No. 20-0725

In The Supreme Court of Texas

PATRICK VON DOHLEN, BRIAN GRECO, KEVIN JASON KHATTAR, MICHAEL KNUFFKE, AND DANIEL PETRI,
Petitioners,
v.
CITY OF SAN ANTONIO,
Respondent.

ON PETITION FOR REVIEW FROM THE
FOURTH COURT OF APPEALS, SAN ANTONIO, TEXAS
NO. 04-20-00071-CV

RESPONDENT'S RESPONSE TO PETITION FOR REVIEW

NORTON ROSE FULBRIGHT US LLP

Daniel McNeel Lane, Jr.
State Bar No. 00784441
Aimeé Vidaurri
State Bar No. 24098550
Peyton L. Craig
State Bar No. 24109765
111 W. Houston Street, Suite 1800
San Antonio, TX 78205-3792
Telephone: (210) 224-5575
Facsimile: (210) 270-7205
neel.lane@nortonrosefulbright.com
aimee.vidaurri@nortonrosefulbright.com
peyton.craig@nortonrosefulbright.com

Counsel for Respondent

Table of Contents

Page

Index of Authorities

Page(s)

Cases

Rules and Statutes

Statement of the Case

Nature of the Case and Parties: Suit for injunctive relief under TEX. GOV'T CODE ANN. § 2400.002 by five individuals (collectively, "Von Dohlen") against the City of San Antonio ("San Antonio"). Von Dohlen alleged that, in March 2019, San Antonio denied Chick-Fil-A a location at the San Antonio Airport on the basis of Chick-Fil-A's support of religious organizations. Von Dohlen sued to compel San Antonio to open a Chick-Fil-A location at the San Antonio Airport. Chick-Fil-A was never a party to the suit. Section 2400.002 did not exist in March 2019, and did not become effective until more than six months after the airport vendor decision, on September 1, 2019.

Trial Court: Hon. David A. Canales, 73rd District Court, Bexar County.

Course of Proceedings: San Antonio filed a plea to the jurisdiction and a Rule 91a motion to dismiss Von Dohlen's claim.

Trial Court Disposition: The trial court overruled San Antonio's plea to the jurisdiction and denied San Antonio's motion to dismiss. San Antonio filed an immediate interlocutory appeal.

Court of Appeals: Fourth Court of Appeals, San Antonio (the "Court of Appeals"). Chief Justice Marion authored the opinion, in which Justices Alvarez and Rios joined.

Court of Appeals Disposition: Reversed and rendered judgment for San Antonio, dismissing Von Dohlen's case for lack of jurisdiction.

Response to Statement of Jurisdiction

Von Dohlen's appeal fails to present a question of law that is important to the jurisprudence of the state. The Court of Appeals' narrow ruling is based on the irrefutable proposition that a statutory waiver of governmental immunity is ineffective to create jurisdiction over claims based on conduct occurring *before* the statute's effective date, unless the statute (including the immunity waiver) applies retroactively. Von Dohlen concedes that the statute here, TEX. GOV'T CODE ANN. § 2400.002, is not retroactive, and that he alleged no wrongful acts by San Antonio *after* the statute's effective date. Even if Von Dohlen's appeal presented an important question of law—it does not—this appeal is a poor vehicle by which to answer that question because Von Dohlen lacks standing to bring his claim for three separate reasons, any one of which would be an independent ground for affirming the decision of the Court of Appeals.

Three respected Amici—including the Governor of the State of Texas and several legislators—have filed briefs in support of the Petition. Because their presentation rests on assumptions, derived from Von Dohlen's brief, that are not accurate, their perspectives do not establish the importance of this case to Texas jurisprudence.

The Amici argue that review is warranted because the Court of Appeals failed to observe the waiver of immunity found in Chapter 2400, parroting the Petition at 4. But the Court of Appeals did not ignore the waiver of immunity in Chapter 2400—rather, it found no waiver of immunity existed for actions that predated the statute because the statute contained no retroactive provision. Thus, Amici erroneously assume the Court of Appeals made an error based on erroneous assumptions about the law. Their pleas for review based on these false assumptions present no basis for review.

