



to comply with Texas Government Code § 411.209 and to seek civil penalties, costs, and fees against the County for its continued violations. In support thereof, the Attorney General would respectfully show the Court as follows:

**I. JURISDICTION AND VENUE**

1.1 This Court has jurisdiction to issue a writ of mandamus to require the County's compliance with § 411.209 of the Texas Government Code. Tex. Gov't Code §§ 24.011, 411.209(g).

1.2 This Court has jurisdiction to assess civil penalties, costs, and fees against the County pursuant to § 411.209(g) of the Texas Government Code.

1.3 Venue is proper in Travis County pursuant to Texas Government Code § 411.209(g).

**II. PARTIES**

2.1 Relator/Plaintiff is Ken Paxton, Texas Attorney General. Pursuant to Texas Government Code § 411.209(g), the Attorney General is charged with enforcement of § 411.029.

2.2 Defendant is Waller County, Texas. Pursuant to Texas Government Code § 411.209, the County is a political subdivision that is subject to mandamus, civil penalties, and expenses (costs and fees) for violation of § 411.209(a). The County may be served with citation by serving Judge Carbett "Trey" J. Duhon, III at 836 Austin Street, Suite 203, Hempstead, Texas 77445.

2.3 Respondent Waller County Commissioners' Court, Judge Carbett "Trey" J. Duhon, III; John A. Amsler, Precinct 1 Commissioner; Russell Klecka, Precinct 2 Commissioner; Jeron Barnett, Precinct 3 Commissioner; Justin Beckendorff, Precinct 4 Commissioner; and Debbie Hollan, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Waller County, Texas are sued in their official capacities for purpose of mandamus pursuant to Texas Government Code §§ 24.011, 411.209(g). They may each be served with citation at 836 Austin Street, Suite 203, Hempstead, Texas 77445.

2.4 Respondent Jeron Barnett, Precinct 3 Commissioner, may also be served at 12620 FM 1887, Hempstead, Texas 77445.

2.5 Respondent Justin Beckendorff, Precinct 4 Commissioner, may also be served at 3410 1st Street, Pattison, Texas 77466.

2.6 Respondent Debbie Hollan, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Waller County, Texas, may also be served at 836 Austin Street, Suite 217, Hempstead, Texas 77445.

### **III. DISCOVERY CONTROL PLAN**

3.1 Discovery in this case is intended to be conducted under Level 2 of the discovery control plan provided by Texas Rule of Civil Procedure 190.3.

### **IV. FACTS**

4.1 This suit for mandamus and civil penalties, costs, and fees arises out of the County's unlawful attempt to prohibit licensed handgun owners possessing handguns from accessing the County courthouse building in its entirety, in violation of Texas Government

Code § 411.209. The Attorney General seeks to prevent the unlawful restriction of Texas citizens' Second Amendment and statutory rights by the County.

4.2 In or about May 2016, citizen complainant Terry Holcomb, Jr. arrived on the premises of the Waller County courthouse building and noted that a sign referring to § 46.03(a)(3) of the Texas Government Code was posted on the outside of the entry to the courthouse building located at 836 Austin Street, Hempstead, Texas. The sign warned handgun license holders that possession of a handgun on the premises is prohibited and punishable as a third degree felony. *See* letter dated May 20, 2016, with attachments, attached as Exhibit A.

4.3 On July 6, 2016, Waller County sued Mr. Holcomb in Waller County District Court. Ex. B. The County's suit seeks declaratory judgment that the County's signs do not violate § 411.209 and that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout the entire building that houses a government court, including the Waller County courthouse building. Significantly, the County is also seeking attorney's fees and court costs from this citizen who was simply exercising his statutory right to seek compliance by Waller County with Texas law.

4.4 It should be noted that Waller County filed suit against Holcomb even before he lodged a complaint with the Office of the Attorney General (OAG). Mr. Holcomb's complaint was received by the OAG on July 20, 2016.

4.5 On July 22, 2016, the Office of the Attorney General sent a letter to Waller County Judge Carbett "Trey" Duhon, III advising that it was reviewing a complaint

received from Mr. Holcomb regarding signage at the County's courthouse building.  
Ex. C.

4.6 On August 4, 2016, Assistant District Attorney Elizabeth Dorsey responded via letter advising, without adequate explanation, that the County views its entire courthouse building as "a place where firearms and other weapons are prohibited" under § 46.03(a)(3) of the Texas Penal Code. She also advised that the County is of the opinion that "Texas law prohibits firearms inside the entire building where the sign is posted." *See* County response letter dated August 4, 2016, Exhibit D, page 1. This is despite the fact that the lawsuit the County filed against Mr. Holcomb acknowledges that there are non-court related offices within the courthouse building. Ex. B, p. 4, ¶ 7.06.

4.7 On August 10, 2016, the Office of the Attorney General provided statutory notice of the violations to the County and advised that the County was in violation of § 411.209 by prohibiting the possession of handguns from the entire premises of the county courthouse building, despite the fact that by its own admission the County also maintains non-judicial county administrative offices, such as the county treasurer and county elections offices in that building. The notice further advised that those offices are not "essential to the operation of the courts nor are they otherwise included in the specific exempted places listed under section 46.03 or 46.035 of the Penal Code." Ex. E.

4.8 The County was further placed on notice that § 46.03(a)(3) does not allow a political subdivision to prohibit licensed handgun holders from entering into an entire building simply because the courts or the offices of the courts are located in a portion of that multipurpose building. Ex. E, p. 2.

4.9 Finally, the County was advised of the statutory period for compliance and that failure to comply with § 411.209 could result in a suit for mandamus and civil penalties pursuant to § 411.209(g), and the amount of potential penalties. Ex. E, p. 3.

4.10 On August 29, 2016, the OAG received a response from Waller County. Ex. F. In sum, the County indicated it has no intention of complying with the terms of the notice letter, complained of the injustice associated with the statutory civil penalties structure of § 411.209, and made it clear that it intends to pursue its lawsuit against Mr. Holcomb.

4.11 Section 411.209 prohibits state agencies and political subdivisions from wrongfully excluding handgun license holders from property owned or leased by the government. The law prohibits the County from providing notice by a communication described in Texas Penal Code § 30.06, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless the license holder is prohibited from carrying a handgun on the premises or other place by Texas Penal Code §§ 46.03 or 46.035. Tex. Gov't Code § 411.209(a).

4.12 The County acknowledges that the courthouse building contains non-judicial county administrative offices such as the county treasurer and the county elections offices. *See* Ex. B, p. 4, ¶ 7.06. Such offices are neither essential to the operation of the courts nor are they otherwise included in the specific exempted places listed under §§ 46.03 or 46.035 of the Penal Code. Section 46.03(a)(3) of the Penal Code does not allow a political subdivision of the state to prohibit licensed handgun holders from entering into an entire

building simply because the courts or the offices of the courts are located in a portion of that multipurpose building. Yet, the County prohibits by its signage<sup>1</sup> licensed handgun holders from entering the building at all. The County is in violation of the Government Code in these respects.

4.13 A state agency or political subdivision is liable for civil penalties, fees, and costs if it has been found to be in violation of § 411.209. *Id.* § 411.209(g).

## **V. CIVIL PENALTIES**

5.1 Texas Government Code § 411.209(b) provides that a political subdivision that violates § 411.209(a) is liable for civil penalties in an amount not less than \$1,000 or more than \$1,500 per day, with each day of violation constituting a separate violation. Tex. Gov't Code § 411.209(b), (c).

5.2 The Attorney General asks the Court to award civil penalties in the amount of \$1,500 per day based on the County's continued violation, beginning on August 29, 2016.

## **VI. MANDAMUS RELIEF**

6.1 In addition to civil penalties, § 411.209(g) authorizes the Attorney General to seek a writ of mandamus to compel the County to comply with § 411.209(a). The Attorney General asks the Court to issue a writ of mandamus against the County and its officials to require compliance with § 411.209.

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<sup>1</sup> Skillfully lacking in any reference to § 30.06 of the Penal Code.

## **VII. EXPENSES**

7.1 Texas Government Code § 411.209(g) authorizes the Court to award to reasonable expenses including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs. The Attorney General hereby requests to recover all expenses incurred in obtaining relief in this cause.

## **VIII. PRAYER**

FOR THESE REASONS, Texas Attorney General Ken Paxton prays for the following:

- (1) the Attorney General asks the Court to issue a writ of mandamus against the County and its officials to require compliance with § 411.209;
- (2) the Court award civil penalties in the amount of \$1,500 per day of violation commencing on August 29, 2016;
- (3) an award for court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs; and
- (4) all such other and further relief to which Texas Attorney General Ken Paxton may be justly entitled on behalf of the State of Texas.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY STARR  
Deputy First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for Civil Litigation

NICHOLE BUNKER-HENDERSON  
Chief, Administrative Law Division

*/s/ John S. Langley*  
\_\_\_\_\_  
JOHN S. LANGLEY  
State Bar No. 11919250  
Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 936-7935  
Facsimile: (512) 320-0167  
[John.Langley@texasattorneygeneral.gov](mailto:John.Langley@texasattorneygeneral.gov)

*Attorneys for Relator/Plaintiff*  
*Ken Paxton, Texas Attorney General*

RECEIVED MAY 25 2016

Terry Holcomb Sr.  
P.O. Box 1503 Coldspring TX 77331  
281-761-1185

May 20th, 2016

*Via Certified Mail RRR No.  
And U.S. First Class Mail*

Honorable County Judge Trey Duhon  
Waller County  
836 Austin St, Hempstead, Texas 77445

**Re: Unlawfully posted "46.03" sign at Waller County Courthouse**

Honorable County Judge Trey Duhon,

I represent members of Texas Carry, am a citizen of the State of Texas and a person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code. I am writing to inform you that the criminal trespass warning sign preventing lawful handgun license holders from bringing lawfully carried handguns onto the real property located at Waller County Courthouse 836 Austin St, Hempstead, Texas 77445, is posted in violation of Texas Penal Code §30.06(e) and is actionable under Texas Government Code §411.209.

The sign you have posted specifically cites the 46.03 penal code which prohibits CHL/LTC holders from entering. "46.03 (f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code" makes this sign an unlawful posting preventing CHL/LTC holders from entering and is actionable under Texas Government Code §411.209.

