

RECENT CASES

2019 Laredo Roadshow

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TOMA – intentional circumvention held unconstitutional

- *State of Texas v. Craig Doyal*, [PD-0254-18](#) (Tex. Crim. App. – February 27, 2019)
- Montgomery County Judge indicted – road issues
- Difficult to support the provision since TOMA applies only when a quorum is present but the crime is committed when a quorum is not present.
- Further, the phrase “knowingly circumvent” does not focus on real-world conduct and is a catch-all provision in the abstract.
- Unconstitutional on its face

Texas Supreme Court holds standards in same-sex discrimination cases are distinctly different than opposite-sex standards

- *Alamo Heights Independent School District v. Clark*, No. 16–0244, 2018 WL 1692367 (Tex. April 6, 2018).
- This is a workplace same-sex discrimination, harassment and retaliation case .
- Female co-coach was often rude, told stories of sexual escapades, would comment on Clark's body.
- Clark Complained
- Was later fired for poor performance

- The Court recognized same-sex discrimination cases = more complicated
- Types: 1) sexual desire, 2) general hostility to a particular gender , or 3) direct comparative evidence of treatment of both sexes.
- All require conduct to have more than offensive sexual connotations, but to be discriminatory because of the gender.

Wasson Interests, Ltd. vs. City of Jacksonville, 17-0198, — S.W.3d. — 2018 WL 2449184 (Tex. June 1, 2018) = Gov vs. Prop: the focus belongs on the nature of the contract, not the nature of the breach.

- Long history
- Waterworks developed houses around lake, leased to Wassons
- Eviction issues
- 2016 opinion – Gov function and prop function in contracts
- This opinion

- 4 Part Test
 - (1) mandatory or discretionary,
 - (2) benefit the general public or the City's residents,
 - (3) State's behalf
 - (4) sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.
- Here, Court held = Proprietary

Tex Sup. Ct – EDCs Do Not Have Governmental Immunity

- *Rosenberg Development Corp. v. Imperial Performing Arts, Inc.*, [No. 17-0660](#) (Tex. – March 9, 2019).
- EDC had contract with performing arts group to renovate
- Costs exceeded contract by 10X – Sued
- Government Immunity is Common Law – court created and controlled
- Reserved decision on statutory immunity

- Statute = “not liable for damages arising from the performance of a governmental function ...” and
- “[f]or purposes of Chapter 101, Civil Practice and Remedies Code, a Type B corporation is a governmental unit and the corporation’s actions are governmental functions.
- Immunity from liability, not governmental liability
- Chief Justice Hecht wrote separately
 - May not collect on Judgement

Tex. Sup. Ct – Rebuild of Water Dam is discretionary = immunity

- *Tarrant Regional Water District v Johnson, et al.*, 17-0095 (Tex. April 12, 2019)
- District rebuilt dam in 2003
- Plaintiff walked across, slipped, drowned
- Family sued = erosion of bed was never returned to original state
- Dam engineer knew of erosion = decided to allow it to protect kiaks

- TTCA focus = preservation of the government's discretionary decision-making authority, rather than on the often-useful but extratextual distinction between design and maintenance.
- "Public Works" alleged = Natural River Bed
- Analyzing the riverbed as if it were a structural public work not proper analysis
- "The notion that the District had a legal obligation to keep this natural "public work" at a constant depth beneath an opaque and running body of water is unsupportable. "

Texas Supreme Court held the City of Dallas' amendment to its pension plan did not violate the Texas Constitution.

- *Eddington v. Dallas Police & Fire Pension Systems, et al.*, [17-0058](#) (Tex. March 8, 2019)
- The Dallas Police and Fire Pension System (“the System”) amended its pension plan to reduce the interest rate paid on Deferred Retirement Option Plan (“DROP”) accounts.
- Lowering the interest rate as-yet unearned DROP payments does not affect a benefit accrued or granted to employees.
- Interest already credited to DROP accounts is not impacted. The reduction in DROP account interest is prospective only.