Further, the Court's interpretation should not be guided by the Governor's commentary on Chapter 2400. Those statements do not address the issue in dispute here. Although the Governor states that "[Chapter 2400's] text is clear that governmental immunity will not shield discrimination of this sort," the Governor offers nothing about the scope or effect of Chapter 2400.[1] In any event, the intent of Chapter 2400 is reflected in the language of the statute chosen by the legislature, and even a legislator's commentary (much less an executive's) cannot alter the meaning of that language. "[T]he statement of a single legislator, even the author and sponsor of the legislation, does not determine legislative intent." *AT&T Commc'ns of Tex.,*

[1] Brief for the Governor of Texas as Amicus Curiae, 1.

L.P. v. Sw. Bell Tel. Co., 186 S.W.3d 517, 528-29 (Tex. 2006). "Statements made during the legislative process by individual legislators or even a unanimous legislative chamber are not evidence of the collective intent of the majorities of both legislative chambers that enacted a statute." *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011).

The Amicus briefing submitted on behalf of 62 Texas legislators also fails to raise an issue for review for two reasons. First, the legislators concede that the statute is unambiguous.[2] As such, the Court would not consider this group of legislators' professed purposes in voting for the statute, but instead would construe the plain language of the statute. Second, the legislators concede that the statute is *not* retroactive.[3] Absent retroactive application, the plain language of statute makes clear that San Antonio is immune from suit for conduct which occurred prior to the statute's effective date: "Sovereign or governmental immunity, as applicable, is waived and abolished *to the extent of liability* for that relief."[4] Because San Antonio cannot be liable for conduct preceding the effective date, governmental immunity is not waived with respect to conduct before the effective date.

[2] Brief of 62 Members of the Texas Legislature as Amici Curiae, 4.
[3] Brief of 62 Members of the Texas Legislature as Amici Curiae, 8.
[4] Tex. Gov. Code § 2400.004 (emphasis added).

Issues Presented

1. Does the trial court have jurisdiction to hear Von Dohlen's suit against San Antonio under Chapter 2400 based on alleged wrongful acts that took place *before* the statute's effective date, even though it is undisputed that the statute is *not* retroactive?
2. Should this Court decline to review this appeal based on multiple independent grounds that would warrant affirmance of the decision of the appeals court, including that:
    - Von Dohlen lacks standing to bring suit because redress for his alleged injury—forcing two non-parties to contract with one another to open a food stand—cannot be granted by a Texas court;
    - Von Dohlen has not alleged sufficient facts to provide statutory standing because he has alleged no statutory violation; and
    - Von Dohlen lacks standing to bring this suit for failure to show individualized injury, alleging only his thwarted desire to purchase a Chick-Fil-A sandwich at the San Antonio Airport?

Statement of Facts

San Antonio owns and manages the San Antonio International Airport (the "Airport"). On March 21, 2019, San Antonio's staff presented the San Antonio City Council (the "Council") with a proposed Concession Agreement for retail space within the Airport.[5] The Concession Agreement called for Paradies Lagardere @ SAT ("Paradies"), the Concessionaire, to contract with a number of subconcessionaires to operate various retail businesses at the Airport.

The proposed Concession Agreement provided that one of the subconcessionaires at the Airport would be Chick-Fil-A.[6] However, two Council members objected to the inclusion of Chick-Fil-A, citing the company management's stance opposing civil and political equality for LGBTQI citizens, many of whom live in San Antonio.[7] One Council member proposed an amendment to approve the proposed Concession Agreement but with the proviso that Chick-Fil-A would be replaced with a different vendor. The Concession Agreement was approved, as amended, by a vote of the Council.[8]

---

[5] *See* Original Petition, ¶ 38.
[6] *Id*.
[7] *Id*. ¶¶ 39–44.
[8] *Id*. ¶¶ 39, 47. The Council's discussion regarding the amendment of the Concession Agreement was exclusively focused on the inclusion and protection of LGBTQI constituents. San Antonio does not believe that any statement or action taken on March 21, 2019 would constitute a violation of Chapter 2400 of the Texas Government Code, even if the statute had been in effect at that time. However, for purposes of this appeal, the Court need not resolve that question because Petitioners concede no violation of Chapter 2400 occurred.

