**TO THE HONORABLE JUDGES OF OUR TEXAS SUPREME COURT;**

Relator, Edmund Bryan Heimlich ("Relator", "I", "me", "my") submit to you, the Honorable Texas Supreme Court, this Writ of Injunction for your certification for observance by the Respondents. I humbly request your presentation of this Writ, with Mandamus, to the Respondent for compliance with the Constitution and Laws of the United States and of this State, including compliance with your Rules of Appellate Procedure.

## PRELIMINARY STATEMENT OF CASE / FACTS

This Writ concerns a second appeal to the Respondents from the Petition and Claim Relator subjected to Judicial Process. A Petition for redress of a grievance and a legal claim, of Public Record with the Clerk of our District Court preserved under file No. GN100142. Hereinafter, referred to as "the claim" of the Relator / "Relator's Claim".

On the first appeal the fact and the law were reviewed by the Respondents. Upon conclusion the respondents held, as a matter of law and fact, the Relator has a legally enforceable claim against the party named as Defendant in GN100142. The claim was remanded to the District Court for determination of a sum certain amount of recovery.

Respondents have refused to comply with the mandate of our Texas Supreme Court, set forth in Rule 308 of our Texas Rules of Civil Procedure and enforce their decree in their judgment and mandate that followed their review, of public record 03-02-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382]. Unidentifiable court officers or employees in the court supervised by the Respondents, if not the Respondent's themselves, have replied with "overruled" or "dismissed" to every attempt to enforce the

decree and Law of this Land. Thus, making necessary, this Writ of Injunction in the Name of the People of the State of Texas.

## LEGAL DEFINITIONS

The defendant responding to Relators's claim, GN100142, is a Legal Entity, a person artificial in character, created to benefit, also known as "to serve", the people of the State of Texas by securing the Substantive Rights of the Individual also known as a "human being" [Tex. Penal Code, §1.07(38)]. Also known as a "human person" in present day International Law, traditionally known in Law as a "Natural Person", [1] as a owner of Substantive Rights.

The Legal Definition of the defendant as a "legal entity", is by authority of the Honorable Legislators for our State of Texas. This is a definition as a matter of Law that cannot be abrogated absent a challenge to the constitutionality of this definition and a finding it is unconstitutional.[2] Nor can the Substantive Rights of an Individual.

> § 311.005. GENERAL DEFINITIONS.
> The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:
> (2) "Person" includes corporation, organization, **government** or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other **legal entity**.

### Conclusion on Definitions

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[1] Officers and Employees in this Legal Entity have a duty, obligation, and responsibility to benefit / serve in exchange for the emoluments (regular pay & employment benefits) received from the sovereign. This is known as the Responsibility of a Fiduciary. A trustee given the Public Trust, the Trust of the People of the State of Texas as the sovereign. Sometimes referred to as a "delegation of powers" it is, first and foremost, a delegation of duties, responsibilities, and obligations to honor the commands of the sovereign – the Law.

[2] A logical impossibility in consideration of §2 of Art. I of our Texas Constitution placing all power in the people, as an inherent (Substantive) Right of the people of and on this Land known as Texas, free and sovereign per §1 of Art. I.

The relator is a human being, also known as an Individual, with Substantive Rights (also known as Natural, Inherent, Rights, sometimes referred to as Fundamental Human Rights) secured by the Constitution and Laws of the United States and of this State, and further secured by the mandatory Oath of Office or Employment. The Oath is prerequisite required of all who serve in the Legal Entity created by the people of the State of Texas [§1, Art. 16, Texas Constitution] prior to acceptance of emoluments (pay and employment benefits) from the sovereign people of the State of Texas, their Treasury of their State. Relator has a claim against this Legal Entity known as government. This claim has been acknowledged by the Respondents as Legal and Enforceable. See Public Record, 02-03-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382] with Decree therein by Judgment of date January 30, 2003 and Mandate of July 2, 2003. See both in Appendix A.

Relators claim is against a Legal Entity, a Fiction of Law, an Artificial Person. As an Artificial Person it is a factual, natural, logical impossibility for a Legal Entity to be a "sovereign" or "the sovereign". The people of the State of Texas are the Sovereign of this Land, and their Texas Constitution is the paramount Law of the Land.

The Attorneys assigned to represent this Legal Entity are required, as a pre-requisite of employment in a position of public trust and as court officers [Tex. Gov. Code 82.037, in addition to §16 of Art. I, Tex.Const.] to be competent in the language common to the people of the Land of Texas. As a matter of Law; Law in this land is defined by "common usage" of the language common to the people of this land and words are given their "ordinary meaning" as commonly used.

> § 311.011. COMMON AND TECHNICAL USAGE OF WORDS.
> (a) Words and phrases shall be read in context and

construed according to the rules of grammar and common usage.
312.002. MEANING OF WORDS.
(a) Except as provided by Subsection (b), words shall be given their ordinary meaning.

