

No. _____

**In The
Supreme Court of Texas**

RONALD F AVERY

PETITIONER

VS.

DYLAN BADDOUR; HEARST COMMUNICATIONS, INC.

RESPONDENT

**From The Fourth Court of Appeals, Cause No. 04-00184-CV
and the District Court for Guadalupe County,
Cause No. 15-2186-CV, Honorable W.C. (Bud) Kirkendall Presiding**

PETITION FOR REVIEW

Ronald F. Avery

Pro Se

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IDENTITY OF PARTIES AND COUNSEL

The following constitutes a list of all parties to the trial court's final judgment and the names and addresses of all trial and appellate counsel:

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Respondents and Counsel at both Trial and Appellate Level:

2. Dylan Baddour;
3. Hearst Communications, Inc.

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REFERENCE NOTATION

- (C152) Refers to the page number of the Clerk's Record at the Trial Court.
- (R12) Refers to the page number of the Reporter's Record at the Trial Court.
- (A13) Refers to the page number of the Appellant's Appendix.

STATEMENT OF THE CASE

Nature of the Case

Petitioner, Ronald Avery, sued Respondent, Dylan Baddour, a Houston Chronicle news reporter, and the owner of the Houston Chronicle, Hearst Communications, Inc., for libel.

The Respondents filed a Texas Citizen Participation Act Motion to Dismiss claiming they were exercising their Constitutional Rights of Free Speech, Association and Petition. Said Motion was granted but mandatory attorney fees, costs, expenses and sanctions were denied.

Petitioner, Ronald F. Avery, appealed the granted Motion to Dismiss to the Fourth Court of Appeals in San Antonio, Texas. Both Respondents, also appealed the trial court's denial of the mandatory attorney fees, costs, expenses, and sanctions. The Fourth Court Affirmed the trial court's Dismissal of Petitioner's libel suit but reversed and remanded the trial court's Denial of mandatory attorney fees, costs, expenses, and sanctions.

Trial Court Information

Trial Court Judge: W.C. (Bud) Kirkendall
Trial Court name: Ronald F. Avery v. Dylan Baddour; Hearst Communications, Inc.
Trial Court Number: 15-2186-CV
Trial Court Ruling: Granted Motion to Dismiss under Texas Citizen Participation Act

Court of Appeals Information
Parties in the Court of Appeals

All Appellants / Cross Appellees: Ronald F. Avery
All Appellees / Cross Appellants: Dylan Baddour
Hearst Communications, Inc.

Court of Appeals Number: 04-16-00184-CV

The appeals were formally submitted on July 29, 2016, on Briefs only before a panel consisting of Chief Justice Sandee Bryan Marion, Justice Rebecca C. Martinez, and Justice Luz Elena D. Chapa. On August 10, 2016, Chief Justice Marion wrote, filed, and issued a 13 page Memorandum Opinion styled No. 04-16-00184-CV Ronald F. AVERY, Appellant/Cross-Appellee v. Dylan BADDOUR and Hearst Communications, Inc., Appellees/Cross-Appellants.

The Fourth Court of Appeals Affirmed the Trial Court Order Dismissing the Petitioner's libel suit and Reversed the Trial Court's Denial of Respondent's request for mandatory attorney fees, costs, expenses and sanctions.

There were no other parties or matters before the Trial Court or Court of Appeals. There were no other separate opinions issued or filed.

There were no motions for rehearing or reconsideration en banc filed.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction pursuant to the following subsection(s) of Texas Government Code section 22.001(a):

(1) (disagreement among justices of court of appeals on question of law material to decision) **3 of 9 Supreme Court Justices disagreed with the majority in a case that was used by the Fourth Court of Appeals to Affirm the Trial Court dismissal. The doctrine of the "Average Hypothetical Reader" to substitute for actual evidence of exposure to public hatred, contempt and ridicule in a libel case was found without authority by the 3 dissenting justices in Musser & Associates v. Smith Protective Services, Inc., 723 S.W.2d 653.**

(2) (conflict between holding of court of appeals and another court on question of law) **NONE**

(3) (construction or validity of a statute):

The Texas Citizen Participation Act (Texas Civil Practice and Remedy Code Chapter 27) has internal flaws that not only thwart its goal but actually work against the intended purpose of the act.

The Statutory Definition of Libel (Texas Civil Practice and Remedy Code 73.001) does not match the case law definition which must be brought in line with the statute. If the statutory definition

matched the present case law definition, no one would ever bring a libel suit again.

(4) (a matter involving state revenue) **NONE**

(5) (a case in which the railroad commission is a party) **NONE**

(6) (an error of law has been committed of importance to the jurisprudence of the state):

Several case law doctrines do not apply or are incorrectly applied to this case creating an error of law important to the jurisprudence of the state:

The "Ordinary Hypothetical Reader" doctrine used to dismiss real written evidence of exposure to public hatred, contempt or ridicule is inapplicable to the facts of this case.

The "Substantial Truth" case law doctrine is misapplied in this case causing an error of law.

ISSUES PRESENTED

Issue 1: "Hypothetical Ordinary Reasonable Reader" Doctrine

The court of appeals erred in finding that Petitioner failed to show prima facie evidence of defamation by disregarding evidence of statutory defamation by substituting in its place the hypothetical ordinary reasonable reader standard that is more applicable to libel cases without evidence of actual statutory defamation per se.

Issue 2: "Substantial Truth" Doctrine

The court of appeals erred in finding that Petitioner failed to show prima facie evidence of falsity by disregarding obvious falsehoods with the misapplication of the substantial truth doctrine.

Issue 3: Case law & Statutory Definitions of Defamation

Case law has strayed from the statutory definition of defamation resulting in injury to those who have actual evidence of statutory defamation encouraging them to file suit when they cannot know in advance if they have the element of defamation as a matter of law by a judge's finding prior to filing.

Issue 4: Internal flaw of Texas Citizen Participation Act

The excessively broad definition of "exercise of freedom of speech" is extended to news reporters who are remain outside objective reporters of other people exercising their constitutional rights. News reporters are ethically forbidden to be a participant in the events they cover. This definition makes outside observers into participants.

STATEMENT OF FACTS

A one page timeline of the facts in this case can be found in Petitioner's Appendix at **TAB 4**.

Because the Fourth Court of Appeals made numerous mistakes in their Statement of Facts, which would be difficult for Petitioner to unravel, he found it easier to simply provide another complete and comprehensive Statement of Facts herein.

On Saturday April 11, 2015, Respondent, 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. The building was partly owned by Respondent, Ronald Avery (**C322**).

Near the end of the meeting, Avery, the Petitioner, addressed the "ROT session of congress" by reading his paper (**C330**) concerning the doctrine of governmental *dissolution* from within by those in government as explained by John Locke in his *Second Treatise of Government*. Avery was not then and is not now and never has been a member of the ROT or of the "congress" of same. (**C6¶17**).

Five months later, on Patriots Day weekend, Sunday September 13, 2015, The Respondents published their article (**C90, TAB 6**) about the

meeting held in McQueeney on their website called "HoustonChronicle.com." The next day, on Monday September 14, 2015 the Respondents published a very similar article on the front page of The Houston Chronicle (C87). 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 (C93). Contrary to the Fourth Court "Background" all three hyperlinked articles are on the record (C106-C122).

The Respondents' 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:

"All Texians have informally renounced their U.S. citizenship, as shown on Ronald Avery's jacket." (C87, TAB 5)

However, the man wearing the jacket was not Ronald Avery, Petitioner, 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:

"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." (C363) (A17) (TAP 14)

Avery has never informally (or formally) renounced his U.S. citizenship.

The web article contained 10 color photographs of the meeting in McQueeney. The third photograph of Respondents' web article shows a picture of Ronald Avery, the Petitioner, at a microphone reading his paper on *dissolution* at the conclusion of the "joint session" of the "ROT" on April 11, 2015. The caption under that photograph said:

"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."" (C364) (A18) (TAB 16)

On September 14, 2015, Avery was first informed of the front page article by a news journalist friend who read the article at a news stand in the George Bush Intercontinental Airport on the way to Washington DC to cover congress. Avery's friend called from the airport to tell him about the front page article and the obvious lies about him being a secessionist and with Avery's name under a photo of someone else

wearing a Republic of Texas jacket (C325¶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 with numerous defamatory public comments below it. Avery also wrote in the blog area that he was thinking of filing a libel suit against Baddour and the Chronicle (C99, TAB 6). That comment posted 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 (C351).

Baddour sent Avery an email, obtained from their blog site private email registration, 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 the articles (C350).

On September 29, 2015, after no offer from the Chronicle to fix anything, Avery emailed his Request for Corrections, Clarifications and Retractions to Baddour and Vernon Loeb at the Chronicle (C28-C31) & (C344) (TAB 18). Avery also sent the same request to Vernon Loeb the same day by certified mail (C28-C32). Baddour replied that

the Chronicle had made a correction to their front page news story earlier on Wednesday September 16, 2015:

"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." (C340)

To this day 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 is not in evidence on record. Avery filed suit against Respondents, Dylan Baddour, and Hearst Communications, Inc., owner of the Houston Chronicle, for libel on November 3, 2015 (C3).

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 (C90), (A20 in color), TAB 15 and his name was removed from the third photograph showing Avery standing at the microphone reading his paper on *dissolution* (C379), (A18), TAB 17. 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 Petition. 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 McQueeney. 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."" (C379) (A19)

Avery is not and never has been a member of the "Republic of Texas" even though he is shown as a member taking turns at the microphone in the photograph. Avery is therefore still shown as a member of the "ROT" as of the filing of this Petition.

SUMMARY OF THE ARGUMENT

The Fourth Court of Appeals erred in affirming the trial court's dismissal of Avery's libel suit against Respondents. The Fourth Court erred in ruling that Avery had not shown that the articles were **defamatory, as a matter of law** under the "**Hypothetical Ordinary Reader**" doctrine. Avery was exposed to numerous written expressions of public hatred, contempt and ridicule in the blog right under the Respondent's web article, two of which called for him to be sent to "GITMO" and be given the "enhanced interrogation." Such constitutes the **statutory definition of defamation**.

The Fourth Court erred in finding that Avery had not proven the **falsity** of the articles under the "**Substantial Truth**" doctrine. The Fourth Court of Appeals erred in essentially rewriting the articles in their 13 page Memorandum Opinion to their own liking to fit the Respondent's inapplicable case law. We have the articles! The articles contained major falsehoods that contained "written or other graphic form(s) that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule." This is defamation as a **matter of statutory law** not judicial findings as a matter of law. The Fourth Court of Appeals arbitrarily found Avery's

opinion of the falsity of the articles to be **subjective** and their opinion of substantial truth of the gist of the article to be **objective**.

Being called a "secessionist" and a "member" when you have provided extensive contradictory evidence of both naturally and objectively leads one to conclude that two lies have been told. What kind of proof would one need to satisfy the element of falsity if falsehood doesn't?

The Fourth Court erred in finding that the only evidence of the conclusion that readers perceived Avery and the Texians as far-right fascists, and neo-Nazis', and part of the growing right-wing terrorist threat is "Avery's own baseless allegations."

The Supreme Court should grant Avery's Petition for Review to **bring case law into conformity with the statutory definition of defamation** in the Texas Civil Practice & Remedy Code Section 73.001. The Texians and Avery, falsely shown and named, as a member, were called, by readers, terrorists just like Muslims that need to be rounded up and sent to GITMO to be water boarded. If that is not evidence of the "capability" of an article to be defamatory by tending to injure one's reputation and exposing them to public hatred, just what would it take?

The Supreme Court should grant Avery's Petition for Review to **cure flaws within the Texas Citizens' Participation Act (TCPA Section 27)**. There is no evidence that Baddour was exercising any constitutional rights outside the excessively broad definition in the Act which allows the Act to be used against the very people it was designed to protect.

There is no evidence that Baddour contributed, or expressed any opinions, or associated with anyone or group, or submitted any petitions. There is no evidence that he is a citizen of Texas or the United States. The Act defines the "exercise of free speech" as any communication about a community issue. The threshold is too low news reporters to be eligible to use the TCPA.

Any participation or exercise of constitutional rights with those they cover harms the objective appearance of the reporter. All of Baddour's articles about Avery and the Texians are statements of fact not his own opinion and exercise of constitutional rights in any way. This is confirmed by several professional media organizations (**C397-400**), (**TAB 9**).

ARGUMENT

1. This Court should grant review to prevent the court of appeals from substituting an arbitrary "Hypothetical Ordinary Reasonable Reader" finding "as a matter of law" in place of real evidence of the "statutory matter of law" definition of defamation.

The appeals court disregarded evidence on the record of public written expressions of ridicule, contempt and hatred towards Avery as a falsely shown member of the "ROT" and by virtue of that membership, a "secessionists," "Far Left Fascist," and "Right-Wing Terror Threat," by imputation and juxtaposition of hyperlinked articles altering the gist of the web article to be very defamatory. 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.) And; Turner v. KTRK Television 38 S.W.3d 103 Sup Crt 2000 at 118.

The Fourth Court of Appeals cited Musser v. Smith Protective Services, Inc. 723 S.W.2d 653 to support their disregard of evidence of the exposure of Avery to public ridicule, contempt and hatred conforming to the statutory definition of defamation. Musser did not contain comparable facts. In Musser the trial court, 12 jurors and the receiver of an alleged libelous letter, found it to be defamatory. The appeals court reversed it because they did not find the letter "capable of defamation" and said it was a "matter of law." The Supreme Court

affirmed the appellate court but it was not unanimous and one justice wrote a dissenting opinion, joined by two others, saying:

"Apparently, the majority feels that Yust, Yuna, the trial judge, twelve jurors, one court of appeals justice and three supreme court justices do not represent the "ordinary reader" while two court of appeals justices and six supreme court justices are "ordinary readers."

The Fourth Court maintains that the determination of the *capability* of material to be defamatory is a "matter of law" finding by a judge citing once again the Musser case. But this too presents a problem that three Supreme Court justices recognized:

"By mere insertion of the words "as a matter of law," the majority of this Court has substituted its judgment, regarding the threshold determination concerning the ambiguity of the statement, for that of the trial court judge. Moreover, the majority has substituted its finding for that of the jury simply because it would have reached a different conclusion. I find no authority for either of these actions by the majority. The record contains evidence to support the trial judge's finding and the jury findings. Accordingly, I would affirm the judgment of the trial court.
RAY and MAUZY, JJ., join in this dissenting opinion."

