

# **GOVERNMENTAL IMMUNITY, QUALIFIED IMMUNITY, AND OTHER FUN STUFF TO KNOW**

**PRESENTED BY MELISSA A. MILES, ESQ.**

**BOJORQUEZ LAW FIRM, P.C.**



# WHAT IS GOVERNMENTAL IMMUNITY?

- **GOVERNMENTAL IMMUNITY ACTS TO SHIELD A CITY FROM LIABILITY AND SUIT**
  - ▶ **A CITY HAS NO IMMUNITY ON ITS OWN**
  - ▶ **A CITY'S GOVERNMENTAL IMMUNITY DERIVES FROM THE STATE'S SOVEREIGN IMMUNITY**

# IMMUNITY DOESN'T MEAN A CITY WON'T BE SUED



# **IMMUNITY IS A DEFENSE THAT LEADS TO DISMISSAL OF THE SUIT**

- **LACK OF JURISDICTION (PLEA TO THE JURISDICTION)**
  - ▶ **STOPS DISCOVERY UNTIL DECIDED**
  - ▶ **IF DENIED, IMMEDIATE APPEAL**

# WAIVERS OF IMMUNITY

- **FOR A CITY TO BE SUED, IMMUNITY MUST BE WAIVED BY A STATE OR FEDERAL LAW**
  - ▶ **FEDERAL CIVIL RIGHTS ACT PROVIDES A CAUSE OF ACTION FOR CONSTITUTIONAL VIOLATIONS**
  - ▶ **OTHER FEDERAL LAWS SUCH AS FAIR HOUSING ACT, REHABILITATION ACT, AND AMERICANS WITH DISABILITIES ACT**
  - ▶ **TEXAS CONSTITUTION**
  - ▶ **TEXAS TORT CLAIMS ACT**
  - ▶ **TEXAS WATER CODE**

# **FEDERAL CIVIL RIGHTS CLAIMS AGAINST A CITY (1983)**

- **42 US CODE SEC. 1983 PROVIDES A CAUSE OF ACTION AGAINST CITIES FOR CIVIL RIGHTS VIOLATIONS**
  - ▶ **1<sup>ST</sup> AMENDMENT (SPEECH, RELIGION, ASSOCIATION)**
  - ▶ **5<sup>TH</sup> AMENDMENT DUE PROCESS (PROCEDURAL AND SUBSTANTIVE - LIFE, LIBERTY, PROPERTY)**
  - ▶ **14<sup>TH</sup> AMENDMENT EQUAL PROTECTION ( DISCRIMINATION BASED ON RACE, RELIGION, NATIONAL ORIGIN, OR ALIENAGE)**
- **A CITY IS LIABLE ONLY FOR CIVIL RIGHTS VIOLATIONS DIRECTLY CAUSED BY THE CITY'S CUSTOM, POLICY, OR PRACTICE**
  - ▶ **POLICY – BY ORDINANCE OR RESOLUTION**
  - ▶ **CUSTOM OR PRACTICE – REPEATED ACTS KNOWN TO THE COUNCIL**

# **FAIR HOUSING ACT, REHABILITATION ACT, AND AMERICANS WITH DISABILITIES ACT**

- **FAIR HOUSING ACT PROHIBITS DISCRIMINATION IN HOUSING OPPORTUNITIES, SERVICES, AND CONDITIONS BASED ON RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, FAMILIAL STATUS, HANDICAP**
- **REHABILITATION ACT PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN ANY PROGRAM THAT RECEIVES FEDERAL FINANCIAL ASSISTANCE**
- **AMERICANS WITH DISABILITIES ACT REQUIRES CITIES TO PROVIDE ACCESS TO CITY SERVICES AND PROGRAMS**

