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NO. _____

Supreme Court, U.S.
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In The Supreme Court of the United States
RUTH TORRES, Petitioner

v.

Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc., et al, Dallas Fort Worth
International Airport Board, Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
FIFTH DISTRICT AT TEXAS OF DALLAS
Fifth Court of Appeals, Cause No. 05-18-00675-CV,
And the 44th District Court for Dallas County,
Cause No. DC-16-08711, Trial Court Bonnie Goldstein

PETITION FOR WRIT OF CERTIORARI
On Interlocutory Appeal- Plea to Jurisdiction

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PETITIONER REQUESTS ORAL ARGUMENT

Questions Presented

Issue 1: When Pro Se Indigent parties lack meaningful access, procedurally and meritoriously, does this constitute lack of due process and equal protections under the US Constitution Amendments Four, Five and Fourteen?

Does the significant level of financial incentives provided to the Texas Judicial System through partisan campaign contributions, or even the appearance of such, undermine the credibility and justice available for just cause against government and big business parties, especially for minority and pro se litigants?

Issue 2: Does a state Supreme Court have a duty to review lower court's order which is directly contrary to law and shows clear error? Does denial of review constitute lack of due process and equal protections under the US Constitution Amendments Four, Five and Fourteen?

When case law is clear, Governmental immunity is not applicable for proprietary actions or intentional torts, such actions are contrary to the purpose of the state, to act in the best interest of residents, how can immunity apply?

Did Fifth Court of Appeals and Texas Supreme Court have ministerial duty to determine trial court orders issued during statutorily required stay are a legal nullity? Did Texas Supreme Court have ministerial duty to correct COA order demanding payment for appeal from party with unchallenged affidavit of inability to pay on file?

Issue 3: When a government entity conspires to violate state and federal laws issuing illegal contract for illegal purpose, retaliates against a whistleblower violating whistleblowers constitutional rights of freedom of speech, due process and freedom of religion, how can government immunity or a plea to jurisdiction stand to avoid accountability and deny justice and equity?

Issue 4: Is Governmental immunity applicable even when state and federal statutes provide waiver and venue for relief?

Issue 5: If the government entity failed to show it owed no duty as a matter of law, when fact issues exist, must it be resolved by the fact finder, the jury?

Issue 6: Does a government entity have a ministerial duty, a proprietary function, to enforce contract terms with good-faith effort?

Issue 7: Should Petitioner be allowed to amend for relief under Uniform Declaratory Judgments Act? Appellant would not have been harmed BUT FOR the illegal contract and amendment is allowed up to seven days prior to trial without judicial approval per state law.

IDENTITY OF PARTIES AND COUNSEL & RELATED CASES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner **Ruth Torres (Pro Se)**

Respondents
Pursuit of Excellence, Inc.,
Marie Diaz,
Mark Galvan,

Pursuit of Excellence HR, Inc.,
Pursuit of Excellence, Northeast, Inc.,
Pursuit of Excellence Holdings, LLC.,
Pursuit of Excellence Texas LLC,
Pursuit of Excellence Texas 2, LLC.,
Pursuit of Excellence Texas 3, LLC.,
P4S Consulting, LLC.,
Cielo Creations, LLC.,
Cielo Preston Forest, LLC.

Dallas Fort Worth International Airport Board

Trial Court: **Hon. Bonnie Goldstein, Presiding Judge**
101st District Court
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Respondent POE: Marie Diaz, Mark Galvan,
Pursuit of Excellence, Inc. et al, Pursuit of Excellence HR,
Inc., Pursuit of Excellence, Northeast, Inc., Pursuit of
Excellence Holdings, LLC., Pursuit of Excellence Texas
LLC, Pursuit of Excellence Texas 2, LLC., Pursuit of
Excellence Texas 3, LLC., P4S Consulting, LLC., Cielo
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REFERENCES:

- Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc. et al, Pursuit of Excellence HR, Inc., Pursuit of Excellence, Northeast, Inc., Pursuit of Excellence Holdings, LLC., Pursuit of Excellence Texas LLC, Pursuit of Excellence Texas 2, LLC., Pursuit of Excellence Texas 3, LLC., P4S Consulting, LLC., Cielo Creations, LLC., Cielo Preston Forest, LLC., et al, are collectively referred to as “POE”.
- Dallas Fort Worth International Airport Board is referred to as “DFW”.
- Fifth Court of Appeals is referred to as “COA”.
- Texas Open Meeting Act (“TOMA”),
- Public Information Act (“PIA”),
- Affordable Care Act (“ACA”),
- Family Medical Leave Act (“FMLA”),
- Texas Citizens Participation Act (“TCPA”),
- Temporary Injunction (“TI”)

NOTICE OF RELATED CASES:

- Trial Case: DC-16-08711, 44th District Court, Judge Goldstein has multiple appeals:
 - a. 05-18-00774-CV (on 16 trial court orders, dismissed due to clerk's refusal to submit record, unchallenged inability to pay on file). TX Supreme Court denied review. SCOTUS denied Writ of Certiorari, 19-5208.
 - b. 05-18-00546-CV (premature appeal dismissed on lack of jurisdiction after denying consolidation with 05-18-00774-CV, awarding costs to POE although affidavit of inability to pay on file). TX Supreme Court denied review.
 - c. 05-18-00675-CV on interlocutory order Granting DFW's Plea to Jurisdiction. Affirmed by Fifth COA on erroneous application of one case which is not consistent with the issues of this case. TX Supreme Court denied review. The basis of this Writ of Certiorari.
 - d. 05-18-00676-CV on interlocutory order denying Petitioner's Motion to Dismiss under TCPA. Affirmed by Fifth COA with multiple errors of fact and law. TX Supreme Court denied review. Writ of Certiorari filed June 29, 2020.
- Trial Case: DC-17-08581, 101st District Court, Judge Staci Williams. POE appealed trial order on contempt for failing to comply with 5th order on discovery, Case No. 05-18-00672-CV. Order & Opinion issued lifting stay. Motions for Show Cause pending before trial court, POE refuses to comply with discovery requests citing the TI issued by Judge Goldstein and matter appealed to COA and here. POE 2nd set of attorneys have moved for trial court stay and withdrawal with same grounds as first attorneys, only in DC-1708581, yet not seeking withdrawal from case before the 44th district court or cases before the court of appeals, all representing the same parties. Case is pending orders on Plaintiffs motions for show cause and contempt for over a year (defendants refuse to comply with discovery and judge will not issue rulings) also pending special set for trial.
- DC-20-07071, Respondents seek default judgments against Petitioner's businesses for claims which fail to satisfy elements, are abuse of process, lack right to sue, Texas courts lack jurisdiction and are directly responsive to Petitioner speaking to DFW Airport Board. The Unauthorized Practice of Law Committee for the Supreme Court of Texas brought suit, violating Petitioners constitutional rights to free speech.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from the state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at: Ruth Torres v. Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc. Dallas/Ft. Worth International Airport, 05-18-00675-CV, (Tex. App. 2020); or,

