



### **Parties**

1. Plaintiff Marc Bennett, the duly elected, qualified District Attorney for the Eighteenth Judicial District, Sedgwick County, Kansas, brings this action in *quo warranto* for and on behalf of the State of Kansas. The powers of the Office of the District Attorney are found in common law, throughout the Kansas Statutes Annotated and, for the specific purposes of ouster, at K.S.A. 60-1201, *et seq.*
2. Defendant James Clendenin, (hereinafter "Defendant") at all times pertinent hereto is the duly elected District 3 Councilman for the Wichita City Council, Sedgwick County, Kansas, holding such office of trust or profit under and by virtue of the laws of the state of Kansas, either state, district, county, or township. Mark Ayesh, attorney for Defendant, has notified Plaintiff that he will accept service for Defendant at, *Ayesh Law Offices*, 8100 East 22nd Street North #2300, Suite 2, Wichita, Kansas 67226. See K.S.A. 60-205(b)(1).

### **Jurisdiction and Venue**

3. This Court has jurisdiction pursuant to K.S.A. 60-1202, Jurisdiction and grounds. Such action may be brought in the supreme court or in the district court in the following cases:  
...  
(2) Whenever any public officer shall have done or suffered any act which by the provisions of law shall work a forfeiture of his or her office.  
and  
(5) For any other cause for which a remedy might have been heretofore obtained by writ of *quo warranto* at common law.
4. Venue in Sedgwick County, Kansas is proper pursuant to K.S.A. 60-602 (2) and K.S.A. 60-603 (1).

## **Allegations Common to All Counts**

### **i. City Councils Generally**

5. Pursuant to Article 12, Section 5 of the Kansas Constitution, concerning Cities Power and Home Rule, § b), "Cities are hereby empowered to determine their local affairs and government. . ." See also K.S.A. 12-101.
6. K.S.A. 12-1040, Governing body powers and duties; appoint of manager; manager powers
  - (a) The governing body shall establish by ordinance the qualifications, oath and powers and duties and terms of office of the governing body.
  - (b) Any action taken by the city governing body shall be by a majority vote of the members unless a greater number of votes are specifically required by another provision of law.
  - (c) The city governing body shall appoint a city manager to be responsible for the administration and affairs of the city. The city manager shall see that all laws and ordinances are enforced. The city manager shall serve at the pleasure of the governing body.
  - (d) The city manager shall appoint and remove all heads of departments and all subordinate officers and employees of the city. All appointments shall be made upon merit and fitness alone.

### **ii. Defendant Generally**

7. Defendant is the duly elected councilmember for District 3, of the Wichita City Council, having been first sworn in 2011.
8. Defendant was re-elected in 2017, and is currently serving his second term which ends in 2021.

### **iii. Regarding the "Protect Wichita Girls" Video**

9. On November 6, 2019, an election was held for the position of Mayor, for the city of Wichita. The candidates were Republican incumbent Jeff Longwell, Democratic candidate, Brandon Whipple (hereinafter "Whipple"), and Independent, Lyndy Wells.
10. On October 11, 2019, Representative Michael Capps (hereinafter "Capps"), then an elected member of the Kansas House of Representatives, who also shared an office with Defendant

on South Broadway in Wichita, wrote a check to Colborn Media in the amount of \$5,000 for "Promotion." Colborn Media was the media company run by Matthew Colborn (hereinafter "Colborn").

11. The check was drawn on the account of the "Fourth and Long Foundation." The Fourth and Long Foundation is headquartered in Wichita, KS, and is a 501(c)(3) organization. Because of its status, donations to Fourth and Long are tax-deductible. The organization is classified by the IRS NTEE system under Youth Development Programs, and obtained its 501(c)(3) status in 2013. According to its articles of incorporation:

The corporation is organized exclusively for charitable, educational, scientific and amateur athletic purposes ... to create an environment of success for low-income, at-risk or otherwise defined disadvantaged student-athletes and the educators, administrators, mentors and coaches who support them. All funds, whether income or principal, and whether acquired by gift or contribution or otherwise, shall be devoted to said purposes.

