

Sheila Hemphill's testimony submitted August 15, 2016 for:

Intergovernmental Relations Interim Charge

TIME & DATE: 9:00 AM, Monday, August 15, 2016

PLACE: E1.012 (Hearing Room)

CHAIR: Senator Eddie Lucio, Jr.

"Examine the processes used by home rule municipalities to adopt ordinances, rules, and regulations, including those initiated by petition and voter referendum. Determine if additional statutory safeguards are necessary to ensure that ballot language accurately describes proposed initiatives. Identify ways to improve transparency and make recommendations, if needed, to ensure that local propositions and the means by which they are put forth to voters, conform with existing state law."

Below is a summary of events from October of 2012 to April of 2013, when the City of Brady attempted to obstruct citizens of Brady, Texas 1st Amendment right to petition on multiple levels. These events were initiated when the City of Brady approved a \$2.5 million smart meter project without adequate notice on the October 15, 2012 City Council Agenda. Two weeks before the City Council meeting, then Lt. Gov. Dewhurst called an interim charge hearing in the Senate Business and Commerce committee to:

Study whether advanced meters, or smart meters, that have been, and will be, installed in Texas have harmful effects on health. Report findings on whether an independent testing company perform an analysis on the safety of advanced meters should be commissioned and the appropriate organization to conduct such a study.

The Mayor and all the City Council members admitted they had no knowledge of any safety or health issues. I was denied 5 requests to be an action item on the City Council agenda to discuss potential public health hazards associated with the advanced meter infrastructure aka smart meter project. The City's Landis Gyr electrical meters were paid for and were only 10 years old. The manufacturer stated they should have service life of 25 to 30 years. This project was put forth without any documentation available to analyze the merits of the project. See item 1 below on page 3.

The following Table of Contents highlights the abuses and actions taken by municipalities to obstruct Citizens' right to petition their government for redress of grievances.

Please feel free to call me to discuss any of the attached information.

Sincerely,

Sheila Hemphill
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www.texasrighttoknow.com

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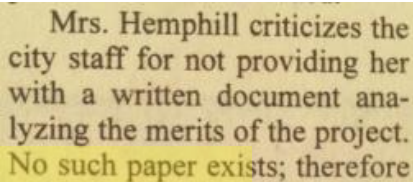
1 March 5, 2014, response from City of Brady, City Manager, Kim Lenior response to open records request for documentation demonstrating the merits of the 2012-2013 smart meter project.

Below is an excerpt from August 15, 2016 State Affairs Interim charge testimony by Sheila Hemphill, sole invited testimony to represent all utility customers of Texas.

Section 5 Failure to conduct proper due diligence on initial Smart Meter project proposals

- 5.1. As reported from various municipalities such as Austin, San Antonio, Brady, Llano, and Smithville, smart meter projects are being deployed without customers' knowledge or consent, or proper documentation from the City to warrant the feasibility of the projects.

The image below is from a letter to the editor in the Brady Standard Times. The Brady City Manager made this declaration regarding Mrs. Hemphill request for documentation showing the merit of the \$2.5 million smart meter project. Also requested was documentation from the maintenance department complaining of malfunctioning meters that would justify replacing the 10 year old Landis Gyr analog meters that had a 25 to 30 year service life as state by the manufacture.



Mrs. Hemphill criticizes the city staff for not providing her with a written document analyzing the merits of the project. No such paper exists; therefore

- 5.2. To finance the smart meter project, the City of Brady utilized Subchapter A of the Public Property Finance Act, 271.005 Authority to Contract for Personal Property. This section contains no provisions for notification in the local newspaper nor provides any petition process or vote to provide for citizen recourse. When citizens complain of lack of due diligence, consistent responses from various City Councils is that these projects have been discussed during budget workshops that are open to the public. Unless citizens attend budget workshops and object to smart meter deployment, the projects are included in the annual budgets. Many city charters prohibit referendums from being used against an annual budget ordinance. Once the project is in the budget, the project is a done deal.

2 See 2016 State Affairs Committee Interim Charge on how the PUC can ensure consumer protection for all utility customers. <http://www.texasrighttoknow.com/#!emf/en1io>

3 See “Right to Petition” summation of District Court Cases citing that the petition of the people shall go on the ballot.

