

No. 11-50441

**In the United States Court of Appeals
for the Fifth Circuit**

DIANA ASGEIRSSON, ET AL.,

Plaintiffs-Appellants.

v.

GREG ABBOTT, TEXAS ATTORNEY GENERAL,
AND THE STATE OF TEXAS,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Pecos Division
No. 4:09-CV-59 (Hon. Robert A. Junell)

**BRIEF OF STATE AND LOCAL OFFICIALS, MEDIA COMPANIES, AND
ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF AFFIRMANCE**

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The undersigned counsel of record certifies that the following listed persons or entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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INTEREST OF AMICI CURIAE¹

Amici curiae include current and former state and local officials who are familiar with and have operated under the requirements of the Texas Open Meetings Act. They support the Act in part because they believe that every Texan is entitled to the fundamental American promise of open government.

Furthermore, they believe—contrary to the core premise of this lawsuit—that public officials benefit from the Act as well. They believe that the Act protects their own rights as public officials to observe and participate in public policy making—and that without the Act, a majority of their colleagues would have the power to expel them from the public policy process altogether. All the majority would have to do is convene a private meeting where they could make all decisions without the remaining members’ knowledge or involvement, and thereby turn any later public meeting into an empty exercise.

Amici also believe that the Act is their only way to credibly communicate to their constituents that they do indeed support open government in actual practice—and not just in rhetoric. After all, it is practically impossible for any official to

¹ All parties have consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(c)(5), amici curiae certify that no party, party’s counsel, or person or entity other than amici curiae and their counsel authored this brief in whole or in part or contributed money intended to fund the preparation or submission of the brief.

prove the negative—that he or she has *not* participated in a secret, closed meeting that, by definition, the public does not know about.

Amici curiae also include various media companies and other related organizations that strongly support open meetings laws in all 50 states, including the Texas law, based on their belief that such laws are essential to their newsgathering and reporting functions and critical to their ability to keep the public informed about the operations of their government.

The following current and former state and local officials join this brief:

- Carlos Amaral, member, Stephen F. Austin State University Board of Regents
- Elizabeth M. Anderson, former chair, Texas Department of Housing & Community Affairs
- George Boehme, member, West University Place City Council
- Malachi O. Boyuls, member, Texas Appraiser Licensing & Certification Board
- José Cuevas, chairman, Texas Alcoholic Beverage Commission
- Nancy DeWitt, former member, Alpine City Council
- Maurine Dickey, member, Dallas County Commissioners Court
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- Vidal Gonzales, former member, Texas Finance Commission; former member, Texas Department of Housing & Community Affairs Governing Board
- Allyson N. Ho, member, Texas Judicial Council
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- Ashley E. Johnson, member, Texas Judicial Council
- Bill Jones, former chairman, Texas A&M University System Board of Regents

- Kathleen Krueger, former member and mayor pro tem, New Braunfels City Council
- Brian Loughmiller, member and mayor, McKinney City Council
- Randy Mankin, former member and mayor pro tem, Eldorado City Council
- Tim McCallum, former member, Rockwall City Council
- Todd Meier, member and mayor, Addison City Council
- Joe Meister, chair, Texas Public Finance Authority
- John L. Ratcliffe, member and mayor, Heath City Council
- Ray Ricchi, member, McKinney City Council
- Wayne Thorburn, former member, State Banking Board; former member, Texas Appraiser Licensing & Certification Board
- Steve Weinberg, member, Texas Alcoholic Beverage Commission

The following companies and organizations also join this brief:

- Austin American-Statesman
- A. H. Belo Corporation
- Belo Corp.
- Daily Commercial Record
- Daily Court Review
- Louisiana Press Association
- Mississippi Press Association
- National Newspaper Association
- Newspaper Association of America
- Texas Association of Broadcasters
- Texas Press Association

INTRODUCTION

The First Amendment protects citizens against government oppression—not government against citizen oversight. Open government laws are based on the same premise: public officials work for the people, so the people have a right to know what officials are doing on their behalf. Openness in government is thus a First Amendment virtue, not a First Amendment violation.

Plaintiffs contend otherwise. But what they seek to protect is not *free* speech, but *secret* speech. The Texas Open Meetings Act does not impede public officials from making public statements on any subject or from advancing any particular viewpoint. It merely requires that, when a quorum of officials assembles to discuss public business, they do so in public view. Nothing in the First Amendment shields officials from accountability to their constituents.

Nor do Plaintiffs' objections to the Act fairly represent the views of their colleagues. To the contrary, amici include numerous officials who have themselves been subject to the Act—and who believe that the Act *benefits* public officials. For one, the Act protects officials from being excluded from substantive debates over public policy by a majority of their colleagues. It also empowers officials to acquire and retain the trust of their constituents, by guaranteeing that backroom deals will not determine the outcome of public debates, and by enabling honest officials to insist that private negotiations be moved into the public square.

ARGUMENT

This lawsuit is founded on two basic premises—both of which are not only wrong, but turn the Constitution and the realities of governance upside down.

First is Plaintiffs' erroneous belief that open meeting laws violate the First Amendment. To the contrary, open meeting laws further, rather than frustrate, First Amendment values. As the U.S. Supreme Court has repeatedly observed, the purpose of the First Amendment is to promote open discourse and access to information about our government. In fact, courts have repeatedly construed the First Amendment itself to guarantee public access to various governmental proceedings. The First Amendment does not prohibit what, in many contexts, it actually *requires*.