12. A video was recorded shortly thereafter in October of 2019 entitled, "Protect Wichita Girls and Stop Brandon Whipple." The video contained the following:
  - a. Three young women in silhouette reading similar allegations, including the statement, "He just came up, looked at me, smiled and said: "Hey, do your panties match your outfit?"
  - b. The video ends with a display of Whipple's personal cell number and the words, "Stop Brandon Whipple."
13. On October 16, 2019, the video, which contained a written statement at the end which read, this video was paid for by "Protect Wichita Girls, LLC," a company licensed in New Mexico, was uploaded to YouTube and Facebook from a website controlled by Capps.

14. On November 18, 2020 Defendant with counsel submitted to a recorded interview conducted by investigators with the Office of the District Attorney and the Sedgwick County Sheriff's Department. During the interview, Defendant stated:

- a. That he and Sedgwick County Commissioner, Michael O'Donnell (hereinafter, "O'Donnell") raised money in the fall of 2019 from private donors to pay for the production of billboard ads to attack the Whipple campaign.
- b. Checks were solicited from private donors to be paid to the "The Fourth and Long Foundation," a charitable 501(c)(3) LLC already owned by Capps.
- c. That the money raised was then paid by the Fourth and Long Foundation to Matthew Colborn, a young man from Wichita who ran a media company, Colborn Media, and shared office space at the office Defendant and Capps rented on South Broadway in Wichita, Kansas:

" . . . on October 11<sup>th</sup> 2019, Michael Capps wrote a check, a check to Colborn Media in the amount of \$5,000.00 dollars for promotion. The check was drawn on the account of the Fourth and Long Foundation. The Fourth and Long Foundation is headquartered in Wichita Kansas. You can see um, some of that um, talks about the Fourth and Long was established by Michael Capps. It was Capp's idea to run the money raise for the defamatory ad through the 51C3, which is illegal. Um, I, first of all don't know that it is illegal."

15. As early as October 17, 2019, the Wichita Eagle ran the story, "Mystery Company Targets Whipple with Allegation Originally Made Against Republican," which outlined the following falsehoods in the Protect Wichita Girls video:

- a. That the allegation that Whipple had asked an intern if her "panties" matched her "outfit," came from a Kansas City Star article from October 31, 2017;
- b. That the Star article concerned certain Republican legislators and the statement, "hey, do your panties match your outfit," specifically concerned statements a "male

Republican Senator" allegedly made to a female intern in 2009, well before Whipple entered public politics in Kansas.

### Counts I

**False Allegations against Brandon Whipple:  
Defendant violated K.S.A. 60-1205(1), (2) and (4) by aiding and abetting  
Criminal False Communication, in violation of K.S.A. 21-6103(a)(1)(A) and (B),  
for the continued public dissemination of  
the false allegations made against Mayoral Candidate, Brandon Whipple,  
in the "Protect Wichita Girls, Stop Brandon Whipple" video,  
even after the false nature of the allegations was made public by local journalists.**

16. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in Paragraphs 1 through 15 above, as if fully set forth here.
17. As set forth above, Defendant asserted in his interview with investigators that he raised money believing the money would be used to pay for billboards intended to expose Whipple for alleged inappropriate behavior while Whipple served as a member of the Kansas House of Representatives.
18. On Tuesday, October 15, 2019, at 9:52 am, Defendant texted Colborn, asking him to watch Whipple's new campaign video. Defendant said, Whipple was "Totally making himself look like a community family man . . . he knows its coming." Defendant wanted to know if Whipple's team would be able to tell if he shared the Whipple video with Colborn on messenger. Defendant noted that Mrs. Whipple was attempting to look like a "happy little supportive wife" but that this was "all about to be blown up." The video was published on Facebook and YouTube the next day, October 16, 2019.
19. On October 17, 2019, the Wichita Eagle ran the story, "Mystery Company Targets Whipple with Allegation Originally Made Against Republican" exposing the following:
  - a. That the video had been made public;