This does not sound like a well resolved doctrine to Petitioner, but rather, a ludicrous proposition. In Musser there is no evidence of public ridicule, contempt and hatred outside the receiver of the private letter and the judiciary process. In the Avery case we have the actual

written expression of public ridicule, contempt and hatred prior to any judicial proceedings.

2. This Court should grant review to correct the improper use of the "Substantial Truth" doctrine by the court of appeals.

The court of appeals used the Substantial Truth doctrine to dismiss evidence of the fact that Avery was not a member of the "Republic of Texas" and a secessionist as falsely reported by Respondents. Which has not been corrected as of this date. The appeals court cited no case law to do this. They also ruled that even though the article falsely implied that Avery renounced his U.S. citizenship and was incorrectly identified as a secessionist, the gist of the article was true. This is an outrageous finding on its face. The Substantial Truth doctrine is only applicable to matters of small degree not matters of nature. It cannot make Avery a member or a secessionist contrary to the evidence on record. Avery showed the articles to be false even in their headlines.

3. This Court should grant review to bring case law into conformity with the statutory law definitions of defamation.

The appeals court also cited *New Times, Inc. v. Isaacks, 146S.W.3d 144, 154 (Tex. 2004)* in support of their finding that defamation is a "matter of law" to be determined only by a judge and not by evidence of the public expressions of hatred, contempt and ridicule on record in the Avery case. But that citation was about a satirical article not a

news story. The Respondents have never suggested that their articles were satires. Their citation is inapplicable to the Avery case.

The Libel statute is clear that evidence of exposure to public hatred, contempt and ridicule is the statutory law definition of defamation. (CPRC 73.001). The present contradiction between case law and statutory law on finding defamation as an element is a trap for those who have evidence of statutory defamation but later discover that only a judge can find that element as a "matter of case law." This is intolerable and damaging to all citizens that are ravaged by an out of control media. It is unconscionable that a Plaintiff who has been called a terrorist that needs to be sent to GITMO for water boarding may now be punished and sanctioned by the courts to prevent him from ever defending his reputation again.

4. This Court should grant review to correct the flaw within the Texas Citizen Participation Act which defeats and works against its purpose.

There is no evidence on record that Baddour is a citizen or ever participated in the events the subject of this suit. He never voiced an opinion, exercised his free speech, or associated with any group including the "ROT." He never petitioned any one or group. It is clear from the record that it is Avery who was exercising his constitutional

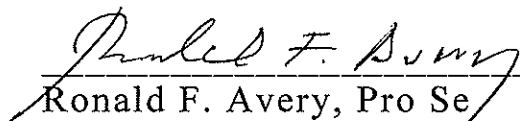
rights to speak freely, associate and petition for when he was attacked by the media.

PRAYER

Petitioner, Ronald F. Avery, respectfully prays that his Petition be Granted that he and Respondents be instructed to submit a Brief on the Merits so that Avery can adequately prove the obvious issues he has exposed herein to ultimately help perfect the presently flawed Texas Citizens Participation Act and bring case law on defamation into conformity to the statutory definition of same.

Petitioner respectfully prays that this court reverse the judgment of the court of appeals, and remand this case for trial on the merits

Respectfully submitted,

A handwritten signature in cursive script that reads "Ronald F. Avery". The signature is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on September 23, 2016, I served a copy of the foregoing Petition for Review on the Respondents listed below by Certified Mail RRR 7016 0910 0001 2761 3822:

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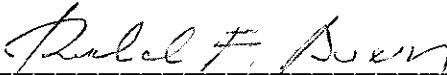
Dylan Baddour and Hearst Communications, Inc.



Ronald F. Avery, Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this Petition for Review contains 2,877 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.



Ronald F. Avery, Pro Se

APPENDIX

TAB	Document
1	Trial Court's judgment on appeal
2	Court of Appeals Memorandum Opinion
3	Court of Appeals Judgment
4	Fact Timeline
5	The Houston Chronicle Front Page Article
6	HoustonChronicle.com Web Article w/ 2 of 10 photos and comments posted in their blog under the article
7	HoustonChronicle.com Web Article hyperlinks falsely said to be not in the record by the court of appeals, and HoustonChronicle.com Web Article revision statement
9	Ethical Standards of News Reporters non-participation
10	United States State Department Description of the present War On Terror
11	Texas Civil Practice & Remedy Code (CPRC Chap. 27) Texas Citizens Participation Act
12	Texas Civil Practice & Remedy Code (CPRC Chap. 73) Libel
14	Lead Picture on Web Article with Avery's name
16	Third Picture on Web Article with Avery's name
18	Avery's Request for Correction, Clarification and Retraction

TAB 1.

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MAR 18 2016
DEBRA CROW
Clerk, Dist. Court, Guadalupe Co. Tx

CAUSE NO. 15-2186-CV

RONALD AVERY,

Plaintiff,

vs.

DYLAN BADDOUR, AND
HEARST COMMUNICATIONS, INC.,

Defendants.

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IN THE DISTRICT COURT OF

GUADALUPE COUNTY, TEXAS

2ND 25TH JUDICIAL DISTRICT

**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 [Signature]
Deputy



TAB 2.



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00184-CV

Ronald F. **EVERY**,
Appellant/Cross-Appellee

v.

Dylan **BADDOUR** and Hearst Communications, Inc.,
Appellees/Cross-Appellants

From the 2nd 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 15-2186-CV
Honorable W.C. Kirkendall, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 10, 2016

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

This is an accelerated appeal from the trial court's order (1) granting appellees' motion to dismiss appellant's defamation claim under the Texas Citizens Participation Act, but (2) denying appellees' recovery of court costs, attorney's fees, and other expenses incurred in defending against appellant's legal action. We affirm the trial court's order dismissing appellant's defamation claim against appellees, but we reverse the trial court's denial of appellees' request for court costs, reasonable attorney's fees, and other expenses; and remand the cause to the trial court for consideration of this request.

BACKGROUND

On April 11, 2015, appellant, Ronald Avery, attended a meeting of a group by the name of The Texas Republic (hereinafter, the “Texians”), which was held on land owned by Avery in McQueeney, Texas. Avery, along with others, was a speaker at the meeting. Also in attendance at the April meeting was Dylan Baddour, a reporter for the Houston Chronicle newspaper.¹

On September 13, 2015, Baddour wrote an article about the Texians that was published on the front page of the Chronicle (“the Print article”) and on the Chronicle’s website (“the Web article”). The Print article discussed the Texian’s views and “solemn mission” of “plotting a legalistic escape [by Texas] from Uncle Sam.” The Web article was substantially the same. Both articles included photographs, and the Web article contained hyperlinks to other documents and articles. Neither article mentioned Avery by name. However, a Print article photograph showing a man seen from behind incorrectly identified Avery as the man in the following caption: “All Texians have informally renounced their U.S. citizenship, as shown on Ronald Avery’s jacket.”² The Web article showed the same photograph with the following caption: “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.” The Web article also contained a photograph correctly identifying Avery standing at a microphone with the following caption:

In April, the Texian congress assembled beneath the blue-and-yellow flag of the Republic of Texas, 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

¹ Baddour also attended a second Texian meeting held in August of 2015.

² The back of the jacket had a gold star encircled by the words: “Republic of Texas-Texian National.”

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.”

Following publication of both articles, Avery wrote to the Chronicle claiming he was “considering a lawsuit for libel against the Houston Chronicle and Dylan Baddour,” and stating (1) the man pictured wearing the jacket was not him, (2) he was not a member of any group called “the Republic of Texas,” (3) he was not anti-government, in fact he sought lawful government, and (4) he did not want, nor did he “advocate secession from the so-called ‘United States of America,’ as it is in fact dissolved.”

The Chronicle issued a correction to the Print article on September 16, 2015, stating it incorrectly identified the man wearing the jacket as Avery and that “Avery is not a member of the organization and was not in the photograph.” Avery’s name was also removed from photo captions accompanying the Web article. On September 29, 2015, Avery again contacted the Chronicle and asked that it print a three-page retraction statement. The Chronicle declined the request.

On November 3, 2015, Avery sued Baddour and Hearst Communications as owner of the Chronicle and its website, alleging the Chronicle’s articles were libelous. About one month later, Baddour and Hearst Communications (collectively, the “appellees”) filed a motion to dismiss pursuant to the Texas Citizens Participation Act. Following a hearing, the trial court granted the motion to dismiss, dismissed Avery’s defamation claim with prejudice, and denied appellees’ request for court costs, attorney’s fees, and other expenses incurred in defending the action. Avery appealed the dismissal of his claim and appellees cross-appealed the denial of their request for costs, fees, and expenses.

TEXAS CITIZENS PROTECTION ACT

The Texas Citizens Participation Act (“the Act”) provides for the expedited dismissal of a legal action that implicates a defendant’s right of free speech or other First Amendment right when

the party filing the action cannot establish the Act’s threshold requirement of a prima facie case. TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.003, 27.005(b),(c) (West 2015).³ A successful motion to dismiss under the Act entitles the moving party to an award of court costs, reasonable attorney’s fees, and other expenses incurred in defending against the legal action. *Id.* § 27.009(a).

The Act contains “a burden-shifting mechanism” in seeking and defending against a dismissal. *Id.* § 27.005. As the movants, appellees had the initial burden to show “by a preponderance of the evidence that the legal action is based on, relates to, or is in response to [their] exercise of: (1) the right of free speech; (2) the right to petition; or (3) the right of association.” *Id.* § 27.005(b). If appellees satisfy this burden, the trial court must dismiss the legal action unless Avery, as the party who brought the action “establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.” *Id.* § 27.005(c). If Avery satisfies his burden, the burden shifts back to appellees to establish by a preponderance of the evidence each essential element of a valid defense to Avery’s claim. *Id.* § 27.005(d). We conduct a de novo review of a trial court’s ruling on a motion to dismiss under the Act. *Herrera v. Stahl*, 441 S.W.3d 739, 741 (Tex. App.—San Antonio 2014, no pet.). We “consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.” TEX. CIV. PRAC. & REM. CODE § 27.006(a); *In re Lipsky*, 460 S.W.3d 579, 587 (Tex. 2015).

A. Exercise of the Right to Free Speech, Petition, and Association

The Act broadly defines “the exercise of the right of free speech” as “a communication made in connection with a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(3). A “communication” is defined as “the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.” *Id.* § 27.001(1). The

³ The Act is sometimes referred to as an anti-SLAPP law—the acronym standing for strategic lawsuit against public participation.

Act further defines a “matter of public concern” to include, among other things, issues related to the “environmental, economic, or community well-being” and issues related to “the government.” *Id.* § 27.001(7)(B & C).

In response to appellees’ motion to dismiss before the trial court and on appeal, Avery asserts his libel suit is not an anti-SLAPP suit because his suit “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.” However Avery may characterize his lawsuit, we must determine whether appellees satisfied their initial burden under the Act.

The two articles reported on the Texians “whose members believe Texas never legally became part of the United States and, therefore, remains a sovereign nation.” The articles described, among other topics, the organization of the group; a recent law enforcement raid on a meeting conducted in Bryan, Texas; and a meeting to discuss various ideas on how to achieve the Texians’ goals. Although the articles mentioned several people—but never Avery—the articles focused primarily on Joe Fallin whom the article described as “a struggling oil field machinery worker” and “a freshman ‘senator’ in a volunteer group called the Republic of Texas”

Considering the petition on which liability in this case was based, we conclude appellees made the communications at issue in connection with a matter of public concern—specifically that it implicated concerns of community well-being and involved issues related to the government. *See id.* §§ 27.001(3), 27.001(7)(B & C). Thus, appellees satisfied their initial burden of showing that Avery’s defamation claim was based on, related to, or was in response to appellees’ exercise of the right of free speech, such that the Act applied to Avery’s claim.

B. Prima Facie Case of Defamation Claim

Because appellees carried their initial burden, the burden shifted to Avery to present clear and specific evidence of a prima facie case for each element of his defamation claim. *See id.* § 27.005(c); *Herrera*, 441 S.W.3d at 741.

A “plaintiff must provide enough detail to show the factual basis for its claim.” *In re Lipsky*, 460 S.W.3d at 591. Prima facie evidence is “the ‘minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true.’” *Id.* at 590 (citations omitted). “In a defamation case that implicates the [Act], pleadings and evidence that establishes the facts of when, where, and what was said, the defamatory nature of the statements, and how they damaged the plaintiff should be sufficient to resist a . . . motion to dismiss [under the Act].” *Id.* at 591. Although the Act “initially demands more information about the underlying claim, the Act does not impose an elevated evidentiary standard or categorically reject circumstantial evidence. In short, it does not impose a higher burden of proof than that required of the plaintiff at trial.” *Id.* However, “[b]are, baseless opinions do not create fact questions, and neither are they a sufficient substitute for the clear and specific evidence required to establish a prima facie case under the [Act].” *Id.* at 592 (quoting *Elizondo v. Krist*, 415 S.W.3d 259, 264 (Tex. 2013)). “Opinions must be based on demonstrable facts and a reasoned basis.” *Id.*

Because Avery, a private individual, brought suit against media defendants, the elements of his cause of action are: (1) appellees published a false statement of fact to a third party; (2) that was defamatory concerning Avery; (3) while acting with negligence regarding the truth of the statement, and (4) damages, unless the defamatory statements were defamatory per se. *Id.* at 593. When—as here—a private individual sues a media defendant for defamation over statements that are of public concern, the plaintiff has the burden of proving falsity—in other words, that the gist

of the statements was not substantially true. *Neely v. Wilson*, 418 S.W.3d 52, 66 n.21 (Tex. 2013).⁴ A communication can convey a false and defamatory meaning by omitting material facts or juxtaposing facts in a misleading way, even though all the story's individual statements considered in isolation are literally true or non-defamatory. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114-15 (Tex. 2000). Whether a publication is capable of a defamatory meaning is initially a question of law for the court. *Musser v. Smith Protective Servs., Inc.*, 723 S.W.2d 653, 654-55 (Tex. 1987). However, when a publication is of ambiguous or doubtful import, the jury must determine its meaning. *Id.* at 655.

