# 1999

1999-03-11 [No. 14-95-01369-CR](http://www.probatemafia.com/Brunsting/Heimlich/1999-03-11%20Heimlich%20v.%20State%20988%20S.W.2d%20382.pdf) Court of Appeals of Texas, Houston, Fourteenth District Heimlich v. State 988 S.W.2d 382 (Tex. App. 1999 ) Decided Mar 11, 1999:

Patrick McCann, Houston, for appellant.

Heimlich entered a plea of not guilty to the offense of third degree felony theft of property. Heimlich was also charged with the misapplication of fiduciary property, but he was found not guilty of that offense. the complainant, a real estate salesperson, worked in association with Heimlich, a licensed real estate broker.

Bank records show the $5050 was placed into Heimlich's corporate bank account on August 26, 1993.

Nevertheless, when Heimlich appeared at the bank on August 27, 1993, to gain access to the funds, the bank's branch manager informed him the funds would not be available until August 30, 1993. Actually, the bank had placed a hold on the funds based upon representations made to it by a person from the district attorney's office. On September 1, 1993, a Harris County district judge signed a warrant authorizing the seizure of the disputed funds and they were deposited into the registry of the court. The evidence was insufficient to support his conviction. legal insufficiency as a question of law comprising the minimum standard for comporting with federal due process. The

State's argument, was based on an erroneous view of commercial paper law.

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# 2003

2003-01-30 [No. 03-02-00151-CV](http://www.probatemafia.com/Brunsting/Heimlich/2003-01-30%20Heimlich%20v.%20State%20107%20S.W.3d%20643.pdf) Court of Appeals of Texas, Third District, Austin Heimlich v. State 107 S.W.3d 643 (Tex. App. 2003) Decided Jan 30, 2003

Appeal from the District Court of Travis County, 200th Judicial District No. GN100142, Honorable Margaret A. Cooper, Judge Presiding.

Edmund Brian Heimlich appeals the summary judgment denying his request for damages due to wrongful imprisonment. We will affirm the judgment in part, reverse the judgment in part, and remand the cause for further proceedings.

Heimlich was convicted of theft and was sentenced to four years in prison. *Heimlich v. State*, 988 S.W.2d 382, 382 (Tex.App.-Houston [14th Dist.] 1999, pet. ref'd). After serving some of his sentence, he was awarded shock probation. *See id*. at 382 n. 2. A court of appeals reversed his conviction and rendered a judgment of acquittal based on legal insufficiency of the evidence. *Id.* at 385. The court concluded that he could not have committed theft of a check as charged because he was the owner of the check. *Id*.

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2 Heimlich alleges without controversion that he served five months in prison.

State moved for summary judgment based on his failure to show that he had "received a full pardon

for the crime and punishment for which he was sentenced" as required by the former statute. The State attached a copy of the letter from the Board of Pardons Paroles stating that "the Theft offense cannot be pardoned because there is no conviction." The district court granted the State's motion for summary judgment.

The circumstances giving rise to this appeal are summarized in *Heimlich v. State*, 988 S.W.2d 382 (Tex.App.- Houston [14th Dist.] 1999, pet. denied), and *Heimlich v. State*, 107 S.W.3d 643 (Tex.App.-Austin 2003, no pet.).

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# 2008

2008-07-31 [No. 03-05-00827-CV](http://www.probatemafia.com/Brunsting/Heimlich/2008-07-31%20Heimlich%20v.%20State%20No.%2003-05-00827-CV%20(Tex.%20App.%20July%2031,%202008).pdf)Court of Appeals of Texas, Third District, Austin Heimlich v. State

Appeal from the District Court of Travis County, 200th Judicial District No. GN100142, Honorable Margaret A. Cooper, Judge Presiding.