Texarkana Court of Appeals holds county court at law has jurisdiction to hear PIA mandamus against city

- *Kenneth Craig Miller v. Gregg County*, , 06-17-00091-CV, 2018 WL 1386264 (Tex. App.—Texarkana Mar. 20, 2018, no pet.)
- Miller filed a suit under the PIA seeking a writ of mandamus in County Court at Law #2
- The PIA states “A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located.” TEX. GOV’T CODE ANN. § 552.321(b) (West 2017).
- After a statutory construction analysis, the Texarkana Court held §552.321(b) does not deprive a county court at law of its concurrent jurisdiction under §25.0003(a).

Fort Worth Court of Appeals holds candidate on ballot for two separate offices resigned second office by law, not the first, once taking oaths

- *City of Forest Hill, et al. v. Michelle Benson, et. al.*, [02-17-00346-CV](#) (Tex. App. – Fort Worth, July 12, 2018).
- Benson on ballot for both City Council and Library Board at same time. Won both
- Incompatible offices, but which one controls
- Election Code §201.025 (1st office vacated) does not apply if elected on same day
- Election Code §141.033 - the invalidity of an application on ballot in same election control.

5th Court of Appeals holds mandatory third-party venue provision controls over TTCA venue provision

Pioneer Natural Resources USA, Inc. v. Texas Department of Transportation, 05-17-01245-CV (Tex. App. – Dallas, July 20, 2018).

- Car accident where Pioneer tractor involved.
- Pioneer brought third-party claims against TxDOT
- Did not sue in Travis
- Section 15.062(a) of the Civil Practice and Remedies Code notes mandatory venue for third-party claims, but §101.102(a) notes a form of mandatory venue for TTCA claims
- Court held §15.062(a) controls

Get You Affidavits Correct


- *City of Dallas v. Lamb*, 05-16-01506-CV, 2017 WL 5987777 (Tex. App.—Dallas Dec. 4, 2017, no pet.)
 - Intersection near building
- *City of San Antonio v. Torres*, 04-17-00309-CV, 2017 WL 5472537 (Tex. App.—San Antonio Nov. 15, 2017, no pet.)
 - Looking both ways before entering intersection after STOP!
 - Compare
- *City of San Antonio v. Reyes*, 04-16-00748-CV, 2017 WL 3701772 (Tex. App.—San Antonio Aug. 23, 2017, no pet.) (mem. op.). Good affidavit of approaching intersection = immunity

Honorable Mentions

- *State of Texas ex Rel. George Darrell Best v Paul Reed Harper*, 16-0647, — S.W.3d – (Tex. July 29, 2018) = **Removal statute subject to Tex. Citizen Participation Act.**
- *San Antonio Independent School District v. Maria Hale, et al.* 04-18-00102-CV (Tex. App. – San Antonio, June 27, 2018) = **Negligent maintenance of school bus is not negligent operation or use**
- *Univ. of Texas M.D. Anderson Cancer Ctr. v. McKenzie*, 529 S.W.3d 177 (Tex. App.—Houston [14th Dist.] 2017, pet. filed).
Administering drug is the “use” of tangible personal property for immunity purposes.

- *City of Sealy v. Town Park Ctr.*, 01-17-00127-CV, 2017 WL 3634025 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, no pet.) (per curiam) (mem. op.). **Interlocutory appeal mooted by Plaintiff's non-suit, even though Plaintiff refiled similar suit directly after dismissal**
- *City of Donna v. Ramirez*, 548 S.W.3d 26 (Tex. App.—Corpus Christi 2017, pet. filed), reh'g denied (Dec. 4, 2017) **TOMA posting inside City Hall with a “cancelled” stamp on an agenda controlled, regardless of other agendas says 13th Court of Appeals**
- *Jesus Christ Open Altar Church, LLC v. City of Hawkins*, 12-17-00090-CV, 2017 WL 6523088 (Tex. App.—Tyler Dec. 21, 2017, no pet.), reh'g denied (Feb. 7, 2018). **Even though no street for 100 years, mere non-use of a dedicated road easement does not amount to abandonment.**

- *VIA Metropolitan Transit Authority v. Shantina Reynolds*, 04-18-00083-CV (Tex. App. – San Antonio, July 18, 2018) **VIA bus system not immune from bus accident, notwithstanding common carrier heightened standard of care argument**



The End...Well no...it never ends...

- **TO BE CONTINUED.....**