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Supreme Court of Texas.
Mission Consolidated Independent School District, Petitioner,
v.
Gloria Garcia, et al, Respondent.
Nos. 05-0734, 05-0762, 05-0763.

February 15, 2007.

Appearances:
David P. Hansen, Schwartz & Eichelbaum, Austin TX, for petitioner.
Savannah Robinson, Law Office of Savannah Robinson, Danbury TX, for respondent.

Before:

Chief Justice Wallace B. Jefferson, Don R. Willett, Harriet O'Neill, David M. Medina, Paul W. Green, Nathan L. Hecht, Dale Wainwright, Phil Johnson, Scott A. Brister

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JUDGE #1: The court is ready to hear argument in 05-0734, 0762, 0763 the Missi-- Mission Consolidated Independent School District cases.
COURT ATTENDANT: May it please the Court. Mr. Hansen will present argument for the petitioner. Petitioner has reserved 5 minutes for rebuttal.

ORAL ARGUMENT OF DAVID P. HANSEN ON BEHALF OF THE PETITIONER

MR. HANSEN: May it please the Court, Counsel. Good morning. My name is David Hansen and I'm here on behalf of the Mission Consolidated Independent School District. Today, the Court will, for the first time, have the opportunity to consider the newly reenacted section 101.106 of the Texas Civil Practice and Remedies Code. The statute has for the pa-- past 25 years served in very important, the area of, of employee immunity. And if the Court chooses to apply the-- apply the statute as written to this case, it will also become a very important case in the area of governmental immunity. We ask the Court for relief from the decision of the Court of Appeals because the Court of Appeals committed several errors. The first, they all rude from rules of statutory construction. And that error in the statutory construction led to their erroneous application of the statute to the case it had. MCISD filed its plea to the jurisdiction based on section 101.106(b) of the Texas

Civil Practice and Remedies Code. It reads, "The filing of a suit against any employee of a governmental unit constitutes an irrevocable election by the plaintiff and immediately and forever bars any suit or recovery by the plaintiff against the governmental unit regarding the same subject matter unless the governmental unit consents." Now, there are several things that are not in issue here. There are spent no issue made whether or not the governmental unit consented, it did not. There is also no issue about whether or not this involves an employee of the governmental unit. That was on the face of the pleadings that that was a super-- former Superintendent of the School District, Mr. Dyer. And then the third, there is no-- there is no issue about whether or not we're a governmental unit. The only issue that seems to-- seems to have a reason or the only two issues are whether they arise from the same subject matter and whether or not, this is any suit. As to the issue of whether or not it arises from the same subject matter, remembering that this is a plead to the jurisdiction. We accept all of the facts that are pled in the petition as true and as you go through the petition and as I've cited in my brief, we see that-- we see that nearly all-- nearly all the claims are pled against both defendants, in, in the Ploro. But the claims are not what-- determines what the subject matter is. As this Court has recognized numerous occasions, subre-- subject matter is determined based upon the facts. And whether or not, these, these claims arise from the same set of transactions or occurrences. And in this case, all of the claims arise out of determination of the, the three respondents in this case. They are discrimination claims that they were-- that the termination amounted to an intentional infliction of emotional distress, that these reasons for the termination were defamatory in nature. So they all certainly arise out of the, the same occurrence which was the termination.

JUDGE #2: Let me ask you this. -

MR. HANSEN: Yes, your Honor.

JUDGE #2: - If we read 101.106(b), the way you want us to read it, it would completely vitiate subsection a, wouldn't it? In every instance.