Plaintiffs' second mistaken premise is their assumption that open meeting laws harm public officials. Once again, Plaintiffs get things precisely backwards. Open meeting laws *benefit* public officials, in at least two distinct ways. Such laws protect individual officeholders from being excluded from meetings—and thus the entire policy-making process—by a majority of their colleagues. Without the Act, a majority of officials could convene a private meeting at which they could make all decisions without dissenting views or public access, and thereby turn any subsequent public session into an empty charade. Open meeting laws also empower officials to credibly communicate to their constituents that they do

indeed support open meetings. Without the Act, it would be practically impossible for officeholders to assure constituents that they are not in fact conducting the real policy making process behind closed doors. After all, any such secret deliberations would be, by definition, secret.

I. Open Meeting Laws Restrict Secret Speech, Not Free Speech, By Public Officials—And Thereby Further, Rather Than Frustrate, First Amendment Values.

A. “[T]he Constitution . . . embraces political transparency.” *Doe v. Reed*, 130 S. Ct. 2811, 2829 (2010) (Sotomayor, J., concurring). There is no “right to legislate without public disclosure”—to the contrary, “the exercise of lawmaking power in the United States has traditionally been public.” *Id.* at 2833 (Scalia, J., concurring in the judgment).

Accordingly, “[t]he belief that the public is entitled to greater access to meetings of government bodies has inspired all 50 states to pass statutes that require certain public agencies to conduct all official meetings in sessions open to the public.” *St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch.*, 332 N.W.2d 1, 5 (Minn. 1983). The Texas Open Meetings Act is such a law. And every reported decision in the nation to consider a First Amendment challenge to an open meetings law has rejected the challenge and upheld the law.²

² See, e.g., *Ctr. for Auto Safety v. Cox*, 580 F.2d 689, 694 (D.C. Cir. 1978) (upholding federal open meetings law). State supreme courts in Colorado, Illinois, Kansas, Minnesota, Nevada, [Footnote continued on next page]

This is not surprising. After all, requiring officials to conduct public business in public furthers, rather than frustrates, fundamental First Amendment values. As the U.S. Supreme Court has repeatedly held, the very purpose of the First Amendment is to enable citizens to engage in a free, open, and informed discussion about our government, our elected officials, and the policies they adopt on our behalf. *See, e.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open”); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) (noting “the role of the First Amendment . . . in affording the public access to discussion, debate, and the dissemination of information and ideas”); *Consol. Edison Co. v. Pub. Serv. Comm’n*, 447 U.S. 530, 541 (1980) (same).

B. In fact, courts have repeatedly invoked the First Amendment to *require* open, public access to a variety of government proceedings. For example, the U.S. Supreme Court has repeatedly invoked the First Amendment to open a

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and Tennessee have likewise upheld their respective open meetings laws against First Amendment attack. *See, e.g., Cole v. State*, 673 P.2d 345, 350 (Colo. 1983) (per curiam); *People ex rel. Difanis v. Barr*, 414 N.E.2d 731, 739 (Ill. 1980); *State ex rel. Murray v. Palmgren*, 646 P.2d 1091, 1099 (Kan. 1982); *St. Cloud*, 332 N.W.2d at 7; *Sandoval v. Bd. of Regents*, 67 P.3d 902, 907 (Nev. 2003) (per curiam); *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). The Texas law has also been upheld in state court. *See Hays Cnty. Water Planning P’ship v. Hays Cnty.*, 41 S.W.3d 174, 181-82 (Tex. App.—Austin 2001, pet. denied).

variety of criminal judicial proceedings to public view. *See Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 509-11 (1984); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604-05 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580-81 (1980). It has done so precisely because “a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs” and “to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.” *Globe*, 457 U.S. at 604 (quotations omitted). “[T]he First Amendment embraces a right of access to criminal trials . . . to ensure that this constitutionally protected ‘discussion of governmental affairs’ is an informed one.” *Id.* at 604-05.

Other courts have likewise interpreted the First Amendment to require access to a wide variety of other forms of public proceedings. Earlier this year, this Court reaffirmed the basic proposition that “the press and public have a First Amendment right of access” to various categories of court proceedings, such as criminal sentencing hearings. *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 172 (5th Cir. 2011). In doing so, Judge Dennis, speaking for a unanimous panel, expressly observed that “public access plays a significant positive role” in our system of government. *Id.* at 179 (quotations omitted). He invoked “the common understanding that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, and to ensure that this constitutionally

protected discussion of governmental affairs is an informed one.” *Id.* at 180 (citations and quotations omitted). And he concluded that the public’s constitutional right of access to governmental proceedings under the First Amendment is “an essential component in our structure of self-government,” and that it “builds public confidence in the criminal justice system because members of the public can observe whether justice is being carried out.” *Id.* at 179 (quoting *Globe*, 457 U.S. at 606).