has been designated for publication but is not yet reported; or,

is unpublished. Fifth Court of Appeals, Texas. 05-18-00675-CV, (Tex. App. 2020); Ruth Torres v. Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc. Dallas/Ft. Worth International Airport, et al,

The opinion (orders) of the trial court appears at Appendix B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

are unpublished.

For cases from the state courts:

The date on which the highest state court Denied Petition for Review on December 20, 2019, and on February 14, 2020 Denied Motion for Rehearing.

A copy of both decisions appear at Appendix C.

JURISDICTION

The jurisdiction of this Court is applicable under 28 U.S.C. § 1257(a), as the denial by the Texas Supreme Court to review and correct COA errors denies the Petitioner due process and equal protection rights guaranteed by the US Constitutional Amendments Four, Five and Fourteen and allows ongoing retaliation against a whistleblower and indigent pro se party with egregious abuses of process and violations of Petitioners constitutional rights.

The trial court abused its discretion and issued an order contrary to law and facts. The COA failed to provide de novo review, made clear errors with application directly contrary to law, failed to apply the required test and ordered cost of appeal to Petitioner contrary to state statute as Petitioner has an unchallenged affidavit on file. The Texas Supreme Court failed to perform duty to review and correct errors. Further, the Fifth Court of Appeals, Dallas and Texas Supreme Court failed to perform ministerial duty to find trial court orders issued during statutorily required stay null and void, orders which were an abuse of discretion without reference to and directly contrary to guiding rules and principles.

The courts actions deprived Petitioner of due process and equal protections and allows for illegal government actions with impunity lacking justice for conscientious citizens participating in government and revealing illegal acts to retaliation and significant harm which is repugnant to the Constitution and of such importance to the jurisprudence, interest of justice and public policy that it requires correction by The Supreme Court of the United States.

STATEMENT OF THE CASE

1. At the root of this case is Petitioner's actions as a whistleblower reporting Respondents violations of various state laws on government procurement and contract processes, Texas Open Meeting Act ("TOMA"), Public Information Act ("PIA") and Texas Gov't Code §§§§252, 2155, 2156 and 2252.064, state worker's compensation laws, etc., and federal laws including reporting a fire/ explosion hazard which violated Occupational Safety and Health Administration Regulations, ("OSHA"), violations of USCIS regarding I9 forms, 29 U.S.C. Chapter 8 ("FLSA"), 42 U.S.C. § 18001 et seq. (2010), The Affordable Care Act ("ACA") and 29 U.S.C. § 2615, Family Medical Leave Act ("FMLA"), which potentially harmed several hundred predominantly low-wage minority workers under contracts totaling at least \$20 Million with POE and potentially significantly higher with displacement of legal compliance and denial of benefits to additional workers under various contracts for other airport workers classified as "temporary", "1099 contractors" and outsourced positions to other workforce providers while receiving "credit" for utilization of Women / Minority contracting.
2. Fifth Court of Appeals, Dallas affirmed the trial court order on August 29, 2019 ignoring 3rd Amended Counter-claim, failed to provide de novo review, failed to apply abuse of discretion standard, refused to apply the proprietary test, refused to perform ministerial act to nullify and void orders issued after

statutorily required stay and ordered Petitioner pay costs of appeal contrary to statute as there is an unchallenged affidavit of inability to pay on file.

3. The Texas Supreme Court failed to perform duty to review and correct errors denying motion for rehearing on February 14, 2020, failed to provide Petitioner with due process and equal protections both procedurally and meritoriously in a meaningful manner, before an impartial decision maker allowing the fact finder, the jury to determine disputed facts has thereby unjustly deprived Petitioner of liberty and property.
4. If this Court denies review, this Court would reinforce the extreme inequity, lack of justice, due process and equal protections that this case reveals within the Texas Judicial System and thereby be complicit.

REASONS FOR GRANTING THE PETITION

Issue 1: When Pro Se Indigent parties lack meaningful due process, procedurally and meritoriously, does this constitute lack of due process and equal protections under the US Constitution Amendments Four, Five and Fourteen?

1. The “king” can and does do wrong, far too often and with impunity. The United States of America is neither a monarchy or dictatorship. We were established to be governed by the people, FOR the people. The ethical and legal compliance standards for those in positions of power within any of the three branches of government should be of a higher standard, not lower than private sector or non-existent. Government immunity is applicable when the actions are in the best interest of the people for which the body is responsible and should no longer be used as venue to abuse the power and people they were elected or appointed to represent without accountability.
2. If this Court refuses to grant review, it allows government entities to displace and violate state and federal laws through illegally issued contracts to perform illegal acts with reasonable knowledge that the government agencies vendor (POE) would not be in compliance with ACA or FMLA from contract issuance, allows for FMLA retaliation against whistleblower for opposing or complaining about DFW's and POE's unlawful practice under FMLA. It allows government entities to fail to perform ministerial acts to enforce compliance with federal laws and contract terms such as the Prompt Pay Act while enjoying credit for utilization of woman/minority contractors thereby abusing the W/MBE

program and hiding behind governmental immunity. It allows for the court system to be used to attack whistleblowers undermining individuals' duty to act according to Biblical principles, civic duty and participation in government, which are public policy issues.

