

ROBERT BURNS, REV. FREDDIE LEE PHILLIPS

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19TH JUDICIAL DISTRICT COURT

VERSUS

LOUISIANA AUCTIONEER'S LICENSING BOARD,
JAMES M. SIMS, TESSA STEINKAMP, GREGORY L.
"GREG" BORDELON

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

NOW UNTO COURT come Plaintiffs, Robert Edwin Burns and Rev. Freddie Lee Phillips, in proper person, who provide this Memorandum in Opposition to Defendants' Motion for Summary Judgment scheduled to be heard by this Honorable Court on Monday, September 15, 2014 at 9:30 a.m.

Plaintiffs respectfully submit to this Honorable Court that the material fact of whether their rights under LA R.S. 42:14(D) to speak at a public meeting were denied exists. In fact, Defendants have provided no evidence whatsoever that they honored their **obligation** under the above referenced statute.

Regarding Petitioner Burns, Defendants state: "While approval of financials was an agenda item, the agenda item did not contain any detail under an item....." This argument is absurd on its face and an absolute insult to this Honorable Court. As Plaintiff Burns argued in Plaintiffs' own Motion for Summary Judgment, there would effectively be no discussion of any agenda item (e.g. "reciprocity," "interagency agreement with LA Used Motor Vehicle Commission," etc.) following such "logic." Audience members could only say, "I see you all have that on the agenda. That's nice." In a word, the argument is utterly absurd and lacking even a modicum of logic and, as previously stated, is an absolute insult to this Honorable Court for it to even be presented.

In Philip Courvelle and LA Recreational Vehicle Dealers Association, Inc. v. LA Recreational and Used Motor Vehicle Commission et. al., the First Circuit Court of Appeal made it abundantly clear how important it is for public deliberations to transpire in an open, transparent manner and one which encourages, not discourages, the public's ability to observe and participate. Clearly, were this Honorable Court to grant Defendants' Motion for Summary Judgment, it would fly in the face of the First Circuit's admonition issued under Courvelle and stand virtually no chance of surviving an appeal

for a Supervisory Writ by Petitioners. Beyond that fact, is the fact that Defendants' attorney, in an email dated December 21, 2012 (Exhibit P-8) specifically stated to Burns that he WOULD be permitted to discuss his concerns regarding per diem payments.

The same logic holds true for Petitioner Phillips. The roll call is a formal part of the prior meetings' minutes. In fact, such minutes' approval is a clear and unequivocal item on the agenda. Defendants seem to infer that, if one has no copy of such proposed minutes, one cannot "intelligently" comment on them. In a word, the argument is utterly absurd and lacking even a modicum of logic and, as previously stated, is an absolute insult to this Honorable Court for it to even be presented. No such restriction is placed upon such comment; furthermore, as stated in the Petition, such comment by Petitioner Phillips transpired in 2012, thereby resulting in a deferral of approval of minutes until May of 2012, at which time two sets of minutes were approved.

Further, Petitioners have been permitted to comment on numerous items under consideration by Defendant LALB (e.g. reciprocity, proposed interagency agreement with LA Used Motor Vehicle Commission, etc.) for which they were **not** provided copies in advance. Do Defendants assert that such commentary was inappropriate and Defendants permitted it anyway and further state to this Honorable Court that Petitioners' comments, and those of other public members who chose to speak, were all "unintelligent?"

Additionally, Defendants frequently attempt to avoid public discussion by being intentionally vague on just what they plan to discuss and vote on. A specific example would be when Defendant LALB had an agenda item entitled, "Proposed change in application for license renewal." That is not a joke! That's what the agenda item was entitled! It turned out that the item under consideration was discussion of a Deferred Adjudication Program, particularly applicable in the state of Texas, and whether or not a line item should be added to renewal applications asking if renewal applicants have ever enrolled in such a program to enable an otherwise-applicable felony conviction to be concealed from the LALB. Perhaps defense counsel Bankston can relay to this Honorable Court as to how any public member was supposed to "intelligently comment" on an agenda item entitled, "Proposed change to renewal application."

As Plaintiff Burns argued on August 4, 2014 in presenting Plaintiffs' arguments for granting Plaintiffs' own Motion for Summary Judgment, Defendant Attorney Larry S. Bankston is a good attorney. Nevertheless, the defenses he presented to Plaintiffs' Motion for Summary Judgment were pathetically weak. Although Plaintiffs are certain Defendants' attorney Bankston is motivated by maximizing billings to his client in presenting the present utterly absurd Motion for Summary Judgment rather than any realistic belief that such a Motion would be granted, his filing further reinforces what Petitioner Burns uttered in Court on August 4, 2014. He presents such utterly weak arguments because that's all he's got! That's why this case, as indicated by Petitioner Burns on August 4, 2014, "screams out with a flashing neon light that granting Summary Judgment for the Plaintiffs is appropriate."

WHEREFORE, Plaintiffs, ROBERT EDWIN BURNS and REV. FREDDIE LEE PHILLIPS, pray that Defendants' Motion for Summary Judgment be DENIED and further pray that this Honorable Court grant Plaintiffs' Motion for Summary Judgment argued before this Honorable Court on August 4, 2014.

Respectfully Submitted,

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Robert Edwin Burns

Certificate of Service:

We hereby certify, on this 3rd day of September, 2014, that a copy of the foregoing has been served upon counsel for all parties to this proceeding by submitting a copy of same via electronic mail, facsimile, or First Class United States Mail, properly addressed and postage prepaid.

Rev. Freddie Lee Phillips

Robert Edwin Burns