

Cause No. D-1-GN-17-003034

§ IN THE DISTRICT COURT

V.

BYRON C. COOK, in his official capacity as Representative of District 8 of the Texas House of Representatives and Chairman of the House State Affairs Committee,

DAVID SAUCEDA, in his official capacity as
Sergeant-At-Arms for the Texas House of
Representatives, and

STEVE MCCRAW, in his official capacity as
Director of the Texas Dept. of Public Safety,
Defendants.

§

§ 201ST JUDICIAL DISTRICT

§ TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION
FOR WRIT OF MANDAMUS AND REQUEST FOR INJUNCTION

NOW COMES Amy Hedtke, Plaintiff herein, filing this Original Petition for Writ of Mandamus and Request for Injunction based on the Texas Open Meetings Act and the defendants' violation of Article 1 Section 8 of the Texas Constitution, based on their illegal ejection of Hedtke from a public meeting of the Texas House State Affairs Committee on March 22, 2017.

Plaintiff seeks mandamus and injunctive relief to prevent future occurrences, in particular the upcoming Special Session of the House of Representatives beginning July 18, 2017.

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends discovery be conducted under Level 3 under Rule 190.4.

II. JURISDICTION AND VENUE

2. The court has jurisdiction over this case because the amount in controversy is within the jurisdiction limits of this court.
3. Venue is proper in the District Court of Travis County under Chapter 15 of the Texas Civil Practice and Remedies Code.
4. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.

III. PARTIES

5. Plaintiff Amy Hedtke is an individual and resident of Texas, and may be contacted through the undersigned, her counsel of record at 200 E. Abram St. Ste. 300, Arlington, TX 76010.
6. Defendant Byron C. Cook ("Cook") is an individual and resident of Texas, Representative for District 8 of the Texas House of Representatives and Chairman of the House State Affairs Committee, and may be served at: 1) his Texas Capitol address, Room GW.7, Austin, Texas 78768; 2) his residence at 2200 Arcady Lane, Corsicana, TX 75110; or wherever he may be found.
7. Defendant David Saucedo is an individual and resident of Texas, and is the Sergeant-At-Arms for the Texas House of Representatives, and may be served at:

1) his Texas Capitol address, Room 2W.7 Capitol, Austin, Texas 78768; or 2) his residence at 330 Sampson, Kyle, TX 78640-4311.

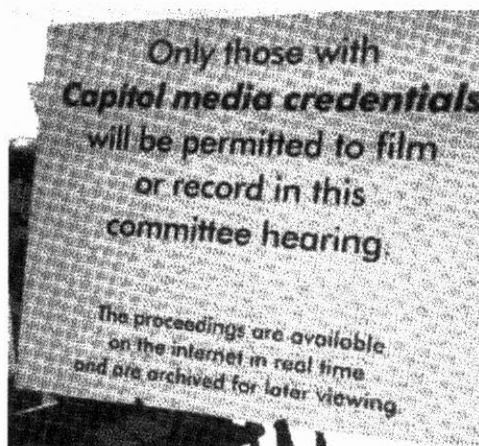
8. Defendant Steve McCraw is Director of the Texas Dept. of Public Safety (“DPS”), a state agency that may be served through the Office of General Counsel, 5805 N. Lamar Blvd., Austin, Texas 78752-4431 or wherever he may be found.

IV. FACTS

9. On March 21, 2017, Plaintiff Hedtke attended a public hearing of the House State Affairs Committee, intending to testify and live stream¹ proceedings using her cell phone, as she had done innumerable times at public meetings at all levels of government. Defendant Cook was the presiding Chairman, which was meeting in Room 140 of the Reagan Bldg. at 1400 Congress Ave, Austin, Texas.

10. Signs were present outside and inside the hearing room, as shown below:

11. The signs state:



Only those with
Capitol Media Credentials
will be permitted to film
or record in this
committee hearing.

The proceedings are available
on the internet in real time
and are archived for later viewing.

¹ To “live stream” is to broadcast to an audience in real time, as an event is happening, typically through wireless means to an internet site.