3. Petitioner and Pro se litigant has repeatedly been denied due process and equal protections by the trial court, court of appeals, and state supreme court, procedurally and meritoriously. The trial court granted DFW's plea to the jurisdiction on June 4, 2018. Interlocutory appealed on June 6, 2018. The trial court abused its discretion ruling contrary to guiding principles, failing to state the reasons for the determination and indicate the evidence relied upon, *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970).

4. Petitioner, Ruth Torres, files this Writ of Certiorari as failure to do so allows orders which are contrary to law, justice and Biblical principles to stand, undermining the credibility of this Court, and furthering a culture in the civil courts of inequity, especially against conscientious citizen whistleblowers, pro se and indigent litigants which undermines trust in government, allows significant public policy issues, and denies Petitioner due process and equal protections under the US Constitution's Fourth, Fifth and Fourteenth Amendments by failing to satisfy the elementary elements of due process both procedurally and meritoriously at the trial court and appeals courts, including

denying review of orders which are clear error and abuse of discretion causing violations of Petitioners constitutional rights.

5. Further, the implications and ramifications of this case are significant for national impact as the side-stepping of compliance with the Affordable Care Act via misclassification of workers as 1099 contractors in violation of FLSA or use of temporary staffing firms or temporary worker classification, has been utilized by federal, state and government entities as well individual employers affecting hundreds of thousands of American workers who are working more and getting less benefits, losing access to group medical benefits (the intent of ACA) but now also losing paid-time off such as vacation, sick pay, as well as unemployment benefits, workers compensation benefits, wage payment enforcement (protections only available to “employees” not 1099 contractors), etc. due to mis-classifications and violations of the Federal Labor Standards Act. Mis-classified workers are disproportionately women and minorities whom also have higher mortality rates due to lack of access to insurance. These abuses against workers have now been allowed almost unchecked to private employers due to cost of litigation and defunding of government enforcement agencies such as the Department of Labor. The abuses with impunity afforded via government immunity undermines justice and law firms lack interest to represent due to inability to gain attorney fees undermines due process.

5. Plaintiff completely relies on the Holy Bible, The Word of God. Government and court system are established based on Biblical principles. Romans 13:1-7. Judges are called and appointed to show no partiality, to give justice to the poor. Exodus 18:13-27, Deuteronomy 16:18-20, Leviticus 19:15, James 2:1-13, Luke 18:1-8, Proverbs 21:3, 13 and 15.
6. Each judge swears an oath and is obligated to adhere to the Code of Judicial Conduct. Perhaps there is justice in many cases. However, even one case that allows injustice sets precedence affects people's lives and should not be considered a light matter.
7. If this Court refuses to hear and rule on Plaintiff's petition, it undermines the credibility of this Court as the orders are contrary to statutes, prior rulings, the oath and code of judicial conduct in an egregious manner.
8. The district court, the 5th Court of Appeals and this Texas Supreme Court have repeatedly denied Petitioner justice and acted contrary to established law. The orders show clear partiality and injustice undermining due process and equal protections.
9. Petitioner has not only been harmed by Respondent POE's baseless, retaliatory claims but by the ongoing actions of Respondents, Texas Courts and officers of the court in this case including but not limited to violation of

Petitioners rights to freedom of speech, freedom to petition, freedom of religion, freedom from search and seizure of personal property, rights to due process and equal protections.

10. The trial court orally ordered the Petitioner to agree to a TI, which is void on its face due to failure to comply with statute and lacked a bond. The TI restricted Petitioners rights to freedom of speech, freedom to participate in government and required Petitioner to submit to seizure of Petitioners personal property of an Iphone and laptop, without defining how long the property would be retained in advance which was seven (7) weeks, (See *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20L.Ed. 2d 889, *United States v. Place*, 462 U.S. 696 (1983), and *Soldal v. Cook County Ill*, 113 S. Ct. 538 (2017)) to invade Petitioners privacy by the Petitioners devises' contents being "mirror imaged" copying all of Petitioners data thereby invading Petitioners privacy and damaged Petitioners property physically and its contents by wiping the hard drives, destroying Petitioner's private data on the basis of Respondents assertion that Petitioner's proof of Respondents illegal acts were actually Respondent POE's "trade secrets" reliant solely on Respondents testimony for emails Petitioner forwarded to Petitioners personal email account which failed to meet the statutory definition of "trade secrets" and were proof of work performed and Respondents illegal acts. The Petitioners personal property of a laptop and Iphone were held for seven weeks by the trial courts appointed "IT Expert" then damaged as petitioners hard drive was completely wiped clean of

all files, over seven years worth of work and personal files as well as the loss of valuable software and the property was physically damaged showing damage bring being dropped with cracks and malfunctioning. These actions violated Petitioners constitutional rights per U.S. Const. Amend. 4, U.S. Const. Amend. 5 and U.S. Const. Amend. 14.

11. When Petitioner still had legal access to the documents supporting Plaintiffs allegations of Respondents illegal acts and used them to support Petitioners pleadings before the trial court and in a related case, the trial court held Petitioner in contempt and struck Petitioners pleadings with prejudice after the trial court received ex parte communications from Respondent POE's attorney urging the contempt. The void on its face TI has been repeatedly used by all Respondents in this case and the related case before Judge Williams to avoid complying with discovery. These actions denied petitioner due process and equal protections under U.S. Const. Amend. 14.