3.1.1 TEXAS STATE CASES RELATED TO REQUIRED PLACEMENT OF
ON CITY ELECTION BALLOTS
(RECALL OR TEXAS LOCAL GOVERNMENT CODE 9.004)

CHARTER AMENDMENTS

Texas Local Government Code §9.004 grants the qualified voters of a municipality the right to petition their governing body to amend its charter and creates a ministerial duty for the City Council “to approve the ordinance ordering the election to be held on the first authorized uniform election date prescribed by the Election Code to place the charter amendment proposal on the ballot.” *Blum v. Lanier*, 997 S.W.2d 259,262 (Tex. 1999); *Brown v. Blum*, 9 SW.3d840,847 (Tex.App.-Houston [14th Dist.] 1999, pet.dism’d *418 w.o.j.). “When the requisite number of qualified citizens sign such a petition, the municipal authority must put the measure to a popular vote.” *Blum*, 997 S.W.2d at 262.

In re Roof 130 S.W.3d 414 (Tex. App. 2004), the city secretary refused to certify a proposed city charter amendment and call an election. The city secretary did not contest the number of qualified signatures on the petition, but replied that she could not certify the petition because, in her estimation, the proposed charter amendment conflict with the city charter, general state law, and the Texas Constitution. “Based on the plain language of section 9.004, and the authorities cited herein, we conclude that when a petition for a proposed charter amendment is presented, the city Secretary has a ministerial duty to verify that a sufficient number of qualified voters signed the petition, and the ‘governing body shall submit a proposed charter amendment to the voters for the approval at an election.’” See Texas Local Government Code §9.004. “It was improper for the City Secretary to refuse to certify the petition based on her belief that the proposed charter amendment conflicts with the charter, general state law, the Texas Constitution. Section 9.004 does not give a public office or such other person performing this ministerial duty imposed in connection with the holding of an election, the discretion of determining whether a proposed amendment violates a city charter, the laws of Texas, or the Texas Constitution. Such question concerning the validity of proposed charter amendments are properly litigated later. See *Green*, 627 S.W.2d at 872. An election will determine whether a justiciable issue exists, at which time the City’s Secretary’s complaints against the validity of the initiatory process under section 9.004 may be determined by litigation. See *Coalson*, 710 S.W.2d at 747; *Green* 627 S. W. at 872.

MINISTERIAL DUTY OF CITY COUNCIL

The city secretary's arguments are not unique or novel. In *Coalson v. City Council of Victoria*, the Relators (petitioners) sought a writ of mandamus to order the Victoria City council to submit a proposed charter amendment to the public for a vote. 610 S. W. 2d 744,745 (Tex 1980). The Texas Supreme Court noted that the Relators complied with article 1170,3 the predecessor of section 9.004 of the Local Government Code. The *Coalson* Court held that, "the city council's duty is clear, and its compliance with the law is ministerial in nature."

Texas courts have long looked askance at efforts by local governing bodies to thwart local citizen efforts to obtain a vote on important local matters. In *Coalson v City Council of Victoria*, 610 S.W. 2d 744(Tex 1980), the Court issued an emergency writ of mandamus to compel a city council to allow a proposed charter amendment to be placed on the ballot for public vote. The Court determined that, to act otherwise would be to allow the city council's refusal to submit the proposed amendments to the vote of the people "thwarts...the will of the people." *Id.* At 747.

A city council's duty to order a special election when state code specifically direct that one be called is mandatory; it is a purely ministerial duty. *Duffy v. Branch, supra*, 828 S.W .2d at 212-13, citing *Blanchard v. Fulbright*, 633 S. W .2d 717,619 (Tex.App.-Houston [14th Dist] 1982, orig proceeding) (per curiam), and *Howard v. Clack*, 589 S.W .2d 748,752 (Tex.Civ.App.-Dallas

JUDICIAL REVIEW OF PETITIONS – RESERVED TO THE PEOPLE NOT TO CITY ATTORNEY OR CITY SECRETARY

State law is unwavering that the city attorney has no authority to adjudge the legal sufficiency of the validity of the proposed charter amendment nor cause for recall nor validity of referendum or initiative. Texas law does not authorize the city attorney and city council to arrogate such judicial review powers to themselves. The *Blanchard v. Fulbright* decision is a good place to start to see why this is so.

