

Velva L. Price
District Clerk
Travis County
D-1-GN-16-003995
Carrisa Escalante

CAUSE NO. D-1-GN-16-003995

FRY AUTO TITLE SERVICES, § IN THE DISTRICT COURT
AUTO TITLE SERVICE, §
AUTO TITLE SERVICE OF OAKHILL, §
SAN ANTONIO AUTO TITLE SERVICES, §
INC., TEXAS AUTO TITLE, §
TEXAS TAG AND TITLE, INC., §
TISDALE, LLC, and §
UNIVERSAL AUTO TITLE SERVICES §
***Plaintiffs* § OF TRAVIS COUNTY**

v. §

TEXAS DEPARTMENT OF §
MOTOR VEHICLES, and §
WHITNEY BREWSTER, EXECUTIVE §
DIRECTOR §
***Defendants* § 345TH JUDICIAL DISTRICT**

PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiffs (together “Auto Title Companies”) file this Original petition against Defendants Texas Department of Motor Vehicles and its Executive Director, Whitney Brewster (together “TxDMV”) and allege as follows:

NATURE OF THE CASE AND DISCOVERY CONTROL PLAN

1. Discovery will be conducted under TRCP 190.3, Level 2. This case should be viewed in the context of fundamental principles of substantive due process—as guaranteed by our *Texas* constitution—that the Texas Supreme Court considered just last year in *Patel v. Texas Department of Licensing and Regulation*. This case concerns the proliferation of Texas state government’s heavy-handed reach into private businesses in a way that the public does not benefit from such purported “help” from the government. The Supreme Court said:

Government will always insist it is acting for the public’s greater good, but as

Justice Brandeis warned in his now-celebrated *Olmstead* dissent: “Experience should teach us to be most on our guard to protect liberty when the government’s purposes are beneficent.”

A pro-liberty presumption is also hardwired into the Texas Constitution, which declares no citizen shall be ‘*deprived* of life, liberty, property, [or] privileges or immunities’—phrasing that indicates citizens already possess these freedoms and government cannot take them ‘except by the due course of the law of the land.’ Texans are thus presumptively free and government must justify its deprivations. So just how nonsensically can government stifle your constitutional right to put your know-how and gumption to use in a gainful trade?

Self-ownership, the right to put your mind and body to productive enterprise, is not a mere luxury to be enjoyed at the sufferance of governmental grace, but is indispensable to human dignity and prosperity.

This case is fundamentally about the American Dream and the unalienable human right to pursue happiness without curtsying to government on bended knee.

The right of contract is one of the most sacred rights of the freeman, and any interference with such privilege by Legislatures or courts is essentially dangerous and vicious.¹

2. a. For at least 55 years, private companies, like the plaintiffs in this lawsuit from Travis County and Bexar County, have been deputized by the locally elected County Tax Collectors (with approval by the Commissioners Courts), to set up and pay for (out of their own pocket) convenient alternative locations for vehicle owners to obtain vehicle titles and registrations. For decades, these companies:

- have operated as small private businesses;
- have received no public funds;
- have paid property, sales, payroll, and income tax like any other private businesses;
- have employed scores of people with good job benefits, some of whom have spent

¹ All quotations are from *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69, 92 et seq. (Tex. 2015) (Justice Willett concurring).

their working careers with the companies, and

- have survived financially on the price they have charged their customers for the convenience of having their location and services available.

b. All of the government “fees” and taxes the companies collect for the title and registration work—every penny of it—has been turned over daily to the tax office and reconciled daily. Their customers have been fully informed of the companies’ additional convenience charge, but, for all these decades, those customers have chosen to continue to use these private companies’ services despite having always had the choice to avoid the convenience charge and get the title/registration work done directly with the local tax office or tax office substations. Competition in the market between these businesses has caused them to set their prices so they are acceptable to their customers. No one has complained about the prices these businesses have charged to be able to stay in business, the cost of which differs from county to county and location to location. No one has asked the State government to “help” by regulating the price these private companies charge. In fact, over 12,000 of the private companies’ customers signed cards and petitions *opposed* to the TxDMV price-limit rules at issue in this case.