After the Council voted to approve the amended Concession Agreement, the Texas State Legislature passed Senate Bill 1978, which prohibits governmental entities from taking "adverse action" against corporations due to, among other things, their affiliation with and support for religious organizations. Senate Bill 1978 was signed by the Governor, took effect on September 1, 2019, and is codified as Chapter 2400 to the Texas Government Code.[9] It is undisputed that Chapter 2400 is *not* retroactive in scope.

On September 5, 2020, four days after Chapter 2400 took effect, Von Dohlen and four other individuals filed suit against San Antonio and Paradies.[10] Von Dohlen and the other plaintiffs have no affiliation with Chick-Fil-A or with Paradies.[11] Von Dohlen later dismissed Paradies from the lawsuit.[12] Chick-Fil-A has never been a party to the lawsuit.

Von Dohlen has conceded on multiple occasions that ***he does not allege San Antonio violated Chapter 2400***. *See, e.g.*, Plaintiffs' Response to City of San Antonio's Rule 91a Motion to Dismiss, p. 12 n.1 ("'Actions' that were taken to

[9] *See* Tex. Gov. Code § 2400.002 *et seq*.
[10] *See* Original Petition, p. 1.
[11] *Id*. ¶¶ 11–15. Von Dohlen asserts that he need not establish injury because Texas Government Code 2400.004 provides him with statutory standing even if he suffered no injury whatsoever. *Id.* ¶ 16. *Von Dohlen* alternatively alleges he has standing because he will be denied the opportunity at some future point to purchase a Chick-Fil-A sandwich in Terminal A of the San Antonio Airport. *Id*.
[12] *See* Notice of Non-Suit Without Prejudice of Claims Against Defendant Paradies Lagardere @ SAT LLC.

implement the Trevino amendment before September 1, 2019, do not violate Senate Bill 1978."); Hearing Transcript, 33:15–24 ("The City's vote on March 21st, 2019, did not violate Senate Bill 1978 because the Bill hadn't been enacted at that point . . . ."). Inexplicably, Von Dohlen nevertheless seeks a declaration from the court that the pre-statute Ordinance approving the Concession Agreement violated Chapter 2400 of the Texas Government Code. *Id*. For relief, Von Dohlen seeks an order compelling San Antonio and non-party Paradies to contract with non-party Chick-Fil-A to open a location at the Airport.[13]

Statement of Procedural History

On October 21, 2019, San Antonio filed its Verified Original Answer to Plaintiffs' Original Petition and Temporary Injunction and Plea to the Jurisdiction. On November 11, 2019, San Antonio filed a Motion to Dismiss under Rule 91a of the Texas Rules of Civil Procedure on jurisdictional grounds.[14] A hearing on the Motion and Plea was held on January 9, 2020.[15] The Court denied San Antonio's motion, and overruled its plea to the jurisdiction.[16]

San Antonio filed an interlocutory appeal pursuant to Texas Civil Practices and Remedies Code sections 51.014(a)(8) and (12). Following a full briefing by both

[13] *See* Original Petition, p. 14.
[14] *See* City's Motion to Dismiss, p. 1.
[15] *See* Hearing Transcript, 3:1–3.
[16] *Id*., 57:11–13.

parties as well as oral arguments, the Fourth Court of Appeals reversed and rendered—ruling that Chapter 2400 was inapplicable to Von Dohlen's pre-statute allegations, and accordingly, Von Dohlen could not overcome San Antonio's governmental immunity.

Summary of the Argument

The Court of Appeals based its unanimous decision on the unremarkable proposition that the statutory waiver of governmental immunity in Chapter 2400 does not render governmental conduct predating the statute actionable, because the statute is not retroactive. Von Dohlen alleged no wrongful conduct by San Antonio occurring after the effective date of the statute, and Von Dohlen concedes the statute is not retroactive. There is no compelling reason to review the decision of the Court of Appeals.

