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Supreme Court of Texas.  
The State of Texas, Petitioner  
v.  
Barbara Oakley, as Guardian of the Estate and Person of Richard  
Danziger,  
Respondent,  
The State of Texas, Petitioner.  
v.  
Barbara Oakley, as Guardian of the Estate and Person of Richard  
Danziger,  
Respondent.  
Nos. 06-0050, 06-0172.

February 15, 2007

Appearances:  
Philip A. Lionberger, Office of Attorney General, Austin, TX, for  
the petitioner.  
Scott Ozmun, Whitehurst Harkness Ozmun & Brees, Austin, TX, for  
respondent.

Before:

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

#### CONTENTS

ORAL ARGUMENT OF PHILIP A. LIONBERGER ON BEHALF OF THE PETITIONER  
ORAL ARGUMENT OF SCOTT OZMUN ON BEHALF OF THE RESPONDENT  
REBUTTAL ARGUMENT OF PHILIP A. LIONBERGER ON BEHALF OF PETITIONER

JUSTICE #1: The court is ready to hear argument in 06-0050, and  
06-0172, the State of Texas versus Barbara Oakley.

COURT ATTENDANT: May it please the Court. Mr. Lionberger to  
present argument of the petitioner for the State of Texas.

ORAL ARGUMENT OF PHILIP A. LIONBERGER ON BEHALF OF THE PETITIONER

MR. LIONBERGER: Good morning and may it please the Court. These  
cases concerning Texas, wrongful imprisonment's statute raised too many  
issues for review.

JUSTICE #1: All right, lead it.

MR. LIONBERGER: Statute's Waiver of Sovereign Immunity from suit  
extend to an assignee of the wrongful imprisonment cause of action.  
Even though the waiver says nothing about assignees. And second,  
whether the statute forbids a person from being compensated twice by

the State and another governmental unit for the same wrongful imprisonment. We say the answer to each of these questions is known. As to the first issue,-

JUSTICE #1: If two events should not do a reach one, how it does work? If we have to, to know the way we will reach whether this can be assigned.

MR. LIONBERGER: Your Honor, if, if your Honor's answers to know than no, I do not believe you that you have to reach question one regarding this signs. As to the first issue, the relevant facts are; that Mr. Ochoa assigned his wrongful imprisonment claim to Mr. Danziger's guardian Ms. Oakley. Ms. Oakley then suit the State on Mr. Ochoa's cause of action for wrongful imprisonment. Question is: Can she do that? We say that she cannot. Section 103.101(a), of the wrongful imprisonment statute contains the Waiver of sovereign Immunity from suit. It says nothing however about assignees. the section does not contains specific language to be effect that of the waiver provided by the section extends to assignees of the original claimant. Because of the rule that the waiver of Sovereign Immunity and the scope of that waiver must be expressed in clear and unambiguous language. Section 103.101(a), does not waive the State Sovereign Immunity from suit as to an assignee. Now, despite this rule, the third court of appeals held that common law rules of assignments could be used to fill in the gap in statute regarding assignees. We state that this was error. The correct approach that the court of appeals should have take it would had been to apply the analogical age, announce in this Court's position of which the twofold, State Hospital versus Taylor. This age should have been used to determine whether the scope of the waiver extends to assignees by necessary application. Now, once such eight asks whether the statute would have been rendered minimal unless immunity were waived as to assignees. Now here, even if immunity were not waived as to assignees, the wrongful imprisonment statute would still be effective and accomplish the legislature intent by operating in favor of the person entitled to compensation. Indeed, there is cannot be said that it is beyond doubt; that the state immunity as to assignees has been waived. Nor is in implying a waiver for assignees unavoidable error and the-- and nor cannot be said that it is the almost certain intent of the legislature that immunity be waived as to assignee.

JUSTICE #1: Why should we look at it that way instead of, of-- as waivers of immunity are written in the context of the common law of preference or assignability of at least some claims. Why wouldn't we think that when the legislature is writing this law regarding waiver, it's thinking about asylum.