The First Circuit likewise reinforced this basic principle just recently: “[T]he First Amendment’s aegis extends further than the text’s proscription on laws ‘abridging the freedom of speech, or of the press,’ and encompasses a range of conduct related to the gathering and dissemination of information. As the Supreme Court has observed, ‘the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.’ . . . Gathering information about government officials . . . serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion of governmental affairs.’” *Glik v. Cunniffe*, No. 10-1764, 2011 WL 3769092, at *3-4 (1st Cir. Aug. 26, 2011) (citation omitted).³

³ See also, e.g., *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695, 700 (6th Cir. 2002) (“First Amendment right of access to certain aspects of the executive and legislative branches,” such [Footnote continued on next page]

This extensive body of First Amendment law defeats Plaintiffs’ claims in this case. After all, it would be absurd to suggest that the First Amendment forbids what, in many contexts, it actually *requires*—openness in government. *Cf. Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 709 (9th Cir. 1997) (“[L]est we lose sight of the forest for the trees, [the Constitution] does not require what it barely permits.”) (addressing the Fourteenth Amendment). In case after case, courts have enforced a right of public access to government proceedings under the First Amendment itself. And even if this “‘right’ is more accurately characterized as an ‘interest’ that States can choose to protect,” *Hill v. Colorado*, 530 U.S. 703, 717 n.24 (2000), the point remains the same: Open meetings laws further, rather than offend, the First Amendment.

C. Not surprisingly, then, the U.S. Supreme Court has repeatedly drawn a sharp distinction between laws that actually restrict speech, on the one hand, and laws that merely require government officials wishing to speak to do so in the open for all to see—striking down the former, while upholding the latter.

For example, in *Doe v. Reed*, decided just last year, the Court observed that open government laws (in that case, the Washington Public Records Act) impose

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as deportation proceedings); *Whiteland Woods, L.P. v. Twp. of W. Whiteland*, 193 F.3d 177, 180-81 (3d Cir. 1999) (planning commission meetings); *Cable News Network, Inc. v. Am. Broad. Cos.*, 518 F. Supp. 1238, 1245 (N.D. Ga. 1981) (White House events). *But see Calder v. IRS*, 890 F.2d 781, 783-84 (5th Cir. 1989) (construing *Richmond Newspapers* narrowly, rejecting First Amendment claim to see Al Capone’s tax records).

“not a prohibition on speech, but instead a *disclosure* requirement.” *Doe*, 130 S. Ct. at 2818. In doing so, the Court was echoing similar observations it made recently in *Citizens United*: “[D]isclosure requirements may burden the ability to speak, but they . . . do not prevent anyone from speaking.” *Id.* (quoting *Citizens United v. FEC*, 130 S. Ct. 876, 914 (2010)). In *Citizens United*, the Court likewise distinguished mere disclosure requirements from restrictions on corporate speech: “The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.” 130 S. Ct. at 886.

Cases like *Doe* and *Citizens United* compel the conclusion reached by the district court below—namely, that the Texas Open Meetings Act is likewise “not a prohibition on speech, but instead a *disclosure* requirement,” and is therefore constitutional on its face. *Doe*, 130 S. Ct. at 2818. For these reasons, as well as the reasons articulated by Attorney General Greg Abbott and the State of Texas, the judgment below should be affirmed.

II. Open Meeting Laws Benefit Public Officials As Well As The Public At Large.

A. Plaintiffs err in a second respect. Open meeting laws do much more than benefit the public. In fact, public officials are among its primary beneficiaries.

Consider the following scenario: A city council is composed of nine members. “[A]lthough each [council member] has equal power, a *cohesive* group of five . . . could determine every [decision] and, in effect, disenfranchise the other four and render them dummies.” John Allen Paulos, *A MATHEMATICIAN READS THE NEWSPAPER* 12-13 (1995). “All that would be necessary would be for the five first to vote *surreptitiously* among themselves, determine what a majority of them thinks, and then agree to be bound by their secret ballot and vote as a bloc in the larger group.” *Id.* at 13 (emphasis added).

The entire purpose of open meeting laws like the Texas Open Meetings Act, of course, is to forbid precisely such “surreptitious[.]” intrigue by a majority “cabal” of officeholders, to the exclusion of the remaining officeholders. *Id.*

This is no mere academic hypothesis. In the experience of amici, it is how the real world of governance often works—and would quickly, and regrettably, become standard operating procedure in the absence of robust open meeting laws.

For example, take Plaintiffs’ own brief. Plaintiffs invoke an earlier suit filed by their counsel, *Rangra v. Brown*. Br. at 23, 31-36. In that case, two Alpine city council members raised a similar First Amendment challenge to the Act. The case became moot after both plaintiffs left office.

What Plaintiffs neglect to mention is that the *Rangra* dispute itself arose out of a secret discussion of public business by four of the five city council members—

at the express *exclusion* of the fifth member. *See* Complaint, *Rangra v. Brown*, No. 4:05-cv-00075, at ¶¶ 9-11 (W.D. Tex. Sep. 26, 2005).

As that fifth member, Nancy DeWitt (and one of the numerous Texas state and local officials who have joined this brief as amici curiae), later explained: “During my time on the Alpine city council, I experienced attempts by a majority of my colleagues to exclude me from their deliberations on public matters entrusted to our care.” Aff. of Nancy DeWitt (Sep. 15, 2011) (attached as App. A). As a result, “my ability to effectively represent the residents of Alpine as a city council member was compromised.” *Id.*

The Texas Open Meetings Act exists precisely to prohibit such exclusions of officeholders—conduct that disenfranchises the excluded officeholder, while depriving his or her constituents of the positive effect a diversity of views can have on the political process.

