



Legislative UPDATE

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Update: City Officials and Social Media Blocking

A recent *Legislative Update* [article](#) reported that a federal district court found that President Trump’s “blocking” of some Twitter users from his Twitter account on the basis of their political views violates the users’ First Amendment free speech rights.

Another lawsuit, [Andrew McKercher v. Ron Morrison](#), has been filed in a federal district court in California. This new lawsuit could have implications on the use of social media by other government officials, including city officials. The lawsuit alleges that the mayor of the City of National City violated a Facebook user’s the First Amendment free speech rights of a Facebook user who was critical of the mayor. The mayor blocked the user from accessing his private Facebook page or comments section. The plaintiff alleges that, because the mayor’s Facebook page is used to distribute information about city matters, and because a majority of the activity on his Facebook page relates to his role as mayor, the mayor’s Facebook page is a “public forum” that is subject to First Amendment protection.

The lawsuit was just filed, and no decision has been issued. League staff will provide updated information as the case unfolds.

The Texas Supreme Court Delivers a One-Two Punch to Governmental Immunity

On June 1, the Texas Supreme Court handed down its second opinion in the [Wasson v. City of Jacksonville \(Wasson II\)](#) case. The court held that the city’s contractual immunity was waived, highlighting the court’s willingness to expose cities to ever-greater liability. In fact, the Texas Supreme Court’s erosion of governmental immunity, without a clear mandate from the Texas Legislature, may be unprecedented in our state’s history.

The case involved a 99-year lease between the City of Jacksonville and Wasson Interests, Ltd. (WIL) for lakefront property owned by the city. The lease contained a provision prohibiting commercial activity on the lots. (The city’s zoning ordinance expressly defines impermissible commercial activity.)

WIL rented the leased property to individuals for terms of a week or less, which is considered an impermissible commercial activity under the city’s zoning ordinance. The city sent eviction notices to WIL based on the continued commercial use of the property.

WIL filed suit against the city, and the case went all the way to the Texas Supreme Court. The court struck its [first blow](#) against cities in its [initial opinion \(*Wasson I*\)](#) by holding that the governmental-proprietary distinction found in the Texas Tort Claims Act applies to contractual claims against a city. A city is immune from liability for performing a “governmental function,” but can be subject to damages for a “proprietary function.” (Governmental functions are things like police and fire service, utility service, zoning, etc. Proprietary functions are more akin to an action typically performed by a private entity.)

The Texas Supreme Court sent the *Wasson* case back to the lower court to determine whether the City of Jacksonville was engaged in a governmental or proprietary function when it leased the lakefront property. The city won at the [Tyler Court of Appeals](#), and WIL appealed. That’s when the Texas Supreme Court struck its second blow against city legal immunity. Overturning the Tyler Court of Appeals, the Texas Supreme Court’s *Wasson II* opinion holds that the City of Jacksonville was performing a proprietary function when it leased its lakefront property (i.e., held that the city’s contractual immunity was waived). Thus, WIL’s suit against the city for breach of the lease agreement may proceed.

Texas Commission on Jail Standards: Proposed Rules Could Affect Municipal Jails

Sandra Bland was a 28-year-old African-American woman who was found hanged in a jail cell in Waller County in 2015, three days after being arrested during a traffic stop. In 2017, the Texas Legislature passed the [Sandra Bland Act](#) in an effort to prevent future inmate deaths.

The law provides protection for arrested persons who have mental health and/or substance abuse issues. It largely affects counties, but some portions of the bill affect cities. Specifically, the law requires the Texas Commission of Jail Standards to update certain rules that could affect municipal jails. The [proposed rules](#) (see page 3,330) would, among other things:

- Define “High risk areas” as those that “consist of holding cells, detoxification cells, separation or single cells and other cells used to house inmates who are known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior.”
- Attempt to ensure the safety of prisoners by giving them the ability to access health professionals at the jail or through a “telemental” or “telehealth” service 24 hours a day.

- Ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals by requiring the installation of electronic sensors or cameras in jails.

City officials who wish to comment on the proposed rules may submit them by email (by June 21) to William Turner at will.turner@tcjs.state.tx.us.

Senate Committee Examines “Housing Affordability”

The Senate Intergovernmental Relations Committee met last week in Pharr to consider the following charge on “housing affordability:”

Examine issues that impact housing affordability, including the effect of local government taxes, fees, and mandates. Evaluate the cost of purchasing a single-family residence in different parts of the state, factoring in the impact of local rules and regulations, to identify matters of policy with the greatest influence, and identify ways to increase transparency and awareness prior to the adoption of costly local ordinances or orders.

The use of the term “housing affordability,” rather than “affordable housing,” led to some confusion as to what input the committee sought from city officials. The mayors of McAllen, Pharr, and Harlingen all testified to the various affordable housing programs they administer. But they also spoke to “the impact of local rules and regulations” on the cost of housing generally.

Some committee members seemed to allege that city property taxes, fees, and land use guidelines are a significant driver of housing costs in Texas. The city witnesses debunked that claim, focusing on the population influx and its effects on pricing. The key request from city officials is that the legislature “do no harm” to cities by imposing one-size-fits all legislation.

The Texas Association of Builders, and League staff, testified that reasonable building guidelines make sense because an “affordable” home that isn’t built to code is of no benefit to anyone.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available [here](#), includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. On May 23, the federal Office of the Comptroller of the Currency (OCC) issued a [bulletin](#) encouraging banks to offer responsible short-term, small-dollar installment loans (typically two to twelve months in duration with equal amortizing payments) to meet the credit needs of consumers. Acknowledging the fact that many consumers turn to payday and auto title loans from credit access businesses because banks have withdrawn from the short-

term lending market, the bulletin represents a shift by the OCC to encourage its member institutions to compete with payday lenders using credit products with reasonable policies regarding the amounts borrowed, borrowing frequency, and repayment requirements.

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