

1 **Cause No. 352-248169-10**

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3 **AMANDA LOLLAR, BAT WORLD  
SANCTUARY**

4 **Plaintiffs,**

5 **vs.**

6 **MARY CUMMINS,**

7 **Defendant Pro se**

§ IN THE 352<sup>nd</sup> DISTRICT COURT  
TARRANT COUNTY, TEXAS

8  
9 **OPPOSED MOTION TO STRIKE, VOID TRIAL, COURT ORDER BY JUDGE  
10 WILLIAM BRIGHAM**

11 TO THE HONORABLE JUDGE OF 352<sup>ND</sup> COURT:

12 Defendant Mary Cummins (“Cummins”) submits this Motion to Strike, Void the June  
13 11, 2012 to June 14, 2012 trial and court order signed August 27, 2012 by Judge  
14 William Brigham because Judge Brigham was 83 years old at the time well over the  
15 mandatory retirement age per the Texas Constitution of 75, and respectfully shows as  
16 follows:  
17

18 **I. INTRODUCTION**

19 Judge William Brigham was the visiting Judge for the June 11, 2012 to June 14,  
20 2012 trial in this case. Defendant was given no notice that there would be a different  
21 Judge. Judge Bonnie Sudderth was the assigned Judge for this court. Judge Brigham  
22 signed the court order August 27, 2012.  
23  
24  
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Judge William Brigham was born August 19, 1928<sup>1</sup>. Judge William Brigham was 83 years old during the hearings and trial in this case.

Judge William Brigham retired from the Second Court of Appeals in 1999 at the age of 71. He continued as a visiting Judge. He finally notified the court that he was no longer capable of being a Judge September 2014. He passed away soon after on February 5, 2015.

Cummins filed a complaint<sup>2</sup> with the Texas State Commission of Judicial Conduct mentioning the Judge's advancing age, errors made and abuse of discretion. Cummins stated that Judge Brigham's Facebook page<sup>3</sup> showed that his mind was compromised because of major misspellings, errors and odd statements (Exhibit 1).

Immediately after Cummins' trial Judge Brigham was interviewed for the Veterans History Project for the Library of Congress. In that August 28, 2012 interview<sup>4</sup> Judge Brigham stated he used to be able to type 95 words a minute but can no longer type at all. He also admitted to unethical, unprofessional behavior in the courtroom.

In this case every order was written and typed by the Plaintiffs' attorney Randy Turner. The two orders contained prior restraint. A third order on the Indigence hearing was reversed by the Appeals court as they stated Judge Brigham "abused his discretion."<sup>5</sup> Part of the final order was ruled unconstitutional by the Second Court of

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<sup>1</sup> Obituary of Judge William Brigham

<http://www.legacy.com/obituaries/dfw/obituary.aspx?pid=174063849>

<sup>2</sup> Complaint against Judge William Brigham

[http://www.animaladvocates.us/complaint\\_judge\\_william\\_brigham\\_internet.pdf](http://www.animaladvocates.us/complaint_judge_william_brigham_internet.pdf)

<sup>3</sup> Judge William Brigham Facebook Page

<https://www.facebook.com/william.brigham.10>

<sup>4</sup> Judge William Brigham interview

<http://lcweb2.loc.gov/diglib/vhp/story/loc.natlib.afc2001001.87524/transcript?ID=sr0001>

<sup>5</sup> Case in Second Court of Appeals Texas

<http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

1 Appeals and was void. The Appeals Court stated that Judge Brigham abused his  
2 discretion and made errors.

3 This abuse of discretion and errors in law show that Judge Brigham was not  
4 competent to oversee the case as a Judge. Defendant believes Judge Brigham's  
5 judgment was impaired and compromised resulting in an unfair trial and court order.  
6

7 In Cummins' complaint to the Judicial Commission she stated,

8 "Before the hearing Plaintiffs' attorney Randy Turner walked over and sat in the pew  
9 directly behind me. He whispered to the back of my head 'I've known this judge for  
years. He'll sign anything I put in front of him.'"

10 This shows poor judgment on the part of Judge Brigham to sign any order put in front  
11 of him by Turner without reading it or considering the law and evidence. It shows that  
12 Plaintiffs' attorney Randy Turner was knowingly taking advantage of an elderly Judge's  
13 advancing age, diminishing mental capacities, poor judgment and misplaced trust.

14 Judge Brigham oversaw the Temporary Injunction Hearing. In that hearing Plaintiffs'  
15 attorney Randy Turner had a six page single spaced pre-typed court order. That order  
16 stated Cummins was to remove posts she never made on websites she did not control.  
17 In fact Cummins had never even seen most of those websites and stated all of this at  
18 the hearing. Judge Brigham did not read that order. Brigham flipped to the last page and  
19 just signed it in front of Defendant.  
20

21 In the trial Plaintiffs' attorney Turner stated there could not be prior restraint in the  
22 court order (Transcript p 200). When Turner finally wrote and sent the order to the  
23 Judge's personal residence the order contained prior restraint. Judge Brigham signed  
24 the order as is with no edits.  
25

At trial Judge Brigham asked Plaintiffs' attorney Turner what he wanted for the order, judgment then he gave him exactly what he asked for even though there was no basis in law or the evidence (Trial transcript<sup>6</sup> Pg 40, line 18). Even though Plaintiffs' admitted they had no proof of any financial damages or causation Turner asked for and received \$3,000,000 in compensatory damages, \$3,000,000 in exemplary damages, \$176,000 in legal fees and \$10,000 in liquidated damages. These damages make no sense as Plaintiffs' only had an annual income of \$90,000 at that time and Defendant was almost penniless.

