

The vision of the Austin Area Urban League is an Austin/Central Texas that provides an Equitable Quality of Life opportunity for all its residents, in all aspects of life. The mission of the Austin Area Urban League is to provide tools to African Americans and under-served populations to build a foundation for social and economic equity and equality.

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#### LOVE THY NEIGHBOR TX-QUICK SNAP SHOT

The Austin Area Urban League (AAUL) announced the Love They Neighbor Texas campaign in response to Winter Storm Uri in February 2021. This response was inclusive of emergency support for shelter, food, water, clothing, amd emergency resources during Winter Storm Uri for our housed & unhouseeed neighbors.

As the catastrophic weather conditions continue to impact communities throughout Texas.





#LoveThyNeighborTX started as a donation drive through and in partnership with community focused organizations, offering immediate assistance for those most adversley affected during these unprecedented weather conditions has evolved into the Austin Winter Storm Repair Fund.

REPORTED PROPERTY DAMAGE

DAYS REPORTED WITHOUT RUNNING WATER

\$1300 AVERAGE COST PER HOUSEHOLD \$500K

ALLOCATED TO
HOUSING REPAIR







Luis, Miriam, and Daniela at the Distribution Center

Luis and Miriam are whole people unto themselves, but their work together was seamless. Starting at the Millennium Youth Complex, Luis and Miriam quickly realized that their organizational strategies for delivering water and food to properties was out of sync with the drive-up distribution system at the MYC. They moved the operation to the Crown Center at North Lamar and continued from there for

the next two weeks. Within days, they also had a walk-up site distributing a combination of water, hot meals and heater meals if requested. They continued this work while also coordinating deliveries to multiple properties and communities in need. Luis and Miriam also came to calls almost dancing with their love for people, enlivening everyone with the spirit in which they took on their work.

# GLORIA

Gloria Vera-Bedolla is a community organizer with deep roots and family in Del Valle. She is also a former Parent Support Specialist for AISD.

Gloria's parents live in Del Valle across from an encampment and near many families who are unhoused, struggling and/or undocumented. In Gloria's parents' neighborhood, people were without water for almost 6 days. During the worst of the storm, Gloria transported one of her unhoused community members to shelter, as well as driving across town to check on her parents. When temperatures increased, Gloria spent her time and energy delivering water as soon as it was available. She worked tirelessly for days on this effort with support from several organizations. Gloria's experience was one of personal trauma while serving others. She was scared at times for her own life, the lives of her family, and the wellbeing of her community. She was angry at the city's lack of response. Gloria's community, Austin's Colony, was one of the hardest hit.

"Our water never broke. It stopped coming into our homes. Along with propane.. That's why I told (the reporter from Vox) I feel like they are systematically going about thinning the herd--killing people out here. Because you turn off the water, turn off the propane, and leave us with what? Any water that we can get ahold of - no way to heat it that's usable."

During the storm, she drove 13 miles across town at 5:30 in the morning to check on her parents in East Austin. She had fear for her parents and neighbors. My fear was for my neighbors that are undocumented. That's what drove me. My fear for my neighbors who are old and cannot fend for themselves. They were trapped in their homes." Gloria helped her family get a generator and space heater set up. Her parents sat in the dark for 5 days in their mobile home, which she says pisses her off, especially since they have underlying health conditions. Her mother had just had heart surgery. "I can only imagine the people that live in the apartment two blocks down." Driving back she got stuck until a couple of young guys helping people get unstuck, but she saw no EMS or other services on site or anywhere. She then drove 10 miles and hour and transported an unhoused individual to the warming shelter on Parmer lane. She says the whole experience was traumatizing. She also said she thinks more disasters are coming. "There's not enough of us worried about Global Warming." Gloria also mentioned that while Austin's Colony and Forest Bluff struggled, a nearby neighborhood, Kennedy Ridge Estates, really got screwed over. Those guys still have some undeveloped streets. Some of them are still a dirt road. And it's got a huge curve and a big dip. So I can only imagine how terrifying it must have been for them, trying to go anywhere. All these things - I have been thinking about how unprepared we were.



PHOTO FROM: https://www.vox.com/identities/22292513/texas-storm-freeze-minority-community-austin

"HAD IT NOT BEEN FOR ME ASKING (CRT) FOR HELP AND GOING DIRECTLY TO PEOPLE THAT I KNOW WORK FOR THE CITY AND ASKING HOW TO GET ON THE LIST, WE MIGHT STILL BE WAITING... WHY DOES IT TAKE AN INEQUITABLE APPROACH TO GET HELP?"



At the time of Storm Uri, Whitley was living in an encampment in north central Austin. She has approved this statement and wishes for her story to be told. Whitley, newly unhoused since December of 2020, has a background working in vocational ministry programs.

