



Sovereignty Immunity Update

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A Good Start: Follow the Law

- There has to be a law → 
- You can't make it up
- If you can find it in a law book you are probably safe
- Develop a sense of confrontation that leads to due diligence
- Make sure you are right
- Demonstrate that you are right
- Don't say stupid things → 
- Don't email stupid things

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Come down here and say it to my face!

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Due Process



- This is lawyer talk for following the law
- Due process means following the process that the law provides
- That means all of it
- If someone decides to blame you for their problems, this is a claim they will consider
- What you do can “harden the target”
- If you are a public official, you need to know the actual scope of your authority
- Make sure you don’t act beyond that authority or do things that appear that way
- Don’t pursue or drive outcomes, follow the process
- The end does not justify the means
- Think about what you say before you say it
- Think about what you can SHOW in the future as what you say

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Immunity

- Even if you are wrong, you still win
- Don’t decide being right does not matter
- Immunity is not something you can effectively orchestrate: following the law and the process are things that you can orchestrate
- State law
 - Immunity from suit
 - Legislative immunity
 - Individual/Official immunity
 - Statutory immunity defenses
- Federal law
 - Absolute immunity
 - Qualified immunity

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What is Immunity?

- Immunity from suit means that the law does not authorize courts to make a determination on the issue or the problem in a particular suit, and the suit must be dismissed
- Immunity from liability means that the law provides protection for government or for public officials for certain actions, so that the taxpayers or the public official are not liable, even if they are wrong

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Immunity from Suit

“Two years after Texas joined the Union, this Court recognized the doctrine of sovereign immunity: “no state can be sued in her own courts without her consent, and then only in the manner indicated by that consent.” *Hosner v. De Young*, 1 Tex. 764, 769 (1847). This common-law doctrine--“inherent in the nature of sovereignty,” *The Federalist* No. 81 (Alexander Hamilton)—”

“The TTCA generally defines governmental functions as those “that are enjoined on a municipality by law and are given it by the state as part of the state’s sovereignty, to be exercised by the municipality in the interest of the general public.” *Id.* § 101.0215(a). It then provides a non-exhaustive list, enumerating thirty-six legislatively-defined governmental functions.” *Id.*

“We therefore hold that the common-law distinction between governmental and proprietary acts--known as the proprietary-governmental dichotomy--applies in the contract-claims context just as it does in the tort-claims context.”

Wassson Interests, Ltd., v. Jacksonville, 489 S.W.3d 427 (Tex. 2016)

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