Waivers of immunity have long been strictly construed. *City of Houston v. Shilling*, 240 S.W.2d 1010, 1012 (Tex. 1951).[17] Courts may not apply waivers of immunity retroactively without a sound statutory basis.[18] A decision in this case to

[17] *Lubbock Cty. Water Control & Imp. Dist. v. Church & Akin, L.L.C.*, 442 S.W.3d 297, 301 (Tex. 2014) ("When the Legislature makes the policy decision to enact a statute that waives governmental immunity, it can do so only by clear and unambiguous language. . . . The Legislature itself has demanded such clarity.") (citations omitted); *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697 (Tex. 2003) ("[W]hen construing a statute that purportedly waives sovereign immunity, we generally resolve ambiguities by retaining immunity.") (citations omitted).

[18] *See, e.g.*, *Church & Akin*, 442 S.W.3d at 301 ("[W]e have consistently deferred to the Legislature, as the public's elected representative body, to decide whether and when to waive the government's immunity.")

overturn the Court of Appeals' decision, as Von Dohlen urges, would strain the resources of governmental entities across Texas that are already dealing with numerous financial pressures. Reversal would open state subdivisions to liability for conduct that did not violate any statute at the time the conduct occurred.

Finally, granting review here would result in a waste of judicial resources because Von Dohlen lacks standing to bring this suit for several reasons, any one of which would be an independent basis to affirm the Court of Appeals' decision. Specifically, the relief Von Dohlen seeks (ordering non-parties to open and operate a Chick-Fil-A store) cannot be ordered by the trial court, Von Dohlen has not alleged facts that would confer statutory standing, and Von Dohlen's alleged injury (being deprived of a chicken sandwich at the airport) is not sufficiently particularized. The frivolous nature of Von Dohlen's alleged injury and requested relief demonstrate both that his appeal is not important to this state's jurisprudence and that his case is not worthy of this Court's attention.

The Petition should be denied.

Argument

I. The Court of Appeals' Decision Is Consistent With This Court's Precedent

Courts cannot expand governmental immunity waivers beyond what was prescribed by the legislature. *City of N. Richland Hills v. Friend*, 370 S.W.3d 369,

373 (Tex. 2012); *Manbeck v. Austin Indep. Sch. Dist*., 381 S.W.3d 528, 532 (Tex. 2012); *Guillory v. Port of Houston Auth*., 845 S.W.2d 812, 814 (Tex. 1993) (noting that narrowing scope of governmental immunity would have the same effect as waiver).

It is a fundamental rule of Texas jurisprudence that the State of Texas and its political subdivisions may not be sued without the consent of the Texas Legislature. *Hosner v. DeYoung*, 1 Tex. 764, 769 (1847); *Griffin v. Hawn*, 341 S.W.2d 151, 152 (Tex. 1960). A unit of state government is immune from suit and liability unless the state consents. *Tex. Dep't. of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). In a lawsuit against a governmental unit, the plaintiff must ***affirmatively demonstrate*** the court's jurisdiction by alleging a valid waiver of immunity. *Tex. Dep't of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001).

Any waiver of immunity must be clear and unambiguous, and any ambiguity is generally resolved in favor of preserving immunity. *Southwestern Bell v. Harris City Toll Road*, 282 S.W.3d 59, 68 (Tex. 2009); *Tooke v. City of Mexia*, 197 S.W.3d 325, 328-29 (Tex. 2006); *Wichita*, 106 S.W.3d at 697. When suit is barred by governmental immunity, dismissal with prejudice is proper. *Liberty Mutual Ins. Co. v. Sharp*, 874 S.W.2d 736, 739 (Tex. App.—Austin 1994, writ denied).

The City of San Antonio is a subdivision of the State of Texas and is entitled to governmental immunity unless specifically waived by statute. *See Dallas Area*

Rapid Transit v. Amalgamated Transit Union Local No. 1338, 273 S.W.3d 659, 661 (Tex. 2008); *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003); *Bell v. VPSI, Inc.*, 205 S.W.3d 707, 710 (Tex. App.—Fort Worth 2006, no pet.).

The Court of Appeals applied the correct standard and analysis in reviewing the Trial Court's ruling on San Antonio's plea to the jurisdiction. The Court of Appeals accurately rejected Von Dohlen's argument that Chapter 2400 can serve as a waiver of immunity for actions predating the statute.

