CAUSE NO. 2018-CV-3354-DC

VICTORIA ADVOCATE PUBLISHING CO., **Plaintiff,**	§	**IN THE DISTRICT COURT OF**
v.	§	**CALHOUN COUNTY, TEXAS**
CALHOUN PORT AUTHORITY, **Defendant.**	§	Calhoun County - 135th District Court **_____ JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION
FOR DECLARATORY AND INJUNCTIVE RELIEF

Victoria Advocate Publishing Co. ("Advocate"), by and through its attorneys, John Griffin, Jr. and Robert E. McKnight, Jr., as and for its complaint against Calhoun Port Authority ("Authority"), alleges as follows:

NATURE OF THE ACTION

1. This is an action under TEX. GOV'T CODE §§ 551.141 and -.142 for declaratory judgment and injunctive relief necessitated by the failure of the Defendant to provide proper notice, as required by § 551.041, that it intended to deliberate, discuss or consult with its personnel regarding the hiring of Blake Farenthold at a annual salary of $160,000. Defendant did in fact discuss the hiring of Mr. Farenthold in a closed session, with no notice to the public. The Plaintiff, publisher of the VICTORIA ADVOCATE newspaper, seeks by this action to vindicate the public interest in open government that is served by §§ 551.041, 551.141, and -.142.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action to enjoin the Authority and award such other relief as may be appropriate.

3. The Court is a proper venue for this action under TEX. CIV. PRAC. & REM. CODE § 15.0151.

PARTIES

4. Plaintiff Victoria Advocate Publishing Co. is organized and exists under the laws of the State of Texas.

5. Defendant Calhoun Port Authority is a governmental entity—specifically, a navigation district—created by the Texas Legislature through enactments codified at TEX. SPECIAL DISTRICT LOCAL LAWS CODE §§ 5003.001 - .105.

DISCOVERY CONTROL PLAN

6. Plaintiff intends to conduct discovery under level 2 of TEX. R. CIV. P. 190.3. Plaintiff affirmatively pleads that its suit is not governed by the expedited-actions process in TEX. R. CIV. P. 169 because Plaintiff seeks non-monetary relief.

STATEMENT OF FACTS

7. On May 4, 2018, the Authority posted notice of a meeting of its six-member governing body to convene on May 9, 2018. (Exh. 1.) At paragraph 11, describing an anticipated closed session, the notice contains the following language: "As authorized by TEX. GOV'T CODE § 651.074 [sic; the correct citation is § 551.074] for purposes of deliberating the appointment, employment, compensation, evaluation, reassignment, duties, discipline or dismissal or a public officer or employee."

8. The preceding notice referred to the Authority's deliberation—a term defined by statute as "a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business," TEX. GOV'T CODE § 551.001(2) —about hiring Blake Farenthold to serve as a lobbyist for the authority. Defendant in fact hired Mr. Farenthold at an annual salary of $160,000. Defendant has yet to publicly disclose the date

he was hired, or his job duties.

9. Mr. Farenthold represented Texas District 27 in the U.S. House of Representatives from January 3, 2011, until he resigned effective April 6, 2018, after it was reported—widely, through national news media—that a sexual harassment lawsuit against his office and involving allegations against him (*Greene v. Office of Representative Blake Farenthold*, No. 1:14-cv-02110-RC (D.D.C., *filed* Dec. 14, 2014)) was settled in 2015 for $84,000. It was further reported that the settlement was paid from public funds provided by taxpayers, and that Mr. Farenthold had not reimbursed, with his own money, the source of the public funds. His resignation before the end of his term was to forestall findings from the House Ethics Committee, which investigated his use of public funds to pay the plaintiff in *Greene*. When he resigned, he promised to repay the source of the $84,000 settlement payment in *Greene*, but later, apparently after he was hired by Defendant, he said he would not in fact repay the source.

CLAIM

10. The preceding notice was legally insufficient to apprise the general public of the Authority's intention to deliberate the hiring of Mr. Farenthold. Due to Mr. Farenthold's current notoriety arising from the circumstances of his recent resignation, and due also to the nature of the position for which the Authority hired him and the amount of the compensation it agreed to pay him, deliberation concerning the hiring of Mr. Farenthold was a topic "of special interest to the public," *Cox Enters., Inc. v. Bd. of Trs. of Austin ISD*, 706 S.W.2d 956, 959 (Tex. 1986), such that the preceding notice was insufficient as a matter of law. The discussions between the Board and its chief executive regarding Mr. Farenthold's hire were a matter of public concern, and Texas law required that more specific notice be given to the public. In violation of

§ 551.041, it was not done, and so the public left to hear about this hiring after the fact.

11. Because the notice was insufficient as a matter of law to give notice of what the Authority actually deliberated and discussed, it violated TEX. GOV'T CODE § 551.041, and rendered the hiring of Mr. Farenthold reversible or voidable by injunction under §§ 551.141, and -.142. The Court should also declare that the Authority violated the Open Meetings Act by deliberating during that meeting regarding Mr. Farenthold. Any closed deliberation of the hiring of Mr. Farenthold that occurred without public notice is a per se and unlawful closed session, and the Court should declare that the "certified agenda" of this deliberation be made public. Finally, to the extent that the Defendant failed to properly maintain a "certified agenda" of the closed session, the Court should enter appropriate declaratory and equitable relief to effectuate the letter and purpose of the Open Meetings Act.

12. The ADVOCATE is also entitled under § 551.142(b) to its reasonable attorney's fees and costs for bringing this action, which vindicates the important right of the public to have notice of governmental deliberations, even when such deliberations occur in a closed session.

13. Few rights of the public are as important as the right to knowledge about how their government spends taxpayer funds and manages the public's business. This suit is to vindicate those rights and reaffirm Justice Brandeis's admonition, quoted by the Texas Supreme Court in *Acker v. Texas Water Com'n*, 790 S.W.2d 299,300 (Tex. 1990), that sunshine is indeed the best disinfectant.[1]

[1] Justice Brandeis wrote that "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." L. Brandeis, *Other People's Money* 92 (1914 ed.).

PRAYER FOR RELIEF

The ADVOCATE asks this Court to enter a judgment:

1. Declaring that the Authority violated TEX. GOV'T CODE § 551.041 by deliberating and discussing the hiring of Mr. Farenthold without legally adequate notice;;

2. Issuing an injunction that reverses, or voids, the Authority's hiring of Mr. Farenthold following the deliberation and discussion that was noticed in violation of TEX. GOV'T CODE § 551.041;

3. Awarding the ADVOCATE the costs of this action, together with reasonable attorney's fees for trial and appeal;

4. Awarding the ADVOCATE such other relief, legal or equitable, as may be warranted to effectuate the letter and purpose of the Open Meetings Act.

Respectfully submitted,

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By: /s/ John W. Griffin, Jr.
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VICTORIA ADVOCATE PUBLISHING CO.