MR. HANSEN: No, no, your Honor, it wouldn't. Because based on-- based on the statutory construction, let me go ahead and-- let me go ahead and explain that. Let's take, for example, a case where there is a, a suit that's under this statute. A good example would be if we have a-- if we have a bus accident in the school district. And the employee and the employer are both sued. In that case, you apply (e) and that escorts out the employee because that (e) is a procedural mechanism not a statuto-- not a-- not a jurisdictional section of the statute. And then (a) keeps it from coming back in. Do we apply (b)? The answer to that question will be, "No." (b) won't apply. And we can take a look at-- or one of the reasons that we look at that as if-- and, and as Justice Xavier Rodriguez says, as decided in, in the Western District Court, that if the School District files a motion under (e), then it is consented to suit. By asking that-- By asking that, it'd be set forth-- it'd be left and be held accountable for the claims.

JUDGE #3: Well, let me-- let me follow-up on Justice O'Neill's question. Because I have really the same one whether (e) would be redundant under your theory. The legislature's giving us both (a) and (b) and the way it works is any suit against the government or its employee immediately bars suit against the other. So if they're both suited once regarding the same subject matter, then both suits are immediately and forever bar, isn't that right?

MR. HANSEN: They are immediately and forever bar but remember, (e)

is not a redundancy. There is no motion to dismiss in Texas-- or in the Texas Rules of Civil Procedure. So what this does is it creates a procedural mechanism where you simply, rather than filing a plea to the jurisdiction, the School District simply files this motion pursuant to ...

JUDGE #3: But under subsection e, if both the employer and employee are sued, under (a) or (b), I can't remember which one, the employer's already been immediately dismissed, so how would they move to dismiss lawsuit?

MR. HANSEN: No, your Honor. As you'll-- As you'll see it's under this chapter. In order to determine which provision of this clai-- which provision applies, you have to look at two things. Whether or not the claims arise from the same subject matter and the claims that were filed. Now, the Court of Appeals held that this ca-- this can only be used to eliminate claims that are under this chapter. And actually, that's where you-- that's where you run into trouble. So let's take this example of, of an incur of, of the bus accident. And we'll look at both (e) and (f) to see how this works. You-- As I said earlier, if you have (e) and (f)-- or, or rather if you have a suit and both of the-- both the employee and the employer have been sued, then you will go ahead and use that procedural mechanism and escort out the employee. Now, will you ever-- will you apply (b)? Now, one of the errors that the, the Court of App-- or the Court of Appeals made was that they ingrafted onto the statute under (b) the language under this chapter. Now, if -

JUDGE #2: Well, -

MR. HANSEN: - you do ...

JUDGE #2: Of course, -

MR. HANSEN: Yes.

JUDGE #2: - they did because an employee sued, is not a sovereign and so it would not make sense to say employee under this chapter.

MR. HANSEN: And, and it makes-- And it makes just a little sense to say any suit against a government or unit under this chapter because you see in (b), that's where any suit-- that, that's where they talked about any suit. Because it says and forever bars any suit or recovery by the plaintiff against the governmental unit and there-- nowhere in there is under this chapter. Now, if the-- Now, they clear-- The legislature clearly showed that if it wanted to limit the application of one of the statutes to acclaim that it was under this chapter, it could have done so because it did so in three other areas in this statute. So what can that mean? Well, let's see if it applies in (f). Now, (f) occurs in this bus accident case and will-- and, and where they just sue the bus driver. Now the bus driver is sued and, and so, well, look. And we'll apply (f) and we'll say, if a suit is filed against the employee of a governmental unit based on conduct within the general scope with the employee's employment and, and here you have all of those things satisfied. He's driving his bus. He runs into a car. And if it could have been brought under this chapter against the governmental unit, and it's a bus accident, it could have been brought under this chapter against a governmental unit, then the suit is considered to be against the employee and the employee's official capacity only. Now, if it's in his official capacity only, that's the same thing as is sued against the governmental unit. Now, let's see if (b) will apply in that circumstance. It says, "The filing of a suit against any employee is the suit against the employee?" As a matter of law pursuant to (f), it is not. It's deemed against the employee and the employee's the official capacity only and the government unit is,