The Texas Constitution limits the age of all Judges, Justices to a maximum of 75 years to ensure people receive fair trials. It was therefore unconstitutional for Judge William Brigham to be the visiting Judge and oversee the trial. The Temporary Injunction Hearing and trial orders should therefore be voided and stricken.

## **II. ARGUMENT**

The Texas Constitution states that **ALL** Judges, Justices must retire at the age of 75. Article 5, Section 1(a).

"The office of every such Justice and Judge shall become vacant on the expiration of the term during which the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe, except that if a Justice or Judge elected to serve or fill the remainder of a six-year term reaches the age of seventy-five (75) years during the first four years of the term, the office of that Justice or Judge shall become vacant on December 31 of the fourth year of the term to which the Justice or Judge was elected."

The purpose of mandatory retirement per Proposition 14 (H.J.R. No. 36) is,

"Mandatory retirement is a way to remove an aging justice or judge who is continuing to serve despite ineffectiveness. The protections of incumbency often make it difficult to

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<sup>6</sup> Court Reporter's transcript of the June 2012 hearing  
[http://www.animaladvocates.us/mary\\_cummins\\_trial\\_transcript.pdf](http://www.animaladvocates.us/mary_cummins_trial_transcript.pdf)

1 remove an aging justice or judge. Timely retirement on reaching the mandatory age  
2 ensures a capable and alert judiciary for the state."

3 In this case Judge William Brigham is a recalled, visiting Judge. He is appointed for  
4 short terms. Judge Brigham was appointed for a week term starting June 11, 2012 by  
5 Judge Jeffrey Walker of the 8<sup>th</sup> Judicial District at the request of Judge Bonnie Sudderth  
6 the then sitting Judge for the 352<sup>nd</sup> District Court.

7 Judge Brigham should not have been appointed to any court for any term after his  
8 75<sup>th</sup> birthday. He should not have been appointed to any court after August 19, 2003.

9 This issue was recently raised in a case involving Judge Robert Newey of the 311<sup>th</sup>  
10 Family Law Court<sup>7</sup>. The Judge was sworn in after his 75<sup>th</sup> birthday. None of the Judges  
11 or clerks knew about the mandatory retirement age or asked the Judge his age.  
12 Attorney David Brown filed a motion stating "any actions taken by Robert E.  
13 Newey...after that date (age of 75) are void." Judge Newey has since stepped down and  
14 been replaced for this reason. Judge Newey was 75. Judge Brigham was 83 almost ten  
15 years older. If a 75 year old Judge must step down and his orders be voided, so must  
16 an 83 year old judge who was clearly losing his mental faculties and had difficulty  
17 walking.  
18

19 "The Texas Legislature has not set the mandatory retirement age for judges, so the  
20 Constitution's age 75 limit is in effect. The statute on the qualifications to be a district  
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<sup>7</sup> "Judge not, lest ye be passed mandatory retirement age," Craig Malisow.  
<http://www.houstonpress.com/news/judge-not-lest-ye-be-past-mandatory-retirement-age-7628215>

judge merely sets the minimum age at 25. Gov't Code, Sec. 24.001 ("A district judge must be at least 25 years old")."<sup>8</sup>

There is no exemption for recalled, visiting Judges. The Constitution states "all" Judges and Justices. As it is most states' age limit is 70 and Texas' is 75. It was therefore unconstitutional for Judge William Brigham to oversee any hearing or trial in this case as he had no legal jurisdiction due to his advanced age. Defendant never defamed or breached a contract. Plaintiffs did not show the elements of defamation or breach of contract. Defendant was denied her right to a fair trial because of Judge Brigham's advanced age and unconstitutional appointment as a visiting Judge in this case.

### **III. CONCLUSION**

Defendant Cummins requests that the trial and final order be completely voided in this case. Defendant requests the Court award her costs, fees, and other expenses incurred in defending against Plaintiffs' meritless and frivolous complaint, and seeks all other relief to which she may be entitled.



Mary Cummins, Defendant  
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<sup>8</sup> "Are All Orders Signed by Former AJ Robert Newey Void Because He Took Office After the Mandatory Judicial Retirement Age of 75?" Greg Enos.  
<http://archive.constantcontact.com/fs152/1109660142763/archive/1121355510185.html#Newey>



### CERTIFICATE OF CONFERENCE

I hereby certify that on August 6, 2015, I made a reasonable attempt to confer with Randall E. Turner, counsel for Respondents, about the merits of this motion. Mr. Turner indicated that he is opposed to the Motion.

### CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **OPPOSED MOTION TO STRIKE, VOID TRIAL, COURT ORDER BY JUDGE WILLIAM BRIGHAM** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

Randy Turner  
Bailey & Galyen  
1300 Summit Ave Suite 650  
Fort Worth, Texas 76102  
August 6, 2015



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Mary Cummins, Defendant Pro se  
645 W 9<sup>th</sup> St, #110-140  
Los Angeles, CA 90015-1640  
Phone 310-877-4770  
Email: [mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)

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EXHIBIT 1  
Facebook page of Judge William Bringham

 **William Bringham** ▼  
March 12, 2013 · 🌐

CccvctsvrtlikThank you Schedule Will be Church It will have to be removed from underneath my pillow,

Mattera.com



Rep. Jan Schakowsky admits that a handgun ban is next

 McAfee SECURE

YOUTUBE.COM

➦ Share

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 **William Bringham** ▼  
March 11, 2013 · 🌐

Do not javre s tsttoo on any plscre on your body, many young people think they are cool, but those of us of the greatest generation think they are gross and will not employ a tattooed person, he this does — at Saratoga Park, Burleson, Texas.