

**Recent State Cases of Interest to  
Cities**

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**City of Houston v. Cogburn**  
*Houston Court of Appeals, 1<sup>st</sup> District*  
*Part I: March 19, 2013*  
*Part II: May 1, 2014*



- When Parking Meters Attack Part II: City Rematch
  - Words you don't want to see in the opening paragraphs of a Texas Tort Claims Act case:  
"He will never recover totally from his injuries."




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**City of Houston v. Cogburn**

- Person injured on tree roots and other "corruption excavated at the site"
- Tree roots are naturally occurring

**In Part I:** Court still held in plaintiff's favor because the city had control over the site and he had to walk across site to use the parking space  
Court also held that maybe the tree roots were not "naturally occurring", maybe the city planted a whomping willow there to attack and the City lost.

**In Part II:** City Rematch: Exposed Tree Roots are naturally occurring and watch where you're going. City wins.




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**City of Watauga v. Russell Gordon**  
Fort Worth Courts of Appeals  
November 21, 2012  
Supreme Court  
June 6, 2014



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**City of Watauga v. Russell Gordon**

- Use of tangible personal property
- Intentional tort?
  - Intended to use cuffs—excessive force?
  - Did not intend to cause injury
  - Consented to being handcuffed?
- Court held that excessive force is battery, intended the touch even if he didn't intend to injure . . .



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**Dallas Metrocare Servs. v. Juarez**  
Supreme Court of Texas—Per Curiam  
Nov. 22, 2013

- Whiteboard attacks individual
- No governmental agency or agent touched the whiteboard
- Court held that it may not be Metrocare's fault

*"If displaying the whiteboard constitutes "use," immunity will be waived every time a piece of government property causes injury."*



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**City of Houston v. Rhule**  
 Supreme Court of Texas—Per Curiam  
 November 22, 2013

- 1988—Workers Comp settlement agreement: city allegedly agrees to pay medical bills for life
- 2004—City stops paying medical bills because enough’s enough
- 2008—Rhule sues without going to the Division of Workers Comp first

Guess how this story ends . . . .




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**City of Houston v. Rhule**

**Failure to Exhaust Administrative Remedies**




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**City of Houston v. Proler**  
 Supreme Court of Texas  
 June 6, 2014.

“Does a firefighter who refuses to fight fires have a “disability” under either state or federal law? ”

 Justice Don Willett @JusticeDonWillett  
 No. #SCOTX

- Disability Discrimination
- What do firefighters, ballerinas, and the Spurs all have in common?

 Justice Don Willett @JusticeDonWillett  
 A reluctance to charge into a burning building is not a mental impairment at all; it is the normal human response. #SCOTX. #GOSPURSGO.




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**City of Houston v. Davis**  
*Houston Court of Appeals—1<sup>st</sup> District*  
*April 24, 2014*

- Passenger in car asks police officer to stop another car that is “trying to run him off the road”
- Officer stops stalker car, stalkee stops as well
- Stalkee driver gets out of car and acts like a fool
- Officer tells him to “get back”
- Driver does not listen . . .



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**City of Houston v. Davis**



- Berro, the Officer’s “partner”, jumps out of police vehicle, and “makes contact” with the driver with his teeth
- Injured person sues city because officer should have kept dog in the car



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**City of Houston v. Davis**

- City claims immunity under the “emergency exception” to the Tort Claims Act. TEX. CIV. PRAC. & REM. CODE § 101.055(2)
- City wins



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**Eldridge v. Brazoria County**  
Houston Court of Appeals, 1st Dist  
March 27, 2014

- Tort Claims Act: Premises Defect v. Injury due to employee action
- Individual injured on road because of missing bridge
- County argued that the alleged defect was not caused by the action of a government employee so they were not liable
- It's either/or: defect or employee negligent: waiver of immunity doesn't require both





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**City of Corpus Christi v. Ferguson**  
Corpus Christi Court of Appeals  
February 6, 2014

- Does recreational use include using the restroom?
- Slip and fall on the way from the restroom.

Ferguson: *"argues that "the act of walking back to her boat after taking a shower" was a "matter of necessity, not leisure" and is not the sort of outdoor activity or hobby contemplated by the statute as "recreation."*

Court: *"In other words, camping overnight on the boat was merely one stage of the broader boating activity for which Ferguson was present at the Marina. And Ferguson's use of the Marina's shower facilities, including her trip to and from the shower, was an inseparable part of that activity."*

Camping is recreation. Camping includes showering. Recreation use statute applies.




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**Molina v. Alvarado**  
El Paso Court of Appeals  
April 23, 2014

- Official Immunity for tort

*"seriously doubt[s] that the Texas Legislature intended to extend immunity to city employees driving vehicles under the influence of alcohol."*




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**State v. Moore Outdoor Props., LP**  
El Paso Court of Appeals  
November 13, 2013

- What is a city billboard permit worth?
- Eminent Domain: It can be considered when valuing the property but does not have value on its own
  - Billboard is a fixture, not personal property
  - Testimony about the value of the property should not include advertising revenue under *Central Expressway* but court allowed it because it was "harmless"




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**City of Keller v. Hall,**  
Fort Worth Court of Appeals  
May 1, 2014

Flooding is no laughing matter.