MR. LIONBERGER: Well, we don't have any indication here that, that was something, that the legislature was thinking about when they wrote it-

JUSTICE #1: I was saying, what is saying, generally speaking, you're saying we should look at waiver rules simply apart from common law of assignability. And I'm saying why is doesn't make more sense that the legislature would write whatever rules in the light of common law rules of asylum?

MR. LIONBERGER: Leave the answer to that, your Honor is that the only way we can know-- the Court can know for sure whether that is true; that, that it should be assumed that the legislature write-- wrote this in light of the common law rules is to look at the language of the statute and the legislative history here and we also have the very basic rules regarding sovereign immunity that the legislature must express its ten-- intent clearly and unambiguously in order to waive

sovereign immunity and the reason for that is the policy judgment that the court has stated numerous times that when it comes to sovereign immunity, that is something that is a waiver of sovereign immunity; that is a decision that is best left to the legislature and therefore, the policy judgment has been made that in order for a Court to find the waiver when it has not been stated it and using those magic words, we waived it, we're going to require something more. We need something that's very clear.

JUSTICE #2: If the purpose of, of immunity is to protect the public fist, how does prevent an assignee really did that? I mean, if we say this claims are unassignable then the inmates just going to keep the claim itself and bring in itself. So how, how do we further the, the purpose behind the act to protect the public fist in dappling your position.

MR. LIONBERGER: Well, your Honor not only is the waiver of sovereign immunity and the waiver and, and the scope of that immunity something that is addressed to the public fist and something that addressed to a legislature and what if is best equipped to do. But not only is the legislature trying to protect the fist but in doing that, it is also has the power and responsibility of saying to whom that waiver is going to extend to. So the legislature here when you look at the language of the statute, it is, it is expressing its tempt, we believe quiet clearly as to whom, as to whom that that, that waiver should run and that waiver and to whom them shall get the money if the requirements of the statute are met or particular claimants is not a waiver as to claims generally is to particular claimants and the particular claimant here that a waiver is addressed to is to the original claimant. Person who was wrongfully imprisoned.

JUSTICE #1: Are you aware of the statute that waives immunity for a person and the person's assignees?

MR. LIONBERGER: A Texas statute or any statute anywhere.

JUSTICE #1: Well, but Texas statute [inaudible].

MR. LIONBERGER: I'm not aware of the Texas statute and for that matter, I'm not aware of another statute anywhere else.

JUSTICE #1: And, but your argument would extend all sorts of law suits trying for Gaxons, I mean, any, any kind of cases that you bring this governmental unit.

MR. LIONBURGER: It may, your Honor, if but, I would hasten to add here that I would do not want to say categorically that whatever rule you lay down on this case will apply to all statutes that are silent as to assignees. It would depend on the particular language and the scope of the waiver that is provided in those other statutes.

JUSTICE #1: Well, but you -

MR. LIONBERGER: Here ...

JUSTICE #1: I thought your argument earlier that to mean that it is the pretty specific. So but you think it could might, might use the word assignee and still cover assignees.

MR. LIONBERGER: Well, and that's why I direct the, the Court's attention and I was arguing about which two false State Hospital. There, the Court said, "Well, there may not be magic words of waiver and we certainly don't have those magic words at least with regard to the scope of the waiver here, that is that, that, that the waiver extends to assignees of the original claimant." But in Taylor and also in Barfield, the Court said, "The magic words may not be there but if it's beyond doubt or if it's the almost certain intent, we could find it by necessary implication." And we're saying, your Honor that when you look at this statute, directed as it is towards particular

claimants, you, you can't say that it is just a-- that as it's directed as it is toward particular claimant, it doesn't extend to assignees. There maybe other statutes that contain different language in our so pointedly directed towards a particular claimant.

JUSTICE #1: But I guess a-- I mean one question is under the Tort Claims Act generally suit as immunity as waived for suits involving operational use of a motor vehicles. So taking example from the last argument, someone-- a city bus hits me and, and injures me under your argument, I could not assign my claim against the city to someone else. Isn't that right? I mean I'm just under the Regulatory Claims Acts on language.

MR. LIONBERGER: That language pertaining to assignees is not there and I, I believe we would take the position that it could not be assigned, it is; that, that like this statute it's a very limited waiver. It's not a very broad.