- b. That allegations in the video accusing Whipple of sexually harassing a legislative intern was a "nearly word for word" quote from a Kansas City Star Article from 2017 concerning an unnamed Republican Senator in 2009.
  - c. That the video had been paid for by Capps' charity, The Fourth and Long Foundation;
19. On October 28, 2020, Mayor Whipple was interviewed by an investigator with the Office of the District attorney. He told the investigator that the day he became aware of the video, he texted Defendant, "because I knew that he was-- the buzz words was that he was fundraising, which turned out to be true. And I did say something to the extent of, I can't believe you went there with a New Mexico hit. You better buckle up. Which was pretty much letting him know, like, you're 'gonna -- you'll probably be exposed." Whipple remembered thaColbornt hours later, the local media began to expose the story.
20. On Thursday, October 17, 2019, at 12:48 pm, Defendant texted Colborn, "I seriously need to find out who burned me." Defendant added that Capps told him "to chill." Defendant then offered, "I think it had to be a donor." Nowhere in the pages of text messages between Defendant and Colborn does Defendant ask Colborn why a video was produced instead of a billboard; inquire as to who gave Colborn the idea to make a video instead of a billboard; or inquire as to the source of the allegation in the video.
21. On October 27, 2020, Dalton Glasscock (hereinafter, "Glasscock"), the chairman of the Sedgwick County Republican Party during the 2019 mayoral race, was interviewed by an investigator with the Office of the District Attorney. He told the investigator,
- a. Capps's involvement in the making of the false video against Whipple had become public in local media reports in late October of 2019.

- b. On November 1, 2019, Glasscock and Ben Saucedo, Executive Director of the party, met with Capps at Glasscock's house to demand his resignation as a member of the Kansas House of Representatives. A recording of this conversation was made public
  - c. The Republican Party released a statement confirming its demand for Capps' resignation.
22. In November of 2020, Colborn released a tape recording made of a conversation he witnessed between Defendant, O'Donnell, and Capps at Capps' residence in the 10000 block of Bronco, in Wichita on November 3, 2019. In the recording the men agree that Capps would use an appearance on the John Whitmer (hereinafter, "Whitmer") radio program on K.N.S.S. 1330 that same night to deny having had any role in the making of the video and instead falsely assert that Glasscock approved the video.
23. On Sunday November 3, 2019, Capps did appear on Whitmer show. At 7:17 p.m., during the show, Defendant texted Colborn and asked if Capps was "on point and ok?" Colborn responded, "Everything is good as of now, currently on air. Went fairly well." Defendant responded, "I listened LOL and yes, now we wait."
24. Defendant texted Colborn again at 11:39 p.m. that night, saying, "the best time for that video to disappear is now" and to "delete the text string for me please LOL," to which Colborn replied, "LOL of course."
25. Whether Defendant raised money thinking it would go to Billboards, as he now states, or whether he knew it was to pay for the video that was ultimately produced, by October 17, 2019, the Wichita Eagle ran a story that exposed the following;
- a. That the video, and not billboards, had been made public;
  - b. That allegations in the video falsely accused candidate Whipple of acts actually attributed to an unnamed former Republican Senator in 2009.



c. That the video had been paid for by Capps' charity, The Fourth and Long Foundation;

26. Despite knowing that a video--not billboards--containing these false statements had been produced with money he helped raise and despite having received a text from Whipple telling Defendant he would be exposed, Defendant made no effort to disavow the video or discourage its continued publication, electing instead to privately advise Colborn in a text on November 3, "the best time for that video to disappear is now"--only after it had been running on social media outlets for eighteen days.