*"The City begins its brief by quoting some lines from Creedence Clearwater Revival's song "Who'll Stop the Rain?" The City believes that its actions did not contribute to the problem on the Property, but we assume that the quoting of the lyrics is not meant to make light of the Halls' situation. But the City did not explain how the lyrics could help us decide this case, and we therefore give no weight to them."*




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**City of Keller v. Hall,**

Taking

- Flooding on property caused by:
  - Road work?
  - Rain?



Recipe for a Taking

- Intentional
- Damaged property
- Public use




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**City of Keller v. Hall**

Intentional

- Either:
  - knows the act will cause harm or
  - knows that harm is substantially likely to occur because of governmental act
  
- Enough evidence that city knew that its road work would be likely to worsen flooding of individual's property




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**Fort Worth Indep. Sch. Dist. v. Palazzolo**  
 Fort Worth Court of Appeals  
 January 9, 2014

- Whistleblower Case
- What does an employee have to do with an employer's internal procedures to later initiate a whistleblower claim?
- Three grievances based on school actions. At hearing for third grievance:
 

*"he told the FWISD Board of Trustees that he had "no problem being reassigned," that he was "fine with either school, Arlington Heights or Western Hills," and that he was "fine with the evaluation" that he had previously challenged and that had been amended."*
- Two weeks after making these statements he sued the school for Whistleblower—court said no—can't say you're fine and then sue.
- . . . . Don't Stop Complaining




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**City of San Antonio v. Salvaggio**  
 San Antonio Court of Appeals  
 Nov. 20, 2013

- Hearing examiner discretion
- Is a post it note designating a seat number for an exam "exam materials"?
  - Officer took post it note out of exam room during exam—had written notes on note—was indefinitely suspended
- City didn't define so police chief couldn't define test or exam materials to include post it notes . . .
- Officer reinstated





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**Harris County Sheriff's Civil Serv. Comm'n v. Guthrie,**  
Houston Court of Appeals  
February 13, 2014

- Terminated for \$17
- Civil Service!
- Not really . . . What does Chapter 614 "written complaint" have to look like?
- Termination letter with allegations sufficient where allegations were violations of civil service regulations including gross overreaction (at the car wash)




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**City of Brownsville v. Longoria**  
Corpus Christi Court of Appeals  
April 3, 2014

- Collective Bargaining! (by trial)
- "Me Too" provision:

*Section 1. If the City voluntarily negotiates an across-the-board wage increase or new fringe benefit to all members of the FLSA non-exempt civilian workforce or all firefighters which exceed that granted the police officers for the year in question, the bargaining unit shall be granted the same improvement*



1<sup>st</sup> lawsuit: Police Me Too Lawsuit: settlement of which causes →  
This lawsuit: Fire Me Too Lawsuit

*Is a settlement raising salaries after dismissal of law suit a voluntary negotiation?*




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**City of Brownsville v. Longoria**

- Yes, voluntary.
  - Because settlement included a "negotiated" collective bargaining agreement and because city had to pay less in "settlement" than it would have had the case gone forward #purposeofsettlement

*the "circuitous" use of the "me too" provisions in the unions' contracts, is without merit.*

*Like trying to pay off a payday loan . . .*

PFR filed in the Supreme Court: Good Luck!!!!




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**Midtown Edge, L.P. v. City of Houston,**  
Houston Court of Appeals, First District  
February 13, 2014)

- What creates an enforceable contract?
- Letter + ordinances?
  - Letter gave him three options for wastewater line: (1) cost sharing, (2) financing the line, or (3) building the line and requesting future connectors to pay a pro rata share for connections to the line—he chose option 3.
  - Ordinances outlined exactions
- Not a contract because letter was not an offer—too vague
- Also . . . not a taking because builder did not object to building wastewater line in question. (maybe because he was relying on a nonexistent contract? )




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**Proprietary v. Governmental Function in Contracts: Do We Care?**

**Lower Colorado River Auth. v. City of Boerne, San Antonio Court of Appeals, January 8, 2014**

- Proprietary contract means waiver of immunity under Chapter 271
- Trying to use the Declaratory Judgment Act to enforce a contract

**Republic Power Partners, L.P. v. City of Lubbock, Amarillo Court of Appeals, February 5, 2014**

- Proprietary v. Governmental distinction does not matter in contracts
- City didn't sign contract so Chapter 271 does not apply
- Had they signed electric contract would likely fit under Chapter 271




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**City of Willow Park v. E.S. & C.M., Inc.,**  
Fort Worth Court of Appeals  
February 6, 2014

- Something not to try:

**12.11 Sovereign Immunity —The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.**

- Above provision literally is enough to get past Chapter 271 but unenforceable:
  - Language of Chapter 271
  - Legislative history
  - Public Policy
- On PFR to Supreme Court and court has requested response




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**City of San Antonio v. Abbott**  
Austin Court of Appeals  
April 10, 2014

- PIA Case.
- City wins!!
- Section 550.065 relating to motor vehicle accident records doesn't just mean the specific accident report but all information related to the accident report
  - Dispatch Logs are confidential



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