In determining whether a publication is defamatory, we construe the article as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 154 (Tex. 2004); *Turner*, 38 S.W.3d at 114; *Musser*, 723 S.W.2d at 655. A person of ordinary intelligence "is a prototype of a person who exercises care and prudence, but not omniscience, when evaluating allegedly defamatory communications." *New Times, Inc.*, 146 S.W.3d at 157. This person "is no dullard" and represents "reasonable intelligence and learning," not "the lowest common denominator." *Id.* (citation omitted). "Thus, the question is not whether some actual readers were misled, as they inevitably will be, but whether the hypothetical reasonable reader could be." *Id.* at 157. The appropriate inquiry is objective, not subjective. *Id.*

A statement may be false, abusive, unpleasant, or objectionable without being defamatory in light of the surrounding circumstances. *Double Diamond, Inc. v. Van Tyne*, 109 S.W.3d 848,

⁴ "At common law, truth was a defense in a suit for defamation; falsity was not an element of the action. But as [the Texas Supreme Court] recently observed, '[t]he United States Supreme Court and this Court long ago shifted the burden of proving the truth defense to require the plaintiff to prove the defamatory statements were false when the statements were made by a media defendant over a public concern.'" *KBMT Operating Co., LLC v. Toledo*, No. 14-0456, 2016 WL 3413477, at *3 (Tex. June 17, 2016) (citation omitted).

854 (Tex. App.—Dallas 2003, no pet.). Moreover, to be actionable, a statement must assert an objectively verifiable fact rather than an opinion. *Neely*, 418 S.W.3d at 62; *Carr v. Brasher*, 776 S.W.2d 567, 570 (Tex. 1989) (holding that all assertions of opinion are constitutionally protected). We classify a statement as fact or opinion based on the statement’s verifiability and the entire context in which the statement was made. *Bentley v. Bunton*, 94 S.W.3d 561, 581 (Tex. 2002).

According to Avery, the gist of the articles is that he is a secessionist, which he claims is false because he has argued against secession for many years, and that the group of people who met in April and August of 2015 were secessionists, which he contends is also false because the Republic of Texas opposes secession. Avery contends the articles falsely made him a member of an alleged secessionist group based on the photograph that identified the man wearing the jacket as him with the caption stating “All Texians have informally renounced their U.S. citizenship” and another photograph that correctly identified him as the man standing at a microphone but included the caption “members take turns at the microphone.” Avery also points to the following hyperlinks in the Web article as evidence that readers were “enraged . . . to express actual written *public hatred* towards the [Texians] and Avery”: (1) a link to a document about the “Sovereign Citizen Extremist” that “will drive violence at home, during travel, and at government facilities”; (2) an article entitled “Putin’s Plot to Get Texas to Secede” about secessionists going to Russia to talk about secession; and (3) an article entitled “The Growing Right-Wing Terror Threat.” On appeal, Avery asserts the published falsehood that he is a member of the “Republic of Texas,” the published falsehood that the “Republic of Texas” is a “secessionist organization,” and the juxtaposition of inapplicable defamatory material hyperlinked to the Web article resulted in his exposure to public ridicule and hatred.

Because the defamatory meaning inquiry is objective rather than subjective, Avery’s subjective perceptions of the validity of his claims are not competent evidence and do not affect

our analysis. *New Times, Inc.*, 146 S.W.3d at 157. Instead, we construe each article as a whole in light of the surrounding circumstances based on how a person of ordinary intelligence would perceive it to determine whether the publication was defamatory. *Id.*

The Print article began on the first page of the newspaper and was entitled: “Secessionists hopeful despite odds.” The photograph of the man in the jacket appeared under the title. The article described the Republic of Texas as a “volunteer group,” that maintained “executive, legislative and judicial branches of government,” and which “call their monthly meetings joint sessions of congress.” The article stated the group refer to themselves as “Texians — citizens of the Republic of Texas,” and their mission was “plotting a legalistic escape from Uncle Sam.” According to the Print article, Republic of Texas members “believe Texas never legally became part of the United States and, therefore, remains a sovereign nation.”

The article continued on another page with the caption “Texians grapple with question: What next?” Above this caption was a photograph of Joe Fallin, “the youngest and newest member of the Texian congress” and on whom the article focused much of its attention. Under the caption, the article noted that interest in the group’s cause had been spurred, at least in part, by “anti-federalism at the state Capitol” and by “popular opposition to Washington.” The article then stated:

Even the Russian media, at Vladimir Putin’s behest, have cheered the independence movement and a rival secessionist group, the Texas National Movement, since the United States brought aggressive sanctions against Russia last fall for its activities in the Ukraine, according to a recent Politico story: “Putin’s plot to get Texas to secede.”

The article next described a state and federal raid on a meeting hall in Bryan, Texas, which targeted two individuals who were wanted “for filing fraudulent legal documents summoning a Kerr County judge to a Republic of Texas court to face judgment for permitting the foreclosure of” the home of one of the individuals. The article stated the Kerr County sheriff said the “large

force [was] an abundance of caution,” because in 1997 persons with ties to the Republic of Texas engaged authorities in a seven-day standoff that ended in gunfire and the death of one Texian. Although the article stated, “The group now forswears violence,” the article also noted “an uneasy tension between law enforcement and anti-government groups.” The article went on to discuss a report generated in 2015 by the Department of Homeland Security that “highlighted concern with a growing number of people who deny the legitimacy of the government.”

The Print article then discussed the April 2015 meeting, at which Fallin asked, “What do we actually do to make this happen?” He was answered with “nothing, yet.” The article mentioned a University of Houston professor who explained that filing a document with the International Court at The Hague would not work because only recognized nations can be parties in the world court, and the only path to recognition for the Republic would be a statewide vote. The article also mentioned a Rice University professor who stated a state legislator must propose a constitutional convention to discuss secession, and a new constitution must be written to appear on the ballot. The article ended by returning its focus to Fallin, how he became disillusioned with the U.S. government and found hope of a better future for himself and his family when he was introduced to the Republic of Texas, and that he brings his children, one-by-one, to meetings.

The Web article was entitled: “Ever hopeful and determined, Texas secessionists face long, long odds.” The photograph of the man in the jacket appeared under the title. Another photograph in the Web article identified Avery as the man standing at a microphone and included the caption:

In April, the Texian congress assembled beneath the blue-and-yellow flag of the Republic of Texas, 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 photo, Ronald Avery lists grievances with the U.S., including the 2008 bank bailout, NSA surveillance, the “police state” and “immoral wars.”

The Web article is substantially the same as the Print article, but contains hyperlinks to the *Politico* article, the Department of Homeland Security report, and a *New York Times* article entitled “Growing Right Wing Terror Threat.” Although copies of the linked pages are not in the record, Avery does not contend the links mention him by name.

We conclude Avery did not satisfy his prima facie burden. Even if the captions incorrectly identified Avery as a secessionist, falsely implied Avery renounced his U.S. citizenship, incorrectly identified the Texians as secessionists, and falsely implied Avery was a member of a secessionist organization, the gist of the articles is substantially true: the Republic of Texas is a volunteer, non-violent organization premised on the belief that Texas is a sovereign nation and whose goal it is to legally extricate itself from the United States. No reasonable reader would conclude—as argued by Avery—that either he or the Republic of Texas is a “far-right fascist, neo-Nazi, part of the growing right-wing terrorist threat.” The only evidence of such a conclusion is Avery’s own allegations. However, “[b]are, baseless opinions [are not] a sufficient substitute for the clear and specific evidence required to establish a prima facie case under the [Act].” *In re Lipsky*, 460 S.W.3d at 592.

Because Avery did not satisfy his burden of showing that the gist of the two articles was not substantially true, the Act requires that his action be dismissed. Therefore, the trial court did not err in granting appellees’ motion to dismiss Avery’s defamation claim.⁵

⁵ Avery also asserts, for the first time on appeal, that the Act violates the Texas Constitution and is “internally flawed.” Avery cites to no authority for either argument; therefore, they are waived as inadequately briefed. See TEX. R. APP. P. 38.1(i); *WorldPeace v. Comm’n for Lawyer Discipline*, 183 S.W.3d 451, 460 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (concluding issue was inadequately briefed and thus waived). Furthermore, because Avery did not raise these complaints before the trial court, his issue is not preserved on appeal. *Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Services, Inc.*, 441 S.W.3d 345, 352 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (complaint that the Act was unconstitutional waived because raised for first time on appeal); see also TEX. R. APP. P. 33.1(a); *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 222 (Tex. 2002) (“A litigant must raise an open-courts challenge in the trial court.”); *In re Doe 2*, 19 S.W.3d 278, 284 (Tex. 2000) (attacks on the presumption that a statute is constitutional should be raised as an affirmative defense through appropriate pleadings before the trial court).

COSTS, FEES, AND EXPENSES

In their cross-appeal, appellees assert the trial court erred by not awarding them their court costs, attorney's fees, and other expenses because such an award is mandatory under the Act.

The Act provides in relevant part:

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

TEX. CIV. PRAC. & REM. CODE § 27.009(a).

Recently, the Texas Supreme Court held that “[b]ased on the statute’s language and punctuation, we conclude that the [Act] requires an award of ‘reasonable attorney’s fees’ to the successful movant.” *Sullivan v. Abraham*, No. 14-0987, 2016 WL 1513674, at *4 (Tex. Apr. 15, 2016) (citing to TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1)). In that case, Sullivan moved for dismissal of Abraham’s defamation claim, and asked for \$67,290.00 in attorney’s fees, \$4,381.01 in costs and expenses, and sanctions. *Id.* at *1. The trial court granted the dismissal, but announced in a letter “that justice and equity necessitate [Sullivan’s] recovery of reasonable attorney’s fees in the amount of \$6,500.00 and costs in the amount of \$1,500.00.” *Id.*

The court of appeals affirmed the trial court’s award of attorney’s fees and expenses, but reversed and remanded for the trial court to reconsider its decision to deny sanctions. The appellate court concluded the Act required an award of “reasonable attorney’s fees” but also allowed the trial court discretion to award a lesser amount if “justice and equity” so required.

On appeal before the Texas Supreme Court, Sullivan agreed the fee award was mandatory, but argued a fee award under the Act is measured by reasonableness alone. *Id.* at *2. The Supreme Court held that “[a] ‘reasonable’ attorney’s fee ‘is one that is not excessive or extreme, but rather moderate or fair,’” and such a “determination rests within the court’s sound discretion, but that

discretion, under the [Act], does not also specifically include considerations of justice and equity.” *Id.* at *4. The Court concluded the “trial court accordingly erred by including these considerations in its attorney’s fee award, and the appellate court likewise erred in recognizing them as part of its standard of review.” *Id.*

Based on the Supreme Court’s analysis in *Sullivan*, we hold that—in addition to reasonable attorney’s fees—the award of court costs and other expenses incurred in defending against the legal action is mandatory. Therefore, the trial court erred in denying appellees’ an opportunity to recover their reasonable attorney’s fees, costs, and other expenses incurred in defending against Avery’s legal action.

CONCLUSION

We affirm that portion of the trial court’s order dismissing Avery’s defamation claim with prejudice. We reverse that portion of the order denying appellees an opportunity to recover their reasonable attorney’s fees, court costs, and other expenses, and we remand the cause to the trial court for the limited purpose of determining an appropriate award of reasonable attorney’s fees, costs, and other expenses pursuant to section 27.009(a)(1) of the Act.

Rebeca C. Martinez, Justice

TAB 3.



Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. 04-16-00184-CV

Ronald F. **EVERY**,
Appellant/Cross-Appellee

v.

Dylan **BADDOUR** and Hearst Communications, Inc.,
Appellees/Cross-Appellants

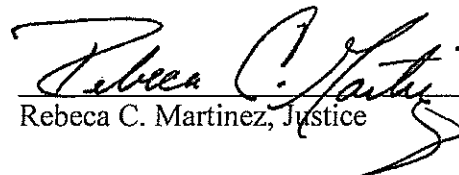
From the 2nd 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 15-2186-CV
Honorable W.C. Kirkendall, Judge Presiding

BEFORE CHIEF JUSTICE MARION, JUSTICE MARTINEZ, AND JUSTICE CHAPA

In accordance with this court's opinion of this date, that portion of the trial court's Order Granting Defendants' Motion to Dismiss Pursuant to The Texas Citizens Participation Act dismissing appellant's claim against appellees with prejudice is **AFFIRMED**. Also in accordance with this court's opinion of this date, that portion the trial court's Order Granting Defendants' Motion to Dismiss Pursuant to The Texas Citizens Participation Act denying appellees the right to recover court costs, reasonable attorney's fees, and other expenses is **REVERSED** and the cause is **REMANDED** to the trial court for the limited purpose of determining an appropriate award of reasonable attorney's fees, court costs, and other expenses pursuant to Texas Civil Practice and Remedies Code section 27.009(a)(1).

It is **ORDERED** that appellees recover their costs of this appeal from appellant.

SIGNED August 10, 2016.


Rebeca C. Martinez, Justice

TAB 4.

Avery v. Baddour Timeline

Event	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Baddour attends "ROT session" at Avery's Building and hears Avery's address to "ROT" after their "session."	Sat 4/11/15								
Baddour's web news article is uploaded.						Sun 9/13/15			
Baddour's Front page news article is distributed						Mon 9/14/15			
Friend calls Avery from Bush International Airport in Houston about falsehoods in article.						Mon 9/14/15			
Avery reads web article and adds comment to blog about suing Baddour and Houston Chronicle. (C99-C100)						Mon 9/14/15			
Baddour emails Avery using registration information derived from blog site and requests Avery to call him. Avery replies he does not talk on phone to those who libel him. (C350)						Tue 9/15/15			
Avery serves Request for Corrections, Clarifications and Retraction. (C28)						Tue 9/29/15			
Baddour replies "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." (C343)						Tue 9/29/15			
Avery never received a copy of this printed retraction and it was never entered into evidence.					➔			
Avery files libel suit against Baddour and Hearst (C3)								Tue 11/3/15	
Baddour prints partial correction on web article at end saying: "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 indentified 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." (C96)								Mon 11/9/15	
Baddour also removed Avery's name from the third photo in the web article.								Mon 11/9/15	
However Baddour left the third picture in the web article showing Avery standing at the microphone reading his paper with the caption still implying he is a member: "In April, the Texian congress assembled ... in McQueeney. They follow a speaker list, and members take turns at the microphone. In this photo, an individual lists grievances" (C379) This implication has never been corrected to this day and is still on-line for all to see.					➔			

TAB 5.