27. Pursuant to K.S.A. 60-1205, Grounds for Forfeiture of Public Office,

Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully engage in misconduct while in office, (2) willfully neglect to perform any duty enjoined upon such person by law, ... or (4) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such person's office and shall be ousted from such office in the manner hereinafter provided.

28. Under K.S.A. 60-1205§(1), Defendant's behavior constitutes misconduct while in office,

In order to find willful misconduct justifying judicial ouster from public office, a court must find both a bad or corrupt purpose and illegal action or inaction that was not justified under the given circumstances.  
*Kansas v. Morrison*, 302 Kan 804, Syl 4 (2015).

29. Under K.S.A. 60-1205§(2), Defendant "willfully neglect[ed] to perform any duty enjoined upon [him] by law," in that he failed to follow the law by committing the crime of Criminal False Communication, in violation of K.S.A. 21-6103, set forth below at 30.

30. Under K.S.A. 60-1205§(4), Defendant's behavior described above constitutes "a violation of any penal statute involving moral turpitude."

a. An act of moral turpitude has long-been recognized as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Bouvier's Legal Dictionary (3d ed. 1914).

b. In *In re Ketter*, 268 Kan. 146, 153 (1999), the Kansas Supreme Court addressed the concept of moral turpitude in the context of an attorney disciplinary proceeding:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication.

Traditionally, the distinction was drawn in terms of offenses involving 'moral turpitude.' That concept can be construed to include offenses that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. *A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.*"

31. K.S.A. 21-6103, Criminal False Communication. (a) Criminal false communication:

(1) Communicating to any person, by any means, information that the person communicating such information knows to be false and will tend to:

(A) Expose another living person to public hatred, contempt or ridicule;

(B) deprive such person of the benefits of public confidence and social acceptance; or

...

(b) Criminal false communication is a class A nonperson misdemeanor.

(c) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal false communication if it is found that such matter was true.

32. During his October 28, 2020 interview with the investigator from the office of the District Attorney, Whipple also expressed the following:

a. He was teaching at WSU, giving a midterm and was texting a friend who said, "hopefully that video doesn't -- doesn't take off." When he inquired as to what video the friend was referring to, the person sent him a link to the Protect Wichita Girls video.

b. Because his personal cell number was on the video, he "started getting calls." He received at least one death threat, saying words to the effect, "you need to drop out of the race we're going to get you."

c. He added, "no one called me to tell me to get out of the race because they thought -- because it was politics. Like that wasn't what it felt like. It was -- it wasn't like, ha ha, you're a democrat or a republican's 'gonna win. Like it was, um, people who are disgusted because they thought this video led them to believe that I was assaulting people."

d. That he had his wife and children stay at another house while he slept in the basement of their home, out of fear their home would be shot at as a result of the video.

33. Defendant's behavior set forth above constitutes grounds for his forfeiture of public office pursuant to K.S.A. 60-1202 and K.S.A. 60-1205.

## **Count II**

### **False Allegations against Chair of the Sedgwick County Republican Party, Dalton Glasscock, on the John Whitmer radio show on November 3, 2019 in violation of K.S.A. 60-1205(1), (2) and (4)**

34. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in Paragraphs 1 through 33 above, as fully set forth here.

35. In November of 2020, counsel for Colborn released a tape recording made of a conversation between Defendant and O'Donnell, and Capps at Capps' residence in the 10000 block of Bronco, in Wichita on November 3, 2019. In the recording the men state the following:
- a. They are aware of the negative impact of the story "Chance" has uncovered (an ostensible reference to Chance Swaim, a reporter for the Wichita Eagle), but Capps did not believe "Chance" knows the whole story: "Even if Chance knew there was a fire where the smoke was. He couldn't find the fire. He manifested the fire."
  - b. That Dalton Glasscock (hereinafter, "Glasscock"), then Chair of the Sedgwick County Republican Party, had learned from media coverage of Capps' apparent involvement in the making and dissemination of the video and consequently called for Capps' resignation from the Kansas legislature.
  - c. That Capps had been invited to appear on the Whitmer radio show on Sunday night November 3, 2019.
  - d. That they agreed Capps would appear on the Whitmer program, deny that he had any involvement in the production of the video and deny that Colborn had any involvement of the production or dissemination of the video.
  - e. Defendant is heard advising Capps,