A. The Court of Appeals Correctly Held That Von Dohlen Did not State a Viable Chapter 2400 Claim Against San Antonio

Von Dohlen asserts that "governmental immunity is 'waived and abolished' in lawsuits brought to enforce Chapter 2400."[19] As a general rule, San Antonio does not disagree. But the waiver in Chapter 2400 can only apply to conduct occurring after the waiver becomes effective. The appellate court correctly found Von Dohlen's claims fall outside Chapter 2400 because his allegations rest on actions that occurred prior to the effective date.[20] Because Chapter 2400 does not apply, the immunity waiver within it is irrelevant to Von Dohlen's claims.

The City Council vote on airport vendors took place before Chapter 2400 existed. Therefore, the immunity waiver in Chapter 2400 is irrelevant to Von

[19] Original Petition. at 3.
[20] *Compare* Original Petition ¶¶ 1-47 *with* App. 5.

Dohlen's pre-statute allegations. The Court of Appeals was correct in determining that governmental immunity protected San Antonio from having to defend against Von Dohlen's lawsuit. The Court of Appeals properly identified the core issue here as "whether appellees allege a violation of chapter 2400 occurring on or after September 1, 2019."[21]

Von Dohlen would have this Court impermissibly broaden the scope of the governmental immunity waiver in Chapter 2400 to reach pre-statute allegations of conduct. Von Dohlen seems to argue that the ordinance approving the Concession Agreement in March 2019 somehow violated Chapter 2400 because it "continued" to exist when Chapter 2400 became effective in September 2019[22]—even though Von Dohlen does not allege San Antonio committed any independent violations of Chapter 2400 after its effective date. This argument may be satisfying to philosophers, who traffic in syllogisms and dancing angels on the heads of pins, but it flies in the face of this Court's precedents, which construe waivers of immunity as narrowly as possible to prevent overburdening governmental entities and straining public resources.[23] Bright lines and clear rules are needed to protect the public fisc.

[21] App. at 3.
[22] Original Petition at p. 1, ¶ 49.
[23] *Church & Akin, L.L.C.*, 442 S.W.3d at 300; *Taylor*, 106 S.W.3d at 697.

B. The Legislature's Decision Not to Waive Governmental Immunity From This Suit Should Be Respected

The Legislature has expressly stated its desire to tightly control waivers of immunity. In 2001, the Legislature enacted Section 311.034 of the Texas Government Code, setting forth the requirement that in order for a statute to be construed as a waiver of immunity, the waiver must be "effected by clear and unambiguous language."

San Antonio does not dispute that, as Von Dohlen notes, the Legislature may have been conscious of the March 2019 vote approving (as amended) the Airport Concession Agreement.[24] If so, this Court can only conclude that the Legislature did not intend Chapter 2400 to waive San Antonio's immunity from suit over the vote because the statute does not include a provision making it retroactive. "We presume the Legislature selected language in a statute with care and that every word or phrase was used with a purpose in mind." *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). If the Legislature had meant to provide the relief Von Dohlen seeks, it would have given Chapter 2400 retroactive effect.

II. Review Should Be Denied Because There Are Multiple Independent Grounds for Affirmance of the Court of Appeals' Decision

Even if Chapter 2400 applied retroactively to permit Von Dohlen's suit against San Antonio—it does not—this Court should deny review because Von

[24] Pet. at 1.

Dohlen lacks standing to assert his claims for multiple reasons. Standing requires, among other things, that a plaintiff present an injury that the court may address, an allegation of an actual injury, and particularized harm to the plaintiff.[25] Failure to meet just one of these requirements would provide this Court grounds to affirm the Fourth Court of Appeals' decision. Here, Von Dohlen fails to meet *all three*.