12. The trial court refused to allow Petitioners pleadings to be scheduled for hearing. The judges' clerk informed Petitioner that the judge had instructed the clerks not to schedule Petitioner's motions. The trial court refused to grant sanctions or hold Respondents in contempt for their actions violating Petitioners constitutional rights and abuse of process. The trial court allowed opposing counsel over 90% of the hearing time to argue and accepted opposing counsels' assertions without question or support. The trial court adopted

opposing counsels' proposed orders without providing explanation, reference to guiding rules or principles and without referencing Petitioners argument. The trial courts have refused to issue orders on Petitioners motions even up to a year after filing and hearing. The trial court clerk of court, allegedly at the direction of the court of appeals clerk, refused to provide case records to the court of appeals contrary to state statute when unchallenged affidavit of inability to pay is on file. Petitioner was not even noticed that the clerk had not provided the requested records at the time. These actions denied petitioner due process and equal protections under U.S. Const. Amend. 14.

13. Petitioner was again denied due process in the Mandamus (05-18-00774-CV) violating Petitioner's constitutional rights to due process and equal protections in refusing to perform ministerial act, denying full requested records and two days later the Mandamus was denied for lack of records. Petitioner, whom has an unchallenged affidavit of inability to pay on file, was denied full records as requested for interlocutory appeals (05-18-00676-CV and 05-18-00675-CV) and the Mandamus (05-18-00774-CV). The District Clerk & Court of Appeals Clerk refused to comply with TRCP 145 and TRAP 20.1, 35.3, and 37.2, contrary to good faith and reasonableness per statutorily defined duty. These actions denied petitioner due process and equal protections under U.S. Const. Amend. 14.

14. Although the Petitioner should not have needed an order from the Fifth Court of Appeals to obtain the release of records, because the clerks refused release of records, the Petitioner sought an order BUT the order issued was limited, without cause or authority to limit the requested records. This sets a dangerous precedent for parties with an affidavit of inability to pay on file because the clerks have exercised an authority they do not have, to deny records in part or in whole and the Fifth Court of Appeals have now established an authority they do not have, to deny records in part or in whole.

15. The Fifth Court of Appeals concluded and misrepresented facts not in evidence, failed to provide de novo review and apply the standard test(s) applicable to the situation. The Texas Supreme Court refused to review. These actions denied petitioner due process and equal protections under U.S. Const. Amend. 14.

16. The Unauthorized Practice of Law Committee for the Supreme Court of Texas filed suit against Petitioner in DC-20-07071. Respondent's claims are wholly conclusory, lacking ability to satisfy all elements of any claim yet used to retaliate against Petitioner for over FOUR YEARS and counting. Respondents seeking to gain default judgments because Texas courts require all businesses to be represented by an attorney and since Respondents have damaged Petitioners reputation undermining gainful employment to afford an attorney. Respondent filed the same claims against Petitioner's businesses

including a Florida business that closed five years prior to Respondent bringing claims and for which never conducted any business outside of Florida and a Texas business that started almost a year AFTER the alleged claim dates and for which the only basis was Petitioner completing a speaker form and providing the business name, The HR Doctor to speak before the DFW Airport Board, a government entity. Petitioner noticed the court of the abuse of process, lack of jurisdiction and Respondents lack right to sue. Respondents filed compliant of Unauthorized Practice of Law. Petitioner noticed the committee of all these facts and that this situation was not applicable to the committee's purpose yet the Committee brought suit anyway seeking permanent injunction which violates Petitioners right to free speech per U.S. Const. Amend. 1.

17. Law school clinics and nonprofit legal services organizations lack the resources to assist in this type of case and have refused to get involved in a case involving a government entity. Small law firms lack the resources for such a litigious long-term battle and large law firms will not undermine their ability to get business from the government entity and other associated government agencies and neither small or large firms identify a means to obtain payment given the significant barrier of government immunity and Respondent POE's apparent lack of financial stability.

18. Additionally, due to Covid-19, the burden and harm to pro se and indigent parties is even worse due to dependence on access to public law libraries and one hour per day limitation on Westlaw case research available at the state courthouse law library which is within the state courthouse which continue to be closed to the public for months. Therefore, indigent and pro se parties lack access to resources to prepare petitions and motions throughout the US court system. While Petitioner appreciates the court's lack of forseeability of Covid and the legislative limitations on the court to grant time extensions, Petitioner has been required to prepare and submit two Writs of Certiorari (05-18-00676-CV and 05-18-00675-CV) without meaningful access to case research via books or database. These barriers denied petitioner due process and equal protections under U.S. Const. Amend. 14.

Does the significant level of financial incentives provided to the Texas Judicial System through partisan campaign contributions, or even the appearance of such, undermine the credibility and justice available for just cause against government and big business parties, especially for minority and pro se litigants?

19. The bias and inequity against minority and indigent litigants is so overwhelming that the vast majority dare not even attempt to seek justice in the courts because as it has been in this case, the damages get worse not better. This Court has a duty to ensure due process and equal protections for Pro Se and indigent litigants who lack legal representation through no fault of their own and therefore gives clear preference and abuse of power to unethical, powerful and wealthy parties and their attorneys. How many Pro Se litigants

actually obtain rulings in their favor at JP, district court, court of appeals and supreme court levels? Do the rulings reveal disparate impact for women, minority and/or pro se litigants with affidavits of inability to pay versus other legally represented litigants, on both process and merits? What is the point of providing resources for Pro Se litigants if the judges will undermine presenting of their arguments and rule against them anyway contrary to statute and case law and the party fails to have meaningful access to review for abuse of discretion? Based on Petitioner's observations and research of a number of Pro Se cases, there is a clear bias in the Courts against Pro Se litigants, even when the Pro Se litigant follows the rules and correctly seeks application of law, as in this case, is a public policy issue.

20. The level of financial incentive in the Texas Judicial system undermines the credibility of the Courts and reveals root cause of inequities and injustices, favoring government and big business and disproportionately impacting minority and pro se litigants.
21. The Texas Judicial system is compromised by campaign donations that have maintained a one party control system for decades at the Texas Supreme Court with over \$13.5 Million in donations and until 2018 at the Fifth Court of Appeals.