This property is owned by Waller County, a state agency or political subdivision. This property is not a place where firearms or concealed handguns are prohibited under Texas Penal Code §46.03 or §46.035. Texas Penal Code §30.06(e) and §30.07(e) specifically states, "It is an exception to the application of this section that the property on which the license holder carries a handgun is *owned* or *leased* by a governmental entity..." Therefore, the posting of "46.03" signs on this property is prohibited.

The offending "46.03" sign(s) is/are specifically located at the entrance of the County Courthouse. I have enclosed photographs of the sign(s) and the building as evidence of the violation in accordance with Texas Government Code §411.209(d). I am hereby requesting that you remove any and all "46.03" signs from the property along with any signs that would prevent CHL/LTC holders from carrying into the building.

In the event that the offending "46.03" signs are not removed from the property before the end of the third business day after the receipt of this notice, this complaint will be filed with the Office of the Texas Attorney General.

In the event that the Texas Attorney General determines that this property has been improperly posted with "46.03" signs and they are not removed, Waller County faces a fine of up to \$1,500 a day for the first violation and \$10,500.00 a day for the second or subsequent violations. Further, sovereign immunity for this conduct by this state agency or political subdivision has been abolished by Texas Government Code §411.209(h), subjecting it to possible litigation to collect any assessed fines, court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

At the expiration of three business days, I will revisit the Waller County Courthouse, to determine if the corrective action of removing all unlawful "46.03" signs has occurred. In the event the signs have not been removed I will proceed with requesting all remedies available under the law.

Thank you for your prompt attention to this matter.

Sincerely,

*Jerry Holcomb Sr.*  
Executive Director  
Texas Carry

Encl.

cc: The Office of the Texas Attorney General

"PURSUANT TO TEXAS PENAL CODE SECTION 46.03(a)(3), A PERSON COMMITS AN OFFENSE IF THE PERSON INTENTIONALLY, KNOWINGLY, OR RECKLESSLY POSSESSES OR GOES WITH A FIREARM, ILLEGAL KNIFE, CLUB, OR PROHIBITED WEAPON LISTED IN SECTION 46.05(a) ON THE PREMISES OF ANY GOVERNMENT COURT OR OFFICES UTILIZED BY THE COURT, UNLESS PURSUANT TO WRITTEN REGULATIONS OR WRITTEN AUTHORIZATION OF THE COURT. VIOLATORS MAY BE CHARGED WITH A THIRD DEGREE FELONY."

## AVISO

"CONFORME AL CODIGO PENAL DE TEXAS 46.03(a)(3), UNA PERSONA COMETE UNA OFENSA SI LA PERSONA INTENCIONALMENTE, SABIENDO, O ATURDIDAMENTE POSEE O VA CON UN ARMA DE FUEGO, CUCHILLO ILEGAL, O ARMA PROHIBIDA ENUMERADA EN 46.05(a) EN LAS PREMISAS DE CUALQUIER CORTE DEL GOBIERNO U OFICINA UTILIZADA POR LA CORTE. A MENOS QUE CONFORME A REGULACIONES ESCRITAS O A LA AUTORIZACION ESCRITA DE LA CORTE, LOS VIOLADORES PUEDEN SER ACUSADOS DE UN DE ITO DE TERCER GRADO."

16-07-23803

CAUSE NO. \_\_\_\_\_

WALLER COUNTY, TEXAS  
*Plaintiff*

V.

TERRY HOLCOMB SR.  
*Defendant*

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IN THE DISTRICT COURT

506<sup>TH</sup> JUDICIAL DISTRICT

WALLER COUNTY, TEXAS

**ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Waller County, Texas (hereinafter "Waller County" or "County") and files its Original Petition for Declaratory Judgment against Defendant Terry Holcomb Sr. (hereinafter "Defendant") and alleges as follows:

**I.**

**Discovery Level**

1.01 Waller County intends for discovery to be conducted, should any discovery be necessary, under Level 2 pursuant to Tex. R. Civ. P. 190.1 and 190.3.

1.02 Waller County affirmatively pleads that this suit is not governed by the expedited actions process under Tex. R. Civ. P. 169 because Waller County seeks Declaratory Judgment.

**II.**

**Claim for Relief**

2.01 Waller County seeks Declaratory Judgment and damages of less than \$100,000.

2.02 The remedies sought are within the jurisdictional authority of the court pursuant to Tex. R. Civ. P. 47.

### III.

#### Parties

3.01 Waller County is a political subdivision and governmental entity having its principal office at 836 Austin Street, Suite 203, Hempstead, Texas 77445.

3.02 As a governmental entity, Waller County does not have a driver's license or a social security number. Tex. Civ. Prac. & Rem. Code § 30.014(a).

3.03 Defendant Terry Holcomb Sr. is a Texas citizen and person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code.

3.04 Defendant may be served at 610 W Rocky Creek Road, Coldspring, TX 77331.

### IV.

#### Jurisdiction

4.01 This Court has jurisdiction to hear this case under the *Uniform Declaratory Judgments Act* and pursuant to its inherent powers in equity. All relief sought by County is within the jurisdictional limits of this Court.

### V.

#### Venue

5.01 Waller County is a proper venue because it is the county in which the principal office of the political subdivision claimed to be in violation of the law is located. It is also the county in which the alleged violation of the law occurred.

### VI.

#### Summary of the Case

6.01 The question before this Court is whether signs posted at courthouses citing Penal Code § 46.03(a)(3), which prohibits an individual from entering the courthouse carrying a

prohibited weapon or firearm, violate Government Code § 411.209. A related question before this Court is whether Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other weapons<sup>1</sup> throughout the entire building in which a court or court office is located or only in an actual courtroom or court office.

## VII.

### Factual Background

7.01 Waller County expects the factual background in this lawsuit to be undisputed and that this lawsuit will involve solely a question of law.

7.02 The Texas Legislature passed Senate Bill 273 during the 84<sup>th</sup> Legislative Session. Senate Bill 273, which became effective on September 1, 2015, added Section 411.209 to the Texas Government Code. Pursuant to Section 411.209, a political subdivision may be fined up to \$10,500 per day if the political subdivision

provide[s] notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.

Tex. Gov't Code § 411.209(a). Penal Code § 46.03 prohibits the carrying of a firearm on the premises of a government court. The text of Government Code § 411.209 assigns no liability for posting notice pursuant to Penal Code § 46.03.

7.03 Government Code § 411.209 created a process by which a citizen may file a complaint with the political subdivision and subsequently with the Attorney General regarding

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<sup>1</sup> Tex. Penal Code § 46.03(a) states that “[a] person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a)” any of the enumerated places. In this Petition the term “other weapon(s)” means illegal knives, clubs, and weapons prohibited by Section 46.05.

wrongfully posted signage under Penal Code § 30.06.

7.04 If the subsequent Attorney General investigation concludes with a finding that the political subdivision is in violation of Section 411.209, the Attorney General may file suit<sup>2</sup> against the political subdivision to recover the civil penalties and other monetary expenses authorized under Government Code § 411.209. A political subdivision so sued has no sovereign immunity. *See* Tex. Gov't Code § 411.209(h).

7.05 Waller County received a citizen complaint pursuant to Section 411.209 from Defendant on May 25, 2016. The complaint alleges that the sign outside the Waller County Courthouse referencing Penal Code § 46.03(a)(3) violates Government Code § 411.209. *Exhibit 1*. The complaint also states that Defendant will file a complaint with the Attorney General if the sign is not removed.

7.06 The Waller County Courthouse is located at 836 Austin Street, Hempstead, Texas 77445. The building is owned by Waller County and houses various courts and county offices including: (1) the Waller County Court at Law, offices utilized by the County Court at Law, and the associated courtroom; (2) the Waller County Commissioners' Court, offices utilized by the Commissioners' Court, and the associated courtroom; (3) the 506<sup>th</sup> District Court, offices utilized by the District Court, and the associated courtroom; (4) the Waller County District Clerk's Office; (5) the Waller County Clerk's Office; (6) the Waller County Auditor's Office; (7) the Waller County Treasurer's Office; (8) the Waller County Elections Office; and (9) the Waller County Veterans Service Office.

7.07 The Waller County Courthouse has four entrances: three that require an employee security code and one for the general public. Signs in English and Spanish are located near each

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<sup>2</sup> Before filing a suit to collect penalties, the Attorney General must give the political subdivision proper notice to cure the violation. TEX. GOV'T CODE § 411.209(f).

entrance to notify members of the public that they may be charged with a third degree felony if they enter the building with a firearm or other prohibited weapon. The English version of the signs states:

**Warning**

Pursuant to Texas Penal Code Section 46.03(a)(3), a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. Violators may be charged with a 3<sup>rd</sup> degree felony.

**VIII.**

**Suit for Declaratory Relief**

8.01 This is a suit for declaratory judgment finding: (1) that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire courthouse, including the Waller County Courthouse and (2) that signs at a courthouse, including those at the Waller County Courthouse, citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.

8.02 This suit for declaratory judgment is brought pursuant to the *Uniform Declaratory Judgments Act* in Chapter 37 of the Texas Civil Practice and Remedies Code. “A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Tex. Civ. Prac. & Rem. Code § 37.003(a). “A person...whose rights, status, or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the...statute...and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* at 37.004(a).

8.03 Government Code § 411.209(a) provides a governmental entity “may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly

referring to that law or to a concealed handgun license,” that a license holder may not carry a handgun on a premises owned or leased by the governmental entity “unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.” The Texas Court of Criminal Appeals, advising courts on how to interpret Texas statutes, has stated:

"[u]nder the canons of statutory construction, we are to construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended."<sup>3</sup> To do so, we focus on the literal text of the statutory language in question, reading it in context and construing it "according to the rules of grammar and common usage."<sup>4</sup> In an attempt to discern the fair, objective meaning of the text at the time of its enactment, "[w]e assume that every word has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible."<sup>5</sup> "Where the statute is clear and unambiguous, the Legislature must be understood to mean what it has expressed, and it is not for the courts to add or subtract from such a statute."<sup>6</sup> It is only "[w]hen the application of the statute's plain language would lead to absurd consequences that the Legislature could not possibly have intended," that a court, out of absolute necessity, may stray from applying the literal language and resort to such extra-textual factors as legislative history, intent, or purpose.<sup>7</sup>

*Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009). Section 411.209(a) only prohibits “communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license.” That language is very clear, unambiguous, and specific. Signs referring to Penal Code § 46.03 are clearly not prohibited by the language of Section 411.209(a).