Edmund Bryan Heimlich obtained a district court judgment against the State awarding him over $600,000 in actual damages. Virtually all of the damages were based on claims Heimlich had asserted under Texas's wrongful-imprisonment statute, chapter 103 of the civil practice and remedies code. *See* Tex. Civ. Prac. Rem. Code Ann.§§ 103.001-.154

Chapter 103 waives sovereign immunity and authorizes

claims against the State for compensation where the claimant (1) "has served in whole or in part a sentence in prison under the laws of this state," and, in relevant part, (2) "has been granted relief on the basis of actual innocence for the crime for which the person was sentenced." Tex. Civ. Prac. Rem. Code Ann. § 103.001(a).

Heimlich based his chapter 103 claim on his imprisonment pending his appeal of a theft conviction in which he ultimately obtained a reversal on legal-insufficiency grounds. Heimlich also recovered roughly $10,000 under a takings claim under article I, section 17 of the Texas Constitution. The State has appealed the judgment, contending that Heimlich's claims are barred by sovereign immunity. In State v. Young, we determined that the legislature in chapter 103 intended to waive sovereign immunity only for claimants who obtained habeas corpus relief from their convictions based on "actual innocence." No. 03-07-00572-CV, \_\_\_ S.W.3d \_\_\_, \_\_\_ (Tex.App.-Austin July 31, 2008, no pet. h). Young controls here and, under its analysis, Heimlich's wrongful-imprisonment claim is barred by sovereign immunity. We also conclude that Heimlich's takings claim is supported by legally insufficient evidence. Accordingly, we will reverse and render judgment dismissing Heimlich's wrongful-imprisonment claim for want of subject-matter jurisdiction, and that Heimlich take nothing on his takings claim.

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# 2019

2019-05-29 [A-19-CV-437-RP](http://www.probatemafia.com/Brunsting/Heimlich/2019-05-29%20Heimlich%20v.%20Texas%20A-19-CV-437-RP.pdf) **UNITED STATES DISTRICT COURT** FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION Heimlich v. Texas

EDMUND BRYAN HEIMLICH v. THE STATE OF TEXAS, et al.

Before the Court is Edmund Bryan Heimlich's Complaint (Dkt. No. 1) and Application to Proceed *In Forma Pauperis* (Dkt. No. 2). The District Court referred the above-motion to the undersigned Magistrate Judge for a determination pursuant to 28 U.S.C. § 636(b) and Rule 1(c) of Appendix C of the Local Rules.

As stated below, this Court has conducted a review of the claims made in Heimlich's Complaint and is recommending his claims be dismissed under 28 U.S.C. § 1915(e). [frivolous]

The plausibility standard is not akin to a 'probability requirement,' but it asks for more \*3 than a sheer possibility that a defendant has acted unlawfully." *Id*.However, the petitioner's pro se status does not offer him "an impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." Farguson v. Mbank Houston N.A., 808 F.2d 358, 359 (5th Cir. 1986).

Under the Eleventh Amendment, a state may not be sued in federal court unless it consents to suit or unless Congress, pursuant to a valid exercise of its power, abrogates the state's immunity.

To state a claim for a constitutional violation under 42 \*5 U.S.C. § 1983, "a plaintiff must: (1)

allege a violation of rights secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." Leffall v. Dall. Indep. Sch. Dist., 28 F.3d 521, 525 (5th Cir. 1994). Heimlich cannot allege a violation of a constitutional right. As this court noted in a prior suit brought by Heimlich,

Even if Heimlich were able to find a way around his Eleventh Amendment problem, he would still not be able to state a claim. To state a claim for a constitutional violation under 42 \*5 U.S.C. § 1983, "a plaintiff must: (1) allege a violation of rights secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." *Leffall v*. *Dall*. *Indep*. *Sch*. *Dist*., 28 F.3d 521, 525 (5th Cir. 1994). Heimlich cannot allege a violation of a constitutional right. As this court noted in a prior suit brought by Heimlich,

Plaintiff Ed Heimlich filed this lawsuit against the State of Texas as a result of state-court case where Heimlich had been awarded a $660,605.74 judgment after trial on the merits. The judgment was subsequently reversed by the Third Court of Appeals. The Texas Supreme Court then denied Heimlich's motion for mandamus and petition for review and hearing.

*Heimlich v*. *State of Texas*, A-10-CV-264-LY (W.D. Tex. June 15, 2010), Dkt. No. 4.