The court in *Blanchard* was presented with similar situation where local citizens submitted an otherwise valid petition for recall, but the city council refused to order the recall election as dictated by city charter. The *Blanchard* court held that the city officials do not have the right of judicial review, whether performed by the city attorney or by the council itself. *Id.* The court found in the charter nothing giving any

city official “the right to judge the validity of petitions.” *Id.* Relying on the analysis of another court which had found such actions illegal and a violation of the council’s ministerial duties –*Howard v. Clack, supra.*

In *Blanchard*, 633 S. W.2d at 622-623, the court explained, the city council could hardly be impartial body and that the truth of falsity of the petition allegations was “a matter for the people to determine in an election.” This, of course, is consistent with the general principal in election law that those in charge of initiating elections “have no authority to inquire into facts de hors the record.” *Garcia v. Carpenter*, 525 S. W.2d 160, 161 (Tex.1975) citing *Weatherly v. Fulgham*, 153 Tex. 481, 271 S. W. 2d 938 (1954).

In *re Roof* 130 S.W.3d 414 (Tex. App. 2004), “The Coalson court concluded that the declaratory judgment action sought only an advisory opinion because an election on the petition could result in its disapproval. Thus, our high court held, “[t]he election will determine whether there is a justiciable issue, at which time the respondents’ complaints against the validity of the initiatory process under article 1170 may be determined by trial court.” *Id.* The Coalson court also held that “[t]he City Council’s duty is clear, and its compliance with the law is ministerial in nature. The City Council’s refusal to submit the proposed amendments to the vote of the people thwarts not only the legislature’s mandate but the will of the public.” *Id.* 3.

In *re Roof* 130 S.W.3d 414 (Tex. App. 2004), “Moreover, in *Green v. City of Lubbock*, the Amarillo Court of Appeals considered when a party’s complaints about a charter amendment should be litigated.⁴ 627 X.W.2d 868, 870 n.2 (Tex.App.-Amarillo 1981, writ ref’d n.r.e.). Relying on the Texas Supreme Court’s opinion in *Coalson*, the *Green* court concluded that “when article 1170 is satisfied, the election is held first and questions concerning the amendments are litigated later.” *Id.* At 872.

⁴ **See December 2012 Restraining Order against the City of Brady prohibiting the City from entering in to contract with smart meter vendors.** <http://www.texasrighttoknow.com/#!emf/en1io>

5 04/24/13 Letter to the Editor–Brady Standard “Preserve Your Right to Petition or Lose It !”

Last Tuesday, the City Council released the sample ballot for the May 11th election – not much time to educate the public so this is long but very important. Starting on Monday, April 29, the Citizens of Brady will go to the ballots for early voting and make decisions for this community that will have the potential to preserve liberty or to give it up.

Below are the four Charter amendments submitted by petition of citizens. I will address each one individually in a condensed manner to conserve on space but will explain why they were necessary to preserve our liberty, safety and sovereignty of our homes. I have emphasized that several of these amendments were submitted by the City Council without recommendation by the Charter Review Committee and it was the Council’s sole discretion to include them. I will address these proposed amendments and what they mean to “We the People”. By the way, there has been some confusion as to who We the People really are – that would be you and me and every other citizen of the United States that is to be protected by the Constitution with our inalienable rights of Life, Liberty and the Pursuit of Happiness.

5.1 *The People’s Proposition 18 Section 8.01 Right of Recall: “The people of the City reserve (a) the power to recall the Mayor or any other Member of the City Council and (b) the sole authority to determine if the reasons cited on the recall petition are valid.”*

This amendment was necessary when the City Council attempted to obstruct our 1st amendment rights to petition our government for redress of grievances by denying our recall petition. It was only when the court ruled in favor of the Writ of Mandamus that our right to petition was preserved. The “Right to Petition” is the one power reserved to the people to give them some means of changing the course that government officials have dictated.

5.1.1 *The People’s Proposition 18 was necessary to counter the City Council’s Proposition 17: Shall the City Charter be amended to define each ground for recall of a member of the City Council?*

Sounds innocent enough until you read the extended version that would go into the Charter to provide for “legal definitions”. Basically for Misconduct, they want psychiatric evaluation, for Non-compliance and Malfeasance, they want civil or criminal actions to have taken place. Now what would be needed to evaluate for a psyche evaluation or civil or criminal action? That would be lawyers and courts and we know what that means when you fight City Hall – they have unlimited legal, and media resources and we the people have to fund our defense out of our pockets. Just a 14 day restraining order costs us over \$5,500 in legal fees by itself – I have no idea how much it cost the individuals who filed the Writ of Mandamus to defend YOUR RIGHTS. Now to top it off, my favorite discovery was during the meeting when the acting City Attorney, Monte Akers informed us why the recall petition was denied because he deemed our 8 pages of grievances as not meeting the “legal definition” of misconduct, etc. I spoke with him stating that it was an indisputable fact that on January 14, the Mayor told the Charter Review Committee that if they could not follow her instructions they could resign or submit their resignation and then she denied having said it on January 28. His statement to me was, “It’s not against the law to lie”. So there you have it Brady, approve Proposition 17 and you will forever lose the ability to recall any

City Council member for basically any reason and certainly can't recall them for "just lying" cause you remember "lying is not illegal". The very fact that the City would have worded the ballot proposition so innocently is self incriminating to the onerous or "sneaky" definitions they would like to put in our Charter to provide for "legal definitions".