22. The lack of justice in Texas Courts is well documented revealing bias based on political contributions by attorneys and business entities as well as appointment without election. See Exhibit 5: Texas NAACP Addresses Important Issues to Facilitate the Discussion Regarding Proposed Changes for Selecting Members of Texas' Judiciary In the Aftermath of the George Floyd Tragedy (and its Appendix). The trial court in this case, Bonnie Goldstein, is currently pursuing election to the Fifth Court of Appeals, Dallas. The attorney for DFW Airport, Henry Wehrmann is listed as a sponsor Judge Goldstein's fundraising campaign. See Exhibit 6. While campaign reports need to be researched, Littler & Mendelson (POE's original attorneys), Scheef & Stone (POE's current attorney) are both large firms and major contributors regularly appearing before the Fifth Court of Appeals & Texas Supreme Court. Additionally, Brandy Chambers (POE's attorney) is currently seeking election to the Texas House. Scheef & Stone has donated \$36,000 directly to 12 Republican candidates. While that may not appear like much, nothing prevents Scheef & Stone from donating to the Texas Republican Party and through that entity contribute to Appellate and Supreme Court Candidates. See Exhibit 7.

23. The current Texas Supreme Court Justices have received a total of \$13,582,520 in campaign donations. In the last 3 elections 2016, 2018 and 2020 (to date, all reports not final), total contributions to Texas Appellate courts and Texas Supreme courts were \$17.9M and \$9.6M respectively. With just 46 days

left until the 2020 general election, Petitioner has seen no commercials, no yard signs, no mailers, no advertising at all for any of these candidates nor any Republican judge for The 5th Court of Appeal, Dallas or Texas Supreme Court race during the last 6 years. While the 2020 election season is not over and all reports are not yet in, per the nonpartisan, nonprofit National Institute on Money in Politics (NIMP) “Follow the Money.org” website, the following donation totals for Texas Supreme Court are detailed in Exhibit 7. In summary:

- Justice Hecht, \$5 Million
- Justice Guzman, \$2.138 Million
- Justice Lehrmann, \$1.663 Million
- Justice Busby, \$ 1.5 Million
- Justice Boyd, \$844 Thousand
- Justice Devine, \$ 884 Thousand
- Justice Bland, \$884 Thousand
- Justice Blacklock, \$639 Thousand

Issue 2: Does a state Supreme Court have a duty to review lower court's order which is directly contrary to law and shows clear error? Does denial of review constitute lack of due process and equal protections under the US Constitution Amendments Four, Five and Fourteen?

24. In accordance with TEX. R. APP. PROC. § 56.1(b)(1) the Texas Supreme Court has a duty to review petitions unless there is no error that requires reversal or lacks importance to jurisprudence of the state. There are clear

errors that have occurred in this case which require reversal as contained in Petitioners seven issues before the Court, including the trial court issuing orders during statutorily required stay. The denial of the Texas Supreme Court to review and correct the clear errors denies the Petitioner due process and equal protections guaranteed under the Fourth, Fifth and Fourteenth Amendments of the US Constitution.

25. This case involves a very important issue to all US citizens: can a government entity violate federal and state laws in voluntarily and purposefully contract with a party for results which are intentionally illegal and then completely escape liability? Therefore, if this Court refuses to hear and reverse orders issued, it allows parties violating state and federal laws to successfully to use government immunity and the court system, a system intended to provide justice to avoid accountability and retaliate against whistleblowers.

26. The Texas Supreme Court refused to perform its duty to review in accordance with TEX. R. APP. PROC. §44.1(a)(1) as the Fifth Court of Appeals reasoning that because DFW Airport is operating an airport, they enjoy a complete blanket of immunity for all actions, including proprietary functions and decisions not directly necessary to airport operations is contrary to statute and prior rulings.

When law is clear, Governmental immunity is not applicable for proprietary actions or intentional torts, such actions are contrary to the purpose of the state, to act in the best interest of residents, how can immunity apply?

27. Government immunity does not apply for proprietary functions or intentional torts or when there is waiver. Nor can there be immunity when damages are born of an illegally issued contract to perform an illegal act. If the pleading was insufficient, Appellant should be provided opportunity to amend as these facts have been alleged in the trial court pleadings.

28. Texas jurisprudence has held for a century that a municipality does not escape liability and can be held liable for its proprietary actions. If this Court holds to the contrary, citizens will be harmed because: (1) that result is not fair, contrary to justice and our system of civil dispute resolution; (2) it will undermine due process rights; (3) there will be failure to provide recourse when intentional torts are born of an illegal contract; (4) it will establish a trend with immunity and indemnification protections for government entities displacing compliance with federal law onto a M/W/S/DBE contractors with full license by this court; and (5) the harm to workers will greatly increase due to the default risk and lack of resources to gain remedy for wages and benefits to which workers are entitled, which is contrary to public good and public policy.

29. This Court should uphold the governmental/proprietary dichotomy for governmental immunity of municipalities because: 1) it is an important and historical test; 2) the Legislature has not abrogated it; 3) there is no reason in law or justice to allow to withhold the test and 4) local governmental liability ensures that qualified third parties will contact with local governments and at lower costs but not at the risk of being abused as a W/M/S/DBE.

30. The Fifth Court of Appeals reasoning applying *Vizant* is clear error. This case is dissimilar to *Vizant* and the COA did not adhere to the process applied in *Vizant*. In *Vizant*, a valid and enforceable contract existed and there was a claim for breach of contract where this Court applied the test, not simply asserting a blanket government function due to DFW being an airport as the COA has done in this case. This is clear error to refuse to apply the test.