8.04 Additionally, Section 411.209(a) does not create any liability for posting any signs prohibiting individuals from carrying a handgun on the premises or other place if Penal Code §

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<sup>3</sup> *Williams v. State*, 253 S.W.3d 673, 677 (Tex. Crim. App. 2008) (citing *Thompson v. State*, 236 S.W.3d 787, 792 (Tex. Crim. App. 2007); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

<sup>4</sup> TEX. GOV'T CODE § 311.011(a).

<sup>5</sup> *Campbell v. State*, 49 S.W.3d 874, 876 (Tex. Crim. App. 2001) (citing *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).

<sup>6</sup> *Coit v. State*, 808 S.W.2d 473, 475 (Tex. Crim. App. 1991).

<sup>7</sup> *State v. Mason*, 980 S.W.2d 635, 638 (Tex. Crim. App. 1998) (citing *Boykin*, 818 S.W.2d at 785-86).

46.03 or 46.035 prohibit weapons on the premises. Penal Code § 46.03(a)(3) prohibits individuals, license holders<sup>8</sup> included, from carrying a firearm or other weapon “on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.” Pursuant to Penal Code § 46.03(c)(1) and 46.035(f)(3), “premises” is defined as “a building or a portion of a building.”<sup>9</sup> The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” The plain language of Penal Code § 46.03(a)(3), combined with the definition of “premises,” clearly and unambiguously prohibits an individual from carrying a firearm into a building that houses a government court.

8.05 Despite the clear and unambiguous language of Government Code § 411.209(a) and Penal Code § 46.03(a)(3) and 46.03(c)(1), two recent Attorney General Opinions<sup>10</sup> suggest: (1) that Section 411.209 creates liability for a governmental entity that gives oral or written notice “that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried,” even if the notice “does not conform to section 30.06 of the Penal Code;”<sup>11</sup> and (2) that pursuant to Section 46.03 “it is only the courtrooms, and those offices determined to be essential

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<sup>8</sup> “License holder” means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code. TEX. PENAL CODE § 46.035(f)(2).

<sup>9</sup> *Dupree v. State*, 433 S.W.3d 788, 792 (Tex. App. – Texarkana) (2014) (“The plain meaning of the phrase “building or a portion of a building” is clear and unambiguous. While the meaning most typically ascribed to the term “premises” would likely include more than a building or a portion of a building, our inquiry is not whether the Legislature’s definition of premises comports with ordinary usage; rather, we are to determine if the plain meaning of the Legislature’s definition is clear and unambiguous. We find that it is. As further support for this interpretation, we look to the second sentence of the definition of “premises,” which unambiguously establishes that the term premises does not include “any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” It is clear, then, that the possession of a firearm on a street, sidewalk, or parking lot, or even in a parking garage--which may well be a building--is not a violation of *Section 46.03 of the Texas Penal Code*. We find nothing in this portion of the statutory definition of premises to suggest that we should deviate from the plain meanings of the words “building or a portion of a building.”” (citations omitted)).

<sup>10</sup> See Tex. Att’y Gen. Op. No. KP-0047 (2015) and KP-0049 (2015).

<sup>11</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015) (emphasis added).

to their operations,” not the entire building of a courthouse, “from which [a governmental entity] may prohibit concealed handguns without risk of incurring a civil penalty.”<sup>12</sup>

8.06 Notably, the Texas Penal Code has incorporated the *Code Construction Act* found in Chapter 311 of the Texas Government Code. See Tex. Penal Code § 1.05. Pursuant to Government Code § 311.021, “[i]n enacting a statute, it is presumed that...the entire statute is intended to be effective,”<sup>13</sup> and that “a result feasible of execution is intended.”<sup>14</sup> The Attorney General’s interpretation of the definition of “premises” violates the *Code Construction Act* and completely ignores the statutory interpretation advice given by the Texas Court of Criminal Appeals. By opining that the prohibition against carrying a firearm “on the premises of any government court or offices utilized by the court”<sup>15</sup> means that firearms may not be excluded from an entire courthouse building, but may only be excluded from individual “courtrooms and those offices...essential to their operations,”<sup>16</sup> the Attorney General improperly ignored the plain language of the statute, ignored a result feasible of execution, did not give effect to all the words in the statute, and ultimately removed “a building or” from the definition of “premises.”

8.07 The *Code Construction Act* also states that

[i]n construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

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<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> TEX. GOV'T CODE § 311.021(2).

<sup>14</sup> *Id.* at § 311.021(4).

<sup>15</sup> TEX. PENAL CODE § 46.03(a)(3).

<sup>16</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015).

TEX. GOV'T CODE § 311.023. Considering these factors lends further support to the interpretation of Penal Code § 46.03 that firearms are prohibited throughout an entire building that houses a government court.

8.08 In 1993 the 73<sup>rd</sup> Texas Legislature passed Senate Bill 1067, which re-codified the Texas Penal Code. At the time, Penal Code § 46.03(a)(3) read “in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.”<sup>17</sup> In 1995, the 74<sup>th</sup> Legislature passed Senate Bill 60, which has become known as the “Texas Concealed Handgun Law.” That bill added section 46.035 to the Texas Penal Code and included the current definition of “premises” in Penal Code §46.035(f)(3).

8.09 In 2003, the 78<sup>th</sup> Legislature passed Senate Bill 501 (“SB 501”), which changed language found in Penal Code § 46.03(a)(3) from “in any government court . . .”<sup>18</sup> to “on the premises of any government court . . .”<sup>19</sup> This change indicates a clear legislative intent to clarify that firearms and other weapons are not merely prohibited only from individual courtrooms and offices, but rather are prohibited from the entire building. Transcripts from legislative hearing committees demonstrate that the legislature considered this exact issue and expressly intended exclude firearms from entire courthouse buildings. Senator Armbrister authored SB 501 and amended his bill in response to an objection from Senator Hinojosa. During a hearing before the Texas Senate Criminal Justice Committee, Senator Armbrister explained that the amendment was intended to expand the meaning of Section 46.03(a)(3) as follows:

What this amendment does members is add a section to the bill to change the existing prohibition against carrying guns into the courtroom to prohibit guns in the courthouse. The use of the word premises tracks other provisions in the statute and is defined to include the building, not parking lots or sidewalks insuring that concealed handgun permit holders can still carry their gun until they enter the

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<sup>17</sup> Tex. S.B. 1067, 73<sup>rd</sup> Leg., R.S. (1993) (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> Tex. S.B. 501, 78<sup>th</sup> Leg., R.S. (2003) (emphasis added).

courthouse. Courthouses where only administrative offices are held are excluded. If this is not adopted counties would not be able to prevent CHP holders from carrying their handgun into courthouses past security checkpoints. So this I think should address that concern.

See [http://tlcsenate.granicus.com/MediaPlayer.php?view\\_id=20&clip\\_id=4603](http://tlcsenate.granicus.com/MediaPlayer.php?view_id=20&clip_id=4603) (actual relevant discussion begins at approximately 42:28 on the hearing tape) (emphasis added). This was in response to the following exchange:

Sen. Hinojosa: Sen. Armbrister. I actually, I like your bill and the principles that are behind it and that the local municipalities and counties cannot supersede state law [inaudible] this bill is about, but one of the things I need to correct if I may, I have a friendly amendment to offer at the proper time as a substitute, is that right now I think that state law says that we can't carry a concealed handgun weapon into the courtroom or, uh, that we cannot carry a concealed weapon into a courthouse and I understand there is an attorney general's opinion that says that that meant into a courtroom but not the actual courthouse and I think what we intend to do with our exemption, an exception, was to make sure that concealed weapons would not be carried into the courthouse. At the proper time I would like to make an amendment.

Sen. Armbrister: Right, my staff tells me that y'all should have an amendment to the committee substitute that I think covers that. Yeah.

*Id.* (emphasis added).

8.10 The Texas House of Representatives Criminal Jurisprudence Committee hearing on SB 501 also addressed the issue and clearly stated their intent:

Rep. Hupp: Thank you Mr. Chairman, members. To refresh your memory Senate Bill 501 and House Bill 878, which is what you all have heard before, seeks to close a loophole that has allowed cities and municipalities to set up ordinances and rules to disallow law-abiding concealed handgun license holders from carrying on city property. Uh . . . that was not prohibited in 46.03 and 46.035 of the Penal Code. . . . . Secondly, there was a concern over the courts and whether or not they would be fully exempted, it was not my intention under HB 878 to affect any of the prohibited places in the original Concealed Carry Bill. But, the Senate companion again . . . uh . . . have added premises of the court which basically prohibits license holders from carrying in any building in which there is a courtroom. I have agreed to keep those two changes in the language in the Bill...

See [http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=22&clip\\_id=2915](http://tlchouse.granicus.com/MediaPlayer.php?view_id=22&clip_id=2915) (relevant discussion begins at 3:37:40 of the hearing tape) (emphasis added).

8.11 SB 501, with the amendment to Penal Code § 46.03(a)(3), passed and became effective September 1, 2003. The language of Section 46.03(a)(3) has not been amended since, including by Senate Bill 273 which added Government Code § 411.209.

8.12 The legislative history of the actual provision involved, Section 46.03(a)(3), the circumstances of the amendment, and the former version of the section clearly establish the Legislature's intent that "on the premises of a court or offices utilized by the court" was intended to mean an entire courthouse or any building housing a court. In fact, it is clear that prohibiting firearms from being brought into a courthouse or building housing a court was the very purpose of the amendment.

8.13 Thus, in applying (1) the rules of the *Code Construction Act*, (2) the Legislature's clear intent to expand Penal Code § 46.03(a)(3) to include the entire building, and (3) the testimony of Representative Hupp and Senators Armbrister and Hinojosa, it is clear that Penal Code § 46.03(a)(3), as written, prohibits all firearms and other weapons in the entire government building that houses a court.

8.14 This Court can resolve and terminate the controversy by clarifying Government Code § 411.209 as to its scope and applicability as it relates to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located. Further, by clarifying Penal Code § 46.03(a)(3) and the definition of "premises" as to their scope and applicability as they relate to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located

**IX.**

**Conditions Precedent**

9.01 All conditions precedent have been performed or have occurred. Tex. R. Civ. P. 54.

**X.**

**Objection to Associate Judge**

10.01 Waller County objects to the referral of this case to an associate judge for hearing hearing a trial on the merits or presiding at a jury trial. Tex. Gov't Code § 54A.106(c).