c. But Texas State officials could not leave well enough alone. In 2013, the Legislature adopted a statute telling TxDMV to adopt rules so TxDMV would regulate virtually all aspects of these companies—including the price they can charge their voluntary customers—even though these companies are deputized by the local Tax Collector (with approval of the local Commissioners Court), not by the State or TxDMV. That statute—establishing this new regulatory scheme over these small businesses—contained no statement of what purpose the State had for the new regulations nor any standard for TxDMV to follow in developing its new rules. TxDMV

adopted rules that are oppressive, unnecessary, and that will adversely impact these companies, putting them out of business. The Travis County and Bexar County Tax Collectors estimate that these companies complete over 1/3 of the title/registration transactions in those counties and, without them, it would cost local taxpayers millions of dollars to add personnel and equipment to the tax offices to handle those transactions. It is that statute and those rules that this lawsuit challenges.

CLAIM FOR RELIEF

2. Plaintiff seeks monetary relief of \$100,000 or less and nonmonetary relief. TRCP 47(c)(2).

PARTIES

3. a. Plaintiff Fry Auto Title Service is the assumed name for WSF Enterprises, Inc., a Texas corporation located in Travis County, Texas who may be served through its attorney of record in this case. Fry Auto Title Service is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

b. Plaintiff Auto Title Service is a sole proprietorship located in Travis County, Texas who may be served through its attorney of record in this case. Auto Title Service is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

c. Plaintiff Auto Title Service of Oak Hill is a partnership located in Travis County, Texas who may be served through its attorney of record in this case. Auto Title Service of Oak Hill is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

d. Plaintiff San Antonio Auto Title Services, Inc. is a Texas corporation located in

Bexar County, Texas who may be served through its attorney of record in this case. San Antonio Auto Title Services, Inc. is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

e. Plaintiff Texas Auto Title is the assumed name for 3MC Auto Title, LLC, a Texas corporation located in Bexar County, Texas who may be served through its attorney of record in this case. Texas Auto Title is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

f. Plaintiff Texas Tag and Title, Inc. is a Texas corporation located in Bexar County, Texas who may be served through its attorney of record in this case. Texas Tag and Title, Inc. is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

g. Plaintiff Tisdale, LLC is a Texas corporation located in Bexar County, Texas who may be served through its attorney of record in this case. Tisdale, LLC is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

h. Plaintiff Universal Auto Title Services is the assumed name for U.A.T.S., Inc., a Texas corporation located in Travis County, Texas who may be served through its attorney of record in this case. Universal Auto Title Services is a micro-business as defined by Tex. Gov't Code ch. 2006 and a business deputized as a full-service deputy that will be adversely affected by the statutes and rules challenged in this lawsuit.

4. a. Defendant Texas Department of Motor Vehicles is a Texas state agency and may

be served with process by serving its representative, David Duncan, General Counsel, at 4000 Jackson Avenue, Austin, Texas 78731 or at any address where he may be found.

b. Defendant Whitney Brewster, Executive Director, sued in her official capacity, may be served with process at 4000 Jackson Avenue, Austin, Texas 78731 or at any address where she may be found.

c. Because Plaintiffs also challenge the constitutionality of a Texas statute, as alleged in this petition, the Honorable Ken Paxton, Attorney General of Texas, is served with process at 300 W. 15th Street, Austin, Texas 78701, as required by Tex. Civ. Prac. & Rem. Code § 37.006(b).

JURISDICTION & VENUE

5. The Court has jurisdiction over the TxDMV rule challenge and request for injunctive relief in this case under Tex. Gov't Code section 2001.038. The Court has jurisdiction over the declaratory judgment claims and ancillary injunctive relief against TxDMV regarding the constitutionality of certain Texas statutes under Tex. Gov't Code section 24.007, by article V, Section 8, of the Texas Constitution, and under Tex. Civ. Prac. & Rem. Code ch.37. Venue is mandatory in this Court.

FACTS

6. The statute challenged as to its constitutionality is Tex. Trans. Code. Section 520.0071 (hereafter referred to as “the Deputy Statute”). The rules challenged in this lawsuit are at 43 TAC chapter 217, which have already taken effect, in part, and will become effective regarding the Auto Title Companies on January 1, 2017 unless enjoined (hereafter referred to as “the Deputy Rules” or as specifically cited).