12. The procedure for obtaining Capitol Media Credentials and a link to media rules are at <http://www.house.state.tx.us/resources/media-credential/>. This process is governed by the House Rules, which gives individuals who obtain the credentials to enter the House floor.² However, the House Rules do not discuss who may or may not record committee meetings, or govern such recordings from the House gallery, except to the extent to require orderly behavior.

13. To obtain the credentials, an applicant is required to certify:

“I am employed by a print, broadcast, or Internet news organization, or a wire service serving such news organizations: (a) whose principal business is the periodic dissemination of original news and opinion of interest to a broad segment of the public; (b) which has published or operated continuously for 18 months; and (c) whose publications and broadcasts are editorially independent of any institution, foundation, or interest group that lobbies the government, or that is not principally a general news organization. I am not engaged in any lobbying (requiring registration under Chapter 305, Government Code) or paid advocacy, advertising, publicity, or promotion work for any individual, political party, corporation, organization, or government agency.”³

14. Additionally, a letter from an employer must be submitted with the application. This certification process prevents individuals who are not qualified to obtain Capitol Media Credentials from gaining access to the House floor, and as currently enforced, prevents citizens from exercising their right to film a public meeting as guaranteed by the Open Meetings Act, TEXAS GOVT. CODE § 551.023.

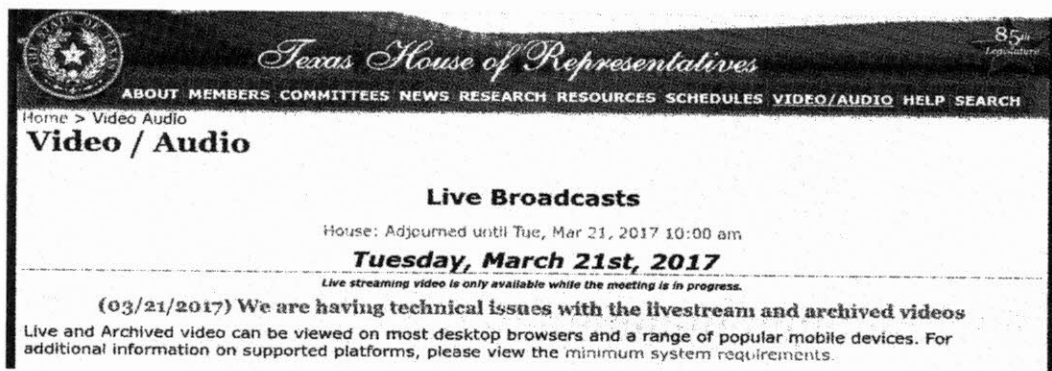
² See http://www.house.state.tx.us/_media/pdf/hrrules.pdf#page=77

³ See <http://www.house.state.tx.us/resources/Media-Credential-Application2017-2018.pdf>.

15. The Texas House of Representatives has adopted rules which require Capital Media Credentials for such actions as gaining access to the floor of the House, but has adopted no such rule regarding recording from the House gallery or any rule whatsoever regarding recording of House committees.

16. Ms. Hedtke began recording a Facebook live stream session on her cell phone while she was in the hallway outside of the hearing room and recorded the signs as described above and commented to her viewers that although the signs indicated that the proceedings were available real time and archived, that other hearings were at times not streamed in real time due to alleged technical issues and archived versions were not always made available to the public.

17. As an example, the real time stream was down on March 21, 2017, the day prior to Ms. Hedtke's recording. Citizens wanting to watch the proceedings on that day saw this image instead of the live feed:



18. Typically, archived videos are limited to one viewpoint of a committee's proceedings, and provide a very limited perspective to constituents who may be interested in other aspects of the meeting or viewing angles.

19. Plaintiff entered the hearing room and noted three additional signs identical to the signs in the hallway as described above.

20. About 4:30 minutes into her live stream recording, an individual off-screen told Hedtke that she may not record; she replied that Texas law allows recording. She was then told "...the Rules of the House have precedent over that and the Constitution as well...", to which she responded, "I'm ready to let you push that."