Proof of this competence is the requirement of proof of extensive education in the language common to the people of this Land, a law degree, and passage of a test in this language as a prerequisite to be licensed as Officers in our Courts [Tex. Gov. Code 82.037]. It is expected that Attorneys learned, in the course of their studies, how to utilize a dictionary. Very few words utilized in statutory law have a "technical" meaning. "Technical" refers to words specific to "trades", not to the practice of law, a practice that requires knowledge of procedures and processes, ability to perform research, and logic for analysis (ability to "reason"). It is not a "technical" trade as it is not a science.

The Respondents are Judicial Officials bound by the mandatory Oath of Office found in the Judgment, Mandate, Decree of the sovereign, a Legal Document known as the Texas Constitution, written in language of common usage, with words of ordinary meaning. The Respondents have a duty, obligation, and responsibility to preserve, protect and defend the language of common usage, words of ordinary meaning, contained in this Legal Document, known as the Texas Constitution, as Law that binds them, Law by which they are enjoined, Law that stands as an Injunction of Public Record - a self-operative Notice to the Judicial Officials serving the people as the sovereign.

**THE LAW AND FACTS AT ISSUE**

The Legislative Division of the government of our State was created by the sovereign. This institution, a creation of law, a legal fiction, a division of government, with a duty, obligation, and responsibility to make law in pursuance of the decree of the

sovereign in the Texas Constitution. This division of government, in pursuance of additional security of the Rights of an Individual secured by the Texas Constitution, established Law providing compensation from the government for Wrongful Imprisonment. This Law is codified in our Texas Civil Practice and Remedies Code in Chapter 103, and written in language of common usage, with words of ordinary meaning.

Subchapter 103 provides a choice to the Individual of mechanism to secure compensation as remedy for their injuries to their lands, goods, person or reputation. The Individual, a human being, may choose Administrative Process [§103 subchapter B] or Judicial Process [§103 subchapter C].

Of Public Record, Relator chose subchapter B, Judicial Process. Subchapter B provides, in plain language of common usage and ordinary meaning to the people of this Land, easily interpreted by any who have proven themselves competent in this language, that **the definition of Actual Innocence is defined by Facts**, as it applies to a claim for Remedy brought via choice of Judicial Process:

> **§ 103.102. Standard of Proof**
> The petitioner must establish by a preponderance of the evidence that the petitioner is entitled to compensation and the amount of compensation to which the petitioner is entitled.

Pursuant to the Law, written in plain language of common usage with words of ordinary meaning, "Actual Innocence", as it relates to a claim for Remedy brought via Judicial Process, is NOT a "technical term" or "word of art", a "question of law" but is clearly established in Law as a "question of Fact". The hurdle established by law is a "preponderance of the evidence". It does not require absolute innocence be proved beyond any possibility of guilt, or impose an assumption of actual guilt.

As any trained in the practice of law knows, Evidence refers to Facts. Relator proved, by presentation of facts to our Texas Court of Appeals, Fourteenth Supreme Judicial District, followed by a Judgment submitted for review by our Texas Court of Criminal Appeals, that he is entitled to compensation. He proved his is innocent when subjected to a standard that assumed guilt beyond a reasonable doubt. The burden of proof, in GN100142, shifts to defendant to prove guilty by a preponderance of evidence. Defendant, failing to do so in the trial court, waived any right to present their assertion.

These findings were submitted to the Respondents, and reviewed by them, of record 03-02-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382]. And, even if the Respondents failed in their duty to review these findings, as the defendant has asserted in their pleadings, the “determinations “of the Court of Criminal Appeals “shall be final” as a matter of Constitutional Law, §5 of Art. 5, Texas Constitution.

Respondents are now bound by their decree in 03-02-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382] as conclusive on the facts pursuant to decree of our Texas Constitution, §6 of Art. 5, and law made in pursuance thereof, §22.225 of our Texas Government Code. They cannot, now, go back on their words:

> **claiming that he has "been granted relief on the basis of actual innocence of the crime."……**
>
> **Heimlich's pleadings are sufficient to state a claim.**

**WHEREFORE;** I respectfully Petition to this Court, our Texas Supreme Court, for review of the following Writ for certification, followed by Writ of Mandamus, from you, directed to Respondents, for compliance with the Law.

# WRIT OF INJUNCTION

## In the name of the people of the State of Texas

**TO THE JUDICIAL OFFICIALS SERVING IN OUR COURT OF APPEALS, Third Supreme Judicial District for our State of Texas;**

**YOU ARE ENJOINED** by Order of our Texas Supreme Court, by their Judgment and Decree establishing the due course of law for this Land known as Texas in what is known as Rules of Court. You are prohibited from review of the issue of the liability of the Defendant, now Judgment-Debtor, (hereinafter "defendant") in cause GN100142 in our District Court. A case previously submitted to you for your review and maintained by your Clerk under file numbered 03-02-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382], now of public record under your Clerk's file number 03-05-00827-CV, established the liability, the debt, of the Defendant, now Judgment-Debtor, to me, the Plaintiff, now Judgment-Creditor. You must now enforce your decree.