7. For the first time, since the existence of Auto Title Companies, the Deputy Statute and Deputy Rules create a regulated, statewide, price for a “convenience” charge or “processing and

handling” charge for registration and titling services, over and above the official “fees” and taxes for titles and registration. Prior to the statute and rules, Auto Title Companies charged a “convenience” or “processing and handling” price to their customer—that was not regulated by law—in addition to the official fees and taxes the companies collect and turn over to the Tax Collector who deputizes them.

8. The price limits set by TxDMV in the Deputy Rules for “convenience” or “processing and handling” are lower than the prices the Auto Title Companies have been charging their walk-in customers and are lower than the companies need to charge to stay in business. While the price needed by each company may differ, TxDMV rejected comments during the rulemaking process to permit local flexibility as to the price (*e.g.*, to be set based on local conditions at the discretion of the Tax Collector) or to grandfather current prices, electing instead to set one statewide, uniform maximum price which is lower than prices that have been charged by these companies for years.

9. a. According to TxDMV’s rule preamble, the Deputy Rules were adopted to “implement the legislative directive of House Bills 2202 and 2741.” 41 Tex. Reg. 5787. But those Bills (the Deputy Statute) contain no standard at all that TxDMV was to follow in establishing this new State regulatory scheme over the Auto Title Companies’ duties, bonds, and prices. The Deputy Statute says:

Sec. 520.0071. DEPUTIES. (a) The board by rule shall prescribe:

- (1) the classification types of deputies performing titling and registration duties;
- (2) the duties and obligations of deputies;
- (3) the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties; and
- (4) the fees that may be charged or retained by deputies.

(b) A county assessor-collector, with the approval of the commissioners court of

the county, may deputize an individual or business entity to perform titling and registration services in accordance with rules adopted under Subsection (a).

Tex. Trans. Code section 520.0071.

b. The bald language of the Deputy Statute gives no direction whatsoever as to what standards TxDMV should follow in prescribing the duties, bonds, or prices of the Auto Title Companies. The Deputy Statute is unconstitutional because it is a standardless delegation of legislative authority to an executive agency. *See FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000) (“The Legislature may delegate powers to agencies established to carry out legislative purposes *as long as the Legislature establishes reasonable standards to guide the agency in exercising those powers.*”). (emphasis added).

10. The legislative history of the Deputy Statute (enacted in both H.B. 2202 and H.B. 2741, 83rd Tex. Leg. 2013) reveals no problem the statute was addressing, no purpose for the new direct regulation, by the State, of these locally deputized private businesses, no statement as to the necessity for the new regulations, and no identification of the alleged legitimate governmental interest in such oppressive regulation that will put these small businesses out of business. The Deputy Statute is an unconstitutional infringement on the substantive due-course-of-law rights of the Auto Title Companies under Tex. Const. art. I, section 19. *See Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2015) (holding that a statute may be held unconstitutional as a violation of substantive due process rights under the Texas Constitution unless the statute (a) has at least a theoretical connection to a legitimate governmental interest, and (b) actually advances a legitimate governmental interest, and (c) does not place an oppressive burden on the plaintiffs challenging the statute.).

11. The Deputy Statute purports to delegate to the TxDMV the power to prescribe “the duties and obligations” of the Tax Collector’s appointed deputies. The deputy companies are solely

deputized by the appointing Tax Collector and function solely “to assist” the Tax Collector in *the Tax Collector’s* duties. The Deputy Rules prescribing the duties and obligations of the deputy companies must be construed as establishing *by agency rule* duties and obligations of the Tax Collector. This contravenes Tex. Const. art. VII, section 14 which empowers only the Legislature to prescribe the duties of the Tax Collector.