HOUSTON CHRONICLE

Monday, September 14, 2015 | HoustonChronicle.com and Chron.com | Vol. 114, No. 336 | \$1.50 ** Mostly sunny: High 87, Low 68

BONUS
DIGITAL CONTENT
extra

Extra: Stories about personal finance: HoustonChronicle.com/E-Extra
Online: Is it possible to own guns and believe in gun control? Yes, says one owner at HoustonChronicle.com/firearms

Race for mayor still stuck in neutral

Just weeks before early voting starts, 5 still have real shot to succeed Parker

By Rebecca Elliott

With a bevy of candidates and midyear fundraising that collectively topped \$7 million, Houston's 2015 mayoral race has

been poised to be a blockbuster. Yet, just five weeks before the start of early voting, the race has remained relatively stagnant. For the most part, the

candidates still are spending little, agreeing often and floating only modestly different visions for the city's future. "This election has unfolded so far to be an election of single-interest forum," said local political observer Darrin Hall, who

previously worked for mayors Annise Parker and Bill White. "There's not a big picture — four major points that any candidate is exposing — like in years past." Put another way, the race to succeed term-limited Parker, essentially, is a popularity contest that at least five candidates still have a

shot at winning, Democratic political consultant Keir Murray said. Among those contenders are state Rep. Sylvester Turner and former Harris County Sheriff Adrian Garcia — who have remained the presumptive front-runners throughout — as **Mayor continues on A11**

NATION
Wildfires devastate towns in California

Two fast-burning wildfires have overtaken several Northern California towns, destroying more than 180 homes and sending residents fleeing Sunday. **Page A2**



Press Democrat via AP
Despite firefighters' efforts, buildings burn Saturday on Cobb Mountain in California.

WORLD
Germany orders temporary border controls

Facing a flood of migrants, Germany suddenly ordered temporary border restrictions that cut off rail travel from Austria and institutes checks on vehicles. **Page A5**

CITY|STATE
Market grows for 'coding boot camps'

A growing number of people looking to improve their job prospects are graduating from "coding boot camps" in the Houston area and across the nation. **Page B1**



Kansas City's Allen Bailey (97) dives on a fumble by Texans quarterback Brian Hoyer, who lost the ball on a sack by the Chiefs' Justin Houston (50) in the second quarter Sunday at NRG Stadium. Hoyer eventually was replaced by Ryan Mallett in the loss. Coverage starts on page C1.

★ **Not all of the action was inside NRG Stadium. Check out Sunday's tailgating fun at Chron.com**

Houston top U.S. city for refugees

By Andrew Kragie

All Al Sudani did not know who wanted to kill him. In the chaos of southern Iraq in 2004, anyone could become a target: translators, journalists, teachers. Al Sudani even knew a barber who was assassinated. So when he started to receive anonymous threats, he knew he had to leave his job translating for the British army. A mechanical engineer by training, Al Sudani signed up to translate for the British in Mysan, his hometown about 100 miles north of Basra. Locals working with coalition forces became targets for assassination. After several years translating for the British and for the Coalition Provisional Authority, Al Sudani took a translator job with a Czech nonprofit. **Refugees continue on A11**

MOSES MALONE 1955 — 2015
Ex-Rockets great a 'true gentleman'

Hall of Fame center was dominant on the court, revered by many off it

By Jonathan Feigen

Calvin Murphy pushed the words out through the pain, breaking as he spoke. Moses Malone, Murphy's friend for more than four decades and one of the most ferocious and relent-

less rebounders in NBA history, had died Sunday morning, several hours after the Rockets legends had made each other shake with laughter. Moses Eugene Malone, who died in Norfolk, Va., at 60, was a three-time



Moses Malone was a two-time league MVP as a Rocket. NBA Most Valuable Player and a 12-time All-Star. He carried the 1981 Rockets to the NBA Finals, one of two teams with a losing record

to advance that far. He helped bring the Philadelphia 76ers the championship in 1983. Malone, who was inducted into the Naismith Hall of Fame in 2001, is the NBA's all-time leader in offensive rebounds, one of three players ever (along with Kareem Abdul-Jabbar and **Malone continues on A8**

★ **See more photos of Malone through the years at HoustonChronicle.com/Malone**

Secessionists hopeful despite odds



All Texans have informally renounced their U.S. citizenship, as shown on Ronald Avery's jacket. **Texas continues on A6**

By Dyan Baddour

Everyone has seen the bumper stickers: "Texas Secede." It's an age-old jest in the Lone Star State. But some people take it seriously. Really seriously. Joe Palin is one of them. An independent Texas is his greatest dream. A struggling oil field machinery worker from outside Bryan, Fallin, 40, is a freshman "senator" in 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. They maintain executive, legislative and judicial branches of government and call their monthly meetings joint sessions of congress. They refer to themselves as Texans — citizens of the Republic of Texas. Their solemn mission, debated these days at considerable length: plotting a legalistic escape from Uncle Sam. **Texas continues on A6**

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FROM THE COVER

Joe Fallin was still the youngest and newest member of the Texian congress when it met in April, so he spoke little and took a lot of notes. He joined the movement to help create a better life for his family.

Pu Ying Huang



Texians grapple with question: What next?

Texians from page A1

"It's not a question of if it's going to happen, it's a question of when," Fallin said.

Times are relatively good for the Republic. Bold anti-federalism at the state Capitol has nudged the mainstream a little nearer to the Texians, and popular opposition to Washington has generated interest in their cause, at least online.

Even the Russian media, at Vladimir Putin's behest, have cheered the independence movement and a rival secessionist group, the Texas Nationalist Movement, since the United States brought aggressive sanctions against Russia last fall for its activities in the Ukraine, according to a recent Politico story. "Putin's plot to get Texas to secede."

The visibility is an exhilarating development to some of the gray-haired Texians who have been meeting for 15 years to little avail.

Gaining attention

But their biggest boost, paradoxically, came in February during a raid by state and federal authorities in the middle of Fallin's first session as a "senator" at a meeting hall in Bryan.

At least 20 men in SWAT gear burst in shouting with weapons drawn. They were from the Kerr County Sheriff's Office, the Bryan Police Department, the Texas Rangers, the U.S. Marshals and the FBI.

The targets of the raid, Susan Cammack and David Kroupa, were wanted for filing fraudulent legal documents summoning a Kerr County judge to a Republic of Texas court to face judgment for permitting the foreclosure of Cammack's home. Kroupa is "chief justice" of the Republic's international common-law court and a chiropractor in Katy. The law enforcement officers corralled the Texians, who demanded a warrant.

"We had no idea what was going on," Republic of Texas president John Jarneke, a 72-year-old retired builder from Fredericksburg, said later.

The document produced by the SWAT force ordered the arrest of Kroupa and Cammack, neither of whom was present. The agents searched the Texians, confiscated most of their possessions and fingerprinted them all, except one who was jailed for refusing. Kroupa and Cammack subsequently were arrested in June and booked on misdemeanor charges of simulating legal process.

Kerr County Sheriff Rusty Hierholzer, who organized the raid, called the large force an abundance of caution. Back in 1997, individuals with ties to the Republic of Texas engaged authorities in a seven-day standoff that ended in gunfire and the death of one Texian. The group now forswears violence.

Still, the February raid was at least partly the result of an uneasy tension between law enforcement nationwide and anti-government groups. In early 2015, various reports, including one by the Department of Homeland Security,

highlighted concern with a growing number of people who deny the legitimacy of the government.

At their spring session of congress, held in a shuttered wooden beer hall on the Guadalupe River, the Texians were still pumped with excitement about all of the publicity and energy generated by the February raid. It produced headlines in the Chronicle, Vice News and the New York Times. Texians also interviewed with a French reporter and an Italian radio station about their struggle for freedom.

How it could happen

Once the legislators in boots, suits and hats gathered around the tables grouped on the dance floor, the first order of business was to remind all that media inquiries must go to the official spokesman, senator Bob Wilson. He's a 70-year-old former preacher and retired chemical engineer who split with his wife in part for his devotion to the Republic.

He and others hailed the media attention as a big opportunity to spread their word. Under parliamentary procedure, members recounted grievances with Washington and pitched their dreams for an independent Texas. Fallin, still a freshman and well below the group's average age, followed along and eagerly took notes. After lunch, he requested time to speak.

He said he felt inspired by the passion in the group but craved a call to action.

"What do we actually do to make this happen?" he said.

Chief justice Ray Cannon gave an answer: nothing, yet. The 58-year-old construction worker from outside Midland said he'd spent three years reading international law textbooks in search of a way to independence. He said the Republic could file a memorial to the International Court at the Hague demanding that the United States annex Texas legally in 1845 and has abused it since.

But he noted that memorials often are thousands of pages long, and it would take time to plan to compile one.

But that plan won't work, said University of Houston professor of international law Jordan Paust; only recognized nations can be parties in the world court. The only path to recognition for the Republic would be a statewide vote.

In order to get a vote, said Rice University political science professor Mark Jones, a state legislator must propose a constitutional convention to discuss secession, and a new constitution must be written to appear on the ballot. Notably, multiple recent polls in the last year turned up higher-than-expected support for the cause, up to 34 percent, according to Reuters.

But the U.S. Supreme Court ruled secession illegal in 1869, so the U.S. would be compelled to thwart Texas' withdrawal by force. Basically, experts agree it is hard to imagine.

Confronted with the facts, Fallin remained optimistic that a way would be found and was eager to

keep trying.

"My wife says I talk about the Republic too much," he said on a summer Sunday afternoon at a coffee shop in old downtown Bryan, with the flag pinned to the collar of his church shirt.

For him, independence rings with lofty promises of a better life and reprieve from a list of qualms with the federal government. Slipping black coffee, he recounted the process of a grown country boy losing faith in the United States that began in the later years of George W. Bush's administration and continued to his pledge of allegiance to the Republic early this year.

"I grew up under the Old Glory. I pledged to the American flag every morning in elementary school," he said.

But expensive, offensive wars waged amid a struggling economy at home spurred his first suspicions that the nation was not what he'd believed. Eventually he came to see Washington, D.C., as a place where corrupt politicians used public funds to do the bidding of wealthy interests. He felt exploited as he stumbled financially, suffering debt and bad credit while he worked full time, helped home-school his six kids and paid taxes.

Getting youth involved

By December, things were really bad. And plummeting oil prices had cut his hours assembling oil field machinery and his wife took a second job on a goat farm. When a co-worker introduced the Republic, Fallin found hope of a better future for himself and his children.

He brings his kids, one by one, to see the Republic in action and hear its message. In August, it was 16-year-old Brooklyn's turn. Dozens of people packed a small meeting room attached to a bar at the Veterans of Foreign Wars post in Tomball. Fallin sat at the table with congress, and Brooklyn joined the crowd at the perimeter.

Several hours in, a newcomer asked to speak — a stylish 54-year-old with a Yorkshire terrier in her arms who said she'd followed her husband skeptically from Houston.

She said she felt deeply moved by the Texians but was bothered by one thing: They were all too old.

"How do you get young people educated and involved?" she asked.

Discussion bubbled until all eyes fell on the only young person in the room: Brooklyn. She timidly must propose a coasting digital action: updating the website, using social media and producing a YouTube video series of explainers. The congress loved it and sang her praise. There was hope for the Republic yet in digital outreach.

When the session closed, a long line of well-wishers greeted and complimented Brooklyn as she stood beside her proud father.

"I'm glad she likes it," Fallin said. "This is daughter four; next up is five."

Brooklyn interjected to say she'd be back as well.

dylan.baldour@chron.com

TAB 6.

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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 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 ... [more](#)

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. Really seriously.

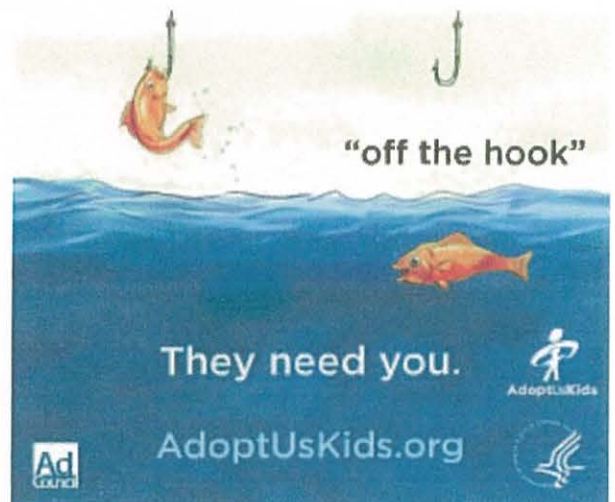
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This article has been edited to reflect the following information: In a photo caption accompanying this article about the Republic of Texas, a secessionist organization, the Chronicle incorrectly identified a man wearing a Republic of Texas jacket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

Dylan Baddour

Reporter

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MrDaleWatson Rank 1989

Looks like secession could be up for a statewide vote next year. Not even kidding:
<http://www.texastribune.org/2015/09/15/texas-nationalist-movement-wants-texas-secede/>

3 months ago Likes Like Share



MrDaleWatson Rank 1989

Texas would be an excellent country on its own. We have big cities, universities, natural resources and 24 million people. Everyone trashing the idea is a wimp.

3 months ago Likes Like Share



Lyn23 Rank 186

Wasn't that whole "secession" thing settled 150 years ago?
Maybe the current secessionists believe that Texas would have pulled it off back then except for those other 10 Confederate states just getting in the way.
If they want to evoke the glorious history of the Lone Star Republic (which I gather they deny was ever a "state" in the first place) they might keep in mind that Sam Houston himself led the movement to make Texas part of the United States in 1845 and, later on, vehemently opposed seceding. < less

3 months ago Likes Like Share

Terrance Steele Rank 2636

Maybe these flks need to be sent to Gitmo.

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DAVID Rank 287

Washington has gotten so corrupt and out of touch with ordinary people that we have groups like this. I can foresee Texas conservatives joining them partly because of Obergefell vs. Hodges, but also because many establishment elites are bent on labeling conservatives as stupid, ignorant, and other nonsense put-downs. It is also become necessary for parent to home-school their children because of all the secular indoctrination going on in public schools at the behest of atheists, humanists, statists, and progressives who flatly do not like Christian Bible-based standards, and do not want those taught to children. « less

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Texianblast Rank 3002

Just a bunch of gun freak malcontents

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Ronald F. Avery Rank 14363

Very interesting article indeed since most of it came from the mind of Dylan Baddour. I am Ronald Avery part owner of the building known as the "Silver Eagle Taphouse" in McQueeney, Texas. I am considering a lawsuit for libel against the Houston Chronicle and Dylan Baddour. I met Baddour at the meeting where he stayed almost all day long. I spoke with him. It's been quite a while so I don't know the exact conversation he and I had. But this I can confirm and obtain legal witness in support: 1) The man in the jacket in not me; 2) I am not a member of any group called "the Republic of Texas;" 3) I am not anti-government, in fact, I seek lawful government; 4) I do not want, nor do I advocate secession from the so-called "United States of America," as it is in fact dissolved.