Among the Judgments and Orders decreed by our Honorable Texas Supreme Court, by which you are enjoined, prohibiting you from taking action on the appeal to you for review of the issue of Defendant's liability, [by assertion the trial court lacked subject matter jurisdiction] are the Texas Rules of Appellate Procedure ("TRAP"). These Rules limit your jurisdiction. In other words, your authority, and the discretion that comes with authority granted by jurisdiction delegated to you by the sovereign, the people of the State of Texas, by Legal Document known as the Texas Constitution.

Of particular relevance to this Writ is TRAP 53.7 and 19: TRAP 53.7 provides the Defendant, now Judgment Debtor, was required to file a Petition for Review to our Texas Supreme Court within 45 days of the date of your Judgment of January 30, 2003 (over 3 years ago), and pursuant to TRAP 19 your plenary power has expired. (Emphasis added)

**RULE 53.7 Time and Place of Filing.**
(a) Petition. The petition **must** [no discretion] be filed with the Supreme Court clerk **within 45 days** after the following:
(1) the date the court of appeals rendered judgment, if no motion for rehearing is timely filed; or
(2) the date of the court of appeals' last ruling on all timely filed motions for rehearing.

**RULE 19. PLENARY POWER OF THE COURTS OF APPEALS AND EXPIRATION OF TERM**

19.1 Plenary Power of Courts of Appeals. A court of appeals' plenary power over its judgment expires:
(a) 60 days after judgment if no timely filed motion to extend time or motion for rehearing is then pending; or
(b) 30 days after the court overrules all timely filed motions for rehearing and motions to extend time to file a motion for rehearing.

19.3 Proceedings After Plenary Power Expires. **After its plenary power expires, the court cannot vacate or modify its judgment.**

Your Judgment of January 30, 2003, published for citation as Heimlich v. State of Texas, 988 S.W.2d 382 [Appendix A] states, in relevant part, in clear and unambiguous language, as follows:

> **On appeal, Heimlich argues that the district court erred by granting summary judgment against his claims because the court of appeals reversed his conviction on grounds that he did not commit a crime; he is thereby essentially claiming that he has "been granted relief on the basis of actual innocence of the crime."…… Heimlich's pleadings are sufficient to state a claim.**

**CONCLUSION**

**Having considered all of Heimlich's complaints, we reverse the summary judgment granted against Heimlich's claims for compensation under article**

**I, section 17 of the Texas Constitution and under Texas Civil Practice and Remedies Code section 103.001.**

Clearly, you found the defendant has a debt to me, owing recovery of my property taken, damaged or destroyed (§17, Art. I, Tex. Const.) and owing for my recovery of damages for Wrongful Imprisonment (§103.105, Tex.Civ.Prac& Rem.Code) and ordered, rendering a "decree", the district court exercise subject matter jurisdiction over my claims, and the responsibility of the debtor, the government, to pay me, Heimlich

The Defendant government did not file a Petition for Review. To the contrary, Defendant thereafter stipulated to Liability. Defendant did so in pleading, with signature of the Defendant, by duly authorized Official, an Assistant Attorney General, on October 25, 2004 [Appendix B], And again, on the record during the trial on damages [Appendix C]. Clearly, if the defendant now has a grievance, it is not with me, plaintiff / Judgment-Debtor, but with the defendant's Legal Counsel, for Legal Malpractice. Jurisdiction for this is not in this case, and does not involve me, Heimlich, as a party.

You, our Court of Appeals do not have jurisdiction to grant Defendant's request for a second review of the Fact and Law previously performed by you. Your Judgment is conclusive on the Fact and Law pursuant to our Texas Constitution [§6, Art.5]and Texas Government Code [§22.225].

Furthermore; as your Review of the Facts followed review of our Court of Appeals, Fourteenth Supreme Judicial District, and Review of their Judgment by our Texas Court of Criminal Appeals, you lack jurisdiction to review the Findings of Fact by the Honorable Judges serving in these jurisdictions.

## JUDGMENT CONCLUSIVE ON FACT AND LAW

Pursuant to our Texas Constitution, §6 of Article 5(a), your Judgment of January 30, 2003, is conclusive on the question of fact, the fact of my Actual Innocence by which liability of the Defendant has been established:

> **TEXAS CONSTITUTION:** (emphasis added):
> Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. **Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error**. Said courts shall have **such other jurisdiction**, original and appellate, as may be **prescribed by law**.