# **TEXAS CONSTITUTION, ART. I, SEC. 17, TAKINGS CLAUSE**

- **“NO PERSON’S PROPERTY SHALL BE TAKEN, DAMAGED OR DESTROYED FOR OR APPLIED TO PUBLIC USE WITHOUT ADEQUATE COMPENSATION BEING MADE, UNLESS BY THE CONSENT OF SUCH PERSON.”**
  - ▶ **ALSO KNOWN AS, “INVERSE CONDEMNATION”**
  - ▶ **EXAMPLE: CITY-OWNED AIRPORT EXPANDS AND BUILDS A NEW RUNWAY FOR COMMERCIAL JETS TO TAKE OFF AND LAND 100 FEET FROM A HOUSE**



# **TEXAS TORT CLAIMS ACT**

- **DEALS GENERALLY WITH CITY NEGLIGENCE (USUALLY BY AN EMPLOYEE) AND PREMISE DEFECTS THAT CAUSE INJURY OR PROPERTY DAMAGE**
- **SETS OUT THE LIST OF FUNCTIONS THAT ARE “GOVERNMENTAL FUNCTIONS” AND IMPLIES THAT FUNCTIONS NOT ON THAT LIST ARE “PROPRIETARY” FUNCTIONS**
- **PROVIDES A LIMITED WAIVER OF IMMUNITY FOR DAMAGE AND INJURY CAUSED BY NEGLIGENCE AND PREMISE DEFECTS IN THE COURSE OF GOVERNMENTAL FUNCTIONS**
- **A CITY HAS NO IMMUNITY FOR PROPRIETARY FUNCTIONS**
- **DID I MENTION THAT A CITY HAS NO IMMUNITY FOR PROPRIETARY FUNCTIONS?**

# GOVERNMENTAL FUNCTIONS

- **(1) POLICE AND FIRE PROTECTION AND CONTROL;**
- **(3) STREET CONSTRUCTION AND DESIGN;**
- **(5) CEMETERIES AND CEMETERY CARE;**
- **(7) ESTABLISHMENT AND MAINTENANCE OF JAILS;**
- **(9) SANITARY AND STORM SEWERS;**
- **(11) WATERWORKS;**
- **(13) PARKS AND ZOOS;**
- **(15) LIBRARIES AND LIBRARY MAINTENANCE;**
- **(17) COMMUNITY OR SENIOR CITIZEN CENTERS;**
- **(19) DAMS AND RESERVOIRS;**
- **(21) REGULATION OF TRAFFIC;**
- 2) HEALTH AND SANITATION SERVICES;**
- (4) BRIDGE AND STREET CONSTRUCTION AND MAINTENANCE;**
- (6) GARBAGE AND SOLID WASTE REMOVAL, COLLECTION, AND DISPOSAL**
- (8) HOSPITALS;**
- (10) AIRPORTS;**
- (12) REPAIR GARAGES;**
- (14) MUSEUMS;**
- (16) CIVIC, CONVENTION CENTERS, OR COLISEUMS;**
- (18) OPERATION OF EMERGENCY AMBULANCE SERVICE;**
- (20) WARNING SIGNALS;**
- (22) TRANSPORTATION SYSTEMS;**

# GOVERNMENTAL FUNCTIONS, CONT'D

- **(23) RECREATIONAL FACILITIES;**
  - **(25) PARKING FACILITIES;**
  - **(27) FIREWORK DISPLAYS;**
  - **(29) ZONING, PLANNING, AND PLAT APPROVAL;**
  - **(31) MAINTENANCE OF TRAFFIC SIGNALS, SIGNS, AND HAZARDS;**
  - **(33) ANIMAL CONTROL;**
  - **(34) COMMUNITY DEVELOPMENT OR URBAN RENEWAL ACTIVITIES UNDERTAKEN BY MUNICIPALITIES AND AUTHORIZED UNDER CHAPTERS 373 AND 374, LOCAL GOVERNMENT CODE;**
  - **(35) LATCHKEY PROGRAMS CONDUCTED EXCLUSIVELY ON A SCHOOL CAMPUS UNDER AN INTERLOCAL AGREEMENT WITH THE SCHOOL DISTRICT IN WHICH THE SCHOOL CAMPUS IS LOCATED; AND**
  - **(36) ENFORCEMENT OF LAND USE RESTRICTIONS UNDER SUBCHAPTER E, CHAPTER 212, LOCAL GOVERNMENT CODE.**
- **(24) VEHICLE AND MOTOR DRIVEN EQUIPMENT MAINTENANCE;**
  - **(26) TAX COLLECTION;**
  - **(28) BUILDING CODES AND INSPECTION;**
  - **(30) ENGINEERING FUNCTIONS;**
  - **(32) WATER AND SEWER SERVICE;**