Nor is DeWitt’s experience an isolated incident. Other examples can be found in other governmental bodies across the State. For example, Dallas County Commissioner Maurine Dickey, another “strong proponent of the Texas Open Meetings Act,” has similarly observed that “the Act protects the rights and interests of office holders as well as ordinary citizens. After all, a majority of commissioners can exclude one of their own colleagues just as easily as they can exclude one of their constituents from the policymaking process. Without the Act,

a majority of commissioners can literally expel a sitting commissioner from the entire process. I say this because it has happened to me. And without the criminal penalties under the Act, this is exactly what will happen on a regular basis across the State of Texas because most local officials do not have the financial resources to initiate litigation on their own behalf to combat violations of the Act.” Aff. of Maurine Dickey (Oct. 10, 2011) (attached as App. B).⁴

Similarly, the Beaumont City Council unanimously adopted a resolution supporting the Texas Open Meetings Act as “a means of promoting open government at all levels.” Beaumont, Tex., City Council Resolution 10-032 (Feb. 16, 2010) (attached as App. C). According to the council, the Act “embodies our fundamental commitment to open and accessible government.” *Id.* What’s more, council members went out of their way to point out that “open meeting laws *benefit public officials* as well as citizens in general.” *Id.* (emphasis added).

B. Public officials benefit from the Act in a second way. Openness in government strengthens public faith in the legitimacy of our political system.

Thus, by guaranteeing citizens access to deliberations on public issues, the Texas

⁴ See also, e.g., Steve Thompson, *In Dallas redistricting, private meetings by commissioner Garcia spark concerns*, DALLAS MORNING NEWS, Sep. 7, 2011, <http://cityhallblog.dallasnews.com/archives/2011/09/in-dallas-redistricting-privat.html> (describing concerns by one official about “private meetings” among a majority of other officials “to discuss various aspects of the redistricting process,” noting that “she had no way of knowing whether any inappropriate back-room deals took place at the meetings, because she did not attend them”); *Dallas commissioner sues, alleging open meetings violations*, ASSOCIATED PRESS, Mar. 19, 2005, http://lubbockonline.com/stories/031905/sta_0319050105.shtml.

Open Meetings Act encourages public trust in government officials. *Cf. Daggett v. Comm'n. on Governmental Ethics & Election Practices*, 205 F.3d 445, 471 (1st Cir. 2000) (by enabling a candidate to avoid “any appearance of corruption,” participation in a public funding system serves as a “benefit[] to the candidate”). As the Supreme Court has noted with respect to open courtroom proceedings, “[t]he value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Press-Enter.*, 464 U.S. at 508. These same principles readily apply to all other governmental proceedings.

Promoting the “cynicism and distrust infecting the decisions of all branches of government . . . is dangerous to our evolving experiment in self-governance through a representative democracy.” *United States v. Bobo*, 323 F. Supp. 2d 1238, 1242 (N.D. Ala. 2004). By strengthening public trust in the political system, the Act improves relationships between officials and their constituents, thereby enabling those officials to better understand constituent concerns. And the Supreme Court has recognized that “restor[ing] public confidence in our political processes” is itself a “substantial public interest[.]” *Nixon v. Adm’r. of Gen. Servs.*, 433 U.S. 425, 453 (1977).

Ensuring public confidence in political deliberations requires more than personal dedication from individual officials. Open meeting laws are the only way for public officials to credibly communicate and guarantee to their constituents that they do indeed support open government in actual practice—and not just in rhetoric. After all, it is practically impossible for any official to prove the negative—that he or she has *not* participated in a secret, closed meeting that, by definition, the public does not know about. An open meetings law “assures the public of its right to be informed of the reasons for decisions being made and provides the public with the opportunity to express its views.” *St. Cloud*, 332 N.W.2d at 7. For officials who seek to enact the best policies for their constituents, eliminating an inevitable—yet entirely avoidable—source of suspicion, such as closed meetings, directly assists them in their goals. The “effort on the part of a state legislature to protect itself from the damaging effects of corruption should not lightly be thwarted by the courts.” *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 717-18 (4th Cir. 1999).

C. So the benefits of the Act to public officials are several. And the burdens are not difficult to manage. The basic principle of the Act is easy to understand and follow: if an official wants to discuss public business with a majority of his or her colleagues, the discussion must take place in the open as required by the Act. This is no more burdensome than what attorneys and judges

do every day. Attorneys and judges are forbidden from discussing pending cases with one another outside the presence of all parties involved, under established rules concerning *ex parte* communications—the same kind of restriction on secret speech, not free speech, at issue here. If attorneys can follow such rules without difficulty in the course of representing individuals, surely so can state and local officeholders on behalf of thousands of ordinary citizens.