Pursuant to "other jurisdiction", "prescribed by law" your Judgment of January 30, 2003, is conclusive on the Fact and the Law, establishing the liability of the Defendant:

> **Texas Government Code: § 22.225.**
> **EFFECT OF JUDGMENT IN CIVIL CASES.**
> (a) A judgment of a court of appeals is conclusive on the facts of the case in **all** civil cases.
> (b) Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, **and a petition for review is not allowed to the supreme court,** in the following civil cases:

## Decisional Law

You are further enjoined by Decisional Law. Of particular relevance to this injunction is the decision of our Texas Supreme Court released April 21 of this year, 2006, in Sheriff of Harris County v. Long, cause no. 03-0204, addressing "whether a government [unit] challenge to subject matter jurisdiction is appealable if raised in a motion for summary judgment."

"Generally, appeals may only be taken from final judgments or orders". The appeal, 03-02-00151-CV, [Heimlich v. State of Texas, 988 S.W.2d 382] in GN100142, was a Final Judgment. Note the plain, clear, language in the Judgment "THIS IS A

FINAL JUDGEMENT" signed January 8, 2002, 4 years ago, [Appendix D]. At issue was the liability of the Defendant and Final Judgment was granted on assertion of the Defendant they were not liable. You, our Court of Appeals, reversed finding the Defendant Liable to me, Heimlich, establishing their debt to me as a matter of law and fact, with remand for a determination of a sum certain amount of recovery.

Defendant's brief, in this second appeal, asserts the district court did not have subject matter jurisdiction [See brief of public record filed April 19, 2006]. How can the Defendant assert the district court did not have jurisdiction when you, our Court of Appeals, in Judgment of January 30, 2003, followed by mandate of July 2, 2003, ordered the district court to exercise jurisdiction? Apparently, the Defendant is asserting you, our Court of Appeals, did not have jurisdiction for your Judgment of January 30, 2003 and is, in effect, not submitting an appeal, but a Motion for Rehearing on this assertion.

In Sheriff of Harris County v. Long, our Texas Supreme Court held:

> ***The Legislature provided for an interlocutory appeal when a trial court denies a government [ unit's] challenge to subject matter jurisdiction. The Legislature provided for an interlocutory appeal when a trial court denies a government [unit's] challenge to subject matter jurisdiction, irrespective of the procedural vehicle used. TEX.CIV.PRAC. & REM. CODE §51.014(a)(8); Haris County v. Sykes, 136S.W.3d 635, 638 (Tx. 2004); see also Surgitek, Bristol-Myers Corp v. Abel, 997 S.W.2d 598, 601 (Tex. 1999)….To the extent some courts of appeals have held otherwise, we disapprove of those holdings.***

Our Texas Supreme Court when on, in relevant part, to state:

> **The Texas Rules of Appellate Procedure only require that the record show the trial court ruled on the request, objection, or motion, either expressly or implicitly. TEX.R.APP.P.22.1(a)(2)(A). Because a trial court cannot reach the merits of a case without subject matter jurisdiction, Tex. Ass'n of Bus. V. Tex. Air Control. Bd., 852 S.W.2d 440, 443 (Tex. 1993), a trial court that rules on the merits of an issue without explicitly rejecting an asserted jurisdictional attack has implicitly denied the jurisdictional challenge. ….That implicit denial satisfies section 51.014(a)(8) of Texas Civil Practice and Remedies Code and gives the court of appeals jurisdiction to consider Thomas's interlocutory appeal. (emphasis added).**

Clearly, you, our Court of Appeals, had jurisdiction to rule on the issue of subject matter jurisdiction. You ruled and ordered the district court to take subject matter jurisdiction on my claims for adequate compensation for property taken, damaged, or destroyed [§17 of Art. I, Texas Constitution] and for damages inflicted by Wrongful Imprisonment [§103.105 TEX.CIV.PRAC. & REM. CODE].

**CONCLUSION OF WRIT OF INJUNCTION**

The time for defendant to submit to you a Motion for Rehearing has passed. The time for defendant to Petition to our Texas Supreme Court for review has passed.

Your Judgment, the Judgment of our Court of Appeals, January 30, 2003, published for citation as Heimlich v. State of Texas, 988 S.W.2d 382, is now decisional law, and Law of the Case. It now stands not only as Law, but as Fact established in the Public Record. It stands a truth that cannot be further contested, nor denied.

**Conscious, deliberate, disregard for the Truth is not within the jurisdiction of any court on this Land of Texas, or the greater land known as the United States of America. Your Plenary Power to grant defendant a Motion for Rehearing, disguised as an Appeal, is enjoined, prohibited, by Law and by the Texas Rules of Appellate Procedure.**

## MEMORANDUM OF LOGICAL ARGUMENT AND LAW IN SUPPORT OF WRIT OF INJUNCTION

### PUBLIC INTEREST – SOUND PUBLIC POLICY

It is in the public interest that litigation, where the general public will ultimately bear the costs of litigation, and the remedy the law mandates on final adjudication, be expedient. That is, when the government, or it's sub-units, officers or employees, are the defendant the defenses protecting against frivolous litigation, known as immunity defenses, be promptly reviewed. It is sound public policy that the government, as defense counsel, has the duty to secure prompt adjudication or waive any jurisdiction to present sovereign immunity as defense, a jurisdictional bar to subject matter or liability.