12. a. The TxDMV has established an unreliable, centralized computer system (the “RTS”) on which virtually all vehicle titles and registrations must be processed, whether in-house by the Tax Collector or by the Auto Title Companies. The Auto Title Companies are completely dependent on the RTS system to be able to operate their businesses and perform their work assisting the Tax Collector who deputized them. Down time of the RTS system is not only a huge inconvenience to customers who need vehicle titles or registrations, such down time directly effects the profitability of the Auto Title Companies, whose operating expenses do not disappear just because the RTS system goes offline. But TxDMV, having established this Big Government centralized method for title and registration transactions, has shown that it will use that system to deliberately cut-off, or threaten to cut-off, RTS access to Auto Title Companies arbitrarily, without cause or due process hearing, and over the objection of the Tax Collector.

b. In the *proposed* Deputy Rules, TxDMV proposed draconian measures to use the RTS feed as a direct means—without consultation or approval by the Tax Collector—to control the Auto Title Companies. *See* 41 Tex. Reg. 2935 (proposed Deputy Rule section 217.163(j)(1)-(11), including, *inter alia*, the condition for RTS access that the Auto Title Companies agree to a TxDMV audit of their entire operation that is not permitted by any statute.). In response to comments objecting to the proposed rule, TxDMV chose to move the draconian measures out of the adopted rule but to empower TxDMV staff to include those measure in a state-mandated

“addendum” to a contract the Deputy Rules require be created between the Tax Collector and his deputies and be in force before the Deputy Rules take effect on January 1, 2017.

c. In other words, to avoid a court challenge to that part of the Deputy Rules, TxDMV moved the RTS-related rules from the rules adopted by the TxDMV Board to a contract addendum to be written by the TxDMV staff who has no rulemaking authority. If the Auto Title Companies (or the Tax Collectors) do not agree to the staff’s addendum (no matter how unconscionable the terms may be), then TxDMV will cut off RTS access and shut down the businesses. On its face, the contract “addendum” is rulemaking without adherence to Tex. Gov’t Code ch. 2001. In addition, the Deputy Statute gave no rulemaking authority to TxDMV, let alone the TxDMV staff, to exercise additional controls of the Auto Title Companies by threatening to cut off their RTS feed without hearing or recourse. The Auto Title Companies give notice of their intent to add their challenge of the “addendum” (when complete) to this lawsuit.

13. In addition to the facts stated in the preceding paragraphs, the following facts are relevant to the State’s new exercise of governmental power to control the operation and prices of the Auto Title Companies in a manner that does not provide equal protection to those companies compared to similarly situated persons and which for which no purpose or legitimate governmental interest has been stated. The State may claim that because the Auto Title Companies are performing the governmental function of vehicle titling and registration, they cannot charge for their services unless the State approves that charge, but that would be inconsistent with the following examples:

a. Title Service License Holders. Tex. Trans. Code, Subchapter E (sections 520.051-063), establishes a licensing scheme for “motor vehicle title services” which, like the Auto Title Companies (who perform full processing of title applications, as if done in the Tax Office), assist customers by delivering the customers’ title paperwork to the Tax Office. But in contrast to the

Deputy Statute and Deputy Rules, the Title Service License (TSL) statute:

1. Gives sole authority to the Tax Collector to license the TSL companies and to suspend or revoke the license (compared to TxDMV's asserted power to cut the RTS feed to a Tax Collector's deputized company—fundamentally shutting down the company—even over the objection of the Tax Collector);

2. Does not regulate, in any way, what price the TSL companies can charge their customers, creating the ironic possibility under the statutes that a TSL company (without even the expense of an office location) could charge more to a customer to deliver or mail the title paperwork to the Tax Office than the Deputy Rules permit the Auto Title Companies to charge customers for completing and entering the entire title transaction as if done in the Tax Office;

3. Contains no requirement at all that TSL companies give a bond to the Tax Collector or to the State; and

4. Contains no “duties and obligations” of TSL companies.

b. Car Rental Companies. In Tex. Att’y Gen. Op. No. 97-013 (1997), the Attorney General held that car rental companies could collect, from their customers, a “reimbursement charge” for the companies’ costs for title and registration fees and ad valorem taxes on the rental cars. The Attorney General said:

Whether a rental car company may pass on the cost of the property taxes and certificate of title and registration fee that the company has paid to the car renters by collecting a reimbursement charge *appears to be a matter of contract between the parties involved.* We have been unable to find a legal prohibition against this practice.