* * *

The Texas Open Meetings Act in no way impedes upon the rights of either individual citizens or individual office holders. At most, it prevents only a *majority* of officeholders from colluding with one another, in private and in secret, in an effort to deny access to government deliberations to other individual officeholders, as well as to the citizenry at large. If anything, the Constitution protects the rights of minorities *against* the majority. *See generally* FEDERALIST No. 10. If majority officeholders do not like the Texas Open Meetings Act, their remedy is simple: they have the same right as anyone else to petition their government—*e.g.*, the Texas Legislature—to repeal the Act. But nothing in the Constitution—least of all the First Amendment—guarantees them that result.

CONCLUSION

The Court should affirm the judgment of the district court.

DATED: October 27, 2011

Respectfully submitted,

/s/ James C. Ho

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COUNSEL FOR BELO CORP. AND
A. H. BELO CORPORATION
AS AMICI CURIAE

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

The undersigned counsel certifies that this amicus brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in Times New Roman, 14-point. The brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,001 words, excluding the parts exempted from the word-count requirement under Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Ashley E. Johnson
Ashley E. Johnson
*Counsel of Record for Amici in Support of
Affirmance*

CERTIFICATE OF SERVICE

I hereby certify that, on October 27, 2011, a true and correct copy of the foregoing was served via the Court's CM/ECF system on the following counsel of record:

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*Counsel of Record for Amici in Support of
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Appendix A

Affidavit of Nancy DeWitt

The State of Colorado §
 §
County of Pueblo §

Before me, the undersigned authority, personally appeared **Nancy DeWitt**, known to me personally to be the person whose name is subscribed below, who after being duly sworn, upon her oath, stated as follows:

“My name is Nancy DeWitt, I am over the age of eighteen years, and I am capable of making this affidavit from my own personal knowledge.

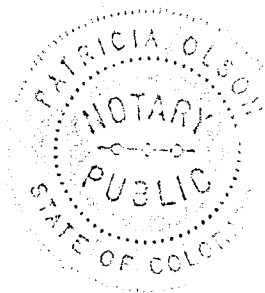
I served on the city council of Alpine, Texas as the representative of Ward 5 between May, 2003 and June, 2005. I understood that the Alpine city council was a governmental body subject to the requirements of the Texas Open Meetings Act. I also understood that one of the requirements of the Act was that our city council could not deliberate as a quorum on public matters entrusted to our care except in an open meeting with proper and adequate notice of the meeting provided to the public. I appreciated and supported the Act’s requirement that our deliberations and decision-making be conducted in public, and not in private. One benefit of the Act is that it ensures that Texans will have meaningful access to the deliberative processes of the governmental bodies whose decisions affect their daily lives.

Another benefit of the Act, about which I feel strongly, is that it ensures that public officials cannot be excluded from the discussion of public business by a majority of their colleagues meeting privately. During my time on the Alpine city council, I experienced attempts by a majority of my colleagues to exclude me from their deliberations on public matters entrusted to our care. When this happened, I felt that my ability to effectively represent the residents of Alpine as a city council member was compromised. And because of that experience, I strongly support the Act’s prohibition on secret meetings of a quorum of a governmental body to discuss public business.”

Further, affiant sayeth not.

Nancy K. DeWitt

SUBSCRIBED and SWORN TO before me, on this 15 day of September 2011.



Patricia Olson
NOTARY PUBLIC, STATE OF COLORADO
8/20/11

Appendix B

Affidavit of Maurine Dickey

The State of Texas §
 §
County of Dallas §

Before me, the undersigned authority, personally appeared **Maurine Dickey**, who, after providing identification and being duly sworn, upon her oath, stated as follows:

“My name is Maurine Dickey, I am over the age of eighteen years, and I am capable of making this affidavit from my own personal knowledge.

“I am a strong proponent of the Texas Open Meetings Act. I believe that the Act protects the rights and interests of office holders as well as ordinary citizens. After all, a majority of commissioners can exclude one of their own colleagues just as easily as they can exclude one of their constituents from the policymaking process. Without the Act, a majority of commissioners can literally expel a sitting commissioner from the entire process.

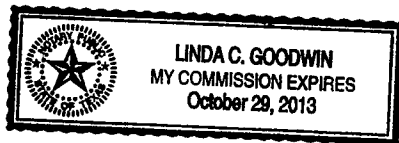
“I say this because it has happened to me. And without the criminal penalties under the Act, this is exactly what will happen on a regular basis across the State of Texas because most local officials do not have the financial resources to initiate litigation on their own behalf to combat violations of the Act.”

Further, affiant sayeth not.



Signature of Affiant

SUBSCRIBED and SWORN TO before me, on this 10th day of October, 2011.





NOTARY PUBLIC, STATE OF TEXAS

Appendix C

RESOLUTION

WHEREAS, the Texas Open Meetings Act embodies our fundamental commitment to open and accessible government and our nation's founding principle that elected and appointed government officials work for the public good; and

WHEREAS, the people have a right to know about their government, the officials they elect to represent them, the policies they implement on their behalf and the manner in which taxpayer money is spent; and

WHEREAS, open meeting laws benefit public officials as well as citizens in general; and

WHEREAS, the First Amendment was enacted in response to a young nation's demand for a guarantee of basic freedoms for its citizens; and

WHEREAS, many of those states which have enacted an open meetings law have imposed criminal penalties for open meeting violations, including the possibility of imprisonment; and

WHEREAS, the Texas Open Meetings Act imposes criminal penalties on public officials who knowingly participate in closed meetings not otherwise permitted under the Act;

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the City of Beaumont supports the Texas Open Meetings Act as a means of promoting open government at all levels of government.