This is necessary to protect the wronged party from being subjected to protracted litigation, and the resultant cost imposed not only on the wronged party, but also on the general public, the public at large, the people of the State of Texas who ultimately bear the additional, unnecessary, litigation costs and additional recovery for injuries and damages inflicted on the wronged party, and mandated by law, to compensate the wronged party for the additional takings caused by delay of justice.

It is clear, when statutory Law, § 22.225(b), [Gov. Code] with it's reference to § 51.014 [TX CP& R], is taken in conjunction with the Law referred to by the government in their brief, §311.034, establishing the Public Policy objective to "preserve the

legislature's interest in managing state fiscal matters through the appropriations process", it is the Public Policy of this State, established in Law, that the government has a duty to raise defenses at the earliest possible time in the litigation process, or waive the defense. The government has, in this case, waived any jurisdiction for further appellate review in this court, or via Petition for Review to our Texas Supreme Court.

In this Appeal by the government, now before this Court of Appeals, government challenges the district court's subject matter jurisdiction. In effect, the government wants to:

1 – Appeal the 11-1-2001 denial of the government's Plea to the Jurisdiction over 5 years after initial denial. A plea also denied by this court in it's judgment of 1-30-2003, over 3 years ago.

2 – Appeals, again, the Final Judgment of 11-8-2002 granted the government in response to the government's Motion for Summary Judgment. By filing on 12-6-2005 what is nothing more than a Motion for Rehearing under color of law as an appeal.

The argument of the government in this Appeal, by and through an Agency of the Executive Division of government, our Office of the Attorney General, is the same argument presented in the government's Plea to the Jurisdiction over 5 years ago, and in the government's Motion for Summary Judgment over 4 years ago. This delay in the due course of justice is contrary to the public interest / the benefit to the people of the State of Texas. The public / people have a vested financial interest in their State Treasury, as appropriated to pay claims for recovery of property taken by their government, and an interest in the litigation expense of defending these claims, but first and foremost, an interest in liberty secured by a government bound by the Rule of Law.

**ACTUAL INNOCENCE**
**A question of Fact, NOT a question of Law**

The defendant now asserts, in their motion / appeallate brief, that Actual Innocence is a question of Law. No. Actual Innocence is a question of Fact, as it applies to my claim, pursuant to Law that rules this claim, §103.102. See plain language:

> **§ 103.102. Standard of Proof**
> The petitioner must establish by a preponderance of the evidence that the petitioner is entitled to compensation and the amount of compensation to which the petitioner is entitled.

Petition was made to our Texas Court of Criminal Appeals on the question of my, plaintiff now Judgment-Creditor's, Actual Innocence. The Standard for Review was an assumption of Actual Guilt, following conviction by a Jury, found on a Standard of Review requiring proof beyond a reasonable doubt. A high standard of review of facts / evidence / proof.

Pursuant to our Texas Civil Practice and Remedies Code, the defendant had to prove Guilt by a lesser standard, by a preponderance of the evidence presented to the Trier of Fact. Failing to do so, my Actual Innocence is presumed. Or, conversely, I, the Plaintiff, had to provide evidence and establish (proof) of Actual Innocence by a preponderance of the evidence.

During the trial I offered proof of my Actual Innocence. The defendant objected stating; {Mr. Dennis, speaking as duly authorized Attorney representing the defendant}: **"Again, Your honor, relevance to all of this. Liability has been established. We're here about damages. I don't see how that relates to damages."**

Defendant cannot, now, in good faith, argue the district court did not have subject matter jurisdiction to enter a judgment for recovery by the plaintiff for his (my) damages.

Defendant stipulated to liability, hence, stipulated that my innocence as actual, as a matter of Fact. Defendant waived any right to raise Actual Innocence as a question of law, or challenge to my assertion my Innocence was, and remains, Actual, as a matter of Fact, Truth in the Public Record, by Final Judgment of our Texas Court of Criminal Appeals, and by conclusive judgment of our Court of Appeals, this Court of Appeals, the Third, rendered January 30, 2003 in cause no. 03-02-00151-CV [Heimlich v. State of Texas, 988 S.W.2d 382]

**ENJOINED BY TRAP 44.1**
**No "error of law" by trial court**

> **RULE 44. REVERSIBLE ERROR**
> 44.1 Reversible Error in Civil Cases.
> (a) Standard for Reversible Error. No judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of:
> (1) probably caused the rendition of an improper judgment; or
> (2) probably prevented the appellant from properly presenting the case to the court of appeals.
> (b) Error Affecting Only Part of Case. If the error affects part of, but not all, the matter in controversy and that part is separable without unfairness to the parties, the judgment must be reversed and a new trial ordered only as to the part affected by the error. The court may not order a separate trial solely on unliquidated damages if liability is contested.