21. Ms. Hedtke then positioned herself at the rear of the committee room and continued to record via live stream and answer questions from her viewers prior to the hearing's start, discussing TEXAS GOVT. CODE § 551.023, the text of which she was displaying on her laptop screen from the State's website: <http://www.statutes.legis.state.tx.us/>, which reads:

Sec. 551.023. RECORDING OF MEETING BY PERSON IN ATTENDANCE.

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

(1) the location of recording equipment; and

(2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

22. Approximately 24 minutes into the live stream recording, Ms. Hedtke was approached by an individual and told she could not continue recording, and if she did continue that she would be removed. She suggested he contact their attorneys and continued to record.

23. The livestream recording continued for another 26 minutes until the hearing started and Ms. Hedtke was approached by DPS Corporal Katherine Creekmore. During a discussion between them, Corporal Creekmore asserted that the Committee Chairman (Defendant Cook) had the right to make the decision to prohibit individuals from recording the committee's hearings and Ms. Hedtke responded that she had the right under Texas law to stay and record, referencing the text of TEXAS GOVT. CODE § 551.023, which was displayed on her laptop. The video of the incident shows the DPS officer looking at the laptop screen.

24. Defendant Saucedo, the Texas House of Representatives Sergeant-at-Arms, also told Ms. Hedtke that she had to stop recording and that the House rules allowed the prohibition. When Hedtke stated that she had the right to record the meetings, Saucedo stated, "No, you don't."

25. Both Saucedo and the DPS officers at all times spoke as though the no-recording rule was strictly a policy that they always enforced, rather than just a one-time enforcement due to unusual circumstances or a temporary misjudgment, a

conclusion supported by not just one sign in the committee room that was perhaps was carried in by an unauthorized individual, but no fewer than three printed signs on stands, clearly attempting to exert a vigorous announcement of the policy.

26. In spite of Ms. Hedtke's attempts to help the authorities understand and follow the Open Meetings Act, and after she refused to leave, two uniformed DPS officers carried Hedtke out of the hearing room, down the hallway to an inside foyer, handcuffed, and placed under arrest. After handcuffing Ms. Hedtke, they carried her out of the building and placed her on the front steps of the Reagan Building for transport. The officers informed Hedtke that they would refrain from arresting her if she left voluntarily.

27. After a few minutes, the two DPS officers then carried Ms. Hedtke back through building and set her on steps outside the other side of the Reagan Building until placed in a DPS vehicle and transported to jail at about two p.m. She was charged with Criminal Trespass and Resisting Arrest. While in the custody of DPS, she was restrained in a prisoner transport chair for about two hours, had a hood placed on her head several times, was disrobed twice (once in a cell that left her visible to hallway traffic), placed in a padded cell, and left naked for several hours before finally being released. She had to wrap a blanket around her to speak with her attorney.

28. Eventually, the ‘resisting arrest’ charge was dismissed; the criminal trespass remains at the filing of this petition.

29. At no point during these events was Ms. Hedtke disrespectful, engaging in disorderly conduct, or obstructing any proceeding, as is clearly evidenced by the recording of her live stream and video of her arrest, available at the following urls:

<https://www.facebook.com/amy.hedtke/videos/1377067645673420/>

<https://www.facebook.com/supermantrackcoach/videos/1021223759216594/>

30. During questioning by investigative journalist James O’Keefe of Project Veritas on April 21, 2017, Chairman Cook’s Chief of Staff Toni Barcellona reaffirmed that no-recording rule was Chairman Cook’s standard policy, and it was supported by Section Two Article Three of the Texas Constitution, and Cook is not bound by the Open Meetings Act.⁴ (As discussed elsewhere, Barcellona most likely intended Section Eleven and not Section Two.)

31. Along with his discussions with Ms. Barcellona, Mr. O’Keefe also discussed the incident with Defendant Saucedo, who blamed the arrest on DPS, though the video of the event shows he assisted to enforce the no-recording policy.⁵ As Sergeant-at-Arms of the Texas House of Representatives, Saucedo is charged with maintaining decorum in Texas House proceedings.

⁴ See <https://www.youtube.com/watch?v=dnGfYDeDL3Q#t=03m45s>.