Tex. Att’y Gen. Op. No. 97-013 at 2 (1997) (emphasis added).

c. Judges Charging for Weddings. In Tex. Att’y Gen. Op. DM-397 (1996), the Attorney General held that even though, when a Judge performs a wedding ceremony, the Judge

is “carrying out an official function,” and even though the Judge might perform that wedding ceremony during normal working hours and with some use of public resources, the Judge may charge and keep personally the fee for conducting the ceremony. There is no restriction on what amount the Judge can charge, presumably letting the competitive market for wedding-ceremony options set that fee.

d. Court Reporters Who Are Paid Public Employees. In Tex. Att’y Gen. Op. GA-0164 (2004), the Attorney General held that court reporters, who are full-time state employees and “official court reporters,” may charge and personally retain a fee (without restriction on the amount) for preparing official hearing transcripts during their normal work hours.

COUNT 1
SUIT FOR DECLARATORY JUDGMENT ON UNCONSTITUTIONAL STATUTE

14. The Auto Title Companies seek a declaration that:

a. The Deputy Statute (Tex. Trans. Code Section 520.0071) is unconstitutional because it is a standardless delegation of legislative authority to the TxDMV, and the Auto Title Companies are entitled to a temporary and permanent injunction to prohibit TxDMV from enforcement against the Auto Title Companies of the Deputy Rules adopted to implement the unconstitutional Deputy Statute.

b. The Deputy Statute (Tex. Trans. Code Section 520.0071) is unconstitutional as applied to the Auto Title Companies because the statute fails the *Patel* test on substantive due process rights guaranteed by Tex. Const. art. I, section 19, and the Auto Title Companies are entitled to a temporary and permanent injunction to prohibit TxDMV from enforcement against the Auto Title Companies of the Deputy Rules adopted to implement the unconstitutional Deputy

Statute.

c. The Deputy Statute (specifically Tex. Trans. Code Section 520.0071(a)(2)) delegating to TxDMV authority to prescribe the “duties” of the Tax Collector’s deputies is unconstitutional because, *the Legislature* must prescribe the duties of the Tax Collector (and his deputies) by statute pursuant to Tex. Const. art. VIII, section 14. It is not the prerogative of an executive agency to set the duties of a deputy whose job is to assist the Tax Collector.

d. In the alternative, the Auto Title Companies seek a declaration that despite the Deputy Statute and the Deputy Rules, the companies are not prohibited by either the Statute or the Rules to contract with their customers for a price for performing their vehicle titling and registration services at any amount agreed to by their customers since the customers are not required to use the services of the Auto Title Companies in lieu of transacting their business with the Tax Office directly.

e. The Deputy Statute regulating the Auto Title Companies, particularly the state control of their prices, is unconstitutional as a violation of equal protection guaranteed by Tex. Const. art 1, section 3. While the Auto Title Companies perform official public services, the Deputy Statute and Deputy Rules unlawfully discriminate against the Auto Title Companies by regulating the price *they* may charge their customers while not regulating the performance or prices charged by similarly situated individuals or companies, such as Title Service License Holders and unregulated vehicle title “runners” among others. The classification and disparate treatment of the vehicle title and registration service companies is not rationally related to a legitimate state interest. *See HL Farm Corp. v. Self*, 877 S.W.2d 288 (Tex. 1994) (holding that the equal protection provision of Texas Constitution (art. I, section 3) applies to business entities, such as corporations, as well as to natural persons; *Freeman v. Swan*, 143 S.W. 724, 727–28 (Tex. Civ. App.—El Paso

1912, *writ ref'd*) (“While the fourteenth amendment guarantees to all the equal protection of the law, yet, in the exercise of the police power, a Legislature, subject to certain limitations, may single out occupations and individuals and impose additional burdens, on the theory that what is done, although it unequally affects part of the community, is for the general peace, good order, morals, or health of the whole community; and it is not within the scope of the amendment to withhold from the states the power of classification, *if the law deals alike with all of a certain class.*”) (emphasis added).

COUNT 2
SUIT FOR DECLARATORY JUDGMENT – RULE CHALLENGE

15. Pursuant to Tex. Gov’t Code section 2001.038, the Auto Title Companies challenge the Deputy Rules (codified at 43 TAC ch. 217) and seek a declaration of that the rules are invalid and seek a temporary and permanent injunction against their enforcement by TxDMV and its Executive Director against the Auto Title Companies, for the following reasons:

a. The Deputy Rules are unconstitutional as applied to the Auto Title Companies because the rules fail the *Patel* test on substantive due process rights guaranteed by Tex. Const. art. I, section 19. The Deputy Rules, and the Rule Preamble, fail to identify any legitimate purpose or governmental interest, do not actually advance a legitimate governmental interest, and place an oppressive burden on the Auto Title Companies.