JUSTICE #1: But conceptually, you, you take the waiver language that we are talking about here and the waiver language that was talked about in that example as being waivers as to-- I think you said claimants or particular persons. What about the conceptual view that the waiver is asked to conduct or particular incidents rather than having a waiver apply only to a particular person and it talks about involving motor vehicle, those, those types of waiver stand up focused on conduct connections rather than waivers as to a particular persons. What about that conceptual view of it?

MR. LIONBERGER: Well, conceptually, your Honor if the waiver is directed towards a particular conduct that was committed by a person that would be again a very limited type waiver and not a very broad waiver as to claims generally and that probably would not operate in favor of finding the scope extending to assignees.

JUSTICE #1: What about subrogation suits-- thing that?

MR. LIONBERGER: Well, in subrogation suits, we, we don't have to talk in the abstract this much because we can look at the federal Tort Claims Act and there's actually a case on that subject. The United States versus ETNA, and there the Supreme Court did indeed hold that an Insurance company may bring a subrogation claim in it's own name against the United States under the federal Tort claim's Act. So-- and the Supreme Court also in that case went on to say that the rule that waivers as sovereign immunity must be strict-- that waivers as sovereign immunity must be strictly construed as applied to the federal Tort Claims Act was contrary to the congress's intent for that enactment. Now, a later case has come along and gleamed a very broad general principle from the Eatna case and that's insurance company of the west and there the federal circuit has said that the federal Tort Claim Acts waiver of immunity may extend to assignees provided that the statutory waiver of sovereign immunity applies to claims and is not limited to a particular claimants and that's basically the rule that I've been putting forth here today is that the federal Tort Claims Act, the Supreme Court has held well, when you have assignees by operation of law, subrogation claim that the federal Tort Claims Act that doesn't prohibit that but the language of the federal Tort Claims Act is different than what we're talking about here in this case and under the general principle that was laid down in insurance company of the west of the principles that if it laid down in ETNA regarding the federal Tort Claims Act, it wouldn't apply if it's directed towards-- the statute is directed-- the waiver is directed towards a particular claim as we are asserting here.

JUSTICE #2: Let me ask you if we move beyond the waiver argument

and go to just assignability of claims in general. It seems that our analysis has moved from survivability to really more policy driven analysis as to whether some should be assigned or not-- assignable or not. What policy would be served by holding this claims, non-assignable.

MR. LIONBERGER: Your Honor, there are several that we can think of. Let me pass them for you. First of all, we believe that having-- allowing the waiver to extend the assignees here could possibly expand the existence or the extent of a wrongful imprisonment claim. Let me give you a hypothetical as to what we mean. What we're talking about here is there's a provision in the wrongful imprisonment statute 103.154, that cuts off a, a claimant's ability to receive compensation if that per sufficing mine, may I finish. If that person is either dies or is convicted of a felony.

JUSTICE #2: But if you step in to the shoes of your assignor then your assignor would expire at that point as well.

MR. LIONBERGER: Well, what we're-- your Honor, following my hypothetical alone, if some-- if the original claimant assigns their claim to in ask-- to, to another person, the assignee then dies or convicts-- commits a felony and it's convicted of that felony, that provision 103.154, would not apply to that assignee. They ask because 103.154(b) is talking about the original claimant if they commit a felony and are convicted if they die, they're cut off but the act provision wouldn't apply to an assignee.

JUSTICE #2: Why, why not? If they stand in the shoes of then I would think that if the, they wrongfully imprisoned plaintiff, commits a felony or dies, it would cut off the assignee's rights as well.

MR. LIONBERGER: Well, what we're talking about under my hypothetical is the assignees themselves who dies, or the assignee in herself, they are convicted of a felony. That provision wouldn't apply to them and the legislature's intention there under that provision was that only living people and non-felons are going to get it and assignee would be able to get around that provision. The assignee would step in to the assignor's shoes, yes and if the assignor committed the felony, he was convicted or the assignor die, that would cut off the assignee but not the assignee if they did those things. And that provision right there, 154 is a very powerful example of how the legislature intended to limit this to particular claims.

JUSTICE #1: Any further questions? Thank you. The court is ready to hear argument from the respondent. May it please the Court. Mr. Ozmun to present argument for the respondents.