**XI.**

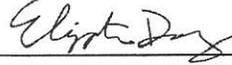
**Conclusion and Prayer**

11.01 Waller County prays for the following relief:

- A. Declaratory Judgment that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire building that houses a government court, including but not limited to the Waller County Courthouse.
- B. Declaratory Judgment that signs, including but not limited to those posted by Waller County, at a building that houses a government court citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.
- C. Court costs and reasonable attorneys' fees.
- D. All other relief to which Waller County is entitled.

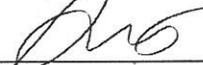
Respectfully submitted,

ELTON MATHIS  
CRIMINAL DISTRICT ATTORNEY  
WALLER COUNTY, TEXAS



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ELIZABETH DORSEY  
Assistant District Attorney  
SBN 24092357  
e.dorsey@wallercounty.us



---

SEAN WHITTMORE  
Assistant District Attorney  
SBN 24070845  
s.whittmore@wallercounty.us  
645 12th Street  
Hempstead, Texas 77445  
(979) 826-7718  
(979) 826-7722 (fax)

ATTORNEYS FOR PLAINTIFF  
WALLER COUNTY, TEXAS

RECEIVED MAY 25 2016

Terry Holcomb Sr.  
P.O. Box 1503 Coldspring TX 77331  
281-761-1185

May 20th, 2016

*Via Certified Mail RRR No.  
And U.S. First Class Mail*

Honorable County Judge Trey Duhon  
Waller County  
836 Austin St, Hempstead, Texas 77445

**Re: Unlawfully posted "46.03" sign at Waller County Courthouse**

Honorable County Judge Trey Duhon,

I represent members of Texas Carry, am a citizen of the State of Texas and a person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code. I am writing to inform you that the criminal trespass warning sign preventing lawful handgun license holders from bringing lawfully carried handguns onto the real property located at Waller County Courthouse 836 Austin St, Hempstead, Texas 77445, is posted in violation of Texas Penal Code §30.06(e) and is actionable under Texas Government Code §411.209.

The sign you have posted specifically cites the 46.03 penal code which prohibits CHL/LTC holders from entering. "46.03 (f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code" makes this sign an unlawful posting preventing CHL/LTC holders from entering and is actionable under Texas Government Code §411.209.

This property is owned by Waller County, a state agency or political subdivision. This property is not a place where firearms or concealed handguns are prohibited under Texas Penal Code §46.03 or §46.035. Texas Penal Code §30.06(e) and §30.07(e) specifically states, "It is an exception to the application of this section that the property on which the license holder carries a handgun is *owned* or *leased* by a governmental entity..." Therefore, the posting of "46.03" signs on this property is prohibited.

The offending "46.03" sign(s) is/are specifically located at the entrance of the County Courthouse. I have enclosed photographs of the sign(s) and the building as evidence of the violation in accordance with Texas Government Code §411.209(d). I am hereby requesting that you remove any and all "46.03" signs from the property along with any signs that would prevent CHL/LTC holders from carrying into the building.

In the event that the offending "46.03" signs are not removed from the property before the end of the third business day after the receipt of this notice, this complaint will be filed with the Office of the Texas Attorney General.

In the event that the Texas Attorney General determines that this property has been improperly posted with "46.03" signs and they are not removed, Waller County faces a fine of up to \$1,500 a day for the first violation and \$10,500.00 a day for the second or subsequent violations. Further, sovereign immunity for this conduct by this state agency or political subdivision has been abolished by Texas Government Code §411.209(h), subjecting it to possible litigation to collect any assessed fines, court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

At the expiration of three business days, I will revisit the Waller County Courthouse, to determine if the corrective action of removing all unlawful "46.03" signs has occurred. In the event the signs have not been removed I will proceed with requesting all remedies available under the law.

Thank you for your prompt attention to this matter.

Sincerely,

*Jerry Holcomb Sr.*  
Executive Director  
Texas Carry

Encl.

cc: The Office of the Texas Attorney General

"PURSUANT TO TEXAS PENAL CODE SECTION 46.03(a)(3), A PERSON COMMITS AN OFFENSE IF THE PERSON INTENTIONALLY, KNOWINGLY, OR RECKLESSLY POSSESSES OR GOES WITH A FIREARM, ILLEGAL KNIFE, CLUB, OR PROHIBITED WEAPON LISTED IN SECTION 46.05(a) ON THE PREMISES OF ANY GOVERNMENT COURT OR OFFICES UTILIZED BY THE COURT, UNLESS PURSUANT TO WRITTEN REGULATIONS OR WRITTEN AUTHORIZATION OF THE COURT. VIOLATORS MAY BE CHARGED WITH A THIRD DEGREE FELONY."

## AVISO

"CONFORME AL CODIGO PENAL DE TEXAS 46.03(a)(3), UNA PERSONA COMETE UNA OFENSA SI LA PERSONA INTENCIONALMENTE, SABIENDO, O ATURDIDAMENTE POSEE O VA CON UN ARMA DE FUEGO, CUCHILLO ILEGAL, O ARMA PROHIBIDA ENUMERADA EN 46.05(a) EN LAS PREMISAS DE CUALQUIER CORTE DEL GOBIERNO U OFICINA UTILIZADA POR LA CORTE, A MENOS QUE CONFORME A REGULACIONES ESCRITAS O A LA AUTORIZACION ESCRITA DE LA CORTE. LOS VIOLADORES PUEDEN SER ACUSADOS DE UN DELITO DE TERCER GRADO."

THE STATE OF TEXAS  
CERTIFIED MAIL CITATION

16-07-23803

**NOTICE TO DEFENDANT:** "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: TERRY HOLCOMB, SR., 610 W ROCKY CREEK ROAD, COLDSRING, TX 77331, Defendant,  
Greeting:

You are hereby commanded to appear by filing a written answer to the Plaintiff's ORIGINAL PETITION at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 506th District Court of Waller County, Texas at the Court House of said county in Hempstead, Texas.

Said Plaintiff's Petition was filed in said court on 07/06/2016, in this case, numbered 16-07-23803 on the docket of said court, and styled,

WALLER COUNTY, TEXAS, Plaintiff VS TERRY HOLCOMB, SR., Defendant

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's ORIGINAL PETITION accompanying this citation and made a part hereof.

ATTORNEY FOR PLAINTIFF OR PLAINTIFF

ELIZABETH DORSEY  
645 12TH STREET  
HEMPSTEAD TX 77445  
979-826-7718

The officer executing this writ shall promptly mail the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said court at Hempstead, Texas on the 7th day of July, 2016.

LIZ PIRKLE, District Clerk,  
District Court, WALLER COUNTY, Texas  
By Janie Derrick, *Janie Derrick* Deputy  
836 Austin Street Room 318  
Hempstead, TX 77445

**ATTACH RETURN RECEIPTS WITH  
ADDRESSEE'S SIGNATURE**

Rule 106 (a) (2) the citation shall be served by Mailing to the defendant by certified mail, return receipt requested, a true copy of the Citation Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

Janie Derrick, Deputy  
836 Austin Street, Room 318  
Hempstead, TX 77445  
CMRR# 7015 0640 0006 0510 2232

**CERTIFICATE OF DELIVERY BY MAIL**

I hereby certify that on the 7th day of July, 2016, I mailed to Terry Holcomb, Sr., by registered mail or certified mail, return receipt requested, a true copy of this citation with a copy of the petition attached thereto.

*Janie Derrick*  
\_\_\_\_\_  
Janie Derrick, Deputy  
Waller County District Clerk



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 22, 2016

The Honorable Carbett "Trey" Duhon, III  
Waller County Judge  
836 Austin Street, Suite 2013  
Hempstead, Texas 77445

RE: Wrongful Exclusion of Handgun License Holder Complaint  
Waller County Courthouse  
OAG Complaint No. 110

Dear Judge Duhon:

The Office of the Attorney General ("OAG") received a citizen complaint from Terry Holcomb, Sr., pursuant to section 411.209 of the Government Code, concerning the wrongful exclusion of handgun license holders from the Waller County Courthouse that allegedly occurred on May 25, 2016. Please be advised that the OAG will be reviewing this complaint. Upon completion of the review, the OAG will inform you of our decision. Please submit any information you think would be helpful with this review within 10 calendar days of receipt of this letter. If you have any questions, feel free to contact me at the phone number or email address below.

Sincerely,

A handwritten signature in blue ink, appearing to read "MA Y".

Matthew R. Entsminger  
Assistant Attorney General  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4151  
Facsimile: (512) 457-4686  
matthew.entsminger@texasattorneygeneral.gov

cc: Terry Holcomb, Sr.  
Elizabeth Dorsey  
Sean Whittmore  
Elton Mathis

RECEIVED

AUG 08 2016

OFFICE OF THE ATTORNEY GENERAL  
ADMINISTRATIVE LAW DIVISION



645 12<sup>th</sup> Street  
Hempstead, Texas 77445

**ELTON R. MATHIS**  
Criminal District Attorney  
Waller County

979.826.7718 Ph  
979.826.7722 Fax

August 4, 2016

Matthew Entsminger  
Assistant Attorney General  
Administrative Law Division  
PO Box 12548, Capitol Station  
Austin, Texas 78711-2548

Re: Wrongful Exclusion of Handgun License Holder Complaint  
Waller County Courthouse  
OAG Complaint No. 110

Dear Mr. Entsminger:

On July 25, 2016 the Waller County District Attorney's Office received your letter informing us that your office will be reviewing the complaint your office received from Mr. Holcomb about our sign at the Waller County Courthouse. The County is currently seeking declaratory judgment on the legal questions raised by Mr. Holcomb's assertion that our sign violates his rights. The pleadings that have been filed in the case so far are enclosed for your reference. We will continue to update your office on the progression of the lawsuit. As our Original Petition explains, our courthouse is a place where firearms and other weapons are prohibited pursuant to Penal Code § 46.03(a)(3), so a notice to that effect does not violate Government Code § 411.209. Additionally, our sign does not violate Section 411.209 because it does not reference Penal Code § 30.06 or a concealed handgun license. In fact, it does not reference any handgun license law.

Our office is available to answer any questions you have during your review or to help gather any additional information you need. We will gladly cooperate with your review, but please understand that this office and our Commissioners Court take this issue very seriously. Current Texas law prohibits firearms inside the entire building where the sign is posted. Our Commissioners Court unanimously supports our declaratory judgment lawsuit and has authorized this office to seek

injunctive relief if necessary to prevent firearms and other weapons from being carried into the building.