The trial court made no "error of law" as the trial court acted (1) the judgment and mandate from you, our Third Court of Appeals, and (2) objection by the defendant, now Appellant complaining the trial court lacked subject matter jurisdiction, preventing the plaintiff from presenting the case of his Actual Innocence, by stipulating to their own, the defendant's liability.

The only part of the Final Judgment of October 3, 2006, subject to review for error, is Point of Error No. 2 in Defendant's Motion for New Trial, of record November

1, 2005. [Appendix E] Defendant's Motion to Amend their Motion for New Trial was dismissed, as untimely, [Appendix F] and this order has not been appealed, nor do the Rules and well-established Decisional Law permit appeal of this Order. See Plaintiff's Motion to dismiss Defendant Supplement, of Record Nov. 23, 2005, in file No. GN100142, followed by order recorded Jan. 5, 2006.

**ADDITIONAL CONCLUSION OF WRIT OF INJUNCTION**

**You, the members of our Honorable Court of Appeals, for our Third Supreme Judicial District, lack jurisdiction to Review Appellant / government's Point of Error No. 1 in their Motion for New Trial setting forth issue for review in this, their appeal, of Public Record 03-05-00827-CV.**

**You are enjoined by your own decree, of public record under file no. 03-02-00151-CV** [Heimlich v. State of Texas, 988 S.W.2d 382]**. You are prohibited by Law from refusal or neglect to enforce your Decree, as required by Rule 308, Texas Rules of Civil Procedure, as a decree of our Texas Supreme Court.**

**The Law cannot be overruled or dismissed. The Law can only be repealed, amended, or declared unconstitutional on Constitutional Question, properly raised.**

**ADDITIONAL ARGUMENT**
**CAUSE FOR EXPEDIENT REVIEW OF THIS WRIT OF INJUNCTION**

I am trying to protect myself, as a person with Rights secured by the Constitution and Laws of the United States and of this State, and protect the class of persons known as the people of the State of Texas, entitled to the same, equal protection of the law.

What the person trusted with our Office of Attorney General has done, through this Appeal, is invite those assigned to serve, benefit, the State of Texas (correctly the

people of the State of Texas) to step outside the function of their Office of Public Trust and join him, the person assigned the Functions of the Office of Attorney General, in a conspiracy to impede, if not defeat, the due course of justice". [see 42 USC 1985]

The person trusted to be our Attorney General for our State has asked for exemption from the Laws that regulate the due course of law in our State, the Rules of Court. This Individual trusted to be our Attorney General for our State has asked Court Officers under his supervision, and the Honorable Judges of this Court, to act with contemptuous disregard for the Rules decreed by our Texas Supreme Court as binding on those assigned, and paid emoluments, to perform the functions delegated by the people of the State of Texas to those who serve in our Court of Appeals.

This Individual, a person trusted to be our Attorney General, asks this court for exemption from laws applicable to his position of Public Trust as an Attorney, and as our Attorney General. He ask this court to place him above the law. He makes this request to the Individuals in this Court, with conscious and deliberate disregard for the unnecessary litigation expense, and other burdens, imposed upon the sovereign of this State, the people of the State of Texas. A burden imposed by and through the taking of their State Treasury as appropriated to the Public Account by the legislature, given to our Office of the Attorney General and to our Judicial Division, with expectation of fiscal responsibility, fiduciary trust, it will be used for the intended purpose of "preserve, protect, defend the Constitution and laws", NOT pervert the law and attempt to circumvent it, avoid it's enforcement.. Our Attorney General does this through his agents, Individuals under his supervision under the Color of serving, providing a benefit, to the people of the State of Texas, but acting in absence of jurisdiction.

Respectfully, humbly, I say to you, the individuals, human persons serving in our Court of Appeals, granting that person his wish is not in the Public Interest. It is not Sound Public Policy. Even if the Individuals the people of the State of Texas trust to provide them with benefit, from their service in this Court, avoid enforcement of the Law by others who choose to be derelict in their duties, this would not be wise in this day and time when communication and information technology make it more difficult to hide malfeasance and dereliction of duty from the people of the State of Texas, from the public. Unpublished opinions no longer remain unpublished. A lack of interest or failure to see profitability, by major the media, will no longer protect those who are malfeasance or derelict in their duties. Nor will attempts to cover the acts with clever language to confuse the public from full awareness of the crimes committed. The truth can and will be revealed via other means to a public more educated than the people of the past.