"You don't have say, you can be vague. You don't have to say that it was at our office. Because if you get real specific and this does get to court, then there's all sorts of shit that's 'gonna hit the fan."
  - f. The men initially agreed to assert that Sedgwick County Clerk, Kelly Arnold, and Glasscock were responsible for the video. By the end of the recorded conversation, the decision was made to excise Mr. Arnold from the narrative, leaving Glasscock as the sole person to blame for the production and dissemination of the ad. This, despite O'Donnell's

statement to Capps, made in the presence of Defendant, "[Capps] I am just trying to keep us out of, like, a lie. A refutable lie. What's irrefutable is that [Glasscock] didn't know anything."

g. Defendant is heard saying, "The narrative -- the narrative that's just discussed, I'm fully bought into."

36. On the evening of November 3, 2019, Capps went on the Whitmer radio show and in fact accused Glasscock of having approved of the video run against Whipple. As set forth above, Defendant texted Colborn during the Whitmer interview and told him, "the best time for that video to disappear is now."
37. When Glasscock was interviewed by the investigator with the Office of the District Attorney, he relayed that he was afraid for his safety afterwards, a fear that was compounded when someone approach him at a Republican meeting and demanded his cell phone, took it and ran. Glasscock contacted law enforcement and purchased a security camera for his house.
38. Pursuant to K.S.A. 60-1205, Grounds for Forfeiture of Public Office,  
Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully engage in misconduct while in office, (2) willfully neglect to perform any duty enjoined upon such person by law, ... or (4) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such person's office and shall be ousted from such office in the manner hereinafter provided.
39. Under K.S.A. 60-1205§(1), Defendant's behavior constitutes misconduct while in office,

In order to find willful misconduct justifying judicial ouster from public office, a court must find both a bad or corrupt purpose and illegal action or inaction that was not justified under the given circumstances.  
*Kansas v. Morrison*, 302 Kan 804, Syl 4 (2015).

40. Under K.S.A. 60-1205§(2), Defendant "willfully neglect[ed] to perform any duty enjoined upon [him] by law," in that he failed to follow the law by committing the crime of Criminal False Communication, in violation of K.S.A. 21-6103, set forth below at 30.
41. Under K.S.A. 60-1205§(4), Defendant's behavior described above constitutes "a violation of any penal statute involving moral turpitude."

a. An act of moral turpitude has long-been recognized as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Bouvier's Legal Dictionary (3d ed. 1914).

b. In *In re Ketter*, 268 Kan. 146, 153 (1999), the Kansas Supreme Court addressed the concept of moral turpitude in the context of an attorney disciplinary proceeding:

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication.

Traditionally, the distinction was drawn in terms of offenses involving 'moral turpitude.' That concept can be construed to include offenses that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. *A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.*"

42. Under K.S.A. 60-1205§(4), Defendant's behavior described above specifically constitutes a violation of K.S.A. 21-6103, Criminal False Communication related to Glasscock.

(1) Communicating to any person, by any means, information that the person communicating such information knows to be false and will tend to:

(A) Expose another living person to public hatred, contempt or ridicule;

(B) deprive such person of the benefits of public confidence and social acceptance; or

...

(b) Criminal false communication is a class A nonperson misdemeanor.

(c) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal false communication if it is found that such matter was true.

43. Defendant's behavior set forth above constitutes grounds for his forfeiture of public office pursuant to K.S.A. 60-1202 and K.S.A. 60-1205

### **Count III**

**Defendant's Solicitation of Financial Donations to the Fourth And Long Charity to be Used to Pay in a Political Campaign Constitutes a violation of K.S.A. 17-1769 in violation of K.S.A. 60-1205(1) and (2)**

44. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in Paragraphs 1 through 43 above, as if fully set forth here.