Please let me know if you have any questions or need any additional information for your review.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth Dorsey".

Elizabeth Dorsey  
Assistant District Attorney  
Waller County District Attorney's Office  
645 12th Street  
Hempstead, Texas 77445  
(979) 826-7718  
(979) 826-7722 (fax)  
e.dorsey@wallercounty.us

16-07-23803

CAUSE NO. \_\_\_\_\_

WALLER COUNTY, TEXAS  
*Plaintiff*

V.

TERRY HOLCOMB SR.  
*Defendant*

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

506<sup>TH</sup> JUDICIAL DISTRICT

WALLER COUNTY, TEXAS

**ORIGINAL PETITION FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Waller County, Texas (hereinafter "Waller County" or "County") and files its Original Petition for Declaratory Judgment against Defendant Terry Holcomb Sr. (hereinafter "Defendant") and alleges as follows:

**I.**

**Discovery Level**

1.01 Waller County intends for discovery to be conducted, should any discovery be necessary, under Level 2 pursuant to Tex. R. Civ. P. 190.1 and 190.3.

1.02 Waller County affirmatively pleads that this suit is not governed by the expedited actions process under Tex. R. Civ. P. 169 because Waller County seeks Declaratory Judgment.

**II.**

**Claim for Relief**

2.01 Waller County seeks Declaratory Judgment and damages of less than \$100,000.

2.02 The remedies sought are within the jurisdictional authority of the court pursuant to Tex. R. Civ. P. 47.

### **III.**

#### **Parties**

3.01 Waller County is a political subdivision and governmental entity having its principal office at 836 Austin Street, Suite 203, Hempstead, Texas 77445.

3.02 As a governmental entity, Waller County does not have a driver's license or a social security number. Tex. Civ. Prac. & Rem. Code § 30.014(a).

3.03 Defendant Terry Holcomb Sr. is a Texas citizen and person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code.

3.04 Defendant may be served at 610 W Rocky Creek Road, Coldspring, TX 77331.

### **IV.**

#### **Jurisdiction**

4.01 This Court has jurisdiction to hear this case under the *Uniform Declaratory Judgments Act* and pursuant to its inherent powers in equity. All relief sought by County is within the jurisdictional limits of this Court.

### **V.**

#### **Venue**

5.01 Waller County is a proper venue because it is the county in which the principal office of the political subdivision claimed to be in violation of the law is located. It is also the county in which the alleged violation of the law occurred.

### **VI.**

#### **Summary of the Case**

6.01 The question before this Court is whether signs posted at courthouses citing Penal Code § 46.03(a)(3), which prohibits an individual from entering the courthouse carrying a

prohibited weapon or firearm, violate Government Code § 411.209. A related question before this Court is whether Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other weapons<sup>1</sup> throughout the entire building in which a court or court office is located or only in an actual courtroom or court office.

## VII.

### Factual Background

7.01 Waller County expects the factual background in this lawsuit to be undisputed and that this lawsuit will involve solely a question of law.

7.02 The Texas Legislature passed Senate Bill 273 during the 84<sup>th</sup> Legislative Session. Senate Bill 273, which became effective on September 1, 2015, added Section 411.209 to the Texas Government Code. Pursuant to Section 411.209, a political subdivision may be fined up to \$10,500 per day if the political subdivision

provide[s] notice by a communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license, that a license holder carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.

Tex. Gov't Code § 411.209(a). Penal Code § 46.03 prohibits the carrying of a firearm on the premises of a government court. The text of Government Code § 411.209 assigns no liability for posting notice pursuant to Penal Code § 46.03.

7.03 Government Code § 411.209 created a process by which a citizen may file a complaint with the political subdivision and subsequently with the Attorney General regarding

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<sup>1</sup> Tex. Penal Code § 46.03(a) states that “[a] person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a)” any of the enumerated places. In this Petition the term “other weapon(s)” means illegal knives, clubs, and weapons prohibited by Section 46.05.

wrongfully posted signage under Penal Code § 30.06.

7.04 If the subsequent Attorney General investigation concludes with a finding that the political subdivision is in violation of Section 411.209, the Attorney General may file suit<sup>2</sup> against the political subdivision to recover the civil penalties and other monetary expenses authorized under Government Code § 411.209. A political subdivision so sued has no sovereign immunity. *See* Tex. Gov't Code § 411.209(h).

7.05 Waller County received a citizen complaint pursuant to Section 411.209 from Defendant on May 25, 2016. The complaint alleges that the sign outside the Waller County Courthouse referencing Penal Code § 46.03(a)(3) violates Government Code § 411.209. *Exhibit I*. The complaint also states that Defendant will file a complaint with the Attorney General if the sign is not removed.

7.06 The Waller County Courthouse is located at 836 Austin Street, Hempstead, Texas 77445. The building is owned by Waller County and houses various courts and county offices including: (1) the Waller County Court at Law, offices utilized by the County Court at Law, and the associated courtroom; (2) the Waller County Commissioners' Court, offices utilized by the Commissioners' Court, and the associated courtroom; (3) the 506<sup>th</sup> District Court, offices utilized by the District Court, and the associated courtroom; (4) the Waller County District Clerk's Office; (5) the Waller County Clerk's Office; (6) the Waller County Auditor's Office; (7) the Waller County Treasurer's Office; (8) the Waller County Elections Office; and (9) the Waller County Veterans Service Office.

7.07 The Waller County Courthouse has four entrances: three that require an employee security code and one for the general public. Signs in English and Spanish are located near each

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<sup>2</sup> Before filing a suit to collect penalties, the Attorney General must give the political subdivision proper notice to cure the violation. TEX. GOV'T CODE § 411.209(f).

entrance to notify members of the public that they may be charged with a third degree felony if they enter the building with a firearm or other prohibited weapon. The English version of the signs states:

#### **Warning**

Pursuant to Texas Penal Code Section 46.03(a)(3), a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court. Violators may be charged with a 3<sup>rd</sup> degree felony.

### **VIII.**

#### **Suit for Declaratory Relief**

8.01 This is a suit for declaratory judgment finding: (1) that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire courthouse, including the Waller County Courthouse and (2) that signs at a courthouse, including those at the Waller County Courthouse, citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.

8.02 This suit for declaratory judgment is brought pursuant to the *Uniform Declaratory Judgments Act* in Chapter 37 of the Texas Civil Practice and Remedies Code. “A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Tex. Civ. Prac. & Rem. Code § 37.003(a). “A person... whose rights, status, or other legal relations are affected by a statute... may have determined any question of construction or validity arising under the... statute... and obtain a declaration of rights, status, or other legal relations thereunder.” *Id.* at 37.004(a).

8.03 Government Code § 411.209(a) provides a governmental entity “may not provide notice by a communication described by Section 30.06, Penal Code, or by any sign expressly

referring to that law or to a concealed handgun license,” that a license holder may not carry a handgun on a premises owned or leased by the governmental entity “unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03 or 46.035, Penal Code.” The Texas Court of Criminal Appeals, advising courts on how to interpret Texas statutes, has stated:

"[u]nder the canons of statutory construction, we are to construe a statute according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended."<sup>3</sup> To do so, we focus on the literal text of the statutory language in question, reading it in context and construing it "according to the rules of grammar and common usage."<sup>4</sup> In an attempt to discern the fair, objective meaning of the text at the time of its enactment, "[w]e assume that every word has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible."<sup>5</sup> "Where the statute is clear and unambiguous, the Legislature must be understood to mean what it has expressed, and it is not for the courts to add or subtract from such a statute."<sup>6</sup> It is only "[w]hen the application of the statute's plain language would lead to absurd consequences that the Legislature could not possibly have intended," that a court, out of absolute necessity, may stray from applying the literal language and resort to such extra-textual factors as legislative history, intent, or purpose.<sup>7</sup>

*Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009). Section 411.209(a) only prohibits “communication described by Section 30.06, Penal Code, or by any sign expressly referring to that law or to a concealed handgun license.” That language is very clear, unambiguous, and specific. Signs referring to Penal Code § 46.03 are clearly not prohibited by the language of Section 411.209(a).

8.04 Additionally, Section 411.209(a) does not create any liability for posting any signs prohibiting individuals from carrying a handgun on the premises or other place if Penal Code §

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<sup>3</sup> *Williams v. State*, 253 S.W.3d 673, 677 (Tex. Crim. App. 2008) (citing *Thompson v. State*, 236 S.W.3d 787, 792 (Tex. Crim. App. 2007); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

<sup>4</sup> TEX. GOV'T CODE § 311.011(a).

<sup>5</sup> *Campbell v. State*, 49 S.W.3d 874, 876 (Tex. Crim. App. 2001) (citing *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).

<sup>6</sup> *Coit v. State*, 808 S.W.2d 473, 475 (Tex. Crim. App. 1991).

<sup>7</sup> *State v. Mason*, 980 S.W.2d 635, 638 (Tex. Crim. App. 1998) (citing *Boykin*, 818 S.W.2d at 785-86).

46.03 or 46.035 prohibit weapons on the premises. Penal Code § 46.03(a)(3) prohibits individuals, license holders<sup>8</sup> included, from carrying a firearm or other weapon “on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.” Pursuant to Penal Code § 46.03(c)(1) and 46.035(f)(3), “premises” is defined as “a building or a portion of a building.”<sup>9</sup> The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” The plain language of Penal Code § 46.03(a)(3), combined with the definition of “premises,” clearly and unambiguously prohibits an individual from carrying a firearm into a building that houses a government court.

8.05 Despite the clear and unambiguous language of Government Code § 411.209(a) and Penal Code § 46.03(a)(3) and 46.03(c)(1), two recent Attorney General Opinions<sup>10</sup> suggest: (1) that Section 411.209 creates liability for a governmental entity that gives oral or written notice “that seeks to improperly prohibit handguns from a place where handguns may be lawfully carried,” even if the notice “does not conform to section 30.06 of the Penal Code;”<sup>11</sup> and (2) that pursuant to Section 46.03 “it is only the courtrooms, and those offices determined to be essential

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<sup>8</sup> “License holder” means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code. TEX. PENAL CODE § 46.035(f)(2).