ORAL ARGUMENT OF SCOTT OZMUN ON BEHALF OF THE RESPONDENT

MR. OZMUN: May it please the Court -

JUSTICE #1: Mr. Ozmun, I don't mean to take you up here. Prepare to marks here but could you answer the question; that Justice O'Neil just ask pertaining to section 103.154, for we don't apply to the assignee, what is that even matter?

MR. OZMUN: I agree with-- what I took from Justice O'Neil's question which is the assignees stands on a shoes of the assignor. So once the-- in this case if Christopher Ochoa die, while the compensation was still do Mr. Danzinger is go on his guardian Ms. Oakley would not be entitled to receive the payment or if Mr. Ochoa was

subsequently convicted of another felony, then likewise Mr. Danzinger through his guardian would not be able to collect the compensation.

JUSTICE #1: And what happened to Danzinger who dies or has convicted of a felony?

MR. OZMUN: Well, I think then he is still entitled to the compensation because the statute is tied to the, the wrongful imprisoned individual. And I do think, the State, the State is trying to narrowly parse this and make it tied to the Tort Claims Act, and I think those cases are not applicable because the waiver of Sovereign Immunity for 103 cases is grounded in the Texas Constitution. Article 3, section 51(c), the Texas Constitution says, "The legislature may grant aid in compensation to any person who is here to for-paid a fine or serve the sentence in prison and who a-- under laws of the State for offense for which he or she is not guilty under such regulations and limitations as legislature maybe in expedient."

JUSTICE #1: But, but I thought that provision is sort of cut against your position because it seems to contemplate that a little just go to that person.

MR. OZMUN: Well, what it says is, we the people of the State are saying, "We are going to compensate somebody who is wrongfully convicted." Legislature, you come up with the scheme to do that. And that's what 103 does, and I think if you read, and it says, "The legislature is suppose to to set whatever limitations, okay." So our position is the burden is on the State to come forward and show you that the legislature intended to limit assignees or the preclude the assignment of these claims because you're right, they have-- the legislature's acting in the context of the common law.

JUSTICE #2: Please look at that, what the legislative intent was.

MR. OZMUN: Right.

JUSTICE #2: If we're focusing on the personal nature of these claims to see whether they are assignable or not and typically, "used to be", "nice to obey" survivability is an indication of the personal nature of an action. The fact that the legislature's specifically said as not survivable would indicate a personal claim that can't be assigned. Well, as would not committing a felony 'cause that's a personal act.

MR. OZMUN: Sure.

JUSTICE #2: And I think the distinction in-- from reading Gandian then from reading, PPG Industries and all that discussion about the history of assignment of cause of action. I think the distinction is this: The personal nature of the claim that used to preclude assignment are those that are personal because the damages are very personal to the individual; man languish, pain and suffering, injury to reputation that's personal damages and those cases were historically taken out of the realm of the assignment. The other personal aspect is based on the nature of the relationship between the tortfeasor and a victim and in that instance in one of the examples used was false imprisonment. Well, ...

JUSTICE #1: But we did that in PPG, just close the statute was absolutely sooth.

MR. OZMUN: Right.

JUSTICE #1: I mean, would, would the author of PPG gone told that trouble, I mean, it starts by saying in chapter 2 claims are assignable, period end of story if DTPA had been said, "These are assignable, period and end of story and that part of PPG never would have had to have been written, would it?" And so back to Judge O'Neill's opinion, if the legislature said these aren't assignable, it

wouldn't a matter whether we take it's a personal cause of action or not, right?

MR. OZMUN: Right. But I think the analysis -

JUSTICE #1: So you know, we got more than we had in the DTPA here. They say, "they ain't survivable for."

MR. OZMUN: But that -

JUSTICE #1: Why doesn't that mean or not assignable either.

MR. OZMUN: Because they're not personal and I think that law is if you're going to go to the Dermourns Stove line of cases of line cases, it is personal and not survivable. I concede that this claims wrote the 103 claims are not survivable. But I will argue strongly that they are not personal because the-- you are not looking at the conduct of the State as irrelevant because it is strictly was this person wrongfully imprisoned have been in declared to be actually in assume, that is it. There was no, you know, the jury-- the fact finder is not concerned with what happened between the individuals and the damages as you wrote in PPG are clearly of the Remedial kind. It is strictly economic, it is strictly attorney fees.