A. Von Dohlen's Alleged Injury Is not Redressable

A party seeking relief must show that there is a substantial likelihood that the requested relief will remedy the alleged injury.[26] Von Dohlen claims to "seek relief that can be granted by courts of law or equity."[27] This is false. He seeks to cancel the March 2019 Airport Concession Agreement and replace it with a contract that includes Chick-Fil-A as a vendor. This would require the trial court to compel two non-parties—Paradies and Chick-Fil-A—to enter into a contract with one another. (It is quite possible that Chick-Fil-A would resist being forced to open business in an airport during a time of pandemic-induced travel downturn.) Von Dohlen has offered no citation to support his assertion that this relief can be granted. Indeed,

---

[25] *See, e.g., City of Shavano Park v. Ard Mor, Inc.*, 04-14-00781-CV, 2015 WL 6510544, at *4 (Tex. App.—San Antonio Oct. 28, 2015, no pet.).

[26] *See Abbott v. G.G.E.*, 463 S.W.3d 633, 646 (Tex. App.—Austin 2015, pet. denied) ("The redressability prong deprives courts of jurisdiction over cases in which the likelihood of the requested relief redressing the plaintiff's injury is only speculative."); *see also, Heckman v. Williamson County*, 369 S.W.3d 137, 155 (Tex. 2012) ("If, for example, a plaintiff suing in a Texas court requests injunctive relief . . . but the injunction could not possibly remedy his situation, then he lacks standing to bring that claim.") (*citing Williams v. Lara*, 52 S.W.3d 171, 184–85 (Tex. 2001)).

[27] Original Petition at 2.

such relief cannot coexist with Texas' policy regarding the paramount import of the freedom to contract.[28] Because the relief requested cannot be given, Von Dohlen lacks standing and the Court of Appeals' decision could be affirmed on this ground.

B. Von Dohlen Has not Alleged Facts Sufficient to Provide Statutory Standing

A party seeking relief must also allege and establish standing within the parameters of the language used in the statute by which he complains at the time suit was filed. *In re H.G.*, 267 S.W.3d 120, 124 (Tex. App.—San Antonio 2008, pet. denied); *In re Vogel*, 261 S.W.3d 917, 921 (Tex. App.—Houston [14th Dist.] 2008, no pet.). As discussed above, Von Dohlen has not alleged a violation of Chapter 2400 that occurred since the statute's effective date. For the same reasons that Von Dohlen's allegations fail to trigger Chapter 2400's waiver of immunity, his allegations also fail to grant him standing under the statute. Accordingly, Von Dohlen lacks standing and the Court of Appeals' decision could be affirmed on this ground.

[28] *See, e.g., Chalker Energy Partners III, LLC v. Le Norman Operating LLC*, 595 S.W.3d 668, 673 (Tex. 2020) ("Texas's strong public policy favoring freedom of contract is firmly embedded in our jurisprudence.") (citations omitted); *Wood Motor Co., Inc. v. Nebel*, 238 S.W.2d 181, 185 (Tex. 1951) ("[C]ontracts when entered into freely and voluntarily shall be held sacred . . . . Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.") (internal citations omitted).

C. Von Dohlen's Desire to Eat a Chicken Sandwich Is not Sufficient to Support Standing to Bring This Suit

Von Dohlen alleges that he has standing outside of Chapter 2400 because he would patronize Chick-Fil-A were it to open in the San Antonio Airport. But for the purposes of standing, an injury must be particular to the individual, as opposed to one affecting the public at large.[29] Von Dohlen's hypothetical inability to consume fast food at the San Antonio Airport is not distinct from the general public; it does not confer standing to him. Moreover, Von Dohlen's alleged injury is not worthy of the dignity of this Court's attention. Accordingly, Von Dohlen lacks standing and the Court of Appeals' decision could be affirmed on this ground.

Conclusion and Prayer for Relief

This Court should deny Petitioners' request for review and allow the Fourth Court of Appeals' Decision to stand.

[29] *See Garcia v. City of Willis*, 593 S.W.3d 201, 206 (Tex. 2019) ("Standing consists of some interest peculiar to the person individually and not just as a member of the public.").

Dated: April 7, 2021

NORTON ROSE FULBRIGHT US LLP

/s/ Daniel McNeel Lane, Jr.