**Government as a Person,**
**Equal Rights secured by Equal Protection of the Law**

It is well established that government is a person. Albeit an artificial person, a fiction of law, a legal entity. Government, as a person, has no Legal Rights superior to my Substantive Rights. At most, our Rights, regardless of whether characterized as Legal or Substantive, are Equal. Therefore, Government, including the government of this State, must litigate as any other party / person, in any court on this Land, known as the United States of America, including Texas courts, to avoid violating requirements of Federal Due Process. This has been recognized by our Texas Supreme Court.

**See Davis v. City of San Antonio, 752 S.W.2d 518 (Tex.1988):**

> We consider it established that governmental units litigate as any other party [**3] in Texas courts and must observe the same rules that bind all other

litigants, which include the laws and rules governing pleadings and burden of proof. Texas Department of Corrections v. Herring, 513 S.W.2d 6, 7-8 (Tex. 1974), citing Texas Co. v. State, 154 Tex. 494, 505, 281 S.W.2d 83, 90 (1955). Rule 94 of the Texas Rules of Civil Procedure requires that in pleading to a preceding pleading, a party "shall" set forth affirmatively any matter constituting an avoidance or affirmative defense. Having not met its pleading burden under Tex. R. Civ. P. 94, the City is not entitled to avoid liability on the ground of governmental immunity.

**See also Texas Department of Transp. v. Jones 8 S.W.3d 636, 43 Tex. Sup. Ct. J. 143 Tex.,1999, supporting and making clear the finding in Davis.**

Our review concerned the City's ability to avoid liability when it failed to raise immunity until it filed a motion for judgment notwithstanding the verdict. Davis, 752 S.W.2d at 519. We held that "sovereign immunity may not be asserted as a jurisdictional obstacle to a trial court's power to hear cases against governmental defendants" and that by failing to plead immunity, the City waived its ability to rely on that defense. Id. at 519-20.

Any party that pleads guilty has accepted liability and confessed to judgment. The Rule is the same for government, as a party / person, as it is for any other party / person engaged in litigation, be it a criminal venue or a civil venue, be they plaintiff or defendant. That confession cannot be withdrawn absent a showing of extraordinary circumstances. The defendant in this case, with an abundance of resources including a Law Firm known as our Office of the Attorney General, with more Lawyers than any

other Law Firm operating on our Land, cannot possibly show extraordinary circumstances to justify withdrawal of it's acceptance of liability [See appendix B & C]

**The LAW as EVIDENCE**

The Law stands as evidence. It is a Fact that cannot be denied. The Law, in the criminal trial underlying the present case, was submitted as evidence protecting my substantive right to property. The Actors for the Defendant, an Individual employed as a prosecutor, an agent of the defendant in this cause, and an Individual employed as an Officer for the defendant, an agent of the defendant, were at minimum negligent, or refused to do their duty, or acting contrary to their duty to confuse the trier of fact, a jury, to overrule, dismiss, the evidence. The mechanism created by the sovereign for this land foiled their scheme, whether or not the scheme was intentional, or the result of negligent incompetence (not material or relevant to the claim at issue) and the Law prevailed.

The Law will prevail to foil any refusal or neglect of duty, and the Law, including the Law provided in the Notice attached hereto, and incorporated herein by reference, the Constitution of the United States of America, and laws made in pursuance thereof, including but not limited to 42 USC 1986, as part of the "supreme Law of the Land, is evidence, a Fact, that cannot be denied. To this my life is dedicated.

**PRAYER**

With each passing day the people of the State of Texas, the general public, is burdened with the cost of additional post-judgment interest that must be, eventually, appropriated from their State Treasury into the Public Account for payment of the recovery mandated by Law in the Final Judgment of October 3, 1006.

In their name, and on their behalf, I petition for expedient review of this Injunction, followed by a Writ of Mandamus, an Order, from our Honorable Judges in our Texas Supreme Court directed to the Respondents, and such other and further relief which this Honorable Court deems just under all the circumstances.

# NOTICE TO RESPONDENTS, et al.

To the Individual, Natural Person, or persons as the case may be,
trusted by Office or Employment in our Texas Supreme Court,
and the Legal Entity from which they receive their emoluments:

## Section 10, Article 16, Texas Constitution and
## 42 USC 1986, liability for neglect to prevent

**The Texas Constitution**

**Article 16 - GENERAL PROVISIONS**

**Section 10 - DEDUCTIONS FROM SALARY FOR NEGLECT OF DUTY**

The Legislature **shall** [emphasis added, pursuant to §311 definitions, imposes a duty] provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

Texas Government Code; § 311.016. "MAY," "SHALL," "MUST," ETC.

(2) "Shall" imposes a duty.