JUSTICE #2: But, but again I would like to follow up on his question, we might agree if we were just looking at the elements of damages. What we're looking for here is legislative intent. And why has the legislatures not signaled as saying not survivable and cut off that he commit a felony. The legislature intended to make them personal to different inquiry.

MR. OZMUN: Yeah, and I think that you, you look at the nature of the cause of action to determine whether it's personal or not and my position is: It's not personal because it is strictly economic recover, that's a damages as part of it but the personal nature, the interaction between the state and the wrongfully imprisoned person is not relevant at all because whether the person was imprisoned because of gross misconduct by governmental official which happened in this case versus -

JUSTICE #2: And but again, I, I mean, it, it, would seem that the legislature about saying not survivable. Knowing our common law about what that is means. Even though we may have departed from that absent any indications of legislative intent. It was seem to me a pretty strong indication from the legislature that we consider this personal by saying they\$7Dre not survivable or else how would you say that? Why would you put that in the statute.

MR. OZMUN: Well, I think with their compensation scheme, they wanted it to be-- they choose to limit the compensation to the person to say it was the-- in a few get convicted of another felony, you're not can be subject to-- entitled to compensation. An if you die but that doesn't-- to me that does not make it personal because that is a distinct to me, that's distinct inquiry, it's a personal and survivable.

JUSTICE #1: If you wanted it to be assignable, why, why would the legislature want them to be assignable but not survivable? We want you to be able to still the same, so you can, you know, get the money and got blow with but we don't want to leave it to your wife and kids. And if you that, why would like do that?

MR. OZMUN: Well, I think if you look at the over purpose of the statute this to give that, that individual an opportunity for a fresh start and we are going to compensate him for his lose the economic opportunity as lost wages and, and whatever medical care is that's not considering -

JUSTICE #1: But, but you've got, you got the, the couple's

survivability and assignability and it just seems to me in the abstract, they are be al-- we, courts should be a lot more concerned about people selling their cause of action, then people die and live to the airs because I used, I don't do that for fraudulent purposes and not willing to commit suicide or whatever else so their errors can have a great cause of action. So if we-- the couple omits seems to me the standard ought to be hired for assignability than this survivability, shouldn't it?

MR. OZMUN: I would, I would disagree, your Honor, I think in this instance the first-- I mean we are, we are talking about people who spent time behind bars where something they didn't even found actually in the follow up policy of the State is to compensate -

JUSTICE #1: No need to talk on my "hard's streams." I believe, I believe to the it to their kids. But the legislature said absolutely not and so that's what we get over that. One, one would they say absolutely not, you cannot leave it to the poor widow. But in the sonnet to a snitch-- to snitch it out.

JUSTICE #2: Please listen to it still -

JUSTICE #1: Well, well, well ...

MR. OZMUN: Its, its nature, I mean -

JUSTICE #2: Its nature set asides the right.

MR. OZMUN: But the-- and again, I think the offer arching public policy is the further the aim of the statute which I mean, the history of this case precludes the point that the Court of Appeals made about how difficult it is to give compensation to this individuals. I may not state, we looked for delayed-denied-defend and so the fact that we are willing to take an asylum, I think that further is that the benefits to the wrongfully imprisoned individual; that they are aligned to assign their claim get the money get down what their life, the assignee take such subject knowing that there are limitations on survivability but they take it subject two others limitations.

JUSTICE #2: Only give you a chance and then maybe more questions as long no vine on the mortal, mortal compensation issue. Why can't we way this statute and prohibiting compensation after-- he is reverse procedure from that city.

MR. OZMUN: Well, that because it, it doesn't say that. First and foremost the statute is very clear in what it says? It says, "A person he was saves compensation under this chapter may not bring an action." Okay, so it is, there was seed of compensation under chapter 103, that triggers the bar on bringing an action and it is of may not bring. At best for the State bring us present tense, the worst for them is future. But it-- under no stretch cannot be read as past tense and so what they want to do is they want to graft, they want to rewrite that statute. And I think the court of appeals will write by looking at-- I know, you all just got down here in about new 101.106, but if you look an old, 101.106, and then the Driskill case, they read it the same way that we're saying 103.153, should be read.