The picture of me speaking before the "Joint Congress" was taken of me reading a

document I prepared concerning the Natural Law Doctrine of Governmental Dissolution that came from John Locke's Second Treatise of Government published in 1689. Thomas Jefferson said that all the concepts of American liberty came from the work of two men; Algernon Sydney in his Discourses on Government, and John Locke in his First and Second Treatise of Government. The entire Declaration of Independence came from The Second Treatise.

A responsible newspaper reporter would have listened to what was being said and reported it like it was said. Then if the reporter wanted to comment on it they could do so by making a distinction between the two. Baddour has confused the two.

I have the document I read from and I have a video tape of the entire event for all to see and hear. < less

1 month ago 1 like 0 replies 0 retweets 0 shares

TSUJones Rank 113

this is the result of under-funded public education. I don't see a lot of MBA's in this photo. i saw laborers mentioned in the article. What happened to voting in change ? Texas already has the most effective voter suppression laws in effect. Minorities have no voice at the state level. States rights are in full effect. What more could these people want ? Of course they think their .223 assault rifles are going to hold off a nuclear superpower with armed drones. Whats going to happen to the cell phone towers ?? < less

1 month ago 1 like 0 replies 0 retweets 0 shares

BRIAN Rank 27

@TSUJones I'm sure I've heard SJL's voice. But if that's the best that you can do.....

1 month ago 0 likes 0 replies 0 retweets 0 shares

OMG Rank 711

Their energy would be better suited into improving their communities and thus our state.

1 month ago 0 likes 0 replies 0 retweets 0 shares

El Gee Rank 131

BTW, the bumper stickers actually say "Secede Texas," not Texas Secede. I've been seeing them in Houston since the 1980s. While they've been looking into the legality of secession, I wonder if they have thought about what it means to go without US government funding? No more Social Security, Medicare, transportation dollars, disaster assistance, etc. If TX secedes, it will have to provide revenue streams for similar programs, which will likely mean a huge tax increase for all Texans. There will be a lot of angry people who paid into SS/Medicare for 40 years only to lose it because their state insisted on being a republic. « less

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Texmix Rank 3015

@El Gee I'll bet they have considered funding issues, but probably more along the lines of "what is the U.S. going to do without all the revenue that Texas sends upstream which gets "funded" to other states". To the tune of approx. 1/6th of what Washington brings in is from Texas (sorry no citing avail at time). Out of 195 recognized nations, an independent Texas would probably rank 13th largest economy.

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El Gee Rank 131

@Texmix, we are already leaving billions of our federal tax dollars on the table by refusing Medicaid expansion. Everything TX doesn't produce will have to be imported and possibly subject to tariffs. I would like to see actual figures of TX contribution to federal coffers, though. 1/6 sounds a bit high.

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OMG Rank 711

@El Gee

And let's not forget all the unemployment that would be caused by the closing of all federal bases and offices. Communities like Corpus Christi, Killeen, San Antonio would be devastated.

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Texmix Rank 3015

@El Gee it's all available for public view; look up state CAFR and the one they don't want you to know about, much less see: the cash accounts.

[reply](#) [retweet](#) [like](#) [share](#)

Texianblast Rank 3002

@El Gee And Mexico would be chomping at the bit to take Texas back.

[reply](#) [retweet](#) [like](#) [share](#)

Texmix Rank 3015

So...a room mostly filled by WWII, Korean, Vietnam and middle east conflict - US military veterans are considered by (otimio) to be terrorists deserved of "GITMO" huh?

Incredible. Really.

And traitors too? For what? Not agreeing, speaking out for what they believe to be true (?). Wanting a true republic again like we're supposed to have (?). Which of those are the traitorous acts, I'm curious? Look, agree or not, how about an informed discussion? And by informed I mean other than the dis-information being spoon fed by public education,CNN,Fox,NBC,ABC etc.. « less

[reply](#) [retweet](#) [like](#) [share](#)

MrDaleWatson Rank 1989

@Texmix I agree. They seem pretty level-headed to me. Maybe a little bit ambitious, but there's no doubt out federal government isn't what it used to be. I'd be interested to see how this effort turns out.

[reply](#) [retweet](#) [like](#) [share](#)

Sam58 Rank 622

These folks actually meet in person, a younger crowd will play this fantasy game online.

It will probably be wildly successful...patriots can shoot illegal aliens, build border walls all while gathering tokens, er, money to get elected president.

[reply](#) [retweet](#) [like](#) [share](#)



WALTER Rank 3692

Inaccurate Headline. "Should read: Ever hopeful and DELUDED, Texas secessionists face long, long odds."

3 months ago

Likes

Like

Share



Scroggins Rank 257

what a sad and deluded bunch.

3 months ago

Likes

Like

Share



This post has been removed by the author.



otimio Rank 379

They are traitors, terrorists wanting to harm the U.S.A., just like the Muslim terrorists, round them up and put them in GITMO, give them the "Enhanced Interrogation"

3 months ago

Likes

Like

Share



Rhymes With Right Rank 49

@otimio Actually, under Article III of the US Constitution they are not guilty of treason.

"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."

Given that their advocacy of secession is completely peaceful and they are not acting violently, they cannot be viewed as making war against the United States. Nor are they adhering to or offering aid and comfort to any enemy. What they are instead doing is engaging in peaceful political advocacy on behalf of their crackpot cause. « less

3 months ago

Likes

Like

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TAB 7.

POLITICO

WASHINGTON AND THE WORLD

Putin's Plot to Get Texas to Secede

For Moscow's right-wingers, payback means teaming up with a band of Texas secessionists.

By

| June 22, 2015



Nathan Smith, who styles himself the “foreign minister” for the Texas Nationalist Movement, appeared last Spring at a far-right confab in St. Petersburg, Russia. Despite roaming around in his cowboy hat, Smith managed to keep a low-key presence at the conference, which was dominated by fascists and neo-Nazis railing against Western decadence. But at least one Russian newspaper, *Vzglyad*, caught up with the American, noted that TNM is “hardly a marginal group,” and quoted Smith liberally on the excellent prospects for a partial breakup of the United States. Smith declared that the Texas National Movement has 250,000 supporters—including all the Texans currently serving in the U.S. Army—and they all “identify themselves first and foremost as Texans” but are being forced to

remain Americans. The United States, he added, “is not a democracy, but a dictatorship.” The Kremlin’s famed troll farms took the interview and ran with it, with dozens of bots instantly tweeting about a “Free Texas.”

For Russians, this was delicious payback. Since the breakup of the Soviet Union two decades ago, many Russians have come to blame the United States for their plight; a seething resentment over U.S. culpability in the loss of Russian national power is one of the reasons Vladimir Putin is so popular. It has only worsened since the United States has led an international effort to isolate and sanction Moscow over its annexation of Crimea and incursions into eastern Ukraine. Thus, over the past 15 months there has been a sudden, bizarre uptick of Russian interest in and around the American Southwest, most notably Texas, where secessionist sentiment never seems to entirely die out (TNM’s predecessor group, the “Republic of Texas,” disbanded after secessionist militants took hostages in 1997). In a rehash of the Soviet Union’s fate, numerous Russian voices have taken to envisioning an American break-up, *E Pluribus Unum* in inverse—out of one, many. *

Nor is Texas the lone region for which Russia has cast secessionist support since the Crimean seizure. Venice, Scotland, Catalonia—the Russian media have voiced fervent support for secession in all these Western allies. (Of course, Moscow’s mantra—secession for thee, but not for me—means you’d be hard-pressed to find any Russian official offering support for Siberian, Tatar, or Chechen independence.) “Since the destabilization of the West is on Russia’s agenda, they may try to reach out to the U.S. separatists,” Anton Shekhovtsov, a researcher on Moscow’s links to far-right movements in Europe, told me. Russia wants a “deepening of social divisions in the American society, destabilizing the internal political life.” And certain Texans, rather than running from the taint of an authoritarian backing, have reciprocated. }

As a political tack, none of this is completely new. Nearly a century ago, British codebreakers presented the American ambassador with a decrypted cable that came to be known as the Zimmermann Telegram, helping to cajole a recalcitrant United States into the Great War. And understandably so: In the deciphered text, German Foreign Minister Arthur Zimmermann alerted the Mexican government that, should the U.S. enter the war, “we shall give general financial support, and it is understood that Mexico is to reconquer her lost territory of New Mexico, Texas and Arizona.”

President Woodrow Wilson's pledge to forgo war evaporated overnight.

Just a few months ago, a cousin of the Zimmermann Telegram was delivered by a Russian government official, directed squarely at an American government once more waffling about military intervention in the European theater. The speaker of Chechnya's parliament, **Dukuvakha Abdurakhmanov**, warned that should the U.S. increase its supply of arms to Kyiv, "we will begin delivery of new weapons to Mexico" and "resume debate on the legal status of the territories annexed by the United States, which are now the U.S. states of California, New Mexico, Arizona, Nevada, Utah, Colorado and Wyoming." As to the putative destination for the weapons, Abdurakhmanov cited unspecified "guerrillas." (Sealing his screed, Abdurakhmanov inexplicably cited Joe Biden as the creator of the current Ukrainian government.)

If his comment existed in a vacuum, Abdurakhmanov's histrionics could be laughed off, another sign of Moscow's ferment sapping logical discourse. Unfortunately, it doesn't.

It's unclear just how high up these propaganda efforts go in the Kremlin. But it can hardly be an accident that last December, in the midst of the ruble's parlous plummet, Russian President Vladimir Putin **lashed out** at putative Western hypocrisy. "As soon as they succeed in putting [our bear] on a chain, they will rip out his teeth and his claws," the president growled. "We have heard many times from officials that it's unfair that Siberia, with its immeasurable wealth, belongs entirely to Russia. Unfair, how do you like that? And grabbing Texas from Mexico was fair!" No matter that the U.S. never wrested Texas from Mexico. No matter that such annexation took place under the 19th-century aegis of expansion and empire. The parallels, to Putin, are too good to pass up.

Russian state media, of course, took the Crimea-as-Texas analogy and sprinted off with it. According to *Sputnik*, the ballot-by-bayonet "referendum" in Crimea saw its historical precedent in Texas. "If one accepts the current status of Texas despite its controversial origin story, then they are more than obliged to recognize the future status of Crimea," the outlet wrote. Again, if you overlook the reality that land

grabs and forced annexations exist in a Victorian firmament, rather than a post-modern international order, then, sure, a faded parallel can emerge, but only if you squint past the prior 170 years of statecraft.



The New York Times | <http://nyti.ms/1dHrPYT>

The Opinion Pages | OP-ED CONTRIBUTOR

The Growing Right-Wing Terror Threat

By CHARLES KURZMAN and DAVID SCHANZER JUNE 16, 2015

THIS month, the headlines were about a Muslim man in Boston who was accused of threatening police officers with a knife. Last month, two Muslims attacked an anti-Islamic conference in Garland, Tex. The month before, a Muslim man was charged with plotting to drive a truck bomb onto a military installation in Kansas. If you keep up with the news, you know that a small but steady stream of American Muslims, radicalized by overseas extremists, are engaging in violence here in the United States.

But headlines can mislead. The main terrorist threat in the United States is not from violent Muslim extremists, but from right-wing extremists. Just ask the police.

In a survey we conducted with the Police Executive Research Forum last year of 382 law enforcement agencies, 74 percent reported anti-government extremism as one of the top three terrorist threats in their jurisdiction; 39 percent listed extremism connected with Al Qaeda or like-minded terrorist organizations. And only 3 percent identified the threat from Muslim extremists as severe, compared with 7 percent for anti-government and other forms of extremism.

The self-proclaimed Islamic State's efforts to radicalize American Muslims, which began just after the survey ended, may have increased threat

perceptions somewhat, but not by much, as we found in follow-up interviews over the past year with counterterrorism specialists at 19 law enforcement agencies. These officers, selected from urban and rural areas around the country, said that radicalization from the Middle East was a concern, but not as dangerous as radicalization among right-wing extremists.

An officer from a large metropolitan area said that “militias, neo-Nazis and sovereign citizens” are the biggest threat we face in regard to extremism. One officer explained that he ranked the right-wing threat higher because “it is an emerging threat that we don’t have as good of a grip on, even with our intelligence unit, as we do with the Al Shabab/Al Qaeda issue, which we have been dealing with for some time.” An officer on the West Coast explained that the “sovereign citizen” anti-government threat has “really taken off,” whereas terrorism by American Muslim is something “we just haven’t experienced yet.”

Last year, for example, a man who identified with the sovereign citizen movement — which claims not to recognize the authority of federal or local government — attacked a courthouse in Forsyth County, Ga., firing an assault rifle at police officers and trying to cover his approach with tear gas and smoke grenades. The suspect was killed by the police, who returned fire. In Nevada, anti-government militants reportedly walked up to and shot two police officers at a restaurant, then placed a “Don’t tread on me” flag on their bodies. An anti-government extremist in Pennsylvania was arrested on suspicion of shooting two state troopers, killing one of them, before leading authorities on a 48-day manhunt. A right-wing militant in Texas declared a “revolution” and was arrested on suspicion of attempting to rob an armored car in order to buy weapons and explosives and attack law enforcement. These individuals on the fringes of right-wing politics increasingly worry law enforcement officials.

Law enforcement agencies around the country are training their officers to recognize signs of anti-government extremism and to exercise caution during routine traffic stops, criminal investigations and other interactions with potential extremists. “The threat is real,” says the handout from one training

program sponsored by the Department of Justice. Since 2000, the handout notes, 25 law enforcement officers have been killed by right-wing extremists, who share a “fear that government will confiscate firearms” and a “belief in the approaching collapse of government and the economy.”

Despite public anxiety about extremists inspired by Al Qaeda and the Islamic State, the number of violent plots by such individuals has remained very low. Since 9/11, an average of nine American Muslims per year have been involved in an average of six terrorism-related plots against targets in the United States. Most were disrupted, but the 20 plots that were carried out accounted for 50 fatalities over the past 13 and a half years.

In contrast, right-wing extremists averaged 337 attacks per year in the decade after 9/11, causing a total of 254 fatalities, according to a study by Arie Perliger, a professor at the United States Military Academy’s Combating Terrorism Center. The toll has increased since the study was released in 2012.