<sup>9</sup> *Dupree v. State*, 433 S.W.3d 788, 792 (Tex. App. – Texarkana) (2014) (“The plain meaning of the phrase “building or a portion of a building” is clear and unambiguous. While the meaning most typically ascribed to the term “premises” would likely include more than a building or a portion of a building, our inquiry is not whether the Legislature’s definition of premises comports with ordinary usage; rather, we are to determine if the plain meaning of the Legislature’s definition is clear and unambiguous. We find that it is. As further support for this interpretation, we look to the second sentence of the definition of “premises,” which unambiguously establishes that the term premises does not include “any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.” It is clear, then, that the possession of a firearm on a street, sidewalk, or parking lot, or even in a parking garage—which may well be a building—is not a violation of *Section 46.03 of the Texas Penal Code*. We find nothing in this portion of the statutory definition of premises to suggest that we should deviate from the plain meanings of the words “building or a portion of a building.”” (citations omitted)).

<sup>10</sup> See Tex. Att’y Gen. Op. No. KP-0047 (2015) and KP-0049 (2015).

<sup>11</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015) (emphasis added).

to their operations,” not the entire building of a courthouse, “from which [a governmental entity] may prohibit concealed handguns without risk of incurring a civil penalty.”<sup>12</sup>

8.06 Notably, the Texas Penal Code has incorporated the *Code Construction Act* found in Chapter 311 of the Texas Government Code. See Tex. Penal Code § 1.05. Pursuant to Government Code § 311.021, “[i]n enacting a statute, it is presumed that...the entire statute is intended to be effective,”<sup>13</sup> and that “a result feasible of execution is intended.”<sup>14</sup> The Attorney General’s interpretation of the definition of “premises” violates the *Code Construction Act* and completely ignores the statutory interpretation advice given by the Texas Court of Criminal Appeals. By opining that the prohibition against carrying a firearm “on the premises of any government court or offices utilized by the court”<sup>15</sup> means that firearms may not be excluded from an entire courthouse building, but may only be excluded from individual “courtrooms and those offices...essential to their operations,”<sup>16</sup> the Attorney General improperly ignored the plain language of the statute, ignored a result feasible of execution, did not give effect to all the words in the statute, and ultimately removed “a building or” from the definition of “premises.”

8.07 The *Code Construction Act* also states that

[i]n construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

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<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> TEX. GOV'T CODE § 311.021(2).

<sup>14</sup> *Id.* at § 311.021(4).

<sup>15</sup> TEX. PENAL CODE § 46.03(a)(3).

<sup>16</sup> Tex. Att’y Gen. Op. No. KP-0049 at 5 (2015).

TEX. GOV'T CODE § 311.023. Considering these factors lends further support to the interpretation of Penal Code § 46.03 that firearms are prohibited throughout an entire building that houses a government court.

8.08 In 1993 the 73<sup>rd</sup> Texas Legislature passed Senate Bill 1067, which re-codified the Texas Penal Code. At the time, Penal Code § 46.03(a)(3) read “in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.”<sup>17</sup> In 1995, the 74<sup>th</sup> Legislature passed Senate Bill 60, which has become known as the “Texas Concealed Handgun Law.” That bill added section 46.035 to the Texas Penal Code and included the current definition of “premises” in Penal Code §46.035(f)(3).

8.09 In 2003, the 78<sup>th</sup> Legislature passed Senate Bill 501 (“SB 501”), which changed language found in Penal Code § 46.03(a)(3) from “in any government court . . .”<sup>18</sup> to “on the premises of any government court . . .”<sup>19</sup> This change indicates a clear legislative intent to clarify that firearms and other weapons are not merely prohibited only from individual courtrooms and offices, but rather are prohibited from the entire building. Transcripts from legislative hearing committees demonstrate that the legislature considered this exact issue and expressly intended exclude firearms from entire courthouse buildings. Senator Armbrister authored SB 501 and amended his bill in response to an objection from Senator Hinojosa. During a hearing before the Texas Senate Criminal Justice Committee, Senator Armbrister explained that the amendment was intended to expand the meaning of Section 46.03(a)(3) as follows:

What this amendment does members is add a section to the bill to change the existing prohibition against carrying guns into the courtroom to prohibit guns in the courthouse. The use of the word premises tracks other provisions in the statute and is defined to include the building, not parking lots or sidewalks insuring that concealed handgun permit holders can still carry their gun until they enter the

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<sup>17</sup> Tex. S.B. 1067, 73<sup>rd</sup> Leg., R.S. (1993) (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> Tex. S.B. 501, 78<sup>th</sup> Leg., R.S. (2003) (emphasis added).

courthouse. Courthouses where only administrative offices are held are excluded. If this is not adopted counties would not be able to prevent CHP holders from carrying their handgun into courthouses past security checkpoints. So this I think should address that concern.

See [http://tlcsenate.granicus.com/MediaPlayer.php?view\\_id=20&clip\\_id=4603](http://tlcsenate.granicus.com/MediaPlayer.php?view_id=20&clip_id=4603) (actual relevant discussion begins at approximately 42:28 on the hearing tape) (emphasis added). This was in response to the following exchange:

Sen. Hinojosa: Sen. Armbrister. I actually, I like your bill and the principles that are behind it and that the local municipalities and counties cannot supersede state law [inaudible] this bill is about, but one of the things I need to correct if I may, I have a friendly amendment to offer at the proper time as a substitute, is that right now I think that state law says that we can't carry a concealed handgun weapon into the courtroom or, uh, that we cannot carry a concealed weapon into a courthouse and I understand there is an attorney general's opinion that says that that meant into a courtroom but not the actual courthouse and I think what we intend to do with our exemption, an exception, was to make sure that concealed weapons would not be carried into the courthouse. At the proper time I would like to make an amendment.

Sen. Armbrister: Right, my staff tells me that y'all should have an amendment to the committee substitute that I think covers that. Yeah.

*Id.* (emphasis added).

8.10 The Texas House of Representatives Criminal Jurisprudence Committee hearing on SB 501 also addressed the issue and clearly stated their intent:

Rep. Hupp: Thank you Mr. Chairman, members. To refresh your memory Senate Bill 501 and House Bill 878, which is what you all have heard before, seeks to close a loophole that has allowed cities and municipalities to set up ordinances and rules to disallow law-abiding concealed handgun license holders from carrying on city property. Uh . . . that was not prohibited in 46.03 and 46.035 of the Penal Code. . . . . Secondly, there was a concern over the courts and whether or not they would be fully exempted, it was not my intention under HB 878 to affect any of the prohibited places in the original Concealed Carry Bill. But, the Senate companion again . . . uh . . . have added premises of the court which basically prohibits license holders from carrying in any building in which there is a courtroom. I have agreed to keep those two changes in the language in the Bill...

See [http://tlchouse.granicus.com/MediaPlayer.php?view\\_id=22&clip\\_id=2915](http://tlchouse.granicus.com/MediaPlayer.php?view_id=22&clip_id=2915) (relevant discussion begins at 3:37:40 of the hearing tape) (emphasis added).

8.11 SB 501, with the amendment to Penal Code § 46.03(a)(3), passed and became effective September 1, 2003. The language of Section 46.03(a)(3) has not been amended since, including by Senate Bill 273 which added Government Code § 411.209.

8.12 The legislative history of the actual provision involved, Section 46.03(a)(3), the circumstances of the amendment, and the former version of the section clearly establish the Legislature's intent that "on the premises of a court or offices utilized by the court" was intended to mean an entire courthouse or any building housing a court. In fact, it is clear that prohibiting firearms from being brought into a courthouse or building housing a court was the very purpose of the amendment.

8.13 Thus, in applying (1) the rules of the *Code Construction Act*, (2) the Legislature's clear intent to expand Penal Code § 46.03(a)(3) to include the entire building, and (3) the testimony of Representative Hupp and Senators Armbrister and Hinojosa, it is clear that Penal Code § 46.03(a)(3), as written, prohibits all firearms and other weapons in the entire government building that houses a court.

8.14 This Court can resolve and terminate the controversy by clarifying Government Code § 411.209 as to its scope and applicability as it relates to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located. Further, by clarifying Penal Code § 46.03(a)(3) and the definition of "premises" as to their scope and applicability as they relate to the Waller County Courthouse, courthouses in general, and government buildings in which courts are located

**IX.**

**Conditions Precedent**

9.01 All conditions precedent have been performed or have occurred. Tex. R. Civ. P. 54.

**X.**

**Objection to Associate Judge**

10.01 Waller County objects to the referral of this case to an associate judge for hearing hearing a trial on the merits or presiding at a jury trial. Tex. Gov't Code § 54A.106(c).

**XI.**

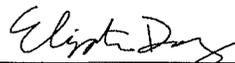
**Conclusion and Prayer**

11.01 Waller County prays for the following relief:

- A. Declaratory Judgment that Penal Code § 46.03(a)(3) prohibits an individual from carrying firearms and other prohibited weapons throughout an entire building that houses a government court, including but not limited to the Waller County Courthouse.
- B. Declaratory Judgment that signs, including but not limited to those posted by Waller County, at a building that houses a government court citing Penal Code § 46.03(a)(3) do not violate Government Code § 411.209.
- C. Court costs and reasonable attorneys' fees.
- D. All other relief to which Waller County is entitled.

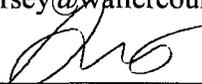
Respectfully submitted,

ELTON MATHIS  
CRIMINAL DISTRICT ATTORNEY  
WALLER COUNTY, TEXAS



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ELIZABETH DORSEY  
Assistant District Attorney  
SBN 24092357  
e.dorsey@wallercounty.us



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SEAN WHITTMORE  
Assistant District Attorney  
SBN 24070845  
s.whittmore@wallercounty.us  
645 12th Street  
Hempstead, Texas 77445  
(979) 826-7718  
(979) 826-7722 (fax)

ATTORNEYS FOR PLAINTIFF  
WALLER COUNTY, TEXAS

RECEIVED MAY 25 2016

Terry Holcomb Sr.  
P.O. Box 1503 Coldspring TX 77331  
281-761-1185

May 20th, 2016

*Via Certified Mail RRR No.  
And U.S. First Class Mail*

Honorable County Judge Trey Duhon  
Waller County  
836 Austin St, Hempstead, Texas 77445

**Re: Unlawfully posted "46.03" sign at Waller County Courthouse**

Honorable County Judge Trey Duhon,

I represent members of Texas Carry, am a citizen of the State of Texas and a person licensed to carry a handgun under Subchapter H, Chapter 411 of the Texas Government Code. I am writing to inform you that the criminal trespass warning sign preventing lawful handgun license holders from bringing lawfully carried handguns onto the real property located at Waller County Courthouse 836 Austin St, Hempstead, Texas 77445, is posted in violation of Texas Penal Code §30.06(e) and is actionable under Texas Government Code §411.209.