JUSTICE #2: But if the purposes to give Free Start, for they wrongfully imprisoned person then they received \$500,000 from (A), they him a Free Start. That's the purpose why should they receive another 500,000 from the State. If that's the purpose, would you said to us and how do you explain that in light of the purpose.

MR. OZMUN: Well, I think, twofold; (1) I think even a State now concedes that the State law cannot foreclose federal remedies and so the person if they have a valuable 1983 cause of action they're going to be able to bring that regardless of the limitations contained in 101.153. So I think if the outset we, it's not a question of is now

another recovery while therefore that obligates that the ability did you done a money from them.

JUSTICE #1: Yes, and then of course, we, we can dictate in Texas what we do in Texas but the Feds can over lay that. So they may have a different thing going on. But in Texas the purposes provided Te-- Free Start.

MR. OZMUN: Well, -

JUSTICE #1: In \$500,000 states that, -

MR. OZMUN: But the

JUSTICE #1: - "Why, why should to ...?"

MR. OZMUN: Well, the statute didn't-- is not tied to compensation from another, so suggest as may not bring a claim. And so under, if you want to take the State's position to it's extreme with, let's say we tried our case in 1983 case against the City of Boston and laws. I know it defends no violation of Federal Sovereign, we got, we got the money. One hundred interpretation injects because we brought a, we brought an action. There is nothing in here that says receiving compensation from another sources it says may not bring any action. And so you, in order to adapt their position you have to entirely rewrite the statute and we all know the case lawyers are not suppose to do that. If you look at the language of what's in the statute, that says, the person who receives compensation under this chapter may not bring. So the triggering is compensation under Chapter 103, and if you look at Driskill, they want through the same analysis and said, "If you follow the steps laid out in the statute, you can do it while in the Driskill was the plaintiffs prior settlement with an employee did not bars subsequently against the governmental entity because of the wide statute was awarded which was a judgment in an action or a settlement of the claim under this chapter bars any action involving the same subject matter about the claim and against the employee" They said, "Well, under that statute, if you do that in order of employee, first, then governmental entity, you're okay." So likewise, it's our position that if we go out and being attained of recovery against the other governmental entity's before we come to the state, but chapter 103 compensation were not barred and so that's, yeah, I think, that's very clear if you follow agrees call, there another case that said, similar things and that was the, I think Bland, yeah, I've said that Grand versus Salvage, were the plaintiff might up to pursue four-common-law remedy against the responsible employee forgoing or postponing and an attempt to recover from the government. So if the legislature want it to like it home sick, you get the money from one or the other, that's it, like did they used, they put them in the statute, but they didn't. And so its our position that there is clearly a temporal distinction in the statute and we followed it.

JUSTICE #1: Like for just a minute to the survivability, assignability, are you aware of the any cause of action that is assignable but not survivable. How would this be the first one?

MR. OZMUN: I will-- can kindly admit, but I haven't to study that question to be able to give you a-- give an answer to know whether we disobey the, the first one.

JUSTICE #1: And none, none come from that man the ...

MR. OZMUN: The, the distinction here, it's will be personal and not survivable and our position is this is clearly a remedial statute and not personal 'cause even if you look at the Bare Hughes case, for which they decided to their burn. Snobe case, they looked at the claims and said, "We're going to allow you to foresee the unacclaimed for this damages because they're were medium. We are not going to allow you

proceed as to the this claims in cite relying on the Thereburn Snobe case, where I think here clearly where we can show and have shown that you think of." But there's a doubt in remedial in nature and the cause of action no longer requires the personal nexus because the conduct of the State has no bearing on the entitlement to compensation. The fact of the claim is not personal and can be a sign, and so for all the missed reasons, Ms. Oakley will ask this Court to affirm the judgment of the Third Court of Appeals and both cases on our respects. Thank you.

JUSTICE #1: Thank you, Counsels. That's true this argument that 103-153. (b) is an inclusion of under this chapter after a short second question; that the compensation for a compensation was not under this chapter therefore, it's a compensation from the State on that basis is not precluded.

