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Can She Say That? Texas Judge Sanctioned Over 'Pussyhat', Comment About Governor

"If you're wearing a pink pussyhat, you are announcing certain views about politics and about life," said Chip Babcock, a First Amendment lawyer with Jackson Walker in Houston. "This is a very, very troubling ruling."

By Angela Morris | December 23, 2020



Pink hats worn by protesters at the Women's March in Washington, DC, after the inauguration of Donald Trump as President of the United States. January 21, 2017. Credit: Heidi Besen/Shutterstock.com

A pink beanie with cat ears that she called her "pussyhat" while talking about reproductive health care has brought a public admonition for former Travis County Judge Sarah Eckhardt. But a prominent First Amendment attorney said he thinks the sanction is unconstitutional.

Eckhardt, who resigned this year to run—and win—a race for the Texas Senate, was presiding over a Travis County Commissioners Court meeting in January 2017 when she wore the hat, said a Dec. 4 public admonition that the Texas Commission on Judicial Conduct released publicly Tuesday. Her sanction also mentions a 2019 comment by Eckhardt about a tree falling on Gov. Greg Abbott.

Eckhardt said she needed to “get my cat ears going here for this one,” when she talked about a proclamation that supported reproductive health care. Eckhardt’s pussy hat “could be perceived as undignified, offensive and inappropriate,” the sanction said.

Read the sanction

([//images.law.com/contrib/content/uploads/documents/401/46196/E0148-20-0469.Pub_.Adm_.12.4.20.pdf](https://images.law.com/contrib/content/uploads/documents/401/46196/E0148-20-0469.Pub_.Adm_.12.4.20.pdf))



Sen. Sarah Eckhardt, D-Austin.
Courtesy photo

The judicial conduct commission decided that Eckhardt had violated part of the Texas Constitution that prohibits a judge from engaging in willful conduct that discredits the judiciary to the public.

Eckhardt didn’t immediately respond to a call seeking comment. She’s an attorney who was licensed in Texas in 1998, said her State Bar of Texas profile.

‘Very troubling ruling’

First Amendment attorney Chip Babcock said Eckhardt’s public admonition sounds unconstitutional to him.

“Under the First Amendment, and Article I of the Texas Constitution, you can’t regulate good tastes,” said Babcock, partner in Jackson Walker in Houston. “Many people—perhaps most people—would find some or all of this speech to be offensive, but that doesn’t give the state the right to tell people they can’t say those things—even judges.”

Around this time in January 2017, President Donald Trump had just been inaugurated and there was a women’s march in Washington, D.C., where many of the demonstrators wore pussyhats as a way to object to Trump’s recorded comments about grabbing women by the genitals.

“If you’re wearing a pink pussyhat, you are announcing certain views about politics and about life,” Babcock said. “Maybe there’s an issue of recusal, but certainly not a sanction. This is a very, very troubling ruling.”

When Eckhardt wore her pink hat, it spread widely on social media and sparked critical articles on conservative-leaning online news sites. Perhaps confused by the weird way Texas uses the title “county judge” for a county’s top executive and legislative official, some articles said Eckhardt was a judge wearing the pink hat in court.

Although some county judges do adjudicate low-level misdemeanors and small civil cases, Eckhardt wasn’t presiding over a court case when she wore the pink hat. County judges in Texas handle local administrative duties—like being the budget officer and emergency management leader. They also lead meetings and vote on the commissioner’s court, which is the legislative entity for a Texas county.

Governor’s injury

The judicial conduct commission also sanctioned Eckhardt for something that she said in September 2019 at the Texas Tribune Festival during a panel discussion. She remarked that Texas Gov. Greg Abbott “hates trees because one fell on him,” said the public admonition. It explained that in 1984, Abbott was jogging when a large tree limb fell on him and paralyzed him from the waist down.

Eckhardt was remorseful for her comment about Abbott’s disability and she wrote him an apology that she also posted to social media and spread to local press, the sanction noted.

Her remark about Abbott and the fallen tree “could be perceived as offensive, demeaning and derogatory towards the governor and others with physical disabilities,” the public admonition said.

Babcock, the free-speech lawyer, said it was a tasteless remark and he feels personally offended because he has known Abbott for a long time. Nevertheless, he said it’s not right to sanction Eckhardt over the bad joke.

“The one thing the First Amendment protects, among all else, is our ability to laugh at ourselves,” he explained. “I can’t imagine the state policing jokes like this. It is a horrible precedent.”

Judicial and lawyer ethics attorney Chuck Herring wrote in an email that the sanction is inappropriate and overreaching.

He said the judicial conduct commission “has a poor record when it comes to recognizing and respecting First Amendment rights. It has been reversed repeatedly by state and federal courts,” said Herring, partner in Herring & Panzer in Austin. The commission “should give more deference to the First Amendment, and should not act as thought-and-speech police for judges who are exercising their constitutional First Amendment rights.”

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