45. As set forth above, that when interviewed by investigators, Defendant acknowledged the money he helped raise was paid into the Capps' charity, the Fourth and Long Foundation, and that Colborn was then paid by the Fourth and Long Foundation for what turned out to be the production and public dissemination of the video:

46. Pursuant to K.S.A. 60-1205, Grounds for Forfeiture of Public Office,

Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully engage in misconduct while in office, (2) willfully neglect to perform any duty enjoined upon such person by law

. . . shall forfeit such person's office and shall be ousted from such office in the manner hereinafter provided.

47. Under K.S.A. 60-1205(1), Defendant's behavior constitutes misconduct while in office,

In order to find willful misconduct justifying judicial ouster from public office, a court must find both a bad or corrupt purpose and illegal action or inaction that was not justified under the given circumstances.

*Kansas v. Morrison*, 302 Kan 804, Syl 4 (2015)

48. Defendant was not a director, professional fund raiser or professional solicitor (see K.S.A. 17-1760). Rather, Defendant's prohibited conduct under K.S.A. 60-1205(2) was to aid and abet Capps in the violation of K.S.A. 17-1769 by soliciting funds to the "Fourth and Long" charitable foundation to be used to pay for the non-charitable, political campaign against Whipple.

49. K.S.A. 17-1769, Unlawful act and practices.

The following acts and practices are hereby declared unlawful as applied to the planning, conduct or execution of any solicitation or charitable purpose:

(a) Operating in violation of, or failing to comply with, any of the requirements of this act;

...

(g) using donations for purposes other than those stated in an organization's articles of incorporation or current registration statements filed with the secretary of state;

...

(i) using donations for other than charitable purposes;

...

See also K.S.A. 17-1773 regarding civil penalties associated with a violation of K.S.A. 17-1769.

50. Defendant's behavior set forth above aided and abetted a violation of K.S.A. 17-1769 and constitutes grounds for his forfeiture of public office pursuant to K.S.A. 60-1202 and K.S.A. 60-1205(1).

#### **Count IV**

**Defendant's Role in the continued Dissemination of the Protect Wichita Girls Video and subsequent agreement to shift blame for the video to Dalton Glassock,**



**each constitute a violation of the City Code of Ethics,  
in violation of K.S.A. 60-1205(1) and (2)**

51. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in Paragraphs 1 through 50 above, as if fully set forth here.

52. The city of Wichita has a Code of Ethics, found at

<https://www.wichita.gov/HR/HRDocuments/Code%20of%20Ethics.pdf>

a. §3 of the city ethics code reads,

“The City of Wichita’s Code of Ethics outlines expected behaviors for employees. The City will conduct its business fairly, impartially, in an ethical manner, and in full compliance with all applicable laws, policies and regulations. Employees will not engage in conduct that raises questions about the City’s honesty, impartiality and reputation, or otherwise causes embarrassment to the City.

b. Sec. 2.04.050 - sets forth the code of ethics for council members.

Council members occupy positions of public trust. All business transactions of such elected officials dealing in any manner with public funds, either directly or indirectly, must be subject to the scrutiny of public opinion both as to the legality and to the propriety of such transactions. In addition to the matters of pecuniary interest, council members shall refrain from making use of special knowledge or information before it is made available to the general public; shall refrain from making decisions involving business associates, customers, clients, friends and competitors; shall refrain from repeated and continued violation of city council rules; shall refrain from appointing immediate family members, business associates, clients or employees to municipal boards and commissions; shall refrain from influencing the employment of municipal employees; shall refrain from requesting the fixing of traffic tickets and all other municipal code citations; shall refrain from seeking the employment of immediate family members in any municipal operation; shall refrain from using their influence as members of the governing body in attempts to secure contracts, zoning or other favorable municipal action for friends, customers, clients, immediate family members or business associates; and shall comply with all lawful actions, directives and orders of duly constituted municipal officials as such may be issued in the normal and lawful discharge of the duties of these municipal officials.