REBUTTAL ARGUMENT OF PHILIP A. LIONBERGER ON BEHALF OF PETITIONER

MR. LIONBERGER: Your Honor, we believe that our best argument regarding section 103.153 is that to read the statute as the respondent who adhere would result and an abs-- with lead to an absurd result; that the consequences flowing from that reading would render the provision useless because no one will ever saw the State first. If Ms. Oakley is correct and it would ensure that no governmental entity would ever receive the section's protection. Ms. Oakley's construction of the section effectively writes it out of the statute and that would be an absurd result. It is elementary. The court should not adapt an interpretation that leads to an, an absurd result or would render a provision meaningless and that's what would happened here. Perhaps, I think the kind of argument would be, it doesn't render section (b) meaningless but it still means that I can still pursue the State for the compensation just means, if there other private parties who are responsible they can pursue them to refers. I think that kind of argument would be that's not absurd, that's just a little legislature structured it and it doesn't make the meaningless because be still mean, what it means? They read it as they say, it, it means, they's, they have to-- they wrap in solves in the plain meaning. They say it's plain. This is what the legislature said, so long as you do not saw the State first you can recover against-- recover as he did here. Millions of dollars from one of the States Governmental Units and then also recover an extra 500,000 grand against the States. So long as you don't saw them first and that's, that's the way the Statute disgraced.

JUSTICE #1: Reason are all of those claims against the governmental entities can be 1983 actions.

MR. LIONBERGER: Not all of them and in fact in this case they, they desert some State claims.

JUSTICE #1: But they could all be not 1983 actions?

MR. LIONBERGER: They might. Yes.

JUSTICE #1: I mean, is 153(b) already meaningless. You can do all of its top against the City before or after or during, if you do it on 1983, and so it really it applies to barred of the State causes of actions if you really don't need on other than the fact that it place turn this always, you know, proper in once Statute when you put in three. But usually, in 1983, works wouldn't it.

MR. LIONBERGER: I felt -

JUSTICE #1: Help me imagine the situation where wouldn't ...

MR. LIONBERGER: Basically, what their argument is there regarding 1983, is that the Supremacy clause of the United States Constitution will not allow Texas to have 105-153(b), because somehow it would preclude them from bringing their section 1983 clause.

JUSTICE #1: Just like putting the argument to make.

MR. LIONBERGER: Yes. But, your Honor, it doesn't-- the supremacy clause is going to operate if there some conflict between the Texas Statute and their federal claim here. And there, what Texas is not precluding them from bringing that claim, what Texas is doing here is saying, you have a choice. You can get it either the 500,000 grand and get your Fresh Start from the State or you can pursue this section 1983 claims. It can't have him both and there's no law that I'm aware of no case that says that someone is prohibited from accepting a cash payment for, for wrongful imprisonment from the State on the condition that the claimant surrender the right to bring another claim involving wrongful imprisonment. So what the statute is doing is basically saying you can have one of the other, just can have both by us.

JUSTICE #1: And your position on matters based upon the purpose of section (b) here not any specific language that you point to.

MR. LIONBERGER: Well, your Honor , I would say -

JUSTICE #1: 'cause the legislature could have said, "You received compensation from anyone else; that's all said against the government recovery? Or bars the government recovery? I don't see any of that language in section (b)."

MR. LIONBERGER: We would say as to their plea-- our opponents plain meaning argument that this language in the statute is anything but plain. We believe that you can read the statute as we're reading it; that they may not bring language here, your Honor; that, that language connotes never under any circumstances they bring, that's how we read this statute. We don't-- there is no expressed timing requirement in the statute. It doesn't say before, it doesn't prior to it; it doesn't say after, it doesn't say subsequent. They're, they're having to read that into the Statute. We say that, that the natural-- a more natural reading in-- in pro-- and the one that most comfort with the legislature intent here is to read it as we do that, you may only receive one compensation for your wrongful imprisonment from the State or one of it's governmental units.

JUSTICE #1: Any other questions? Thank you counsel. All of those cases are submitted and the Court will take a brief recess. All rise.

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