5.2 The City Council's Proposition 19: *"petition for recall be signed by at least twenty (20%) of the qualified voters of the City".*

Sounds innocent enough until you look and you find that Mayor Lohn received 380 signatures to be Mayor and if this amendment passes it would require 651 signature for a petition to put a recall option on a ballot. Currently it requires a minimum of 250 signatures which equates to 34% of the people who voted at the last election! Under the ballot section Recall election, you will be given an opportunity to have new leadership for Brady by voting FOR Mayor Lohn's recall.

5.3 The People's Proposition 24 - Section 8.08 Recall Election to be Called: *"If the accused official does not resign, the Council shall order an election within 45 days of the petition signatures being certified".*

What people do not realize about a recall election is that the current wording in the Charter states an election is to occur on the state uniform dates of May or November. But in order to have an item on a ballot for the May election, the petition blanks, gathering of signatures, certification of the signatures and submission to the City Council must take place before March 1st or by August for the November ballot. So at the earliest, it takes 3 ½ months to remove an elected official from office and if you miss that cycle, you're out 10 months before they can be removed. A lot can take place in 3 ½ or 10 months.

5.4 The People's Proposition 26 - Section 9.04 Determination of Sufficiency: The City Secretary shall complete a certification where *"petition for recall shall be based solely on the timeliness of the petition submission(s) and the required number of certified signatures"*.

5.4.1 Proposition 26 was necessary to counter the City Council's Proposition 25: *"determining the sufficiency of a petition for recall of a council member that the City Secretary shall, with assistance from the City Attorney, certify whether the reasons stated for recall meet the legal definitions for recall?"*

Remember City Council's Proposition 17's for legal definitions and with Proposition 25, where the evaluation of the grievances would be subject to an attorney's opinion given to the City Secretary to make that evaluation, these two propositions will virtually strip the Right of Recall from the Brady City Charter.

5.5 The People's Proposition 27 - Section 12.21 – Utility Customer Rights: *"The utility customers of the City of Brady have the right to decline installation and the right to request removal of any product and/or service of the City which the customer deems harmful to their person, property or privacy", citizens shall be notified by mail of their options at no charge or surcharges for their decisions and "The City of Brady is civilly liable to the customer for personal injury, property damage or death during the time the customer was subjected to product and/or service use."*

Since April 9, my son Coleman and I have spent 2 days in Austin testifying before Senate Business and Commerce and the Public Utility Commission Hearings regarding the Opt Out options. Over 7 hours of

testimonies from PhD's, industry privacy experts, physicians, lawyers all with scientific reports backing the evidence that these frequencies cause harm to our environment for plants, animals and humans. These devices are not just meters, they are Smart controllers that can be programmed remotely and are designed to capture data from new "Smart appliances" that transmit usage data via WIFI type transmissions to basically radiate everyone and everything in your home. This technology provides for unwarranted surveillance of your personal activities. The most heart wrenching were the testimonies of the people whose health and lives have been devastated by these devices where symptoms include insomnia, migraines, nose bleeds, heart palpitations etc. Then you hear how the Pineal gland that detects darkness to produce and release Melatonin cannot tell the difference between light frequencies and the 900 megahertz devices like Smart Meters, cordless home phones, baby monitors and WIFI so that Melatonin is not properly produced or released. Put that with the fact that breast cancer women have 1/10th the amount of Melatonin and men with prostate cancer or children with Autism have 50% of the Melatonin they should have. Shouldn't we all be concerned?