The sign you have posted specifically cites the 46.03 penal code which prohibits CHL/LTC holders from entering. "46.03 (f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code" makes this sign an unlawful posting preventing CHL/LTC holders from entering and is actionable under Texas Government Code §411.209.

This property is owned by Waller County, a state agency or political subdivision. This property is not a place where firearms or concealed handguns are prohibited under Texas Penal Code §46.03 or §46.035. Texas Penal Code §30.06(e) and §30.07(e) specifically states, "It is an exception to the application of this section that the property on which the license holder carries a handgun is *owned* or *leased* by a governmental entity..." Therefore, the posting of "46.03" signs on this property is prohibited.

The offending "46.03" sign(s) is/are specifically located at the entrance of the County Courthouse. I have enclosed photographs of the sign(s) and the building as evidence of the violation in accordance with Texas Government Code §411.209(d). I am hereby requesting that you remove any and all "46.03" signs from the property along with any signs that would prevent CHL/LTC holders from carrying into the building.

In the event that the offending "46.03" signs are not removed from the property before the end of the third business day after the receipt of this notice, this complaint will be filed with the Office of the Texas Attorney General.

In the event that the Texas Attorney General determines that this property has been improperly posted with "46.03" signs and they are not removed, Waller County faces a fine of up to \$1,500 a day for the first violation and \$10,500.00 a day for the second or subsequent violations. Further, sovereign immunity for this conduct by this state agency or political subdivision has been abolished by Texas Government Code §411.209(h), subjecting it to possible litigation to collect any assessed fines, court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

At the expiration of three business days, I will revisit the Waller County Courthouse, to determine if the corrective action of removing all unlawful "46.03" signs has occurred. In the event the signs have not been removed I will proceed with requesting all remedies available under the law.

Thank you for your prompt attention to this matter.

Sincerely,

*Jerry Holcomb Sr.*

Executive Director  
Texas Carry

Encl.

cc: The Office of the Texas Attorney General

"PURSUANT TO TEXAS PENAL CODE SECTION 46.03(a)(3), A PERSON COMMITS AN OFFENSE IF THE PERSON INTENTIONALLY, KNOWINGLY, OR RECKLESSLY POSSESSES OR GOES WITH A FIREARM, ILLEGAL KNIFE, CLUB, OR PROHIBITED WEAPON LISTED IN SECTION 46.05(a) ON THE PREMISES OF ANY GOVERNMENT COURT OR OFFICES UTILIZED BY THE COURT, UNLESS PURSUANT TO WRITTEN REGULATIONS OR WRITTEN AUTHORIZATION OF THE COURT. VIOLATORS MAY BE CHARGED WITH A THIRD DEGREE FELONY."

## AVISO

"CONFORME AL CODIGO PENAL DE TEXAS 46.03(a)(3), UNA PERSONA COMETE UNA OFENSA SI LA PERSONA INTENCIONALMENTE, SABIENDO, O ATURDIDAMENTE POSEE O VA CON UN ARMA DE FUEGO, CUCHILLO ILEGAL, O ARMA PROHIBIDA ENUMERADA EN 46.05(a) EN LAS PREMISAS DE CUALQUIER CORTE DEL GOBIERNO U OFICINA UTILIZADA POR LA CORTE, A MENOS QUE CONFORME A REGULACIONES ESCRITAS O A LA AUTORIZACION ESCRITA DE LA CORTE. LOS VIOLADORES PUEDEN SER ACUSADOS DE UN DELITO DE TERCER GRADO."

CAUSE NO. 16-07-23803

WALLER COUNTY, TEXAS  
Plaintiff,

V.

TERRY HOLCOMB, SR.  
Defendant.

§ IN THE DISTRICT COURT  
§  
§  
§ 506<sup>TH</sup> JUDICIAL DISTRICT  
§  
§  
§ OF WALLER COUNTY, TEXAS

**DEFENDANT'S ORIGINAL ANSWER TO PETITION FOR DECLARATORY JUDGMENT, PLEA TO THE JURISDICTION, AND MOTION FOR SANCTIONS**

NOW COMES Defendant, Terry Holcomb, Sr., named Defendant in the above-entitled and numbered cause, and files this Original Answer, Plea to the Jurisdiction, and Motion For Sanctions, and shows the Court:

**PARTY IDENTIFICATION INFORMATION**

Terry Holcomb, Sr. has been issued a driver's license with the last 3 numbers 103. Terry Holcomb, Sr. has been issued a Social Security number with the last 3 numbers 811.

**PLEA TO JURISDICTION**

1. Defendant avers that the Court lacks jurisdiction to entertain the request for declaratory judgment stated in Plaintiff's Original Petition. Defendant claims this Honorable Court is without authority to determine the subject in controversy because Plaintiff's Petition presents no justiciable issue to this Court. Plaintiff in this matter seeks to litigate the issue of whether or not a person who holds a Texas License To Carry a handgun (LTC) can be prosecuted for a 3<sup>rd</sup> degree felony for unlawfully carrying a firearm in a prohibited place pursuant to Texas Penal Code Sec. 46.03(a)(3). This is a matter that should be litigated in the forum of a criminal trial where an individual has been charged by indictment with the criminal act of unlawful carry of a firearm in a prohibited place. This present suit is not such a case and Defendant is not such an individual.

2. Defendant avers that there exists no justiciable controversy between the parties. Defendant claims this Honorable Court is without authority to determine the subject in controversy because Plaintiff's Petition contains matters that are not ripe for consideration by this Court. Plaintiff in this matter seeks to have a preemptive declaration that certain premises (buildings or portions of buildings) owned by Plaintiff are exempt from Texas Government Code Sec. 411.209, even though there has not been any determination by the Texas Attorney General as to whether or not Plaintiff is in violation of the statute.

3. Defendant avers granting declaratory judgment in this action as requested in Plaintiff's Original Petition would not be proper because it would not terminate the uncertainty or controversy giving rise to this proceeding. The Texas Legislature has given authority to the Texas Attorney General in Texas Government Code Sec. 411.209 to determine the issue of whether or not property owned by a political subdivision is a prohibited premises for the carrying of handgun under Texas Penal Code Secs. 46.03 or 46.035, as well as the ability to assess penalties arising from the wrongful exclusion of LTC holders who are carrying handguns.

#### **GENERAL DENIAL**

4. Defendant denies each and every, all and singular, the allegations of Plaintiff's Original Petition For Declaratory Judgment and demand strict proof thereof as required by the Texas Rules of Civil Procedure.

#### **VERIFIED DENIALS**

5. Defendant, by way of further answer, claims Plaintiff does not have capacity to sue in this matter.

6. Defendant, by way of further answer, claims Plaintiff cannot recover from Defendant, the relief requested, in the capacity Plaintiff in which it is suing.

7. Defendant, by way of further answer, does not have the legal capacity to be sued in this matter.

8. Defendant, by way of further answer, is not liable to Plaintiff in the capacity Defendant in which he is sued.

#### **ATTORNEYS' FEES**

9. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, Defendant requests all costs and reasonable and necessary attorney's fees incurred by Defendant herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

#### **DEFENDANT'S MOTION FOR SANCTIONS**

10. Terry Holcomb, Sr., Defendant and Movant herein, and files this Motion for Sanctions pursuant to Rule 13 of the Texas Rules of Civil Procedure and Section 10.001 *et. seq.* of the Texas Civil Practice and Remedies Code in the above-entitled and numbered cause.

11. Under Rule 13 of the Texas Rules of Civil Procedure, the court shall impose an appropriate sanction when a party signs an instrument which is either groundless and brought in bad faith or groundless and brought for the purpose of harassment. These sanctions can be imposed upon the person who signed it, a represented party, or both.

12. Under Section 10.001 *et. seq.* of the Texas Civil Practice and Remedies Code, the court may impose an appropriate sanction when a party signs a pleading or motion that is being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; has a claim, defense or other legal contention in the pleading or motion that is not warranted by existing law or has a frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; when each allegation or

other factual contention in the pleading or motion does not have evidential support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; or when each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based upon a lack of information or belief. Sanctions can be imposed upon the person who signed it, a represented party, or both.

13. The following persons or parties have violated Rule 13 of the Texas Rules of Civil Procedure and Section 10.001 *et seq.* of the Texas Civil Practice and Remedies Code:

- a. Waller County, Texas.
- b. Elizabeth Dorsey, as attorney for Waller County, Texas
- c. Sean Whittmore, as attorney for Waller County, Texas.

14. The above referenced persons or parties have violated Rule 13 of the Texas Rules of Civil Procedure by signing the Original Petition For Declaratory Judgment. This instrument is groundless and brought for the purpose of bad faith because it is attempt to intimidate and silence Defendant and prevent him from exercising his rights under the First Amendment to the United States Constitution, his statutory rights to carry a handgun pursuant to Chapter 411, Subchapter H of the Texas Government Code, and his rights statutory rights to address grievances against the government pursuant to Section 411.209 of the Texas Government Code.

15. Further, the above referenced persons or parties have violated Section 10.001 *et seq.* of the Texas Civil Practice and Remedies Code by serving the signed Original Petition For Declaratory Judgement to Defendant on July 11, 2016. The Petition was presented for an improper purpose and has a claim, defense or other legal contention that is not warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the

establishment of new law and each allegation or other factual contention does not have evidentiary support and is not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery because it is attempt to intimidate and silence Defendant and prevent him from exercising his rights under the First Amendment to the United States Constitution, his statutory rights to carry a handgun pursuant to Chapter 411, Subchapter H of the Texas Government Code, and his statutory rights to address grievances against the government pursuant to Section 411.209 of the Texas Government Code.

16. Therefore, the Original Petition For Declaratory Judgment of Waller County, Texas, signed by attorneys Elizabeth Dorsey and Sean Whittmore, violates Rule 13 and therefore, this Court should impose an appropriate sanction available under Rule 215.

17. Therefore, the Original Petition For Declaratory Judgment of Waller County, Texas, signed by attorneys Elizabeth Dorsey and Sean Whittmore, violates Section 10.001 of the Texas Civil Practice and Remedies Code and therefore, this Court should impose an appropriate sanction available under Section 10.004 of the Texas Civil Practice and Remedies Code.