31. “When a municipality acts within its discretion, primarily for the benefit of those within its corporate limits, it performs a proprietary function for which it has no immunity.” City of Georgetown v. Lower Colo. River Auth., 413 S.W.3d 803, 808, 809 (Tex. App. - Austin 2013, pet. dism. by agr.). *Dillard*, 806 S.W.2d at 593 (quoting *City of Galveston v. Posnainsky*, 62 Tex. 118, 125, 127 (1884)); *Wasson*, 489 S.W.3d 427 (Tex. 2016); *Holder*, 954 S.W.2d at 805. Accordingly, if the municipality was not acting as an agent of state, the municipality enjoyed no immunity, and was held to the same standard of care as a private citizen engaged in that activity. *Wasson*, 489 S.W.3d 427 (Tex. 2016); *Turvey*, 602

S.W.2d at 519, *see also Bailey v. City of Austin*, 972 S.W.2d 180, 192–93 (Tex.App.-Austin 1998, pet. denied) (city's provision of health insurance to its employees is proprietary function for which governmental immunity does not apply). *Truong v. City of Houston*, 99 S.W.3d 204, 209 (Tex. App. - Houston [1st Dist.] 2002, no pet.). “[G]enerally speaking, a municipality's proprietary functions are those conducted ‘in its private capacity, for the benefit only of those within its corporate limits, and not as an arm of the government,’ while its governmental functions are ‘in the performance of purely governmental matters solely for the public benefit.’” *Tooke*, 197 S.W.3d at 343, *Hudson v. City of Houston*, 392 S.W.3d 714, 723 (Tex. App. - Houston [1st Dist.] 2011, pet. denied). In a commentary, Chief Justice Greenhill offered the following practical explanation: “Essentially, governmental functions are those normally performed by governmental units, e.g., police and fire protection, while the proprietary functions are those that can be, and often are provided by private persons, e.g., gas and electric service.” Id. (quoting *Joe R. Greenhill & Thomas V. Murto III*, Governmental Immunity, 49 TEXAS L. REV. 462, 463 (1971)).

Did Fifth Court of Appeals and Texas Supreme Court have ministerial duty to determine trial court orders issued during statutorily required stay are a legal nullity? Did Texas Supreme Court have ministerial duty to review COA order demanding payment for appeal from party with unchallenged affidavit of inability to pay on file?

32. The Fifth Court of Appeals refused to address the trial courts orders issued during statutorily required stay, which was a ministerial duty to nullify and strike all orders issued after perfected appeal and statutorily required stay, per TEX. CIV. P. & REM. Code §51.014(a)(8) and (b). The Texas Supreme Court refused to perform its duty to review and correct clear error is an abuse of discretion. Additionally, The Texas Supreme Court refused to perform duty to review orders with clear error and ministerial duty to find the COA's order demanding Appellant pay for appeal costs null and void as unchallenged affidavit of inability to pay is on file.

33. Following Petitioners submission of appeal on Order Granting Plea to Jurisdiction and Verified Motion for Recusal, stay applied per TEX. CIV.PRAC. & R. §51.014 (b), per TEX. PRAC. & REM. Code §51.014 (b); *See In Re Marriage of J.B.* 326S.W.3d 654,662 (TEX. App.-Dallas 2010, pet. dism'd). "An order signed during a stay is a 'legal nullity.'" Per TEX. R. CIV. P. §18a (f): (2) (A) the judge must take no further action in the case until motion has been decided, except for good cause stated in writing or on the record.

34. A trial court abuses its discretion when it acts without reference to any guiding rules or principles. The appellate courts were therefore required to apply the abuse of discretion standard, which they failed to do.

35. In accordance with TEX. R. APP. PROC. § 56.1(b)(2), The Texas Supreme Court had a duty to review the petition as the trial court and Fifth Court of Appeals failed to adhere to clearly established case law and precedent. The Texas Supreme Court's failure to review and correct clear errors fails to provide Petitioner with due process and equal protections guaranteed by the US Constitution Amendments Four, Five and Fourteen.

36. Once appellate review is established it must be kept free of unreasonable discriminatory distinctions that can only impede open and equal access to the courts.

37. To determine what process is due, courts weigh three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens posed by alternative procedural requirements. U.S. Const. Amends. 5, 14, *Crawford v. Blue*, 271 F.Supp.3d 316 (2017).

38. In this case, the private interests affected by the COA's clear errors and the Texas Supreme Courts refusal to review and correct the errors allows a government entity to abuse its immunity protections by issuing illegal contracts to perform illegal acts, avoid compliance with federal labor laws and

then participate in retaliating against a whistleblower using the courts to violate constitutional rights. The risk to other conscientious citizens is significant and will effectively silence participation in government and allow corruption with impunity, which would be contrary to the interest of the courts and public policy. If this Court refuses to grant Plaintiffs Writ, injustice will occur, which is a public policy issue affecting not just the Petitioner but all individuals harmed by the actions at the root of this case; and other similar situations which are bound to reoccur. It allows government entities to displace and violate state and federal laws through use of vendor contracts, without accountability. It allows for the court system to be used to attack whistleblowers. It undermines individuals' duty to act according to Biblical principles, civic duty and participation in government, which are public policy issues.

39. If Respondents are again successful in abusing the Courts to hide illegal acts, won't it set precedent and perpetuate their strategy? Won't it embolden others to do the same? How can the poor receive a fair trial? How many cases will not be filed or responded to by Pro Se litigants and therefore injustice will prevail?

40. Due process requires that the procedures by which laws are applied be evenhanded. Per *Texas Southern University v. State Street Bank and Trust Co.*, 212 S.W.3d 893:

We review a trial court's ruling on a jurisdictional plea de novo, construing the pleadings in the plaintiff's favor and looking to the pleader's intent. *Id.* at 226; *IT-Davy*, 74 S.W.3d at 855. "If a plea to the jurisdiction challenges the existence of jurisdictional facts, [a court is to] consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised." *Miranda*, 133 S.W.3d at 226. Yet, "[i]f the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issues will be resolved by the fact finder." *Id.* at 227–28.

41. "A motion for rehearing does not afford a party an opportunity to raise new issues after the case has been briefed, argued, and decided on other grounds unless the error is fundamental." *OAIC*, 234 S.W.3d at 747; see *Tex. Mun. Power Agency v. Public Util. Comm'n of Tex.*, 150 S.W.3d 579, 591 n.13 (Tex. App.—Austin 2004), rev'd in part on other grounds, 253 S.W.3d 184 (Tex. 2007). Fundamental error exists "in those rare instances in which the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas." *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex. 1982); see *OAIC*, 234 S.W.3d at 747; *Texas Mun. Power*, 150 S.W.3d at 591 n.13.
42. "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,'... and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." *Goldberg v. Kelly*, 397 U.S. 254, 262–263 (1970), (quoting *Joint Anti-Fascist Refugee*

Comm. V. McGrath, 341 U.S. 123, 168 (1951). The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.” *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886, 894-95 (1961).