# **TEXAS TORT CLAIMS ACT WAIVER OF IMMUNITY IN THE COURSE OF GOVERNMENTAL FUNCTIONS**

- **A GOVERNMENTAL UNIT IN THE STATE IS LIABLE FOR:**

**(1) PROPERTY DAMAGE, PERSONAL INJURY, AND DEATH PROXIMATELY CAUSED BY THE WRONGFUL ACT OR OMISSION OR THE NEGLIGENCE OF AN EMPLOYEE ACTING WITHIN HIS SCOPE OF EMPLOYMENT IF:**

**(A) THE PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH ARISES FROM THE OPERATION OR USE OF A MOTOR-DRIVEN VEHICLE OR MOTOR-DRIVEN EQUIPMENT; AND**

**(B) THE EMPLOYEE WOULD BE PERSONALLY LIABLE TO THE CLAIMANT ACCORDING TO TEXAS LAW; AND**

**(2) PERSONAL INJURY AND DEATH SO CAUSED BY A CONDITION OR USE OF TANGIBLE PERSONAL OR REAL PROPERTY IF THE GOVERNMENTAL UNIT WOULD, WERE IT A PRIVATE PERSON, BE LIABLE TO THE CLAIMANT ACCORDING TO TEXAS LAW.**

# **TEXAS WATER CODE, SEC. 11.086**

- **(A) NO PERSON MAY DIVERT OR IMPOUND THE NATURAL FLOW OF SURFACE WATERS IN THIS STATE, OR PERMIT A DIVERSION OR IMPOUNDING BY HIM TO CONTINUE, IN A MANNER THAT DAMAGES THE PROPERTY OF ANOTHER BY THE OVERFLOW OF THE WATER DIVERTED OR IMPOUNDED.**
- **(B) A PERSON WHOSE PROPERTY IS INJURED BY AN OVERFLOW OF WATER CAUSED BY AN UNLAWFUL DIVERSION OR IMPOUNDING HAS REMEDIES AT LAW AND IN EQUITY AND MAY RECOVER DAMAGES OCCASIONED BY THE OVERFLOW.**

# DALLAS LOVE FIELD PARKING GARAGE FLOODS



WEATHER APR 24



## Parking garage at Dallas Love Field floods after heavy storms sweep North Texas



*Robert Wilonsky, Jesus Jimenez and Loyd Brumfield*

# QUALIFIED IMMUNITY

- **AN EXTENSION OF GOVERNMENTAL IMMUNITY FOR INDIVIDUAL GOVERNMENT EMPLOYEES AND OFFICIALS**
- **GOAL IS TO ALLOW EMPLOYEES AND OFFICIALS TO PERFORM THEIR JOBS WITHOUT FEAR OF BEING SUED**
- **PROTECTS EMPLOYEES AND OFFICIALS WHILE PERFORMING JOB-RELATED DUTIES**

# **QUALIFIED IMMUNITY DOES NOT APPLY**

- **WHEN AN EMPLOYEE OR OFFICIAL IS NOT PERFORMING JOB-RELATED DUTIES; OR**
- **ACTS OUTSIDE THE SCOPE OF THEIR AUTHORITY (ULTRA VIRES); OR**
- **IN THE COURSE OF PERFORMING JOB-RELATED DUTIES**
  - ▶ **KNOWINGLY OR NEGLIGENTLY VIOLATED AN INDIVIDUAL'S CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS**
  - ▶ **UNDER CIRCUMSTANCES THAT A REASONABLE AND PRUDENT PERSON IN THE DEFENDANT'S POSITION WOULD HAVE KNOWN THAT HIS/HER ACTIONS OR INACTIONS VIOLATED A CLEARLY ESTABLISHED RIGHT**