18. Recognizing the Court's broad authority under Section 10.004 of the Texas Civil Practice and Remedies Code, and Rules 13 and 215.2(b) of the Texas Rules of Civil Procedure to make such orders as are just, Defendant respectfully submits that an appropriate sanction in this case would be to strike Plaintiff's Original Petition For Declaratory Judgment and enter such orders dismissing this matter as this Court deems just.

19. Due to the acts of Waller County, Texas, Elizabeth Dorsey, and Sean Whittmore, described herein, Defendant has incurred substantial expenses, including but not limited to attorney's fees. Under Section 10.004 of the Texas Civil Practice and Remedies Code, Defendant may recover reasonable expenses, including reasonable attorney's fees, incurred in obtaining an

order for sanctions.

20. Further, under Rule 215.2(b)(8) of the Texas Rules of Civil Procedure, Movant is entitled to recover reasonable expenses, including reasonable attorney's fees, incurred in obtaining an order for sanctions.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Terry Holcomb, Sr., Defendant, requests that the Petition for Declaratory Judgment filed herein by Waller County, Texas, Plaintiff, be denied, that Defendant be awarded reasonable and necessary attorney's fees, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,  
Walker & Byington, PLLC

By: */s/ T. Edwin Walker*

T. Edwin Walker  
Texas Bar No. 00786324  
Email: tewalker@walkerbyington.com  
1020 Bay Area Blvd., Suite 105  
Houston, Texas 77058  
Tel. (281) 668-9957  
Fax. (281) 282-9419  
Attorney for Defendant,  
Terry Holcomb, Sr.

**CERTIFICATE OF SERVICE**

I certify that on August 1, 2016 a true and correct copy of Defendant's Answer To Petition for Declaratory Judgment and Motion For Sanctions was served on Waller County, Texas by serving Elton Mathis, Waller County Criminal District Attorney, by and through his attorneys of record, Elizabeth Dorsey and Sean Whittmore electronically through the electronic filing manager.

*/s/ T. Edwin Walker*

\_\_\_\_\_  
T. Edwin Walker

CAUSE NO. 16-07-23803

WALLER COUNTY, TEXAS  
Plaintiff,

V.

TERRY HOLCOMB, SR.  
Defendant.

§ IN THE DISTRICT COURT  
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§ 506<sup>TH</sup> JUDICIAL DISTRICT  
§  
§  
§ OF WALLER COUNTY, TEXAS

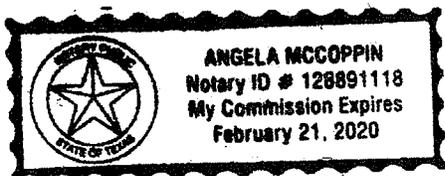
VERIFICATION

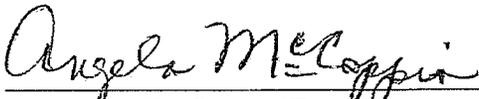
BEFORE ME, the undersigned authority, personally appeared Terry Holcomb, Sr., who being duly sworn, deposed as follows:

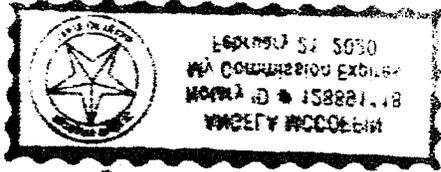
"My name is Terry Holcomb, Sr. I am at least 18 years of age and of sound mind. I am personally acquainted with the facts alleged in Defendant's Plea to Jurisdiction and Defendant's Verified Denials and Defendant's Motion For Sanctions. I hereby swear that the statements in support of Defendant's Plea to Jurisdiction, Defendant's Verified Denials, and Defendant's Motion For Sanctions are true and correct."

  
\_\_\_\_\_  
Terry Holcomb, Sr.

SUBSCRIBED AND SWORN TO BEFORE ME on July 30, 2016, by Terry Holcomb, Sr.



  
\_\_\_\_\_  
Notary Public, State of Texas





Additionally, Attorney General Opinion KP-0047 stated “the responsible authority that would notify license holders of their inability to carry on respective premises must make the determination of which government courtrooms and offices are essential to the operation of the government court.” The OAG acknowledges that decisions such as this are for the governmental entity in the first instance, subject to review for abuse of discretion. Tex. Att’y Gen. Op. Nos. KP-0007 at 2 (2015), GA-0843 at 2 (2011), GA-0271 at 3 (2009), GA-0472 at 3 (2006); *see also Comm’rs Ct. of Titus Cnty. v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997) (recognizing district court’s supervisory control over a commissioners court that abuses its discretion).

In this instance the citizen complaint states that, outside the entrances to the Waller County Courthouse (the “courthouse”), located at 836 Austin Street, Hempstead, Texas 77445, there are signs referring to section 46.03(a)(3) of the Penal Code and warning handgun license holders that possession of a handgun on the premises is prohibited and punishable as a third degree felony. After reviewing the complaint, the OAG notes the courthouse is a multi-story, multipurpose building that houses the Waller County (the “county”) district courts, county courts-at-law, commissioners court, and the district clerk, as well as the offices of the county clerk, treasurer, human resources, elections, and auditor, among others.

By correspondence dated August 4, 2016, Assistant District Attorney Elizabeth Dorsey provided a response to the complaint on behalf of the county. The county generally asserts the courthouse is a place where firearms are prohibited pursuant to section 46.03(a)(3) of the Penal Code. The county further asserts the signage in question is not in violation of section 411.209 because it does not reference 30.06 or “any handgun license law.” The county has also provided the OAG with copies of the pleadings filed in a lawsuit brought by the county against the citizen complainant. The petition states the county seeks a declaratory judgment that section 46.03(a)(3) of the Penal Code “prohibits an individual from carrying firearms and other prohibited weapons throughout an entire building that houses a government court, including but not limited to” the courthouse.

The OAG has reviewed the information provided by the county, including its response to the complaint and its petition against the citizen complainant. Initially, the OAG notes section 411.209 of the Government Code does not contemplate a suit filed by the government against a citizen complainant. Regardless, the county’s petition acknowledges the courthouse contains non-judicial county administrative offices such as the county clerk, county treasurer, and county elections offices. These offices are neither offices essential to the operation of the courts nor are they otherwise included in the specific exempted places listed under section 46.03 or 46.035 of the Penal Code. Section 46.03(a)(3) of the Penal Code does not allow a political subdivision to prohibit licensed handgun holders from entering into an entire building simply because the courts or the offices of the courts are located in a portion of that multipurpose building. Consequently, the OAG has determined the signs posted outside the entrances to the courthouse are in violation of the Government Code.

The Honorable Carbett "Trey" Duhon, III  
August 10, 2016  
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The county has fifteen (15) days from the receipt of this written notice to cure the violation. If the county fails to cure the violation within this fifteen day period, the OAG may proceed to file suit in district court and seek civil penalties pursuant to section 411.209(g) of the Government Code. Section 411.209(b) of the Government Code authorizes the court to assess civil penalties in the amount of:

- Not less than \$1,000 and not more than \$1,500 for the first violation; and
- Not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

Be advised that each day of a continuing violation constitutes a separate violation. TEX. GOV'T CODE § 411.209(c). Accordingly, beginning on the sixteenth (16<sup>th</sup>) day following the receipt of this written notice the county may be liable for a proposed maximum penalty of \$1,500 for each day the county remains in violation, as well as any reasonable expenses incurred by the Attorney General in obtaining relief under section 411.209(g) of the Government Code.

Sincerely,



Matthew R. Entsminger  
Assistant Attorney General  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4151  
Facsimile: (512) 457-4686  
matthew.entsminger@texasattorneygeneral.gov

cc: Terry Holcomb, Sr.  
Elizabeth Dorsey  
Sean Whittmore  
Elton Mathis



645 12<sup>th</sup> Street  
Hempstead, Texas 77445

**ELTON R. MATHIS**  
Criminal District Attorney  
Waller County

979.826.7718 Ph  
979.826.7722 Fax

August 29, 2016

Matthew Entsminger  
Assistant Attorney General  
Administrative Law Division  
PO Box 12548, Capitol Station  
Austin, Texas 78711-2548

Re: Wrongful Exclusion of Handgun License Holder Complaint  
Waller County Courthouse  
OAG Complaint No. 110

Dear Mr. Entsminger:

This letter is in response to the ruling letter issued by your office determining that our 46.03 signs at the Waller County Courthouse are posted in violation of the Government Code. The determination that our signs violate the Government Code is based in large part on Attorney General Opinion KP-0047. After discussing the definition of "premises" and how it relates to the prohibition in Penal Code §46.03(a)(3) against firearms and other weapons "on the premises of any government court," KP-0047 states "[t]he Legislature has not clearly demarcated, or established, a precise boundary in a building or portion of a building at which handguns are prohibited or permitted." If the Attorney General's Office is unsure about the areas where firearms are prohibited, then seeking to collect fines and recover attorneys' fees and investigation costs from Waller County would be unjust and contrary to the intent of Government Code §411.209. The authority and power given to your office was intended to curtail clear violations of the Government Code. By the Attorney General's own reasoning, the signs at our courthouse are *not* posted in clear violation of the Government Code.

Your letter also states that the County has 15 days from receiving the ruling letter to remove the signs or the County risks being liable for fines and expenses incurred by your office. Seeking to collect fines and expenses from Waller County would also be unjust and inequitable because the

Attorney General's Office is aware that Waller County is seeking a judicial determination of where firearms are and are not prohibited by Penal Code §46.03(a)(3). The County's declaratory judgment action is a more appropriate legal avenue for deciding Mr. Holcomb's rights and the County's rights under the relevant laws. Our declaratory judgment action seeks to settle the disagreement over the alleged right to carry a firearm into the courthouse under Texas law, not to punish any party for their views about their rights. A lawsuit to collect fines and recover expenses would be unnecessarily punitive, especially considering the pending action to settle the matter. The appropriate setting for deciding this issue is through a declaratory judgment action in the 506<sup>th</sup> District Court.

Sincerely,



Elizabeth Dorsey  
Assistant District Attorney  
Waller County District Attorney's Office  
645 12th Street  
Hempstead, Texas 77445  
(979) 826-7718  
(979) 826-7722 (fax)  
e.dorsey@wallercounty.us