



Legislative UPDATE

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Guns in Courthouses: The Licensed Carry Saga Continues

The dispute over licensed carry and courthouses continues. On March 15, a Houston court of appeals overturned a trial court order concluding that the entire building that houses a court or offices utilized by the court is off limits to licensed carriers.

In 2016, Waller County, located northwest of Houston, filed a [lawsuit](#) against a person who had complained that he should be able to carry in those portions of the county courthouse that aren't used by the court. In November of that year, a district judge in Waller County issued an [order](#) in the case of *Waller County v. Terry Holcomb*. The order concluded that the *entire building that houses a court* is off-limits to anyone carrying a firearm, including the holder of a license to carry. The order also concludes that the attorney general has no authority to investigate the county's signs providing notice that no firearms are allowed.

Prior to the lawsuit, Holcomb sent a written complaint to Waller County officials claiming that – based on an [attorney general opinion](#) – they can't prohibit licensed carry in the entire courthouse building. He also claimed that the attorney general's office, under its investigatory authority over signage, can seek civil penalties against the county if it refuses to remove its signs. (Another [attorney general opinion](#), with which many city attorneys disagree, concludes that the attorney general can't investigate the county's sign.)

The county filed the lawsuit against Mr. Holcomb seeking a declaratory judgment from the district court that: (1) the entire courthouse is off-limits to licensed carriers; and (2) the attorney

general's office doesn't have as much enforcement authority as it claims. The court's order agreed fully with the county's position. However, the order wasn't precedential, and it was recently [overturned](#) by a Houston court of appeals.

The court of appeals concluded that writing a letter to a political subdivision to complain about its allegedly unlawful conduct is not a wrong that gives a court jurisdiction. According to the court, "Holcomb had a statutory right to notify the County of his contention that its courthouse signage violates the Government Code and request that the County cure this violation." Even in the absence of a statute, the court held that he had a right under the Texas Constitution to "apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance."

The court ultimately concluded that only the attorney general, at his discretion, can investigate an allegation that a sign isn't allowed. That means the lawsuit should be between the county and the attorney general. Because the attorney general wasn't named as the party, the order was thrown out. Moreover, the court actually sent the case back to the trial court for it to consider awarding damages to Holcomb under a law called the Citizen's Participation Act. The Act is designed to protect a citizen who complains against government to claim unfair treatment.

In any case, the reversal doesn't mean that the court of appeals wouldn't agree with the trial court on the merits. It simply means that the correct parties weren't involved, which rendered the trial court without jurisdiction to hear that case. According to the county, they may appeal the decision. In the meantime, they have no plans to allow anyone to carry a firearm into their courthouse.

"Sanctuary City" Litigation Continues

A panel of three U.S. Fifth Circuit Court of Appeals judges ruled last week that most of the "sanctuary city" law, [Senate Bill 4](#), can go into effect while the *City of El Cenizo v. Texas* case – which is challenging much of the law – proceeds.

Senate Bill 4 requires local law enforcement to cooperate with Immigration and Customs Enforcement detainer requests, and it authorizes officers to inquire about the immigration status of people they detain or arrest. In addition, the bill subjects elected and appointed officials to a fine, jail time, and possible removal from office for violating the bill. Several governmental entities, including the cities of El Paso, Austin and Houston, sued the state after the bill was signed into law last spring, arguing it was unconstitutional.

On August 30, 2017, a federal district judge of the Western District of Texas, Judge Orlando Garcia, [temporarily blocked](#) most of the law from taking effect by issuing a preliminary injunction. Soon after, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit [reinstated](#) portions of Senate Bill 4. And now a three-judge panel has [vacated the injunction](#) on all but one part of the bill. The one part of the bill that is still on hold is a provision that punishes local officials from "adopting, enforcing or *endorsing*" policies that specifically prohibit or limit

enforcement of immigration laws. The judges kept that injunction in place, but said it only applies to the word “endorse.”

This is not the final decision in the case. Judge Garcia must still issue a ruling on the merits of the case (the bill’s constitutionality), which is expected in the coming months.

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