**§ 1986. Action for neglect to prevent;** Release date: 2005-12-27

**Every person** who, having knowledge that **any** of the wrongs conspired to be done, and **mentioned in section 1985** of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if

such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for **all** damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and **any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action**;

**Sec. 1985. Conspiracy to interfere with civil rights**

(2) Obstructing justice;

or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire ….on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; …….

or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may

have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

**Entitlement to Equal Protection of the Law, for "persons"**
**Pursuant to decisional, controlling, law as binding precedent**

The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no [358 U.S. 1, 17] other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Ex parte Virginia, 100 U.S. 339, 347 . Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313 ; Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230 ; Shelley v. Kraemer, 334 U.S. 1 ; or whatever the guise in which it is taken, see Derrington v. Plummer, 240 F.2d 922; Department of Conservation and Development v. Tate, 231 F.2d 615.

**No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it.**

Above quotes from COOPER v. AARON, 358 U.S. 1 (1958)

## Conclusion

You may be held responsible for payment of sanctions, in your character as an Individual Person, by deduction from your salary (emoluments), and for recovery of injuries cause by your neglect (negligence, does not require "intent" or even knowledge of your duty) to prevent obstruction of justice, or the deprivation of my rights and privileges, that cause injury to me. So too is your respondeant superior, "the State" [meaning government of], for what you do as a Person acting as an Officer or employee, or that you, and others you can influence as Judicial Authorities of the State of Texas, can do but failed to do, to prevent wrongful acts. I humbly request you be diligent and responsible. Do not join, or aid and abet, directly or indirectly, those that war against our Constitutions, State and Federal. Pursuant to Texas Law, Art.2.03 Texas Code of Criminal Procedure, our Attorney representing us, the people as "the State", has a duty to prosecute any official who violates law by which they are enjoined, for Neglect of Duty.

## APOLOGY FOR FORM, PRAYER FOR SUBSTANCE

I apologize for any lack of form and pray the Honorable Judges of this Court will discern the substance herein. I do not have a formal education in the practice of Law and am not licensed as a professional in this practice. Due to unlawful taking of my property, by the defendant in Cause No. GN100142, on of Record in our Court of Appeals, 03-05-00827-CV, I do not have property to exchange for professional counsel and/or representation (an Attorney, licensed to practice law). Therefore, my form may not be of the same quality or style of that typically seen in pleadings to this court.

However, where the form may be lacking, the substance of what is required by the Rules 52 of the Texas Rules of Appellate Procedure, is present and discernable with a little effort put forth by our public servants, those employed in our Texas Supreme Court.

I have a substantive Right to have my pleadings reviewed by "less stringent standards than formal pleadings drafted by lawyers". This is a Right recognized by dicta of our United States Supreme Court, and now well-established law. See ***Haines v. Kerner, 404 U.S. 519 (1972)*** , more recently CASTRO V. UNITED STATES 540 U.S. 375 (2003), which also requires warning with opportunity to correct my pleadings prior to overruling, based on defects in pleadings, or prior to dismissal without explanation.

**Certificate of Service**

I certify that on this, the _____ day of May, 2006, I submitted by postal mail 6 copies, one for each of the Judicial Officials elected or appointed to serve as Judges, and who accepted the additional responsibility of supervising those employed therein. Plus an additional copy direct to Patrick Shannon, as Chief Staff Attorney Third Court of Appeal.

I certify that I also served, on same day by same means, a copy to the Real Party in Interest, government of our State of Texas, by and through our Attorney General as represented by Lead Counsel of Record 03-05-00827-CV.

Respectfully Submitted,

_____
Edmund Bryan Heimlich

**The following is the Proposed WRIT OF MANDAMUS**

# MANDATE

**THE STATE OF TEXAS**

**TO THE COURT OF APPEALS, THIRD SUPREME JUDICIAL DISTRICT; Greetings,**

In reference to your File number 03-02-00151-CV and 03-05-00827-CV.

**We command you to observe the Order of this Court, set forth in Rules of Court. Specifically but not limited to the following:**

Rule 308, Texas Rules of Civil Procedure

Rule 53.3, Texas Rules of Appellate Procedure

Rule 19, Texas Rules of Appellate Procedure,

Rule 44.1, Texas Rules of Appellate Procedure.

And Rule 45, Texas Rules of Appellate Procedure, (frivolous appeals) as well as all other Rules of Court imposing duties, obligations, and responsibilities on all court officers to secure, artificial persons, to natural / human person due course of law / due process of law.

**We also command that you observe our decisional law as set forth in;**

Our decision released for publication April 21 of this year, 2006, in Sheriff of Harris County v. Long, or record in our court as cause no. 03-0204,

Davis v. City of San Antonio, 752 S.W.2d 518 (Tex.1988), as clarified by our decree in Texas Department of Transp. v. Jones 8 S.W.3d 636, 43 Tex. Sup. Ct. J. 143

And our decree in Moritz v. Preiss (Sup. 2003) 121 S.W.3d 715

**Wherefore, we command you to observe the orders of our Texas Supreme Court in this behalf, your File number 03-02-00151-CV and 03-05-00827-CV, and in all things have our orders duly recognized, obeyed, and executed.**

Witness the Honorable _____
With seal of the court affixed this _____ day
of _____, _____.

_____