is substituted for the-- the government unit is substituted for the employee. So-- So in that case, (b) wouldn't apply. So when will if, if (b) only applies when the claim is under this chapter, when will it ever apply? Because on the-- (b) requires three things. It requires that the more than one person be sued, an employee of a governmental unit and the employer and it requires that they arise from the same subject matter. In, in other words, it will never apply. And as, as Justice Brister has stated in, in Delhite ver-- versus Nhata, a statute should not be interpreted to be pointless. And that is precisely what happens if you-- if you ingraft on the statute, this requirement that it'd be under this chapter. Now, when will it apply? Then we look at the claims and if they are not claims under this chapter, and it's a suit against both the governmental unit and its employee arising from the same subject matter. We all know the only time we di-- a court has a jurisdiction over a-- over a suit is whether the legislature waived sovereign immunity from suit. So it's going to have to-- if it's going to have any point to it at all, it's going to have to have a point and eliminate claims where there is been a waiver of sovereign immunity against the governmental unit. I've already showed how, if, if you do apply and-- well, if you try and ingraft under this chapter on there, it will either become a nullity or in some circumstances, a "meat-grinder."

JUDGE #2: Well, this, this is a confusing area of the law. It strikes me and what I'm graphing within this case is you've got a number of common law claims. That state's immune from anyway?

MR. HANSEN: That's right.

JUDGE #2: So regardless, you can get out on this claim. So what we're really talking about is the claims under the, the human rights act -

MR. HANSEN: Yes, your Honor.

JUDGE #2: - or discrimination.

MR. HANSEN: Yes, your Honor.

JUDGE #2: And it would be fairly asset here to say that the-- that human rights act which specifically waives immunity against the School District is wiped out through the subsection b of 101.106. I mean, at that-- that's hard for me to figure out how the legislature would have wanted to do that.

MR. HANSEN: Well, actually as, as you-- Well, first the-- the-- this is-- that's what they said. They used any suit which is actually similar to the language from the previous version of the statute which said, "any action," but as this Court has held in Thomas versus Olley action is synonymous with suit. So as, as you held in Bel versus Love, "any suit means any suit." And now, given at that time when, when you render that decision, we were talking about-- we were talking about suit against employees. But as Justice Green held in Urban versus Canada, there is-- where there was a statutory liable claim that was dismissed. The, the fact that it's embodied in some other statute, it doesn't really matter any suit means any suit and if we're going to ...

JUDGE #2: But the legislature then intended to allow waiver immunity against School District for discrimination under the human rights act, and to discourage suits against employees.

MR. HANSEN: No-- Actually the, the legislature intended to-- has the dissent in, in the-- in the Waksahatchi versus Johnson said, "Take meat cleaver to the cases." And say, "Look. If you have something that's arising of the same subject matter, we're not going to let you sue both the employee and the governmental unit." In the interest of judicial economy, you pick one or you pick the other. And if you look--

If you look at (a) and (b) and the way that they worked together, understanding that (b) is never going to be applicable when it-- when the claim is under this chapter, you'll see that there are again and again. That, that they-- They take every suit against a governmental unit and its employee and so long as it arises from the same subject matter, it had suit and says, "You're free to pursue your claims." Now, the question might be, well, what happens-- what then would happen in, in a case if somebody has been discriminated against? Well, this statute isn't going to apply to get rid of federal claims because of the supremacy clause. So if someone feels like they still need to pursue their claims for discrimination, they're free to go ahead and file something under Title VII or perhaps under the United States Constitution alleging discrimination. This is strictly dealing with what's in the purview of the legislature and what was certainly in their minds and as this Court has held on many occasions, the Court-- or the legislature is deemed to be cognisant of all the laws and the decisions that, that have been rendered surrounding those laws, when it enacts the statute. And if that rule of construction applies here, then it certainly when, when they say "any case", they'd certainly don't mean "in no case", they mean "any case" and they were certainly cognisant of that and they could have carved out an exception there have they wished to.

JUDGE #2: If they had-- If the plaintiff had simply sued the District and the employee for discrimination under the, the human rights act, and not alleged any other claims, would the result be different?