⁵ <https://www.youtube.com/watch?v=dnGfYDeDL3Q#t=05m35s>

V. AUTHORITIES AND ARGUMENT

32. Section 11 of Article 3 of the Texas Constitution states: “Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.” However, the first clause of that Section does not support a claim to unilateral and unchecked power to make up whatever rules a committee chair wishes to concoct, else the second clause would be unnecessary; if the House can make up whatever rules it wants, it can also punish members for disorderly conduct.

33. House Rule 4, Section 12 states:

Meetings Open to the Public — All meetings of a committee or subcommittee, including a calendars committee, shall be open to other members, the press, and the public unless specifically provided otherwise by resolution adopted by the house. However, the General Investigating and Ethics Committee or a committee considering an impeachment, an address, the punishment of a member of the house, or any other matter of a quasi-judicial nature may meet in executive session for the limited purpose of examining a witness or deliberating, considering, or debating a decision, but no decision may be made or voted on except in a meeting that is open to the public and otherwise in compliance with the rules of the house.⁶

34. The House has passed no resolution pursuant to House Rule 4, Section 12 that might support a general rule that each committee chair can enforce whatever rules he wishes regarding recording at meetings, except to preserve the peace.

⁶ See <http://www.house.state.tx.us/media/pdf/hrrules.pdf#page=53>.

35. The rules pertaining to the media are found in House Rule 5, §11, §19, §20.⁷ These rules all discuss behavior of media regarding the House floor and chamber. Nothing in the House Rules provide power to a committee chair to dictate that only the professional media class may record in a committee.

36. Though Chairman Cook's Chief of Staff Toni Barcellona reaffirmed that it was the policy of Chairman Cook to prohibit recording without Capital Media Credentials, and claimed that the Texas Constitution⁸ supports the right of a committee chair to enforce the no-recording rule, the plaintiff could not locate any support in the Texas Constitution for that assertion.

37. While the Texas Constitution gives the House the power to govern itself, it does not give the House the power to create new crimes to be enforced by DPS. Rather, the Texas Constitution at Section 15 of Article 3 states: "Each House may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours." Thus, if a person in a committee's audience was acting disorderly, the House may imprison her for up to 48 hours, but Plaintiff could locate no authority

⁷ <http://www.house.state.tx.us/media/pdf/hrrules.pdf#page=77>.

⁸ Ms. Barcellona actually references Section Two of Article Three during the discussion, but the House Rules are generally authorized by Section Eleven of Article 3, leading to the natural assumption that she misread the '11' to be the Roman numeral "II", i.e., '2'.

which allows a chairman to 1) make up a rule, and then 2) call on DPS personnel to prevent violations of these rules (which are not *laws*) by translating any such rule into a charge of criminal trespass.

38. The Texas Legislature enacted the Open Meetings Act, TEXAS GOVT. CODE § 551.023, in 1993 and later amended it in 2013. The Open Meetings Act ensures that every person attending a public meeting in Texas is unhindered by government officials who prefer to limit citizen oversight, whether the meeting is that of the local library board, county commissioner, or meetings of the Texas House State Affairs Committee.

39. Section 551.142 of the Texas Government allows that an interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.

40. In discussing this incident, defendants have alleged that the Texas Constitution gives the House the authority to manage its own proceedings, and its rules allow the chairs the power to ban non-credentialed citizen journalists. If that were the case, defendants should be able to reference some House Rule that was passed to support that assertion, but they have not done so, and cannot, because no such rule exists.

41. Having enacted the Open Meeting Act, and having passed no contrary rule, no committee chairman may simply decide to ignore that law and violate it. Nor may a chairman direct the Texas Department of Public Safety to enforce any such House rule that violates State law.

42. Additionally, the Texas Department of Public Safety may not establish any policy that violates Texas law, such as the policy followed in this case of removing individuals from open meetings when they are recording the meeting.

VI. CAUSE – OPEN MEETING ACT VIOLATIONS

43. Defendant Byron C. Cook, in his capacity as a member of the Texas House of Representatives and Chair of the House State Affairs Committee, violated the Texas Open Meetings Act and the Texas Constitution at Section 8 of Article 1 (guaranteeing freedom of the press) by establishing and enforcing an unconstitutional and illegal rule or policy prohibiting individuals lacking a Capitol Media Credential from recording public hearings of a Texas House committee.