“Because the judgment on which Heimlich bases his claim here was reversed, he cannot make out a takings claim.”

To the extent he brings one, Heimlich's Due Process claim seems to be based upon the fact that the Texas Court of Appeals reversed the lower court's judgment in his favor because, although he was acquitted of the criminal claims against him, he was not found "actually innocent," pardoned, or granted habeas corpus relief as required to collect damages under the relevant statute. *See* TEX. CIV. PRAC. & REM.CODE § 103.001(a). But federal courts do not have subject matter jurisdiction in "cases brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile Corp*. *v*. *Saudi Basic Indus*. *Corp*., 544 U.S. 280, 284 (2005) (applying the *Rooker-Feldman* doctrine). Unsuccessful state court litigants "may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." *Hale v*. *Harney*, 786 F.2d 688, 690-91 (5th Cir. 1986). Because this court is precluded from reviewing a final state court judgment, Heimlich cannot assert a Due Process \*6 claim challenging the Texas Third Court of Appeals' reversal of his judgment. *See Lance v*. *Dennis*, 546 U.S. 459, 463 (2006) (per curiam).[[1]](#footnote-1)

# 2020-01-23

2020-01-23 Notarized [Affidavit of Cindy Heimlich](http://www.probatemafia.com/Brunsting/Heimlich/2020-01-23%20notarized%20aff%20of%20cindy%20heimlich.pdf) CAUSE NO. 20l9-01400J

# 2022-04-14 Vexatious

Judge Newman recused himself on April 22, 2022. But not before signing an April 14, 2022, Order Declaring Plaintiff Edmund Heimlich a Vexatious Litigant.

Judge Newman’s order does not identify the authority under which he declared Heimlich a vexatious litigant, [Tex. Civ. Prac. & Rem. Code § 11.054] and does not identify the criterion [Tex. Civ. Prac. & Rem. Code § 11.054(1), (2), (3)] nor does it state any facts establishing any element of any subsection thereunder.

# 2022-10-07

2022-10-07 [Heimlich v. Cook, No. 14-22-00358-CV](http://www.probatemafia.com/Brunsting/Heimlich/2022-10-07%20Heimlich%20v.%20Cook,%20No.%2014-22-00358-CV%20(Tex.%20App.%20Oct.%2027,%202022).pdf) Court of Appeals of Texas, Fourteenth District

Appellant's brief was originally due August 10, 2022.

we GRANT appellant's motion and order appellant to file a brief with the clerk of this court within thirty (30) days of the date of this order. If appellant does not timely file the brief as ordered, the appeal is subject to dismissal without further notice for want of prosecution. *See* Tex. R. App. P. 42.3(b).

# 2022-12-01

2022-12-01 [Heimlich v. Cook, No. 01-22-00595-CV](http://www.probatemafia.com/Brunsting/Heimlich/2022-12-01%20Heimlich%20v.%20Cook,%20No.%2001-22-00595-CV%20(Tex.%20App.%20Dec.%201,%202022).pdf) (Tex. App. Dec. 1, 2022).

2022-12-01 [No. 01-22-00638-CV](http://www.probatemafia.com/Brunsting/Heimlich/2022-12-01%20Heimlich%20v.%20The%20Estate%20of%20Heimlich,%20No.%2001-22-00638-CV%20(Tex.%20App.%20Dec.%201,%202022).pdf) Court of Appeals of Texas, First District Heimlich v. The Estate of Heimlich

Appellant has been declared a vexatious litigant and is subject to a prefilling order. Accordingly, appellant may not proceed with an appeal without a permission order from the local administrative judge. Because appellant has not obtained such an order, we dismiss the appeal.