MR. HANSEN: If they had sued the, the School District and the employee under the human rights act.

JUDGE #2: Alone?

MR. HANSEN: Alone. Of course, it-- Of course, the-- it would-- they wouldn't be able to sue an employee under the-- properly sue the employee under the human rights act because the human rights act only applies to governmental units but the, the results-- I think, it's harsh of that sounds the result would be the same, you would-- you would cleave it. And, and, because this is any suit, that that claim against the employer of discrimination would be dismissed. Now, the way that this, this statute should have applied in this case would, would be-- to have looked at and said, said, "We are a governmental unit." They sued a governmental employee, any suit means any suit just like it always has. And certainly-- And certainly, looking at to the history of this-- of this statute and the history of that particular piece of language was per-- or that, that broad statement which was imported from-- imported from the, the previous statute. It can come to no other conclusion then that this case should have been dismissed. And, and that there is no jurisdiction over this case pursuant to 101.106 (b). Thank you for your time.

JUDGE #1: Thank you Counselor. The Court is ready to hear argument from the respondents.

COURT ATTENDANT: May it please the Court. Ms. Robinson will present argument for the respondents.

ORAL ARGUMENT OF SAVANNAH ROBINSON ON BEHALF OF THE RESPONDENT

MS. ROBINSON: May it please the Court, and opposing Counsel. There

are tow reasons that the requested relief from the School District should not be granted. The first reason is that long standing rules of construction do not support their interpretation of the statute. The second reason is that basic policy-- basic public policy annunciated in 1969, which has not changed to the present, does not favor the interpretation that they have reached because they reached a conclusion that is contrary to the goal of the statute. If you look at the public policy embodied in the whole of the statute, the whole of the statute has six part. It is not six separate statutes. As a matter of statutory construction, it is long standing law that you look at the purpose, the intent of the whole statute. The whole statute isn't intended to do two things. It's intended to prevent the government recovery which is unfair to the Public Treasury and it is intended to protect the employees. Protecting the employees is not an altruistic act. It is in the benefit of the governmental entity to do so. As the insurance companies have long known, when you control the defense of a lawsuit, you control the cause. You can cap the damages by settling earlier or settling fairly. You can prevent a conflict between yourself, the governmental entity, and the employees. And it can protect from any possible collusion. Collusion is not a wild assertion because particularly, the TCHRA, the Texas Commission on Human Rights Act, covers sexual harassment. Sexual harassment case is fre-- frequent-- frequently have a romantic portion. It is not unheard-of for victims and the aggressor in a sexual harassment case in a sexual harassment case to cooperate in those lawsuits. They may get married later on down the road. So that public purpose embodied in the election of remedies statute is to protect the government by allowing them to control the litigation. They control the cause. They get to use their caps. They get to prevent any conflict with the employees and they get to wipe away the specter of collusion. The Texas Commission on Human Rights Act is a separate waiver of sovereign immunity from the Tort Claims Act. The Tort Claims Act acknowledges that there are other waivers of sovereign immunity in 101.103, where it says, "The Tort Claims Act is in addition to other remedies." Under the Texas Commission on Human Rights Act, only the employer can be sued. You don't sue an employee. Under the Texas Tort Claims Act, intentional torts can not be raised. None use of tangible property can not be raised. There are a lot of things that the governmental entity has not waived immunity for it. And that an individual, who's perhaps acting with malice, could be responsible for.

JUDGE #1: Do you think it's true that you can only sue a governmental unit under the Tort Claims Act?

MS. ROBINSON: No, sir, I don't. The Texas Commission on Human Rights Act is an independent waiver of immunity. It mentions it in the definition of an employer. It's very clear that state instrumentalities are a portion of the employer definition. It says, "You can sue an employer they can file to employee of the government." There isn't separate damages provision that says that the state will pay attorney's fees just like any private person.