Issue 3: When a government entity conspires to violate state and federal laws issuing illegal contract for illegal purpose, retaliates against a whistleblower violating whistleblowers constitutional rights of freedom of speech, due process and freedom of religion, how can government immunity or a plea to jurisdiction stand to avoid accountability and deny justice and equity?

43. Respondent POE initiated this case against Petitioner in retaliation of Petitioner reporting violations of law to government entities and exercised constitutional rights, including reporting a fire/explosion hazard threatening several dozen unknowing persons with threat of serious injury or death by use and storage of propane tanks with open flames in the basement of a 42 story office building and confronting the DFW Airport Board, a government entity whose voting board is appointed by the city councils of Dallas and Fort Worth, for its conspiracy with its contractor's (POE) to violate state and federal laws including but not limited to illegally issuing contracts to POE contrary to state procurement statutes, violating open meetings act and public information requirements, to outsource workers depriving potentially hundreds of low-wage predominantly minority and women workers from benefits they were otherwise entitled to, avoiding and displacing compliance with the Affordable Care Act and Family Medical Leave Act, while reasonably knowing the contractor (POE)

was violating various state and federal laws from contract issuance, including lacking workers compensation insurance for workers at an international port, violations of USCIS by shifting workers between entities to avoid compliance with ACA and failing to properly complete I9 forms as required and purposefully misclassifying workers as 1099 contractors in violation of FLSA, while insulating DFW from liability under governmental immunity.

44. DFW and all Respondents then participated in retaliation against Petitioner Whistleblower including but not limited to denying earned wages and violations of whistleblowers constitutional rights by unreasonable search and seizure of personal property, infringe upon Petitioners freedom of speech, freedom to petition, freedom to participate in government, freedom of religion, abuse of process and prevention of due process, violations of U.S. Const. Amend. 1, 4, 5 and 14.

Issue 4: Is Governmental immunity applicable without application of test and even when state and federal statutes provide exception, waiver and venue for relief?

45. Sovereign and governmental immunity have two components: (1) immunity from liability and (2) immunity from suit. *Tooke v. City of Mexia*, 197 S.W.3d 325, 332 (Tex. 2006). A governmental entity waives immunity from liability and binds itself to the terms of a contract, just as any other party would, when it enters into the contract. But it does not waive immunity from suit. *Id.*

46. Texas Local Government Code Section 271.152 says that a “local governmental entity ... that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.” A “local governmental entity” is defined to include cities, public school districts, and any “special purpose district or authority.” TEX. LOC. GOVT CODE § 271.151(3).

47. Further, there should be a waiver due to egregious conduct. In a footnote in *Federal Sign*, the supreme court held open the possibility that “[t]here may be other circumstances where the State may waive its immunity by conduct other than simply executing a contract so that it is not always immune from suit when it contracts.” 951 S.W.2d at 408 n.1. Five years later, in a plurality opinion joined by three other justices, Justice Baker rejected any “waiver-by-conduct exception” to sovereign immunity: “We again reaffirm that it is the Legislature’s sole province to waive or abrogate sovereign immunity.” *IT-Davy*, 74 S.W.3d at 857. But in a concurring opinion, also joined by three other justices, Justice Hecht stated: “I cannot absolutely foreclose the possibility that the State may waive immunity in some circumstances other than by statute.” *Id.* at 862. Only one reported case has acted on the *Federal Sign* footnote and found a waiver-by inequitable-conduct. *See Texas S. Univ. v. State Street Bank & Trust Co.*, 212 S.W.3d 893, 908 (Tex. App.—Houston [1st Dist.] 2007, pet.

denied) (university waived its immunity when it “lured” the other party into the contract “with false promises that the contract would be valid and enforceable,” then took position contract was not valid). Id. at 908. Every other reported case that has considered a waiver-by-egregious-conduct argument has rejected it. Relying on the plurality opinion in *IT-Davy*, several courts of appeal have declined to find a waiver-by-conduct exception to immunity until the supreme court identifies the kind of conduct that would give rise to such a waiver. *See, e.g., Leach v. Texas Tech Univ.*, 335 S.W.3d 386, 400-01 (Tex. App.— Amarillo 2011, pet. filed); *Employees Ret. Sys. v. Putnam, LLC*, 294 S.W.3d 309, 327 (Tex. App.—Austin 2009, no pet.).

48. Per Texas Govt. Code § 101.0215(a) DFW is liable for damages arising from its governmental functions such as failure to comply with Texas Open Meetings Act, Public Information Act, Texas Commission on Human Rights Act, Texas Local Government Code chapters 252, 2156 and 252, Prompt Pay Act and FMLA Retaliation per FMLA section 105 and 825.220, and for illegally issuing a contract to gain an illegal result, all which have been asserted in this case.

49. Exception applies for ultra vires acts as senior executives and the entire board of director of Dallas Fort Worth International Airport violated state statutes in the process it used to issue the contracts for workers and in issuing the contracts to displace compliance with federal laws, laws the entity was aware of. The senior executives and board acted without legal authority and failed to

perform multiple ministerial acts to ensure their contractor was in compliance with the contract and with applicable federal, state and local laws. *See City of El Paso v. Heinrich*, 284 S.W.3d at 372.

50. The Texas Prompt Payment Act designates the payment terms for governmental entities and their vendors. TEX. GOVT CODE §2251. The Texas Prompt Payment Act establishes a payment date for governmental entities of thirty days after the later of: (i) the date the governmental entity receives the goods under the contract, and (ii) the date the performance of the service under the contract is completed or the date the governmental entity receives an invoice for the goods or service. Id. §2251.021. A governmental vendor must pay subcontractors by the tenth day following receipt of payment from the governmental entity, and subcontractors must pay their suppliers by the tenth day following their receipt of payment from the vendor. Id. §2251.022, .023. In this case, DFW Airport was notified of the non-payment for work Ms. Torres performed on behalf of DFW Airport via DFW's Contractor, Pursuit of Excellence. DFW Airport provided no relief to Ms. Torres contrary to the contract and statute.