Other data sets, using different definitions of political violence, tell comparable stories. The Global Terrorism Database maintained by the Start Center at the University of Maryland includes 65 attacks in the United States associated with right-wing ideologies and 24 by Muslim extremists since 9/11. The International Security Program at the New America Foundation identifies 39 fatalities from “non-jihadist” homegrown extremists and 26 fatalities from “jihadist” extremists.

Meanwhile, terrorism of all forms has accounted for a tiny proportion of violence in America. There have been more than 215,000 murders in the United States since 9/11. For every person killed by Muslim extremists, there have been 4,300 homicides from other threats.

Public debates on terrorism focus intensely on Muslims. But this focus does not square with the low number of plots in the United States by Muslims, and it does a disservice to a minority group that suffers from increasingly hostile public opinion. As state and local police agencies remind us, right-wing,

anti-government extremism is the leading source of ideological violence in America.

Correction: June 19, 2015

An Op-Ed article on Tuesday omitted the given name of a scholar of counterterrorism at West Point. He is Arie Perliger.

Charles Kurzman teaches sociology at the University of North Carolina at Chapel Hill. David Schanzer is director of the Triangle Center on Terrorism and Homeland Security at Duke University.

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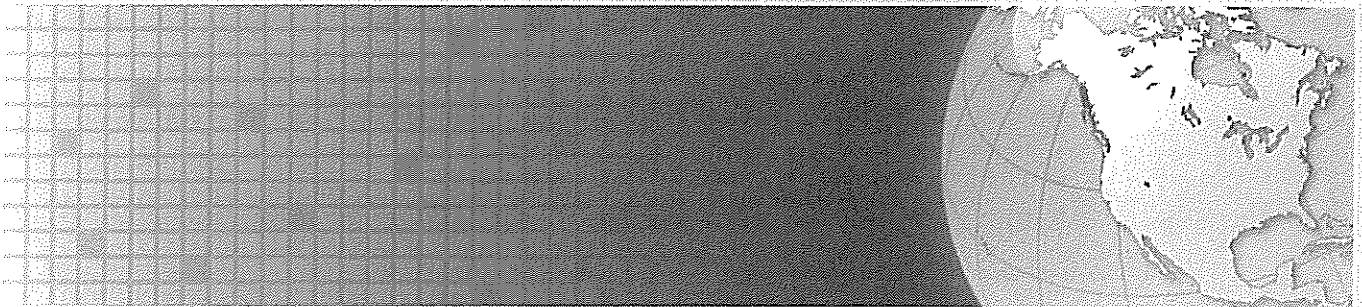
A version of this op-ed appears in print on June 16, 2015, on page A27 of the New York edition with the headline: The Other Terror Threat.

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Homeland
Security

INTELLIGENCE ASSESSMENT



(U//FOUO) Sovereign Citizen Extremist Ideology Will Drive Violence at Home, During Travel, and at Government Facilities

5 February 2015

Office of Intelligence and Analysis
IA-0105-15

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Homeland Security
Office of Intelligence and Analysis

INTELLIGENCE ASSESSMENT

5 February 2015

(U//FOUO) Sovereign Citizen Extremist Ideology Will Drive Violence at Home, During Travel, and at Government Facilities

(U//FOUO) Prepared by the Office of Intelligence and Analysis (I&A).
Coordinated with FBI.

(U) Scope

(U//FOUO) This Assessment is based on an I&A review of 24 law enforcement investigations into acts and threats of sovereign citizen extremist (SCE) violence since 2010, detailing locations, targets of violence, and their statements about the violence, when available.^{*} It is intended to inform law enforcement at the federal, state, and local levels about the nature and circumstances of SCE violence to help officers prepare for, anticipate, and ultimately avoid violent incidents. Most sovereign citizens are non-violent, and this assessment applies only to those that use violence to advance their goals. This Assessment stems from law enforcement feedback on a 2013 analysis of the geographic distribution of SCE violence (see "(U//FOUO) Limited Reporting Suggests Sovereign Citizen Extremist Violence Most Common in Southern and Western United States," dated 27 February 2014).

(U//FOUO) For this review, I&A counted only violence perpetrated by identified SCEs for ideological reasons that involved shootings, assaults, plots to commit violence, and credible violent threats against law enforcement, government personnel, and public officials. All incidents were reviewed by multiple I&A analysts to validate ideological motives. This data set may not be comprehensive of all SCE violence and threats of violence, and is limited by the difficulty in discerning the ideological motivations behind some crimes, which could increase the number of violent incidents by SCEs that were not recognized or reported as stemming from ideological reasons. Additional information from state and local partners could assist efforts to better understand the nature and breadth of these activities.

^{*} (U//FOUO) DHS defines SCEs as groups or individuals who facilitate or engage in acts of violence directed at public officials, financial institutions, and government facilities in support of their belief that the legitimacy of US citizenship should be rejected; that almost all forms of established government, authority, and institutions are illegitimate; and that they are immune from federal, state, and local laws.

(U) Key Judgments

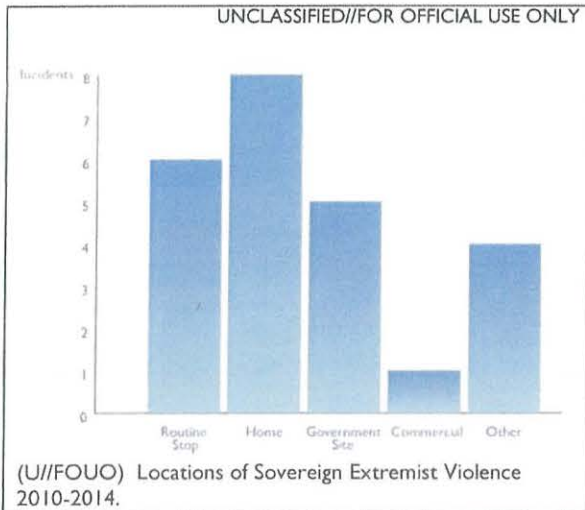
(U//FOUO) I&A assesses that SCE violence during 2015 will occur most frequently during routine law encounters at a suspect's home, during enforcement stops and at government offices.[†]

(U//FOUO) I&A assesses that SCE violence over the next year will remain at the same sporadic level, consisting primarily of unplanned, reactive violence targeting law enforcement officers during active enforcement efforts.

(U//FOUO) SCE Ideology Will Prompt Violence in Specific Circumstances and Locations

(U//FOUO) I&A assesses that most SCE violence will continue to occur most frequently at SCE homes, during routine traffic stops, or at government offices due to their perception that their individual rights are being violated. SCE violence took place in these three circumstances in 19 of the 24 instances of SCE violence since 2010. SCEs perceive that law enforcement efforts and judicial actions infringe upon key personal rights and individual sovereignty—such as the right to travel—most strongly during these circumstances. SCEs believe they personally can ignore laws and act according to their own sovereign citizen ideology. Consequently, when SCEs perceive government representatives directly infringing on their rights and freedoms in an irrevocable way—such as police serving a warrant or a judge ruling against legal filings intended to tie up court proceedings—SCEs resort to violence.

[†] (U) For the purposes of this product, "routine stops" includes primarily traffic stops, but also Terry stops—where a police officer briefly detains a person based on a reasonable suspicion of involvement in criminal activity—and other routine enforcement actions.



- » (U) Victor White^{USPER}, an Odessa, Texas SCE, engaged in a 22-hour armed standoff and gun battle with police in 2010 and was convicted of shooting two officers and a utility worker. White initiated the violence because the police officer was escorting the utility worker onto White's property. White claimed he was "defending and protecting my dignity and the sovereignty of my domain" in a jailhouse interview with media.
- » (U) A SCE father and son claimed police had no authority over them and refused to produce identification when stopped for a traffic violation in Louisiana in 2012. The son then allegedly shot and wounded the police officer who stopped them with an AK-47 assault rifle before fleeing the scene. Later that day, police officers located the suspects at a residence in a mobile home park. The son emerged from the home and allegedly started shooting, killing two police officers and wounding two others, according to media reports.
- » (U) A Denver-based SCE threatened a state employee who handled his unresolved tax dispute with a hoax terrorism letter in 2012. He was convicted after sending an envelope containing white powder specifically to the employee, resulting in the evacuation of a Colorado Department of Revenue building, according to media reports.

(U) Sovereign Citizen Extremist Ideology

(U//FOUO) SCEs—like their non-violent sovereign citizen counterparts—believe they are immune from federal, state, and local laws and that many Constitutional amendments are false. They reject the authority of the government, law enforcement, and the courts because they think these entities are actually commercial entities that cannot compel participation in a commercial contract (although many sovereign citizens recognize the law enforcement authority of the elected sheriff). Many believe that US born citizens can use their birth certificates to access secret US Treasury bank accounts to pay debts and fines. SCEs believe they have unfettered authority to travel "on the land" and avoid paying taxes and fees. Sometimes they create their own parallel government institutions, such as courts and grand juries—which have no legal authority—to support their claims.

(U//FOUO) SCE Violence Is Personal, Not Symbolic

(U//FOUO) I&A assesses that SCE tactics differ from most violent extremists in that their attacks are reactive and personal, rather than symbolic. Other domestic terrorists typically attack symbolic targets to oppose laws and policies they disagree with rather than certain individuals.* By contrast, even when SCEs plot their violence over time or threaten attacks, it is often in direct response to an ongoing personal grievance, such as an arrest or court order. In almost all of the 24 incidents we reviewed, the targets were the specific individuals who the SCE perceive violated their rights, rather than public symbols or anonymous representatives of the government. While other domestic terrorists may be motivated by personal grievances as well as ideology, rarely do they target a specific individual.

- » (U) A Washington-based SCE was convicted in December 2011 for threatening to arrest and kidnap specific law enforcement and government officials involved in giving him a traffic citation, according to the Department of Justice.
- » (U) Francis Shaeffer Cox^{USPER}, an Alaska-based SCE, conspired to kill a US district court judge and an

* (U//FOUO) DHS defines domestic terrorism as any act of violence that is dangerous to human life or potentially destructive of critical infrastructure or key resources committed by a group or individual based and operating entirely within the United States or its territories without direction or inspiration from a foreign terrorist group. The act is a violation of the criminal laws of the United States or of any state or other subdivision of the United States and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping. A domestic terrorist differs from a homegrown violent extremist in that the former is not inspired by, and does not take direction from, a foreign terrorist group or other foreign actor.

Internal Revenue Service officer in March 2011. He targeted them in retaliation for their involvement in law enforcement and judicial actions against him, according to media reports of his trial and conviction.

- » (U//FOUO) Other recent domestic terrorism attacks committed by individuals motivated by anti-government ideologies but who are not SCEs targeted random law enforcement and government employees due to their symbolic value as targets rather than a personal grievance against those individuals, according to case documents. These cases include the shooting attack on three TSA agents at Los Angeles International Airport in November 2013 (killing one); the murder of two Las Vegas policemen and a civilian in May 2014 by Jerad and Amanda Miller (who were killed during the attack); and Eric Michael Frein^{USPER}, who allegedly shot and killed a policeman and injured another in September 2014.

(U//FOUO) SCEs Will Continue to Attack Police Officers Because of Their Enforcement Role

(U//FOUO) I&A assesses law enforcement officers will remain the primary target of SCE violence over the next year due to their role in physically enforcing laws and regulations. While judges and other government officials often earn SCE ire, SCEs typically—though not always—respond to judicial decrees and regulatory actions by disputing them on paper through extensive legal claims before engaging in violent plots, and rarely attack symbolic targets. By contrast, law enforcement actions often involve direct personal (and physical) confrontations that SCEs perceive as provoking an immediate physical response for “self-defense.”

- » (U//FOUO) Law enforcement officers were targeted in 83 percent (20 of 24) of violent sovereign citizen incidents between 2010 and 2014, according to a review of DHS, law enforcement, and open source data.
- » (U) An alleged SCE shot two federal and state law enforcement officers in California in June 2014. He justified his actions in a local media interview by claiming that the law enforcement officers were there “to provoke me” and “murder me if possible.”
- » (U) Earl Cranston Harris, an Oregon SCE, was shot and killed after threatening to shoot deputies who came to his home to enforce an eviction order stemming from a long-running, but previously peaceful, property dispute in June 2014, according to media accounts.

- » (U//FOUO) An alleged SCE made a series of verbal and written threats to CBP and other law enforcement officials at a port of entry between 2010-2013, including mailing threatening statements and manifestos, simply for processing him at the international border. He threatened to retaliate against law enforcement if they continued to stop and question him during border crossings, according to DHS reporting.

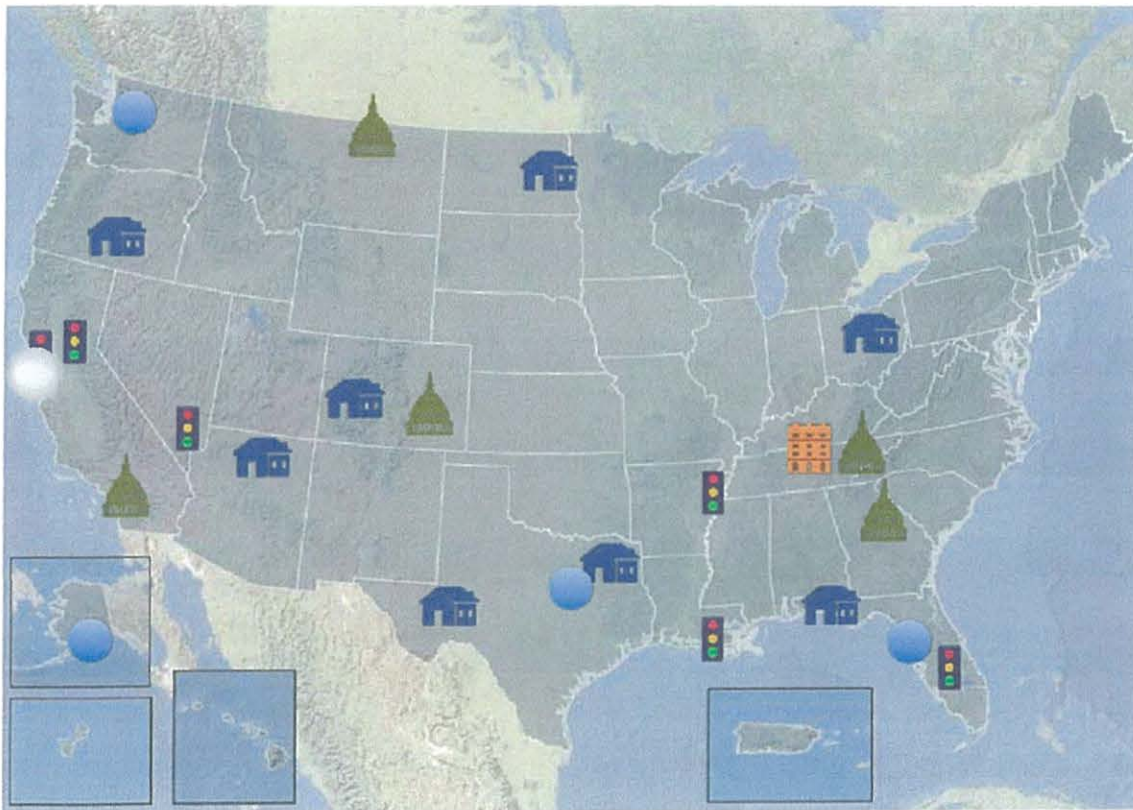
(U) Outlook

(U//FOUO) Barring any significant change in SCE ideology, a major event, or a charismatic leader that advocates for more assertive violence in support of SCEs’ perceived rights, I&A assesses the sporadic pattern and level of violence at homes, traffic stops, and government sites will continue through 2015. However, each individual is unique and may have different interpretations of SCE ideology, especially since there is no agreed-upon dogma or national leader. Some domestic terrorists may combine elements of SCE ideologies with other, more aggressive violent anti-government perspectives—such as militia extremism.⁷ Consequently, such individuals likely pose a greater threat of proactive violence than other SCEs.