JUDGE #1: I understand that point. But what about the Tort Claims Act?

MS. ROBINSON: The Tort Claims Act is in addition to other remedies. I think ...

JUDGE #1: I understand that but can you sue an employee under whatever that means the, Tort Claims Act?

MS. ROBINSON: No, sir. If you have ...

JUDGE #1: You can sue an employee under the Tort Claims Act or

under the Human Rights Act?

MS. ROBINSON: You can not sue an employee under those causes of action. You can sue an employee for the same subject matter.

JUDGE #1: But would you can't-- It would make any sense and be to say the filing of suit against any employee of government-- immuni-- under this chapter, 'cause you can't sue employee -

MS. ROBINSON: Right.

JUDGE #1: - under the chapter.

MS. ROBINSON: Absolutely, correct. And I think that goes against the interpretation proffered by the District. The-- It's cleared why that language is not in there. The ...

JUDGE #4: But it seems to-- It seems to support the District--the filing of any suit against the employee of a governmental unit would it make any sense with the remedy of this chapter constitutes an irrevocable election of governmental unit regarding the scientific act.

MS. ROBINSON: Right. Right.

JUDGE #4: That seems to be the District charges.

MS. ROBINSON: And I think the interpretation given to it by the Court of Appeals is regarding the same subject matter that regarding the same subject matter we'd have to arise under the Texas Tort Claims Act. For the Texas Tort Claims Act election-to-remedies.

JUDGE #3: Uh-huh.

MS. ROBINSON: It is not that the following suit against any employee under the statute. It is the same subject matter under this chapter.

JUDGE #3: [inaudible] disabling.

MS. ROBINSON:No, sir, it does not. It is a logical extension because of the way that the entire statute is structured. And the problems about that-- That-- The difference between the types of things that you can suit a governmental entity for and you can sue an individual for.

JUDGE #1: What are good reasons for suing the employee if you have cause of action regarding the same subject matter against the government, itself?

MS. ROBINSON: If there is a closed question concerning official capacity, whether there was an action by an individual that was within his course and scope and within his authorization, or whether it was ultra vires sort of action or there is a factual question about whether the employee was acting on behalf of the government or whether he was acting on his own behalf.

JUDGE #3: And if the latter, is the state have to limit all the judgment or you just don't judge the employee for whatever he's done.

MS. ROBINSON: I think, you go against the employee for whatever he's got but the state would prefer to defend that cause of action. You know, there's a difference between defense cause and indemnity cause. The judgment may have to be born by the individual but the cause of defense, it's clearly in the government's best interest to defend the lawsuit.

JUDGE #3: Why do you think that my concern is that the government will say, "Well, sure he did it but he will not contrast" So -

MS. ROBINSON: That's a concern ...

JUDGE #3: - you can't give him-- you can't get us, so you haven't sued him.

MS. ROBINSON: That's a concern and the defense counsel who are handling that would have to work out that potential conflict between the government position and the individual's position. The individual likewise has a clear interest in saying, "You know, I was in course and

scope. I was authorized to do this. You know, we have this secret memos in my desk that prove that I have told my supervisors, I wanted to do this." And so the defense counsel remains in control of that conflict in the way that conflict is presented to the finder of fact. The Public Treasury can be depleted directly by judgments against, by cause of defending suit. It can also be depleted indirectly by employees having the purpose insurance for potential liability. The legislature is very clear in this statute that they want the government to take on the defense and to maintain control of that litigation. This ...

JUDGE #2: Under, under the, the District's reading of this statute, would there be any way through-- for a plaintiff to sue both and main-- and continue to maintain that lawsuit against the individual and the government. Individual for those actions that could not otherwise be barred and against the District for the human rights violations.