MINUTES - CITY OF BEAUMONT

W.L. Pate, Jr., At-Large
Dr. Alan B. Coleman, Ward I
Audwin Samuel, Ward III
Tyrone E. Cooper, City Attorney

BECKY AMES, MAYOR
CITY COUNCIL MEETING
February 16, 2010
Kyle Hayes, City Manager

Gethrel Wright, Mayor Pro Tem
Nancy Beaulieu, Ward II
Jamie Smith, Ward IV
Tina Broussard, City Clerk

The City Council of the City of Beaumont, Texas, met in a regular session on **February 16, 2010**, at the City Hall Council Chambers, 801 Main Street, Beaumont, Texas, at 1:30 p.m. to consider the following:

OPENING

- * Invocation Pledge of Allegiance Roll Call
- * Presentations and Recognition
- * Public Comment: Persons may speak on scheduled agenda items 1-3/Consent Agenda
- * Consent Agenda

Mayor Ames called the council meeting to order at 1:30 p.m.

Pastor Henry Brown of Restoration Outreach Christian Church gave the invocation. Mayor Pro Tem Wright led the Pledge of Allegiance. Roll call was made by Tina Broussard, City Clerk.

Present at the meeting were Mayor Ames, Mayor Pro Tem Wright, Councilmembers Coleman, Beaulieu, Pate, Samuel and Smith. Also present were Kyle Hayes, City Manager; Tyrone Cooper, City Attorney; Tina Broussard, City Clerk.

Proclamations, Presentations, Recognitions

“Arbor Day” - February, 20, 2010 - Proclamation read by Councilmember Coleman; accepted by Laurie Lester with Beautify Beaumont, Inc. and guest

“Engineer’s Week” - February 14 - 20, 2010 - Proclamation read by Councilmember Smith; accepted by Troy Whitehead, President of Texas Society of Professional Engineers

“Taste of the Triangle” - February 16, 2010 - Proclamation ready by Mayor Ames; accepted by David Heilman with Sabine Area Restaurant Association

Public Comment: Persons may speak on scheduled agenda items 1-3/Consent Agenda.

Keith Elkins 3001 N. Lamar Blvd. #302 Beaumont TX

Spoke on Item A; asked that Council vote in favor of supporting the Texas Open Meetings Act to open and accessible government

CONSENT AGENDA

- * Approval of minutes - **February 02 , 2010**
- * Confirmation of committee appointments - **Resolution 10 - 031**

Larue Smith would be appointed to the Library Commission. The term would commence February 16, 2010 and expire February 15, 2012. (Councilmember Jamie D. Smith)

Gene Bush would be appointed as Chairman of the Parks and Recreation Advisory Committee. The term would commence February 16, 2010 and expire February 15, 2011. (Mayor Becky Ames)

- B) Authorize the City Manager to execute all documents necessary for the Beaumont Public Health Department to continue to provide the Chambers County Health Department with all activities relating to public health emergency preparedness - **Resolution 10 - 033**
- C) Authorize the City Manager to execute all documents necessary to accept funding for the Cardiovascular Health and Wellness Grant for the Beaumont Public Health Department - **Resolution 10 - 034**
- D) Authorize the City Manager to execute all documents necessary for the Beaumont Public Health Department to continue to provide the Orange County Health Department with all activities relating to public health emergency preparedness - **Resolution 10 - 035**
- E) Authorize the City Manager to execute all documents necessary for the Beaumont Public Health Department to continue to provide the Hardin County Health Department with all activities relating to public health emergency preparedness - **Resolution 10 - 036**
- F) Approve a resolution authorizing the acquisition of property for the Concord Road Pavement Widening Project - **Resolution 10 - 037**
- G) Authorize the granting of a Pipeline License Agreement to cross city right-of-way near the Beaumont Municipal Airport - **Resolution 10 - 038**
- H) Authorize the acceptance of a water line easement to provide access for fire protection services at 1650 East Lucas - **Resolution 10 - 039**
- I) Authorize acceptance of supplemental funding for the Southeast Texas Auto Theft Task Force - **Resolution 10 - 040**

Councilmember Samuel made a motion to approve the Consent Agenda omitting Item A. Councilmember Pate seconded the motion.

AYES: MAYOR AMES, MAYOR PRO TEM WRIGHT, COUNCILMEMBERS COLEMAN, BEAULIEU, PATE, SAMUEL AND SMITH

NAYS: NONE

MOTION PASSED

- A) Approve a resolution supporting the Texas Open Meetings Act.

Consider approving a resolution supporting the Texas Open Meetings Act.

Administration recommended the adoption of a resolution of support for the Texas Open Meetings Act.

There has been controversial litigation surrounding the current Texas Open Meetings Act. The resolution submitted for consideration is one in support of the Texas Open Meetings Act.

Councilmember Beaulieu moved to **APPROVE A RESOLUTION THAT THE CITY OF BEAUMONT SUPPORTS THE TEXAS OPEN MEETINGS ACT AS A MEANS OF PROMOTING OPEN GOVERNMENT AT ALL LEVELS OF GOVERNMENT.** Mayor Pro Tem Wright seconded the motion.