Now how much "fair and balanced" information has the City of Brady provided for you regarding the potential for Smart Meter health hazards? Absolutely NONE. But worse, Mayor Lohn obstructed my numerous attempts to have dialog with my elected officials and she and the Council refused to answer any questions during our December 6 petitioned Public Hearing. The December 11th "Town Hall" meeting that I requested to have equal time with the Sales Reps to bring the health issues to the Citizens of Brady was completely taken over by the City as a Pro-Smart Meter event. Dale Brown asked me to submit questions for the meeting. I submitted 22 technical questions for Sensus and the City and I was only allowed 3 at the meeting. I have never received answers to those questions. One of which was a map of radiation exposure from the 9000 meters emitting 2 watts of energy per meter to the collector sites on the water towers. That's just 18,000 watts of energy emitting in our community, are you OK with that? How could you even have an opinion one way or another when this City Council has blocked your access to information.

Voter guides and more information on the hazards of Smart Meter technologies are available at 1413 S. Bridge.

Sincerely,

Sheila Hemphill

04/21/13 URGENT! SB241 Contact These Senators

Below are the Senators on the Business and Commerce Committee where SB 241 is under consideration to allow utility customers to Opt Out at no-charge of having a Smart Meter on Texas resident's homes and require the meter removal. Attached is a document with reasons for providing an Opt Out. This committee heard testimonies on April 9. The bill is currently in a pending status. It is crucial for people to call and email these Senators ASAP to support SB241 so it has time to make it to the floor for a vote.

Please forward to your email list, Facebook posts etc. as it is helpful when comments come from their constituents but given Smart Meters are statewide, the decision that takes place in committee affects every person in Texas.

The Smart Meter issues are many and complex but here they are in brief:

1. False Claim of Energy Reduction::

Smart Meters do not reduce electrical usage – that's done the old fashion way by turning off devices – the meters just determines peak usage times and can bill higher rates during that time frame to discourage use.

2. Forced Installation:

Police force has been utilized to force installation upon residents who are told that meter installation is mandatory, which is clearly not the intent of HB 2129 according to the bill's author Dennis Bonnen:

http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40190_12_720818.PDF

3. Safety Issues:

a. Reports of house fires Inside PECO's smart meter debacle - FierceEnergy

<http://www.fierceenergy.com/story/inside-pecos-smart-meter-debacle/2012-10-15#ixzz29i0wssE>

b. Google Smart Meter House Fires

4. Health Issues:

a. 2013 Autism rate from CDC is 1 in 50, 2009 was one in 109 doubled in 4 years – See Dr. Dietrich Klinghardt documentary below.

b. Alzheimer's is now 6th leading cause of death – All neurological disease rates up dramatically.

c. Newly defined Type 3 diabetes where people have blood sugar issues when in high EMF environments and not have blood sugar problems when in EMF remediated areas :

<http://www.magdahavas.com/diabetes-and-electrosensitivity/>

d. Table showing Radio Frequency exposure and health effects: <http://emfwise.com/tableofeffects.php>

e. Smart Meters can peak transmission at 50 m/Wm². FYI: 2 – 80 m/Wm² result in two-fold increase in childhood leukemia / RFR exposure to AM/FM towers

f. Report from the American Academy on Environmental Medicine: http://aaemonline.org/emf_rf_position.html

5. Environmental Issues:

a. 70% of the world's Bee populations have diminished while 10% of the world's butterflies face extinction. As bees go, so goes our food supplies.

b. A number of species which rely on the earth's magnetic fields to navigate, have mysteriously gone into decline.

6. Privacy Issues:

a. Smart Meters are not just metering your consumption use, they are programmable, computerized controllers designed to communicate with new updated appliances in your home enabling utility companies to control these devices and provide unwarranted surveillance by gathering personal activity in your home.

Public Hearings on Smart Meter Opt Out:

04/09/13 SB 241 Senate of Business and Commerce Committee Hearing on Smart Meters:

<http://www.senate.state.tx.us/75r/senate/commit/c510/c510.htm> Part 2- Starts at 46:00

04/19/13 PUC Hearing: <http://puc.texas.gov/agency/Broadcasts.aspx>

Helpful links:

<http://www.bantexasmartmeters.com/>

<http://texansagainstsmartmeters.com/?p=557>

<http://emfsafetynetwork.org/>

Link to the documentaries:

1. Resonance – Beings of Frequency:

http://www.youtube.com/watch?v=5vb9R0x_0NQ

2. Smart Meters and EMR: The Health Crisis of Our Time by Dietrich Klinghardt, MD PhD

<http://www.klinghardtacademy.com/>

3. Take Back Your Power:

Trailer:: <http://takebackyourpower.net/>

Screening locations: <http://takebackyourpower.net/screenings/>