MS. ROBINSON: I don't think so. I think the statute does now under (e) and (f), force and election and you have to take your chances. You know, if there is a closed question of the official capacity of an individual, there would be a factual finding by the Trial Court under (f) about whether or not he was acting in his official capacity. And my assumption is that the same process that immun-- that this Court announced in the Miranda case versus Texas Parks and Wild Life would apply, that as a plea to the jurisdiction, you would have a fact finding. The trial court would make a-- a finding of fact about whether or not he was in the official capacity. But there's another issue that's not directly addressed by this lawsuit but it is coming your way about whether or not this entire statute is an immunity statute. There is one decision out there that if the employee is dismissed from the lawsuit, that is could not be the subject of interlocutory appeal. I think it makes better sense for both the governmental entity to be able to pursue interlocutory appeal and the employee to be able to pursue an interlocutory appeal because it so mangles the case. It so directs the case for that kind of a fact finding be made early on in the lawsuit that if there is a controversy over that needs to be resolved or you waste a lot of money defending the lawsuit twice.

JUDGE #2: What case you are referring to?

JUDGE #2: About the jurors, I think, it would have [inaudible] isn't it?

JUDGE #3: [inaudible]

MS. ROBINSON: [inaudible] in January 2007 and it's-- it is not the additional remedy of Southwest statement but it's 2007 West law, 291014. The issue of the subject, whether this arises under the same matter, has not been determined. The trial court didn't reach it, the Court of Appeals didn't reach it. And quite frankly, the pleadings are deficient. So we go back to Miranda versus Texas Parks and Wild Life. And at some point, the trial court is going to be to have a hearing, probably there will be special exceptions on amendments to clarify that issue. At this point, without special exceptions, without a finding about whether or not there is subject matter or whether it is the same subject matter. And I would contend that a defamation claim is a whole lot different than a Texas Commission on Human Rights-Discrimination claim. There really isn't any finding when were the other, whether or not, this is the same subject matter. Well, Waksahatchi case of course, found that a plaintiff who had been arrested, he said maliciously and then two months later, was terminated. The Waksahatchi Court of Appeals found that that was not the same subject matter. We don't have a timeline in these pleadings. We don't have a good set of facts that are

on these pleadings. So at this point, we're not able to say that it is or is not the same subject matter. This is a story about a case of statutory construction and that long standing principles that we would rely on at statutory construction is that you look first to the intent of the statute as a whole and then, you interpret the statute based on that. You don't read any part of it to make it a nullity. I think Justice O'Neill is absolutely correct that if you read the statute the way the District is asking, you obviate section (e) which clearly was not their intent. And I think in this case, we don't have any issue about whether or not, the government's policy is a rational policy because it's very clear that it benefits the government to control the litigation.

JUDGE #1: So you don't like the argument that section(e) is a procedural mechanism that allows a civil procedure to call a motion to dismiss to be filed which does not exist, it's by name in ERISA sole procedure.

MS. ROBINSON: I know that it doesn't exist in our rules in civil procedure but I sure see a lot of them. And they're, they're misnamed. They're pleased the jurisdiction notice through that. I think the better rule-- rea-- reading is that this entire thing, it, because it's part of the Tort Claims Act, is a modification of sovereign immunity. As an immunity question, a plea to jurisdiction is the better procedural device. And so that-- whether it adds a new level of civil procedure without this Court's enactment of a Texas Rule Civil Procedure. I don't think it does. I think we had adequate procedures already.

JUDGE #1: Any further questions?

JUDGE #2: Thank you.

JUDGE #1: Thank you Counsel.

MS. ROBINSON: Thank you.

JUDGE #5: Mr. Hansen, only to make sure I heard you right in your respondent to Judge O'Neill earlier. Just to make sure I'm clear. Did you suggest that under your a sort of any suit means suit -

MR. HANSEN: Yes, your Honor.

JUDGE #5: - theory? That if a plaintiff, if a victim of race defamation by a stand alone claim for that under the Human Rights Act, that claim would be barred?