44. Defendant David Saucedo, in his capacity as Texas House of Representatives Sergeant-at-Arms, violated the Texas Open Meetings Act and the Texas Constitution at Section 8 of Article 1 by establishing and enforcing an unconstitutional and illegal rule or policy preventing individuals lacking a Capitol Media Credential from recording public hearings of the House State Affairs

Committee. As the House Sergeant-at-Arms, Saucedo is particularly charged with maintaining decorum and does know or should know what the Open Meetings Act requires.⁹

45. Defendant Steve McCraw, in his capacity as Director of the Texas Department of Public Safety, violated the Texas Open Meetings Act and the Texas Constitution at Section 8 of Article 1 by establishing and enforcing an unconstitutional and illegal rule or policy as established by Defendant Cook by removing individuals recording hearings from the hearing rooms, even those who are not being disorderly, and placing them under arrest.

46. Defendants have no reasonable basis in law to promulgate and enforce rules that are in violation of TEX. GOVT. CODE § 551.023.

47. Plaintiff is an interested person and prays the court issue a Writ of Mandamus directing defendants to cease enforcement of the illegal no-recording rule or establishing any such rule that conflicts with TEX. GOVT. CODE § 551.023 or any other similar rule that violates the Open Meetings Act, and enjoin Defendant Cook and the Texas Department of Public safety from enforcing the rule as described *supra*, both temporarily and permanently.

⁹ For the duties of the House Sergeant-at-Arms, see <http://www.house.state.tx.us/media/pdf/lrrules.pdf#page=22>.

VII. DAMAGES

48. As a result of the arrest, Ms. Hedtke suffered attorneys' fees as damages necessary to the defense of the criminal charges brought against her in connection with her arrest, as well as the reasonable and necessary attorneys' fees incurred in prosecuting this civil action.

49. In the alternative, Ms. Hedtke suffered at least nominal damages as a result of the defendants' acts as alleged herein.

VIII. ATTORNEY'S FEES.

50. Plaintiff requests recovery of all reasonable and necessary attorney's fees pursuant to Section 551.142(b) of the Texas Government Code, which provides for the award of the costs of litigation and reasonable attorney fees incurred by a party who substantially prevails in an action under Section 551.142(a).

IX. REQUEST FOR INJUNCTION

51. Plaintiff incorporates all previous paragraphs herein by reference.

52. Plaintiff requests the court set a hearing for the purpose of hearing evidence and entering a temporary injunction enjoining defendants and their agents, employees and contractors from enforcing the no-recording rule and from establishing any such rule that conflicts with TEX. GOVT. CODE § 551.023 and the

Texas Constitution at Section 8 of Article 1, and that following trial on the merits that the temporary injunction be made permanent.

53. The purpose of a temporary injunction is to preserve the status quo of the subject matter of the litigation until final hearing can be held on the merits of the case. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex.2002).

54. The standard for obtaining preliminary injunction is well established. Plaintiff is entitled to a temporary injunction because it has demonstrated the following four grounds for relief as outlined in *Pinebrook Prop. v. Brookhaven Lake*, 77 S.W.3d 487, 505 (Tex.App.—Texarkana 2002, pet. denied):

- a. The existence of wrongful acts - defendants have violated the Texas Open Meetings Act and the Texas Constitution, Sec. 8 of Article 1;
- b. The probable right to relief - defendants' violations have no reasonable basis in law; even defendants' House Rules argument is hollow;
- c. Existence of imminent harm and irreparable injury - Defendant Cook has taken the position that his "no recording" rule is proper and supported, and will undoubtedly be enforced during the Special Session of the Texas Legislature called by Gov. Abbott to commence July 18, 2017, so individuals without *Capital Media Credentials* will be prohibited from exercising their rights as protected by the Open Meetings Act.