# What is a Vexatious Litigant?

“[Texas Civil Practice and Remedies Code section 11.051](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-a-general-provisions/chapter-11-vexatious-litigants/subchapter-b-vexatious-litigants/section-11051-motion-for-order-determining-plaintiff-a-vexatious-litigant-and-requesting-security) provides that a defendant may, on or before the 90th day after the date the defendant files its original answer, move the court for an order determining that the plaintiff is a vexatious litigant and requiring the plaintiff to furnish security. [Tex. Civ. Prac. & Rem. Code § 11.051](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-a-general-provisions/chapter-11-vexatious-litigants/subchapter-b-vexatious-litigants/section-11051-motion-for-order-determining-plaintiff-a-vexatious-litigant-and-requesting-security). Vexatious litigants are persons who abuse the legal system by filing numerous, frivolous lawsuits. Drake v. Andrews, [294 S.W.3d 370, 373](https://casetext.com/case/drake-v-andrews#p373) (Tex. App.—Dallas 2009, pet. denied). A vexatious litigant determination requires the defendant to demonstrate that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that the plaintiff, in the preceding seven-year period, commenced, prosecuted, or maintained as a pro se litigant at least five litigations, other than in small claims court, that were finally determined adversely to the plaintiff. [Tex. Civ. Prac. & Rem. Code § 11.054](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-a-general-provisions/chapter-11-vexatious-litigants/subchapter-b-vexatious-litigants/section-11054-criteria-for-finding-plaintiff-a-vexatious-litigant). Bierwirth challenges only the first requirement, arguing that Rio Rancho failed to show that there was no reasonable probability that he would prevail in this lawsuit.”

Bierwirth v. Rio Rancho Props., LLC, No. 03-17-00733-CV, at \*5 (Tex. App. Sep. 25, 2018)

# 2022-12-01

2022-12-01 [Heimlich v. The Estate of Heimlich](http://www.probatemafia.com/Brunsting/Heimlich/2022-12-01%20Heimlich%20v.%20The%20Estate%20of%20Heimlich,%20No.%2001-22-00638-CV%20(Tex.%20App.%20Dec.%201,%202022).pdf), No. 01-22-00638-CV (Tex. App. Dec. 1, 2022)

02/02/2023 Application to Withdraw as Attorney of Record

02/03/2023 Heimlich Objection to Withdrawal of Candice Schwager with a Request for a Hearing on her Motion and Hearing on Specific Performance as Scheduled

# 2023-11-06

2023-11-06 Base Cause No. [495,484 Request for Appointment of Successor Judge](http://www.probatemafia.com/Brunsting/Heimlich/2023-11-06%20Heimlich%20-%20BASE%20Request%20for%20Designation%20of%20Probate%20Judge%20to%20Hear%20Probate%20Matters%20in%20Harris%20County.pdf)

2023-11-06 Heimlich – [495,484-401 Request for Designation of Probate Judge](http://www.probatemafia.com/Brunsting/Heimlich/2023-11-06%20Heimlich%20-%20-401%20Request%20for%20Designation%20of%20Probate%20Judge%20to%20Hear%20Probate%20Matters%20in%20Harris%20County.pdf) to Hear Probate Matters in Harris County.pdf

2023-11-06 Heimlich – [495,484-402 Request for Designation of Probate Judge](http://www.probatemafia.com/Brunsting/Heimlich/2023-11-06%20Heimlich%20-%20-402%20Request%20for%20Designation%20of%20Probate%20Judge%20to%20Hear%20Probate%20Matters%20in%20Harris%20County.pdf) to Hear Probate Matters in Harris County.pdf

2023-11-06 Heimlich – [495,484-403 Request for Designation of Probate Judge](http://www.probatemafia.com/Brunsting/Heimlich/2023-11-06%20Heimlich%20-%20-403%20Request%20for%20Designation%20of%20Probate%20Judge%20to%20Hear%20Probate%20Matters%20in%20Harris%20County.pdf) to Hear Probate Matters in Harris County.pdf

1. [Ed lost this case under the Ripoff feldfuk Doctrine and a complete misstatement (or misunderstanding) of the basis for Ed’s claims] I’m not sure I would trust ANDREW W. AUSTIN UNITED STATES MAGISTRATE JUDGE FOR THE WESTERN DISTRICT OF TEXAS to walk my dog. I would need to see Ed’s complaint. [↑](#footnote-ref-1)