⁷ (U//FOUO) DHS defines militia extremists as groups or individuals who facilitate or engage in acts of violence directed at federal, state, or local government officials or infrastructure in response to their belief that the government deliberately is stripping Americans of their freedoms and is attempting to establish a totalitarian regime. These individuals consequently oppose many federal and state authorities’ laws and regulations (particularly those related to firearms ownership), and often belong to armed paramilitary groups. They often conduct paramilitary training designed to violently resist perceived government oppression or to violently overthrow the US Government.

(U) Locations and Targets of Sovereign Citizen Extremist Violence 2010-2014

Reset



(U) This is an interactive graphic. Click on any incident – or use the navigation buttons for any year or target type below – to see more details.

2010 2011 2012 2013 2014

Target



Location



(U) Source Summary Statement

*(U//FOUO) This Assessment is based on a large body of law enforcement and open source reporting from DHS, state and local law enforcement, the FBI, court documents and the media. The law enforcement reports and court documents typically have high credibility and rely on witness testimony and facts established through law enforcement investigation. The media reports range in reliability from moderate to high, but all incidents have also been reviewed by either FBI or local fusion center analysts, giving us **high confidence** in the factual reporting of these cases. We have **high confidence** in our judgment that SCE violence during 2015 will continue to occur most frequently during routine law enforcement stops and encounters at a suspect's home, followed by government offices, because it is based on our review of these incidents and the consistency of basic sovereign citizen ideology that has been established over many years. We also have **high confidence** in our assessment that most SCE violence over the next year will remain at the same sporadic level and will consist primarily of unplanned, reactive violence targeting law enforcement officers during active enforcement efforts. We have seen no changes in basic SCE ideology and the trends displayed since 2010 stem from this ideology. Additional FBI reporting on plotting by SCE groups could alter our assessment, but existing reporting supports our assessments above.*

(U) Report Suspicious Activity

(U) To report suspicious activity, law enforcement, Fire-EMS, private security personnel, and emergency managers should follow established protocols; all other personnel should call 911 or contact local law enforcement. Suspicious activity reports (SARs) will be forwarded to the appropriate fusion center and FBI Joint Terrorism Task Force for further action. For more information on the Nationwide SAR Initiative, visit <http://nsi.ncirc.gov/resources.aspx>.

(U) Tracked by: HSEC-8.2, HSEC-8.5, HSEC-8.6, HSEC-8.8, HSEC-8.10



Homeland Security

Office of Intelligence and Analysis

Customer Feedback Form

Product Title: (U//FOUO) Sovereign Citizen Extremist Ideology Will Drive Violence at Home, During Travel, and at Government

1. Please select partner type: and function:

2. What is the highest level of intelligence information that you receive?

3. Please complete the following sentence: "I focus most of my time on:"

4. Please rate your satisfaction with each of the following:

	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied	N/A
Product's overall usefulness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product's relevance to your mission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product's timeliness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product's responsiveness to your intelligence needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. How do you plan to use this product in support of your mission? (Check all that apply.)

- | | |
|--|---|
| <input type="checkbox"/> Drive planning and preparedness efforts, training, and/or emergency response operations | <input type="checkbox"/> Initiate a law enforcement investigation |
| <input type="checkbox"/> Observe, identify, and/or disrupt threats | <input type="checkbox"/> Initiate your own regional-specific analysis |
| <input type="checkbox"/> Share with partners | <input type="checkbox"/> Initiate your own topic-specific analysis |
| <input type="checkbox"/> Allocate resources (e.g. equipment and personnel) | <input type="checkbox"/> Develop long-term homeland security strategies |
| <input type="checkbox"/> Reprioritize organizational focus | <input type="checkbox"/> Do not plan to use |
| <input type="checkbox"/> Author or adjust policies and guidelines | <input type="checkbox"/> Other: |

6. To further understand your response to question #5, please provide specific details about situations in which you might use this product.

7. What did this product *not* address that you anticipated it would?

8. To what extent do you agree with the following two statements?

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	N/A
This product will enable me to make better decisions regarding this topic.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
This product provided me with intelligence information I did not find elsewhere.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9. How did you obtain this product?

10. Would you be willing to participate in a follow-up conversation about your feedback?

To help us understand more about your organization so we can better tailor future products, please provide:

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Organization: <input type="text"/>	State: <input type="text"/>
Contact Number: <input type="text"/>	Email: <input type="text"/>



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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

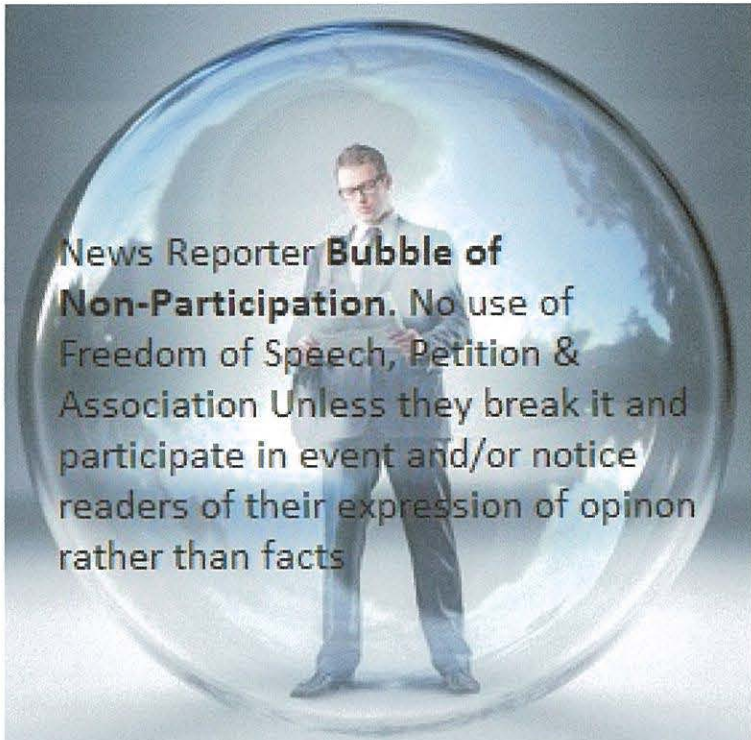
IMAGE 3 OF 10

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 McQueeney. 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.

TAB 9.



News Reporter **Bubble of Non-Participation.** No use of Freedom of Speech, Petition & Association Unless they break it and participate in event and/or notice readers of their expression of opinion rather than facts

FILED
MAR 07 2008

No. 15-2186-CV

DEBRA CROW
Clerk, Dist. Court, Guadalupe Co. Tx.

RONALD F. AVERY

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IN THE DISTRICT COURT

VS.

GUADALUPE COUNTY, TEXAS

DYLAN BADDOUR;
HEARST COMMUNICATIONS,
INC.

2nd 25TH JUDICIAL DISTRICT

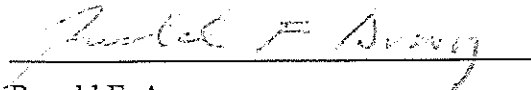
**PLAINTIFF'S ADDENDUM #2 TO PLAINTIFF'S
AFFIDAVIT IN SUPPORT OF HIS RESPONSE TO
DEFENDANT'S
MOTION TO DISMISS**

STATE OF TEXAS §
GUADALUPE COUNTY §

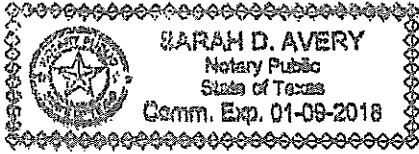
Before me, the undersigned notary, on this day personally appeared Ronald F. Avery, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Ronald Franklin Avery. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I went to four websites of professional news entities and found their code of ethics and rules of good news journalism and copied excerpts from them. I copied and pasted relevant sections regarding the citizen participation of news reporters in the stories they cover into four page document with links to the source of information. I labeled that document **Exhibit J**. I have attached it hereto and will refer to it as "Plaintiff's Affidavit Exhibit J."
3. I also added an except to **Exhibit J** from Professor Dr. Roger Simpson, showing that "the social role of journalism is a professional detachment that eschews any role other than observation."

Further the Affiant sayeth not.


Ronald F. Avery

Sworn to and subscribed before me by Ronald F. Avery on March 5, 2016



Sarah D. Avery
Notary Public in and for
The State of Texas

My commission expires: 1.09.2018

CERTIFICATE OF SERVICE

I certify that on March 7, 2016, I served a copy of this "Addendum #2 to Affidavit of Ronald F. Avery in Support of His Response to Defendant's Motion To Dismiss" on the parties listed below by Certified Mail RRR 7009 0960 0000 7721 9568:

Jonathan R. Donnellan
Kristina E. Findikyan
Jennifer D. Bishop
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Cardinal Rules of News Journalism Prevent Exercise of a Reporter's Own Freedoms Unless They Notice the Participants and the Readers

Cardinal rules of journalism prevent news reporters from Participation or Exercise of their own Freedoms of Speech, Petition & Association in the events they cover and the articles they write about the events they cover unless they notify the citizen participants they are covering and notify the readers of the stories they write about those events. Therefore, news reporters, by professional definition, are not participants in any events they cover nor do they exercise their own personal constitutional rights of free speech, petition and association at the events or in the articles they write about them. The Texas Citizen Participation Act is not applicable to news journalists unless they show evidence, like any other citizen, of their own personal citizen participation in the events they cover or the article they write about them for which they were sued.

1. Excepts From: SPJ (Society of Professional Journalists) Ethics Committee Position Papers:

Political Involvement:

The SPJ Ethics Committee gets a significant number of questions about whether journalists should engage in political activity. **The simplest answer is “No.” Don’t do it. Don’t get involved.** Don’t contribute money, don’t work in a campaign, don’t lobby, and especially, don’t run for office yourself. (Bolding added)

But it’s a bit more nuanced than that. These are the most pertinent parts of the SPJ Code of Ethics:

- Avoid conflicts of interest, real or perceived
- **Remain free of associations** that may compromise integrity or damage credibility

While those are the most directly relevant provisions, the following also apply, but in different ways:

- Disclose unavoidable conflicts
- Be vigilant and courageous about holding those with power accountable
- **Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context** (Bolding added)
- Recognize a special obligation to ensure that the public’s business is conducted in the open and that government records are open to inspection

Objectivity in today’s superheated political environment may be impossible, but impartiality should still be a reporter’s goal. Even those who are paid to have opinions — columnists, editorial writers, talk show hosts, bloggers (OK, maybe not always paid) — should at least be aware of all relevant points of view.

Reporters covering politics are at the other end of this spectrum of what may be tolerated. For them, almost no political activity is OK. Some reporters interpret this as meaning it's off-limits even to register to vote as a Democrat or Republican or third-party member. Some take it to extremes and even decline to vote in a general election. Those are extreme positions, and unnecessarily prim. The proof of a reporter's impartiality should be in the performance.

Many employers' codes of ethics are much more specific than SPJ's code about their employees' involvement in politics. The SPJ code is merely advisory, but a journalist can be fired for violating an employer's ethical rules. NPR's code, for instance, says quite bluntly that **"NPR journalists may not participate in marches and rallies" concerning issues that NPR covers — which is pretty much everything.** (Bolding added)

Newspapers, in particular, have a longstanding practice of endorsing candidates in competitive political races. Although some readers think these endorsements signal a bias in the publication's news coverage, SPJ encourages editorial pages to promote thoughtful debate on candidates and politics; letting readers know through endorsements which candidates share the newspaper's vision is part of that discussion. **Part of an editorial page's responsibility, though, to take every appropriate opportunity to explain the firewall between news and opinion.** (Bolding added)

Ironically, journalism is a profession protected by the same First Amendment that grants to all citizens the right to run for office or to support, by word, deed or cash, the people they would like to see elected. But journalists who want to be perceived as impartial must avoid any display of partisanship.

<http://www.spj.org/ethics-papers-politics.asp>

2. Excerpts From: Associated Press News: Values and Principles:

EXPRESSIONS OF OPINION:

Anyone who works for the AP must be mindful that opinions they express may damage the AP's reputation as an unbiased source of news. They must refrain from declaring their views on contentious public issues in any public forum, whether in Web logs, chat rooms, letters to the editor, petitions, bumper stickers or lapel buttons, and must not take part in demonstrations in support of causes or movements.

<http://www.ap.org/company/News-Values>

3. Excerpts From: NPR Ethics Handbook: Impartiality:

On attending marches, rallies and other public events.

There is real journalistic value in being an observer at public events such as a march or rally, even without a reporting assignment. **But while we may observe, we refrain from actively participating in marches, rallies or public events involving political issues or partisan causes that our organization covers or may cover.** (Bolding added)

<http://ethics.npr.org/category/f-impartiality/>

4. Excerpts From: Greater Good Science Center Berkeley University:

Rules of Engagement by Professor Dr. Roger Simpson. Roger Simpson, Ph.D., is a professor of communication at the University of Washington, where he holds the Dart Professorship for Journalism and Trauma, and was the founding director of the Dart Center for Journalism and Trauma:

Journalists are bystanders to the world around them, often witnessing people in great distress. When should they put down their cameras and notebooks and help their subjects? **Roger Simpson** explains when journalists should get involved—and when they shouldn't.