55. Plaintiff has and will continue to suffer imminent and irreparable harm because of the actions of defendants. “Irreparable injury” occurs when the injury is of such a nature that the injured party cannot be adequately compensated for it in damages, or the damages cannot be measured by any certain pecuniary standard. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Defendants show no indication that they intend to cease enforcing this impermissible rule and by doing so will injure plaintiff and every other individual desiring to exercise their right to record the hearings of the House State Affairs Committee and all other committees.

56. Defendants will not be harmed by the injunctive relief requested. Defendants will simply be prevented from violating the Open Meetings Act (TEX. GOVT. CODE § 551.023). The harm to plaintiff, and other individuals if the injunctive relief is denied will be significant, as the result will be that an elected chairman in the Texas House of Representatives will be rewarded for demonstrating disregard for the law – one he supported and for which he voted.

57. Plaintiff respectfully requests the court grant plaintiff’s request for a temporary injunction to prevent the immediate and continuing irreparable harm from occurring to plaintiff and other individuals that will be prevented from exercising their rights under the Open Meetings Act.

58. The issuance of an injunction will preserve the status quo in this matter. Further, Plaintiff will suffer irreparable harm if the Order is not granted. An award of damages later is not sufficient to correct defendants' current unlawful behavior.

59. Plaintiff asks the Court to use the discretion provided in Rule 684 to waive any requirement to post bond because the injunction sought is against a state actor, she has no pecuniary interest in the suit beyond the nominal damages sought. In the alternative, Plaintiff is willing to post bond in an amount determined by the court, but request that amount of the bond be *de minimis* and in no case more than \$100 based on the circumstances of this case.

60. Plaintiff request the court enter an order restraining defendants and their employees, agents, and contractors from:

- a. Enforcing the rule promulgated by Defendant Cook which prohibits any individual from recording hearings of the House State Affairs Committee;
- b. Establishing any new rule in violation of the Open Meetings Act, in particular, Section 551.023 of the Texas Government Code;
- c. Establishing or enforcing any policy of removing any individual from public hearings of the House State Affairs Committee merely because they are recording a hearing, and further, refraining from arresting such individuals.

X. REQUEST FOR WRIT OF MANDAMUS

61. Incorporating all the facts and arguments above, plaintiff here alleges that members of the Texas House of Representatives have an affirmative obligation to follow the Texas Open Meetings Act, as the House of Representatives passed the law, and did not exempt itself.

62. Alternatively, plaintiff alleges that House members have an affirmative obligation to follow the Texas Open Meetings Act until and unless the House of Representatives passes a law stating that it is conducting its open meetings and hearings in such a way that its members need not follow the Open Meetings Act.

63. Whether the House is required to follow the Open Meetings Act by virtue of its passage by the House, or by failing to pass a House Rule countermanding the Open Meetings Act, no reasonable person can say as the time that this suit has been filed that House members may simply choose to lawfully ignore the Open Meetings Act.

64. Because the Open Meetings Act places an affirmative burden on state actors conducting open meetings, and state representatives are state actors, plaintiff asks this Court to issue a Writ of Mandamus requiring Cook, Saucedo, and the Texas DPS to follow the Open Meetings Act, and prohibit them from interfering with citizens who are peacefully recording or live broadcasting open meetings.

XI. PRAYER

WHEREFORE PREMISES CONSIDERED Plaintiff prays that the court issue citation and after hearing, enter judgment in favor of Plaintiff against defendants; that the court issue a Writ of Mandamus as pled, issue a Temporary Injunction and after trial, issue a permanent injunction against defendants, jointly and severally, prevent them from establishing and enforcing any rule in violation of the Texas Open Meetings Act; that plaintiff be awarded all damages, costs, and reasonable and necessary attorneys' fees and all other relief to which she may be entitled in law and equity.

Respectfully submitted,

Norred Law, PLLC

/s/ Warren v. Norred

Warren V. Norred, Texas Bar No. 24045094, norred@norredlaw.com

C. Chad Lampe, Texas Bar No. 24045042, chad@norredlaw.com

200 E. Abram St. Ste. 300, Arlington, TX 76010

Tel. (817) 704-3984; Fax. (817) 524-6686

Attorneys for Plaintiff