



MCCDLA

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To whom it may concern:

This letter is written in response to recent attacks on the 9th District Court Judge's ruling that what remains of Section 33.021 is unconstitutional. The Texas Court of Criminal Appeals has already ruled portions of the statute unconstitutional. Notably, the Texas Legislature acknowledged that what remained of the statute was unconstitutional, which is why they unanimously passed the changes that go into effect on September 1, 2015.

Judge Kelly Case is the only sitting district judge in Montgomery County that is board certified in criminal law, has been both a prosecutor and defense attorney, and has prepared and tried capital murder cases. His criminal experience is vast and his treatment of citizens and lawyers in his court is one of the most professional in the legal community.

We elect judges to follow the law and sometimes that includes making unpopular decisions. Judge Case only did what the Texas Court of Criminal Appeals has already done. Importantly, multiple law enforcement agencies, the Texas Attorney General's Office and even the Montgomery County D.A.s office agreed to the changes in the new law in Austin back in May of this year. The new law that replaced the unconstitutional one was also supported by the Harris County District Attorney's Office. Further, Brandon Creighton, State Senator from Conroe also sponsored the new legislation to fix the unconstitutional law. The chief of the Harris County District Attorney's appellate division, Allen Curry, spoke on this to the state legislature. Mr. Curry is who a respected appellate prosecutor acknowledged in the legislative committee floor that the law was "not narrowly tailored" and such, was overbroad.

An overbroad statute that restricts speech is unconstitutional.

"The current statute is overbroad." Those are the words, not of Judge Kelly Case, but of Senator Joan Huffman describing the very online-solicitation-of-a-minor statute that Judge Case—following Senator Huffman's lead—found unconstitutional yesterday. <http://www.legis.state.tx.us/tlodocs/84R/analysis/html/SB00344I.htm>. Ex assistant D.A. and ex Republican Judge and now Senator Huffman, is known as one of the most conservative senators and opposed to almost any legislation that might benefit an accused citizen. However, Senator Huffman championed this new bill that will protect children and get rid of an unconstitutional law that does not protect children.

Unlike Judge Case, though, Senator Huffman (and Governor Abbott, who signed Huffman's bill amending the statute to eliminate its unconstitutionality) was not accused by Montgomery County First Assistant District Attorney Phil Grant of a "war on our proactive efforts to protect the children of Montgomery County" for saying that section 33.021 is unconstitutional and taking action to correct the problem.

Why the disparate treatment of Judge Case, but not of Senators Huffman and Creighton? Probably because Mr. Grant is not running against Senator Huffman or Senator Creighton, but is running for Judge Case's bench for the 9th District Court. Mr. Grant has seen fit to personally attack the decisions of Judge Case for giving probation in certain cases including sex crimes, whereas Judge Kathleen Hamilton and other judges have also given probation on these types of cases and have not been personally attacked by Mr. Grant.

When a judge finds a statute unconstitutional (a ruling that, in this case, will ultimately be upheld on appeal because it is correct) he is not making war on prosecutors' efforts and not commenting on the guilt or innocence of the accused; rather, he is doing his sworn duty of defending the Constitution. Judge Case deserves our praise for doing his politically unpopular duty; if Mr. Grant is incapable of protecting the children of Montgomery County without the help of unconstitutional statutes, then he is incapable of keeping his own oath, and is unfit to be either a prosecutor or judge. But Phil Grant through his ability and access to the media makes false and misleading statements to further his own political goals, not just in this matter but almost weekly by blasting decisions by a sitting judge. Phil Grant knows that he can speak to the press unchecked, all the while knowing

that Judge Case is forbidden by ethics to respond to correct Mr. Grant's misstatements or political agenda.

Curiously, Phil Grant sent his chief internet crimes against children prosecutor to Austin, Cindy Pulcher, to support the new legislation. Upon reviewing the video tapes from the legislative committee meeting, the Montgomery County D.A.'s office and Montgomery County Precinct 3 Constables Office were present in the roll call for the committee meeting and were offered the opportunity to oppose the changes to the statute. They all stood in support of the changes to the new law and were recognized by the Committee as being in favor that the law was unconstitutional. The new law changes come in coordination and at the request of the Attorney General's office, law enforcement and district attorney's office across the state. By Phil Grant sending his people to the Legislature in support of the new law he has then acknowledged the law is unconstitutional as the Texas Court of Criminal Appeals has already ruled. Now Mr. Grant is merely attempting to enrage voters by making preposterous accusations of the judge not protecting the children. The judge simply did not have a choice but to follow the law as set out by the Court of Criminal Appeals. These statements by Mr. Grant are just a ruse in an attempt to gain political support.

Judge Case is protecting children by showing the D.A.'s office that they are using a law that is unconstitutional and they need to protect children in a different and lawful way. The new law appears to protect children and every legal scholar in Austin, even the Montgomery County D.A.'s office agreed. But Phil Grant sees fit to mislead the public, which causes anger in those who do not realize what he is saying is false, and misleading, since he is running for Judge.

This is not the first time, Phil Grant has made legally incorrect and disparaging remarks about this sitting district judge. He did so in the Adrian Peterson case and then showed up to the hearing seemingly unprepared with flawed pleadings. This appeared to be nothing more than political grandstanding to further his own political agenda. Phil Grant is a candidate for the 9th District Court. His statements are inflammatory and in this case, fly in the face of a unanimous legislature, the opinions of our state senators, the governor and the Harris County District Attorney's office and First Amendment scholars. However, as inflammatory and self-serving as Mr. Grant's statements are, his too are protected by the First Amendment. As ethical attorneys know, judges are NOT ALLOWED to comment in the press about these matters, whereas political candidates like Mr. Grant can go unchecked and say what they please no matter how incorrect the statements may be.

We stand by Judge Case, The Texas Court of Criminal Appeals, Senator Huffman, Senator Creighton, Alan Curry, the Texas Legislature and every other organization and law enforcement group that made it known that the law needed to be changed. Ruling that 33.021 of the Texas Penal Code is unconstitutional as written was Judge Case's judicial responsibility. As citizens don't we want a judge that will follow the law, constitution and his ethical obligations? Or would you rather have Phil Grant who publicly states he is knowingly going to follow an unconstitutional statute?

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