Council members shall conduct themselves so as to bring credit upon the city as a whole and so as to set an example of good ethical conduct for all

citizens of the community. Council members shall bear in mind at all times their responsibility to the entire electorate, and shall refrain from actions benefiting special groups at the expense of the city as a whole and shall do everything in their power to ensure equal and impartial law enforcement throughout the city at large without respect to race, creed, color or the economic or the social position of individual citizens.

(Ord. No. 47-858, § 10, 3-28-08)

53. Defendant's role in the false video against Whipple and his role in the formulation of a plan to falsely shift the blame for the video to Glasscock having now been exposed, has brought public censure from Defendant's colleagues on the Wichita City Council, a vote of no confidence from the District 3 advisory board, and public condemnation from other elected officials.

54. Pursuant to K.S.A. 60-1205, Grounds for Forfeiture of Public Office,

Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully engage in misconduct while in office, (2) willfully neglect to perform any duty enjoined upon such person by law, ... shall forfeit such person's office and shall be ousted from such office in the manner hereinafter provided.

55. Under K.S.A. 60-1205§(1), Defendant's behavior constitutes misconduct while in office,

In order to find willful misconduct justifying judicial ouster from public office, a court must find both a bad or corrupt purpose and illegal action or inaction that was not justified under the given circumstances.

*Kansas v. Morrison*, 302 Kan 804, Syl 4 (2015)

56. Pursuant to K.S.A. 60-1205(2), Defendant "willfully neglect[ed] to perform any duty enjoined upon [him] by law," in that he failed to follow Wichita Municipal Ordinance, 2.04.05, the ethics ordinance specifically required of city councilmembers.

57. Defendant's behavior set forth above was in violation of the city's ethics code, compliance with which is required of all city employees, section 2.04.05 is specifically required of councilmembers. Violation thereof constitutes both misconduct under K.S.A. 60-1205(1) and the neglect to perform any duty enjoined upon him by law under K.S.A. 60-1205(2); and constitutes grounds for his forfeiture of public office pursuant to K.S.A. 60-1202 and K.S.A. 60-1205.

### **Prayer for Relief**

WHEREFORE, it is in the public interest that actions to declare forfeiture of public office for Defendant's violations of K.S.A. 60-1205, be tried and determined as soon as possible, consistent with fairness and justice.

Plaintiff respectfully requests that the Court:

- (1) Set a time and date for hearing on the above allegations with notice an opportunity to be heard as soon as possible;
- (2) Pursuant to K.S.A. 60-1207, after seven days' notice of the application for order of suspension has been served upon said Defendant, issue an order suspending Defendant from performing any of the duties of his office, pending a final hearing and determination of the matter;
- (3) Pursuant to K.S.A. 60-1207, the power to fill the vacancy falls to "the authority having power of appointment to fill vacancies in such office." Wichita City Ordinances Sec. 2.04.040, addresses vacancies on the city council.
- (4) Find that the Defendant has (1) willfully engaged in misconduct while in office, (2) willfully neglected to perform any duty enjoined upon him by law and (3) has

committed any act constituting a violation of any penal statute involving moral turpitude and that by the provisions of law, and that said actions shall work a forfeiture of his office;

- (5) Declare that Defendant has by his actions forfeited the Office as the District 3 Councilmember for the City of Wichita.
- (6) Oust the Defendant from said office and all attendant responsibilities thereto;
- (7) Declare said office of the District 3 City Council vacant, and
- (8) Order such other and further relief as the Court deems just and equitable.

Respectfully Submitted,

/s/ Marc Bennett  
Marc Bennett, #17237  
District Attorney  
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