AYES: MAYOR AMES, MAYOR PRO TEM WRIGHT, COUNCILMEMBERS COLEMAN, BEAULIEU, PATE, SAMUEL AND SMITH

NAYS: NONE

MOTION PASSED

Resolution 10 - 032

GENERAL BUSINESS

- 1. Consider approving a contract for a general contractor to perform work related to the Weatherization Program funded by the American Recovery and Reinvestment Act of 2009.

Administration recommended the award of a contract to EAS/Weatherization Management Group of Dallas, Texas.

The Weatherization Assistance Program is designed to increase the energy efficiency of dwellings owned or occupied by low-income persons and improve their health and safety, especially those persons who are particularly vulnerable such as the elderly, persons with disabilities and families with young children. Funding in the amount of \$1,382,532 has been allocated to the City of Beaumont for this program. This level of funding should allow for the provision of service to approximately 175 homes. However, the City will receive one-half of the earmarked amount at this time or 691,267 which will allow for work at approximately 85 homes.

Requests for Proposals (RFP) were sent to eight (8) potential responders and posted on the City website. Five (5) responses were received. All responses were evaluated with the criteria provided in the RFP. After the initial evaluation, the two (2) highest ranking respondents were invited to meet with City representatives to further review and discuss their proposals.

Funds are available through the American Recovery and Reinvestment Act of 2009. The grant has no matching requirements on behalf of the City.

Councilmember Pate moved to **APPROVE A RESOLUTION THAT THE CITY COUNCIL HEREBY APPROVES THE AWARD OF A CONTRACT TO EAS/WEATHERIZATION MANAGEMENT GROUP OF DALLAS, TEXAS, TO PERFORM WORK RELATED TO THE TEXAS WEATHERIZATION ASSISTANCE PROGRAM AUTHORIZED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND FUNDED BY THE DEPARTMENT OF ENERGY IN THE AMOUNT OF \$1,382,532.** Councilmember Beaulieu seconded the motion.

AYES: MAYOR AMES, MAYOR PRO TEM WRIGHT, COUNCILMEMBERS COLEMAN, BEAULIEU, PATE, SAMUEL AND SMITH

NAYS: NONE

MOTION PASSED

Resolution 10 - 041

- 2. Consider appointing Lane Nichols as the hearing officer to preside over the appeal of the decision of the Chief of Police to suspend the non-consent towing permit of Payne and Sons Wrecker.

Administration recommended approval.

After an investigation of a reported complaint of overcharging by Payne and Sons Wrecker, the Chief of Police on February 2, 2010 notified the company of the violation of the non-consent towing ordinance and a 60-day suspension of its license as a result. The company has since filed an appeal of the Chief's decision to suspend its non-consent towing permit. Section 29-74 of the Code of Ordinances gives the City Council the authority to hear the appeal or select a hearing officer to preside at an appeal hearing. If the Council is so inclined, staff would recommend the appointment of Lane Nichols as the hearing officer in this instance.

Councilmember Samuel made a motion to **APPROVE A RESOLUTION THAT LANE NICHOLS BE AND HE IS HEREBY APPOINTED AS THE HEARING OFFICER TO PRESIDE OVER THE APPEAL OF THE DECISION OF THE CHIEF OF POLICE TO SUSPEND THE NON-CONSENT TOWING PERMIT OF PAYNE AND SONS WRECKER.** Councilmember Smith seconded the motion.

AYES: MAYOR AMES, MAYOR PRO TEM WRIGHT, COUNCILMEMBERS COLEMAN, BEAULIEU, PATE, SAMUEL AND SMITH

NAYS: NONE

MOTION PASSED

Resolution 10 - 042

- 3. Consider authorizing the City Manager to execute a Memorandum of Understanding with Christus St. Elizabeth Hospital related to federal funding assistance for a generator project.

Administration recommended approval.

Christus St Elizabeth Hospital was fortunate to get Congressional earmark funding in the amount of \$250,000 for a generator. The stipulation included is that the City of Beaumont agree to facilitate the grant application through FEMA's Pre-Disaster Mitigation grant program. The generator will provide an alternate power source for the hospital which houses the only Level III trauma center in the region. The citizens of Beaumont and this region will directly benefit from this mitigation project so the hospital requested our assistance with submitting the application. A memorandum of understanding would formally document the agreement and responsibilities and enable the City to facilitate grant funding for the hospital.

The City will have no financial obligation due to facilitating the grant for Christus St. Elizabeth Hospital. St. Elizabeth will provide any local match required under the guidelines of the respective grant programs.

Councilmember Beaulieu made a motion to **APPROVE A RESOLUTION THAT THE CITY MANAGER BE AND HE IS HEREBY AUTHORIZED TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH CHRISTUS ST. ELIZABETH HOSPITAL (THE "HOSPITAL") TO FACILITATE GRANT FUNDING FOR THE HOSPITAL THROUGH FEMA'S PRE-DISASTER MITIGATION PROGRAM GRANT PROGRAM.** Councilmember Coleman seconded the motion.