REBUTTAL ARGUMENT OF DAVID P. HANSEN ON BEHALF OF PETITIONER

MR. HANSEN: If they brought it-- If they tried to bring a claim against the employee arising from the same subject matter, yes. It would be barred. And, and that the-- And-- I guess it would. The statute is very clear. Now let-- May I address a, a couple of points the I raised here. The question of subject matter is not determined by what claims are filed. So as, as what Justice suggested here that somehow the subject matter is different simply because it is stated in terms of a Tort Claims Act claim versus a discrimination claim. That's not how you decide what subject matter is. Subject matter is decided by the facts. And this Court held that in MH&MR versus Bossley, in another case interpreting section 101.106. So the-- that is-- that's very clear law. If this-- Can this be harsh? Yes, it can. But what will be harsher? If we have-- We-- Here we have this statute and if have a suit against an employee and the government entity for a bus accident, and

we adopt the interpretation somehow of the-- of the Court of Appeals which says that if you used (b) to, to dismiss ca-- or to bar claims under this chapter, then you've got not a "meat cleaver" or it seemed somewhat grotesque but not so much when you look at it in, in what it would become as a "meat grinder." Because if you apply-- if you can only apply this in claims that are under this chapter, then you are completely eliminating the cause of action that a person may have against in-- or for a legitimate claim where they run over by a bus. Because you either used (e) or (f) to get the employee out and substitute the government entity and then you apply (b) because that's the only time that the Court of Appeals says that this rule applied is to dismiss claims under this chapter. But that's not right. That's not have it wrote it. This statute is pretty straight forward if you look at it for a couple of years like I have. But it's, it's pretty straight forward. If, if you think about the used in terms of what (e) and (f) are and they are just procedural mechanisms and you will be seeing this, this section in December to the work where they're claiming that (e) is not the jurisdictional bar. It's (a). (e) escorts them out and (a) is the procedural bar. That's for you to file the plea to the jurisdiction if they ever tried to bring him back in.

JUDGE #2: Is there any claim here that invokes the used of tangible personal property provision of the Tort Claims Act?

MR. HANSEN: No, your Honor, there isn't. There is-- There is no claim in here that provide us under this chapter and if there were claim that arose under this chapter, then we would be-- then we would be applying (e) and Mr. Dyer would be out and then, (a), to keep him out. So if there were any claim under here that arose under this chapter, that's what we would be doing. The statute-- Or it was said just a moment ago that the statute was intended to protect the employees and there's language all over the case law in 101.106 saying that. But that's before they added the section (b) and section (d) who's only purpose is to eliminate claims again-- or is to bar claims against the government. So it's somewhat erroneous to go back to that language now and waded this newly reenacted statute and say that there is-- that there, there is no policy in here to protect government unit. The policy is to create efficiency and that is to eliminate act to get go and to force the plaintiff to decide, "Am I going to file a 'shotgun' pleading and let the statute decide who I sue? Or am I going to do a reasonable amount of research into those. I've got most of the time. I've got to put a long, long time to determine what's going on here." In, in fact, if-- if it's a TCHR claim, they have the whole TCHR process to go through, to determine who they're going to sue. And the statute simply asked them to be accountable for that.

JUDGE #2: So they have not included the individuals here? That would be still be include but at least they name the individual everything else is turning?

MR. HANSEN: Yes, your Honor. And that's because the-- (b) will never apply, none of these provisions will ever apply for only one suit. And that's the best indication of all of what the intention of the legislature was when it enacted this.

JUDGE #3: Did the government and the employee motion bear to have an interlocutory appeal?

MR. HANSEN: Well, an interlocutory appeal may rely under (a) but for the employee because as this Court held in Harris County versus Sykes, this is an immunity statute. So they would-- Actually, they would file a summary judgment asserting immunity in, in, in (a). And so it's possible that they might have interlocutory appeal well, on this

record.

JUDGE #1: Any further question? Thank you Counsel. Because it is submitted and the Court would take a brief recess.

MR. HANSEN: Thank you to your Honors.

2007 WL 5425886 (Tex.)