Daniel McNeel Lane, Jr.
State Bar No. 00784441
neel.lane@nortonrosefulbright.com
Aimeé Vidaurri
State Bar No. 24098550
aimee.vidaurri@nortonrosefulbright.com
Peyton L. Craig
State Bar No. 24109765
peyton.craig@nortonrosefulbright.com
111 W. Houston Street, Suite 1800
San Antonio, TX 78205-3792
Telephone:(210) 224-5575
Facsimile: (210) 270-7205

Counsel for Respondent City of San Antonio

CERTIFICATE OF COMPLIANCE AND SERVICE

I certify that this petition complies with type-face and type-volume requirements. The document contains 3,924 words in total, which is less than the 4,500 word limit for select portions of the brief. Tex. R. App. P. 9.4(i)(2)(D).

I hereby certify that on April 7, 2021, this document was served through the electronic filing manager upon:

H. Dustin Fillmore III
Charles W. Fillmore
The Fillmore Law Firm, LLP
1200 Summit Avenue, Suite 860
Fort Worth, Texas 76102
(817) 332-2351 (phone)
(817) 870-1859 (fax)
Email: dusty@fillmorefirm.com
Email: chad@fillmorefirm.com

Jonathan F. Mitchell
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
Email: jonathan@mitchell.law

/s/ Daniel McNeel Lane, Jr.
Daniel McNeel Lane, Jr.

No. 20-0725

In The Supreme Court of Texas

PATRICK VON DOHLEN, BRIAN GRECO, KEVIN JASON KHATTAR, MICHAEL KNUFFKE, AND DANIEL PETRI,
Petitioners,
v.
CITY OF SAN ANTONIO,
Respondent.

ON PETITION FOR REVIEW FROM THE
FOURTH COURT OF APPEALS, SAN ANTONIO, TEXAS
NO. 04-20-00071-CV

APPENDIX TO RESPONSE

INDEX TO APPENDIX

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 3. Legislative Branch (Refs & Annos)
Subtitle B. Legislation
Chapter 311. Code Construction Act (Refs & Annos)
Subchapter C. Construction of Statutes (Refs & Annos)

V.T.C.A., Government Code § 311.034

§ 311.034. Waiver of Sovereign Immunity

Effective: September 1, 2005
Currentness

In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

Credits

Added by Acts 2001, 77th Leg., ch. 1158, § 8, eff. June 15, 2001. Amended by Acts 2005, 79th Leg., ch. 1150, § 1, eff. Sept. 1, 2005.

Notes of Decisions (175)

V. T. C. A., Government Code § 311.034, TX GOVT § 311.034
Current through the end of the 2019 Regular Session of the 86th Legislature

End of Document

Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Susan Cardenas on behalf of Daniel Lane, Jr.
Bar No. 784441
susan.cardenas@nortonrosefulbright.com
Envelope ID: 52237460
Status as of 4/7/2021 4:38 PM CST

Associated Case Party: 62 Members of the Texas Legislature

Name	BarNumber	Email	TimestampSubmitted	Status
D. Bryan Hughes		bryan@hughesfirm.com	4/7/2021 4:30:06 PM	SENT
Matthew Krause		matt@mattkrause.org	4/7/2021 4:30:06 PM	SENT

Associated Case Party: City of San Antonio

Name	BarNumber	Email	TimestampSubmitted	Status
Jodye Kasher		jodye.kasher@nortonrosefulbright.com	4/7/2021 4:30:06 PM	SENT
Aimee Vidaurri		aimee.vidaurri@nortonrosefulbright.com	4/7/2021 4:30:06 PM	SENT
Daniel McNeel Lane	784441	neel.lane@nortonrosefulbright.com	4/7/2021 4:30:06 PM	SENT
Courtney Spizzo		courtney.spizzo@nortonrosefulbright.com	4/7/2021 4:30:06 PM	SENT

Associated Case Party: Patrick Von Dohlen

Name	BarNumber	Email	TimestampSubmitted	Status
Jonathan F.Mitchell		jonathan@mitchell.law	4/7/2021 4:30:06 PM	SENT
Charles W.Fillmore		chad@fillmorefirm.com	4/7/2021 4:30:06 PM	SENT
H. Dustin Fillmore		dusty@fillmorefirm.com	4/7/2021 4:30:06 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
James P.Sullivan		james.sullivan@gov.texas.gov	4/7/2021 4:30:06 PM	SENT