b. The TxDMV Board and its Executive Director are without authority to adopt or enforce the Deputy Rules since their adoption was based on the unconstitutional Deputy Statute.

c. The Deputy Rules or their threatened application against the Auto Title Companies will interfere with or impair the rights and privileges of the Auto Title Companies: (1) to contract

with their customers, who choose to use their services, for a price that is determined by the parties to the contract; (2) to be free from unwarranted and oppressive interference by TxDMV in operating their private companies for a profit; (3) to be free from TxDMV's interference in obtaining the benefits of being a deputy appointed by the Tax Collector; (4) to be free from TxDMV's interference in performing their duty to assist the Tax Collector who appointed them as that Tax Collector would direct.

d. The Deputy Rules are not necessary and appropriate.

e. The Deputy Rules setting the price the Auto Title Companies can charge and retain is not sufficient to cover their costs and reasonable return on investment, such as is required by Tex. Trans. Code section 501.1911(b).

f. The Deputy Rules violate Tex. Gov't Code section 2006.002 which prohibits adoption of agency rules that have adverse impact on micro-businesses (such as the Auto Title Companies) without mitigating such adverse impact.

g. The Order and Preamble of the Deputy Rules fails to provide a reasoned justification for the rules as required by Tex. Gov't Code ch. 2001.

APPLICATION FOR TEMPORARY & PERMANENT INJUNCTION

16. The Auto Title Companies ask, upon hearing, the Court grant a Temporary Injunction pending trial, as authorized by Tex. Civ. Prac. & Rem. Code section 65.011 to temporarily enjoin the TxDMV from enforcing the Deputy Rules against the Auto Title Companies. If the Deputy Rules take effect on January 1, 2017 and the Auto Title Companies are prohibited from charging their usual and established convenience charge to their customers, the companies will permanently lose the revenue from those transactions, or, if they continue to charge those customers their

convenience charge in excess of the amount permitted by the Deputy Rules, the companies will be vulnerable to TxDMV cutting off their RTS service, causing the companies to shut down operation.

a. The Auto Title Companies ask the Court to enjoin TxDMV and Defendant Whitney Brewster, as Executive Director of TxDMV, from enforcing the Deputy Rules on or after January 1, 2017 until trial is held in this case.

b. It is probable that the Auto Title Companies will recover from the defendants after a trial on the merits because the Deputy Statute, on which the Deputy Rules is based, is unconstitutional, and, regardless, the Deputy Rules are invalid for the reasons pled above.

c. If the Auto Title Companies' application is not granted, harm is imminent because, the Deputy Rule is already partially in effect (requiring the Auto Title Companies to negotiate and accept a contract addendum prior to January 1st) and the remainder of the rules, including the price regulations, take effect on January 1, 2017.

d. The harm that will result if the temporary restraining order is not issued is irreparable because as explained above, on and after January 1, 2017, the companies will either permanently lose needed revenue if they comply with the Deputy Rules, or will be subject to losing RTS access or otherwise be restrained by TxDMV and its Executive Director from operating at all without complying with the Deputy Rules.

e. The Auto Title Companies have no adequate remedy at law because complying with the Deputy Rules causes a permanent loss of revenue needed to stay in operation, and defying the Deputy Rules and continuing to charge their usual prices subjects the Auto Title Companies to, one way or the other, being shut down by TxDMV and its Executive Director enforcing the rules.

- f. The Auto Title Companies are willing to post bond.
 - g. The Auto Title Companies have joined all indispensable parties under TRCP 39.
17. The Auto Title Companies ask the Court to set their request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against defendants.

REQUEST FOR DISCLOSURE

18. Under TRCP 194, plaintiffs request that defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

CONDITIONS PRECEDENT

19. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

PRAYER

For these reasons, Plaintiffs ask the Court the grant the requested declarations that the Deputy Statute is unconstitutional and that the Deputy Rules are invalid, and to enter the requested injunctive relief to prohibit Defendants from enforcing the Deputy Rules against Plaintiffs, to award court costs to Plaintiffs, and to grant Plaintiffs all other relief to which they may be entitled.

Respectfully submitted,



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