

IN THE SUPREME COURT OF TEXAS

=====
No. 04-0631
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COUNTY OF DALLAS, TEXAS AND DERRICK EVANS,
CONSTABLE PRECINCT 7, PETITIONERS

v.

LAMAR WALTON, RESPONDENT

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS
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Argued March 22, 2005

JUSTICE BRISTER, joined by CHIEF JUSTICE JEFFERSON, JUSTICE O'NEILL, and JUSTICE MEDINA, concurring.

For the reasons stated in my separate opinion in *County of Dallas v. Wiland*,¹ I would affirm the court of appeals' judgment.

The facts here differ from those in *Wiland* in only three respects. First, Walton was discharged in the middle of a term rather than at the end. But as the Court unanimously holds in *Wiland*, in 2001 a Dallas County deputy's term did not expire when a constable left office, and could only be terminated for just cause.² As the County failed to assert any just cause in its summary judgment motion, it is immaterial when the discharge took place.

¹ __ S.W.3d __.

² *Id.* at __.

Second, when Constable Jernigan reappointed deputy Lamar Walton in January 2001, Walton was required to sign a notarized statement that the appointment “was at the will and pleasure of the Constable, and may be rescinded at any time,” and if not rescinded “will expire automatically at the expiration of the Constable’s term of office.” I agree with the Court that this document did not and could not change Dallas County’s civil service rules. State law authorized Dallas County’s Civil Service Commission — not Constable Jernigan — to adopt rules governing the employment and dismissal of covered employees.³ There would be little purpose for civil service systems if individual supervisors could cancel them with documents like this.

Third, unlike in *Wiland*, the County’s motion for summary judgment here actually asserted that public employees did not have substantive due process rights to continued employment. For the reasons stated in *Wiland*, I would not render judgment on this uncertain question. As the County did not prove or even allege that Walton would have been dismissed for just cause had he been given a hearing, he is entitled to a trial on his procedural due process claim for lost wages.

Accordingly, while I would not render judgment on Walton’s substantive due process claim, I join in the remainder of the Court’s judgment.

Scott Brister,
Justice

OPINION DELIVERED: February 16, 2007

³ See TEX. LOC. GOV’T CODE § 158.009.