In his reporting for CNN, **Cooper adhered obediently to the journalistic standards of objectivity and non-intervention.** (Bolding added)

“You have the power of a thousand bulldozers,” a New Orleans resident told Anderson Cooper. “I don't think it's true, of course,” Cooper later wrote. No two comments could speak more clearly about our confused expectations of journalists and the burden that confusion places on them. The confusion rests in large part on **the news industry's demands that its employees stand aloof from what they cover—an effort to assure audiences of reporters' fairness and objectivity.** The demands have been effective. The “**dominant stance of journalism today,**” writes **Maxwell McCombs, a leading scholar of the social role of journalism, is a “professional detachment that eschews any role” other than observation.** (Bolding added)

http://greatergood.berkeley.edu/article/item/the_rules_of_engagement

5. Excerpts From: Ethical Journalism Network:

5 Principles of Journalism

The core principles of journalism set out below provide an excellent base for everyone who aspires to launch themselves into the public information sphere to show responsibility in how they use information. There are hundreds of codes of conduct,

charters and statements made by media and professional groups outlining the principles, values and obligations of the craft of journalism. Most focus on five common themes:

Truth and Accuracy

Journalists cannot always guarantee ‘truth’, **but getting the facts right is the cardinal principle of journalism.** We should always strive for accuracy, give all the relevant facts we have and ensure that they have been checked. When we cannot corroborate information we should say so. (Bolding added)

Independence

Journalists must be independent voices; **we should not act, formally or informally, on behalf of special interests whether political, corporate or cultural. We should declare to our editors – or the audience – any of our political affiliations, financial arrangements or other personal information that might constitute a conflict of interest.** (Bolding added)

Fairness and Impartiality

Most stories have at least two sides. While there is no obligation to present every side in every piece, stories should be balanced and add context. Objectivity is not always possible, and may not always be desirable (in the face for example of brutality or inhumanity), but impartial reporting builds trust and confidence.

Humanity

Journalists should do no harm. What we publish or broadcast may be hurtful, but we should be aware of the impact of our words and images on the lives of others.

Accountability

A sure sign of professionalism and responsible journalism is **the ability to hold ourselves accountable. When we commit errors we must correct them and our expressions of regret must be sincere not cynical. We listen to the concerns of our audience. We may not change what readers write or say but we will always provide remedies when we are unfair.** (Bolding added)

EJN members do not believe that we need to add new rules to regulate journalists and their work in addition to the responsibilities outlined above, but we do support the creation of a legal and social framework, that encourages journalists to respect and follow the established values of their craft.

In doing so, journalists and traditional media, will put themselves in a position to be provide leadership about what constitutes ethical freedom of expression. What is good for journalism is also good for others who use the Internet or online media for public communications.

<http://ethicaljournalismnetwork.org/en/contents/5-principles-of-journalism>

TAB 11.

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

(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,

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.

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

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

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

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.

TAB 12.

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 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.

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.

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.

TAB 14.

HOUSTON

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

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

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Bleached out.

Photo: Pu Ying Huang

IMAGE 1 OF 10

All Texans 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

TAB 16.

HOUSTON

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

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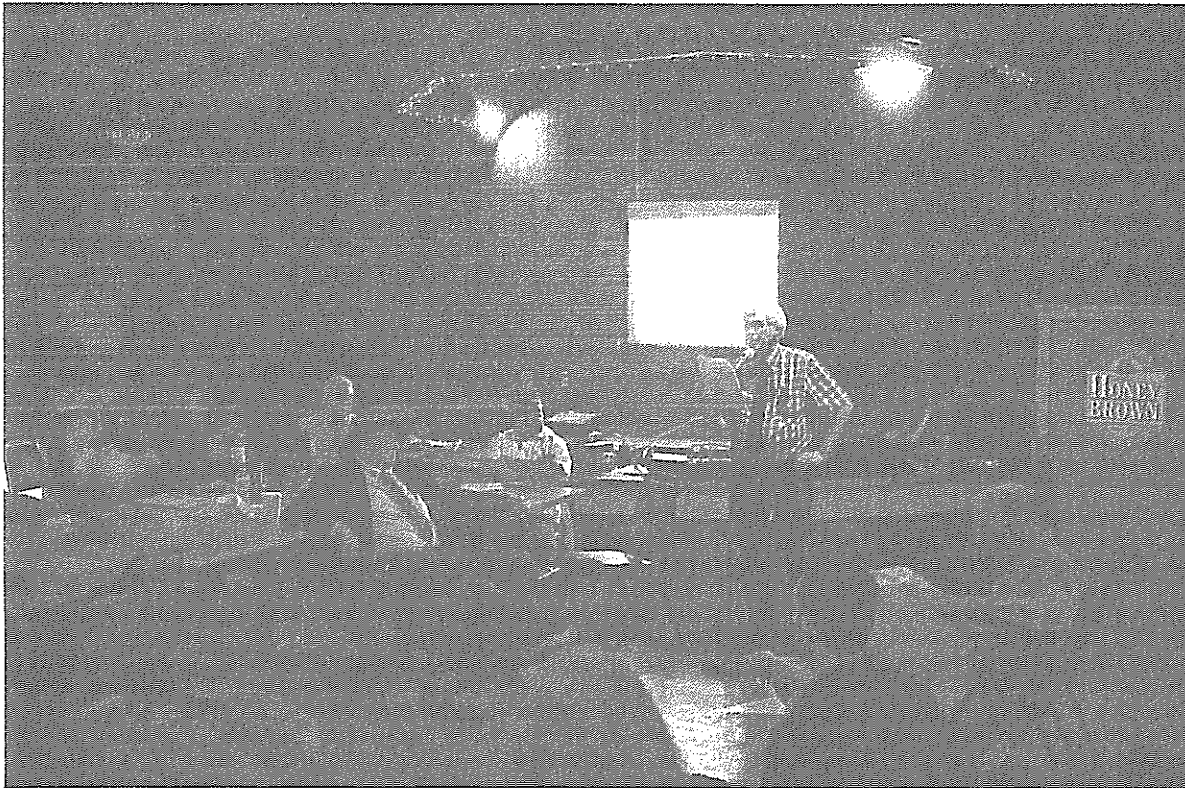


Photo: Pu Ying Huang

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 McQueeney. 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."

Blind spot

EXHIBIT

364

G

TAB 18.

Ronald F. Avery
Architect
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September 29, 2015

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RRR# 7007 0710 0004 8478 2012

Mr. Dylan G. Baddour,
Houston Chronicle
via email: Dylan.Baddour@chron.com

RE: RETRACTION STATEMENT REQUEST BY RONALD AVERY

Dear Mr. Baddour,

This is my request for a Retraction Statement containing Corrections and Clarifications and a full Retraction from the Houston Chronicle to be printed on the front page of the paper where the original article appeared containing the following and on a Sunday with the same circulation as the Sunday it first appeared.

Beginning of Retraction Statement:

Corrections, Clarifications and Retraction of a story titled " Ever hopeful and determined, Texas secessionist face long, long odds"

The Houston Chronicle apologizes to Ronald Avery and makes the following corrections and clarifications to, and retraction of, a story written by Dylan Baddour and published herein at this location on Sunday September 15, 2015 entitled "*Ever hopeful and determined, Texas secessionist face long, long odds.*" This correction, clarification and retraction statement applies to both the article printed in the paper and the on-line version by the same title and shall appear with identical content and form.

Corrections & Clarifications:

1. The building known as "The Silver Eagle Taphouse" is not now, and never has been, "shuttered," as incorrectly reported in the body of the article and captioned under

- photograph 3, but rather, the doors and windows were open on the day Dylan Baddour visited and anyone could have come into the building.
2. The building known as "The Silver Eagle Taphouse" is not "wooden" any more than any other wood frame modern restaurant or motel. It is clad in corrugated metal and has a metal roof as clearly shown in the photograph 4.
 3. The person shown in the photograph wearing a blue jacket with a gold star in the center with the words in gold letters around it saying; "Republic of Texas, Texian National," was not "Ronald Avery," as was incorrectly reported in the caption under photograph 1.
 4. The jacket shown in the photograph described above with the gold star and letters did not, does not, and never has belonged to "Ronald Avery," as was incorrectly reported in the caption under photograph 1.
 5. "Ronald Avery" has never "informally renounced their U.S. citizenship," as was incorrectly reported, implied and captioned under photograph 1.
 6. "Ronald Avery" has never "formally renounced U.S. citizenship," as was incorrectly reported, implied and captioned under photograph 1.
 7. "Ronald Avery" has never "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," as was incorrectly reported, implied and captioned under photograph 1.
 8. Ronald Avery is not now, and never has been, a member, of the so-called "Republic of Texas," as incorrectly reported, implied and captioned under photograph 1.
 9. Ronald Avery is not now, and never has been, a *member* of "The Republic of Texas," as incorrectly reported and incorrectly captioned in photograph 3, but rather was, a *guest speaker* before the group calling themselves "The Republic of Texas."
 10. "Ronald Avery" is not now, and never has been a "secessionist," as was incorrectly implied by the whole article and captions under photographs 1 and 3.
 11. "Ronald Avery" was not reciting a "list" of "grievances" in his speech, as incorrectly reported and captioned under photograph 3, but rather, was reciting what he considered to be *alterations and violations* of the US Constitution made without the required amendments.
 12. The alterations and violations of the U.S. Constitution listed in the speech made before the "Republic of Texas" by "Ronald Avery" were not presented in support of *secession*, as incorrectly implied by the whole article and the caption under photograph 3, but rather, as evidence in support of the natural law doctrine proving the *dissolution* of any and all governments according to John Locke's Second Treatise of Government, published in 1689.
 13. "Ronald Avery" has never advocated "secession" of the so-called "State of Texas" from the so-called "United States of America," as incorrectly implied by the whole article and the captions under photographs 1 and 3.
 14. "Ronald Avery" has never advocated "secession" of any other state or number of states, as incorrectly implied in the whole article and the captions under photographs 1 and 3.
 15. Ronald Avery is a strong opponent of secession of any of the states from the so-called "United States of America," and has argued extensively against secession with many leaders and members of groups who do advocate secession including the Texas Nationalist Movement, spoken of in Mr. Baddour's article.

16. "Ronald Avery" has never "plotted legalistic escape from Uncle Sam," as incorrectly implied in the whole article and in the captions under photographs 1 and 3.
17. "Ronald Avery" has never been a part of "Putin's Plot to get Texas to Secede," as incorrectly implied in the whole article and in the captions under photographs 1 and 3.
18. "Ronald Avery" is not "*anti-government*," as incorrectly implied in the whole article and in the captions under photographs 1 and 3.
19. Ronald Avery is very *pro-government* and has argued in favor of lawful government with many anti-government leaders of anarchist movements, of several types, in America and Canada.
20. "Ronald Avery" is not "*anti-federalist*," as incorrectly implied in the whole article and in the captions under photographs 1 and 3.
21. Ronald Avery is *pro-federalist* arguing with many in favor of a lawful union of states.

Retraction:

The whole article that appeared on the front page of the Houston Chronicle on Sunday, September 15, 2015, entitled "*Ever hopeful and determined, Texas secessionist face long, long odds*," written by Dylan Baddour, is retracted in full, as the whole article leads to incorrect and false conclusions as clearly revealed by the following facts:

1. The meeting at the "Silver Eagle Taphouse" attended and reported on by Dylan Baddour was held by a group calling themselves "The Republic of Texas" or "The Texas Republic." This group has asserted for many years that the 1836 Republic of Texas was never lawfully annexed as a state of the Union and therefore is not now a state of the Union. As a result of that view, they do not advocate secession for the Republic because it was never a state to start with. That would be like divorcing a spouse you never married.
2. This same group also has asserted for many years that the so-called "State of Texas" is not the "Republic of Texas." It follows under this view that even if the "State of Texas" seceded it would not be the "Republic of Texas." Therefore, once again, they do not advocate secession of the "State of Texas" from the "United States of America."
3. Ronald Avery, part owner of the "Silver Eagle Taphouse" gave a speech to "The Texas Republic," as a guest speaker, at the meeting. He spoke on the doctrine of governmental dissolution from within resulting from the alteration of constitutional form without the required permission by the people through their states by amendment. This doctrine explained in the last chapter of the Second Treatise of Government published in 1689 by John Locke asserts that once a government dissolves itself by altering the constitutional will of the people without their permission, the government loses its authority and the people are free to form new lawful government for the protection of their property as they see fit.
4. Secession is the process by which a lawful state separates from a lawful union of states. If the union be dissolved, there is no need to secede from it as it does not lawfully exist and has lost its authority and all are free to make new lawful government.

5. Secession is an admission that the government from which separation is sought lawfully exists. Secession from a dissolved government is an absurd contradiction. This would be like seeking a divorce from a dead spouse.
6. Secession was not advocated nor was it a topic of conversation at the meeting held at the "Silver Eagle Taphouse" reported on by Dylan Baddour yet that is the main theme and thrust of his whole article about it, even in the headline to the article. The Dylan Baddour article leads all readers to an erroneous conclusion about the meeting and what was discussed.

Therefore, the entire article written by Dylan Baddour and published on the front page of the Houston Chronicle on September 15, 2015, entitled "*Ever hopeful and determined, Texas secessionist face long, long odds*" is hereby retracted in full with apologies to Ronald Avery and to all that attended the meeting at the "Silver Eagle Taphouse" on April 11, 2015.

End of Retraction Statement.

If you would like me to submit facts to support all I have said above, I would be happy to do so. And I further know that you will find no evidence to support what you have said about my political views and status in the newspaper article. So you can rely on what I have said herein and know that you will not be making further mistakes in your clarification and retraction.

Also you will find that no one in the group calling itself "The Republic of Texas" or "The Texas Republic" will deny what I have said about them showing the whole article to be erroneous. Feel free to send this to them if you like to get confirmation from them regarding that.

Please send me a copy of what you want to print if it is any different from what I have written above before you print it so that I may determine if it is sufficient or insufficient.

Also please let me know when the Retraction Statement containing Corrections, and Clarifications will appear and please send me a copy of the original paper with the original article and a copy of the printed paper containing the Retraction Statement.

Sincerely,

Ronald F. Avery