Issue 5: If the government entity failed to show it owed no duty as a matter of law, when fact issues exist, must it be resolved by the fact finder, the jury?

51. In this case, there were legitimate questions as to jurisdiction and duty owed that needed to be answered by the fact finder, the jury, including but not limited to if the contract between DFW and POE was legally issued, if DFW was acting within its proprietary or government function in issuing the contract, if DFW owed Petitioner a duty per the Prompt Pay Act contract terms to enforce payment for services to Petitioner for performance connected with the contract between DFW and POE, if DFW entered into a contract to perform an illegal act displacing and avoiding compliance with ACA and FMLA to deny otherwise eligible workers from benefits to which they were legally entitled, if DFW has participated in retaliation against the Petitioner whistleblower violating Petitioner's constitutional rights.

52. The Fifth Court of Appeals ignores that Petitioner challenges that the contract between DFW Airport and its contractor, Pursuit of Excellence, was illegally issued and that the parties conspired to avoid compliance with federal employment laws, The Affordable Care Act and Family Medical Leave Act and violated state procurement and Open Meetings laws to ensure Pursuit of Excellence received the contract, thereby issuing an illegal contract to perform an illegal act, for which immunity would be a gross abuse of the power of the government agency and contrary to the purpose of the state, to act in the best interest of constituents.

Issue 6: Does a government entity have a ministerial duty, a proprietary function, to enforce contract terms with good-faith effort?

53. The contracts issued between DFW Airport and its contractor POE, included specific performance terms, including the requirement to comply with all applicable federal, state and local laws, including Prompt Pay Act. The contracts also included terms to maintain specific levels of insurance coverage and report coverage and any changes in coverage. The contracts included terms requiring specific record retention and reporting. DFW Airport failed to inspect what it expected and when notified of the contractors various breaches of contract, DFW Airport took no action to enforce contract terms nor to provide relief to workers harmed by contractors breach. In fact, DFW Airport asserted it owed no duty despite being enriched by services performed and failed to make any effort to enforce Prompt Pay Act.

Issue 7: Should Petitioner be allowed to amend for relief under Uniform Declaratory Judgments Act? Appellant would not have been harmed BUT FOR the illegal contract and amendment is allowed up to seven days prior to trial without judicial approval per state law.

54. The Fifth Court of Appeals also reasons that because Petitioner did not directly contract with DFW Airport, no waiver or duty applies, which is also contrary to statute and case law. Petitioner would not have been harmed BUT FOR the contract between Respondents DFW Airport and its contractor, Pursuit of Excellence. The contract included terms requiring POE to comply with all federal and state laws and to promptly issue payment to all workers

who contributed to performance of the contract demonstrating this foreseeable event.

55. DFW failed to perform ministerial act required in contract with POE, to ensure the contractor complied with all laws including Prompt Pay Act, to ensure Petitioner, which provided services to POE in fulfillment of POE's obligations to the contract between POE and DFW, was promptly and fully paid for services provided for which DFW benefitted.

56. The Petitioner noticed DFW that POE had refused to timely and completely pay Petitioner for services rendered in performance of the contract between DFW and POE and by which POE and DFW benefitted from Petitioner's services. DFW refused to enforce the Prompt Pay Act terms defined in the contract between DFW and POE. These were contractual terms DFW Airport had a duty to enforce yet failed to do so. Petitioner's 3rd Amended Counter-claim clearly makes this assertion.

57. The Court of Appeals was obligated to look at substance of pleadings which is apparent from the context. Tex. R. Civ. P. 71, 166a; Tex. R. App. P. 33. Further, when error is curable by amendment, petitioner should be afforded opportunity to amend per TRCP §66 and *City of El Paso v. Waterblasting Techs., Inc.*, 491 S.W.3d 890 (Tex. App. 2016).

58. The Fifth Court of Appeals refers to Torres' 2nd Amended Counterclaim while ignoring that Torres filed a 3rd Amended Counterclaim which contained claims and addressed the issue of government immunity. The trial court ordered Petitioner to amend, Petitioner amended as ordered and then the trial court denied the amended pleading, which was an abuse of discretion and process without explanation, per TRCP §66 and *City of El Paso v. Waterblasting Techs., Inc.*, 491 S.W.3d 890 (Tex. App. 2016) which provides amendment unrestricted prior to seven days before and even within the seven days prior to trial if not a surprise, any refusal to allow amendment is abuse of discretion. Therefore, by the Fifth Court of Appeals and The Texas Supreme Court failure to consider Petitioner's 3rd Amended Counterclaim, it fails to provide Petitioner with due process and equal protections.

59. If this Court fails to grant Writ of Certiorari it allows orders which demonstrate clear error, bias, are contrary to law and justice to stand undermining the credibility of the Court system and furthers inequity in the courts against indigent and pro se parties who are merely trying to participate in government and be responsible citizens.

60. If this Court fails to grant Writ of Certiorari, it allows violation of Petitioner's right to due process and equal protections under the US Constitution's Fifth and Fourteenth Amendment due to the state high court's refusal to perform duty to review due to clear error and prevention of record, refusal to perform

ministerial act to find orders issued during statutorily required stay are null and void and that order demanding Petitioner pay cost of appeal contrary to statute as unchallenged affidavit of inability to pay was on file.

PRAYER

Petitioner respectfully requests the Court Grant the Writ of Certiorari for the reasons contained herein.

CERTIFICATIONS

I hereby certify that a true and correct copy of the foregoing instrument of 7,217 words has been delivered pursuant to all parties and/or counsel of record on July 13, 2020, resubmission with corrections per July 24, 2020 notice from Supreme Court Clerk and Rule 14.5 on September 18, 2020.

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