AYES: MAYOR AMES, MAYOR PRO TEM WRIGHT, COUNCILMEMBERS COLEMAN, BEAULIEU, PATE, SAMUEL AND SMITH

NAYS: NONE

MOTION PASSED

Resolution 10 - 043

Mayor Ames read the announcement regarding Executive Session being held at the conclusion of the General Business portion of the meeting.

Councilmember Samuel left the meeting at 1:57 p.m.

COUNCILMEMBER COMMENTS

COUNCILMEMBER COLEMAN - REMINDED CITIZENS THAT EARLY VOTING HAS STARTED, PLEASE EXERCISE YOUR RIGHT TO VOTE OVER THE NEXT TWO WEEKS, ALSO STATED THAT CRIME STOPPERS IS IN THE MIDDLE OF FUNDRAISERS FOR ITS OPERATIONS, THEY WELCOME ANY CONTRIBUTIONS AND SUPPORT

- COUNCILMEMBER BEAULIEU -** THANKED EVERYONE THAT SPOKE FOR PROCLAMATIONS AND FOR THOSE THAT WORK HARD ON FUNDRAISERS TO HELP OUR YOUNG PEOPLE
- MAYOR PRO TEM WRIGHT -** GLAD TO BE BACK, THANKED EVERYONE FOR THEIR PHONE CALLS, FLOWERS, FOOD, PRAYERS, ALSO THANKED THE WATER UTILITIES DEPARTMENT FOR THE BASKET OF FOOD, THANKED THE MANAGER FOR ALL THAT HE DID, ENCOURAGED EVERYONE TO VOTE
- COUNCILMEMBER PATE -** WELCOMED MAYOR PRO TEM WRIGHT BACK, THANKED SABINE AREA ASSOCIATION FOR THEIR TIME, ENERGY, WORK AND EFFORT, ENCOURAGED EVERYONE TO BE A PART OF THEIR NEIGHBORHOOD ASSOCIATIONS
- COUNCILMEMBER SAMUEL -** NONE
- COUNCILMEMBER SMITH -** WELCOMED MAYOR PRO TEM WRIGHT BACK , ANNOUNCED THE NAACP'S FREEDOM FUND BANQUET FRIDAY, FEBRUARY 19, 2010, AT 7:00 P.M., AT THE BEAUMONT CIVIC CENTER
- CITY ATTORNEY COOPER -** NONE
- CITY MANAGER HAYES -** NONE
- MAYOR AMES -** THANKS TO ALL OF THE ORGANIZATIONS THAT WERE PRESENT FOR PROCLAMATIONS, FOR ALL THAT THEY DO IN REGARDS TO BENEFITTING OUR COMMUNITY, BEAUTIFICATION AND HELPING OUR YOUNG PEOPLE

Public Comments (Persons are limited to three minutes)

Darlene Chodzinski 2240 Calder Beaumont TX

Executive Director of the Beaumont Heritage Society, spoke to Council in regards to the visionaries and preservation program, would like to develop a short and long term preservation plan for the City of Beaumont with all groups working together, announced the first workshop scheduled for Tuesday, February 16, 2010 at 5:30 p.m., at Heritage Hall on the grounds of the John J. French Museum, 3025 French Road

Josh Lasserre 1304 Colorado Beaumont TX

Commented on the public workshop that will take place on Tuesday, February 16, 2010, this workshop will take place every third Tuesday, praised the city for what they have done on Calder with the lighting and sidewalks and the great job that has been done downtown

Matt Synatschk

P.O. Box 12276

Austin TX

Commented on the public workshop, main goal is to bring all the groups in Beaumont together and consolidate the work, there will also be a task force to create goals and quality of life in the community and build a stronger economy

J.D. Roberts

5275 Landry Ln.

Beaumont TX

Congratulated Councilmembers Jamie Smith and Audwin Samuel on behalf of the organization SOC - Children in Motion for receiving the "Above and Beyond" award at the SOC banquet that was held on Wednesday, February 10, 2010

Louis Vaughn

9615 Mapes St.

Beaumont TX

Spoke in regards to the flooding in the West Oakland addition; stated that the line that is causing the flooding has a restriction on it by the city, therefore DD7 can't go in and clean the line, what has occurred is that phase one has been completed, there are still two phases that need to be completed by the city but there is no money

Bruce Hoffer

2535 North

Beaumont TX

Commented on the South Texas Annual Winter soccer meeting, found out that in the southern half of the State of Texas there are about 70,000 kids playing soccer, there are about 3,500 kids playing in the Golden Triangle, Beaumont is actively involved in getting teams lined up for spring soccer, there will be a ground breaking ceremony for a indoor practice facility, for the first time this summer there will be world cup soccer, also encouraged everyone to exercise their right to vote

Open session of meeting recessed at 2:15 p.m.

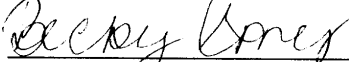
EXECUTIVE SESSION

- * Consider matters related to contemplated or pending litigation in accordance with Section 551.071 of the Government Code:

Claim Against Beaumont Metropolitan YMCA
 State of Texas v. James Edward Mathews, Jr. - **(No discussion held)**
 City of Beaumont v. James Mathews - **(No discussion held)**

There being no action taken in Executive Session, Council adjourned.

Audio available upon request in the City Clerk's Office



 Becky Ames, Mayor



 Tina Broussard, City Clerk