Whitley had already built relationships with members of the unhoused community when she was working in ministry programs. She has a good working relationship with the camp leader, and loves her camp community. On the street she has, however, experienced abuse and harassment from others outside of her camp. Whitley says that cars (maybe of them returning repeatedly) harass the members of her camp by honking up to 30 times a day and into the night. Sometimes they lay on the horn, and other times they honk in sequence. At the beginning of the storm, Whitley came to the collaborative working on storm response to share her direct experience

and requests with over 40 community organizers and city staff on February 13th, the day before Whitley made one thing very clear: hotels were necessary to save lives. People would in many cases never go to a shelter, because they felt shelters were usafe and often inhumane. If we wanted to get people out of the 10 degree weather, we had to offer hotels. This effort was provided in a partnership of organizations working through CRT, with food provided to the hotels funded by Austin Area Urban League. CRT paid Whitley for her consultation during the storm, and ensured that she was sheltered in a hotel throughout the storm as well.



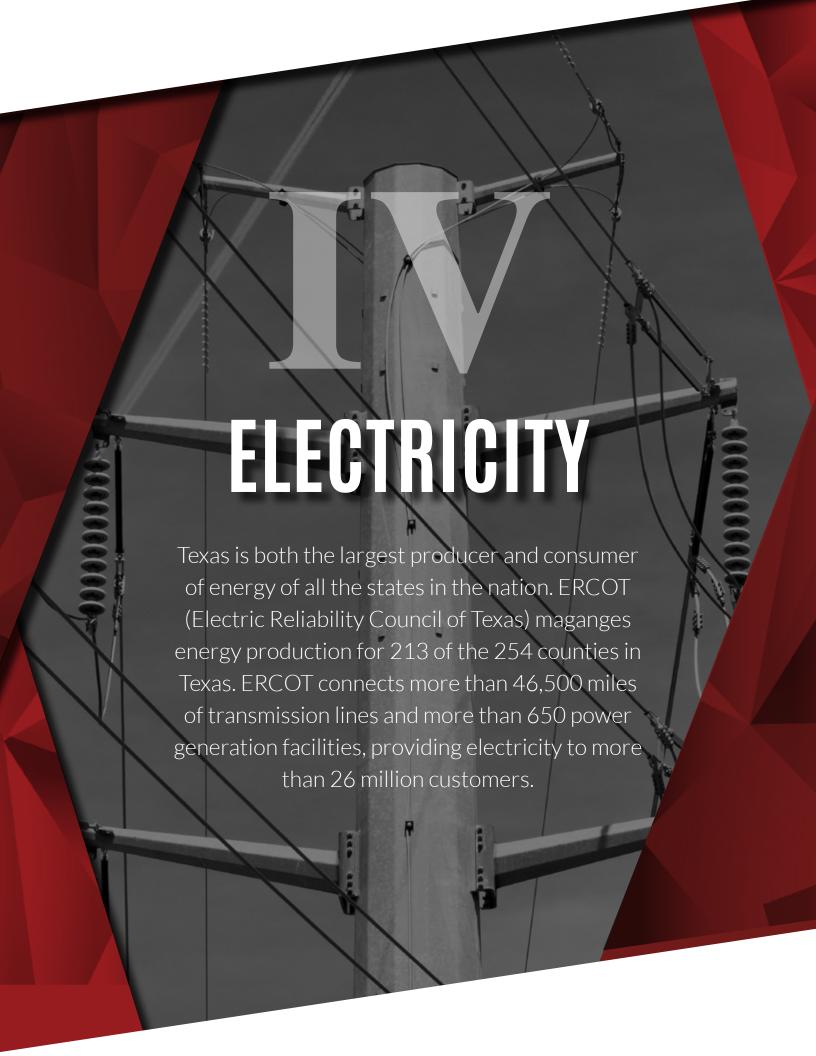
In February 2021, the state of Texas was devastated by Winter Storm Uri. A winter storm that brought freezing temperatures further south than anticipated, and for a longer duration than could be managed by our existing infrastructure. Approximately 194 Texans died as a result of the storm; either due to freezing temperatures, unattended medical conditions, or desperate attempts to obtain warmth or shelter.<sup>1</sup>

This was a pervasive issue that affected all of our major power producers. The freezing of coal piles, loss of 25% of our nuclear power processing plants, the failure of wind turbines and the freezing of natural gas in storage and pipelines all contributed to the severe loss of power.<sup>2</sup> We were unprepared for the extreme cold.

"Uri left approximately 4.3 million Texans (more than 200,000 Austinites) without power and approximately 12 million (1 million Austinites) without access to drinkable water at some point." <sup>3</sup>

The storm will possibly be the costliest natural disaster in Texas history. There was significant damage to piping and other infrastructure. The Perryman Group, a firm which specializes in economic and financial research and analysis, projects the total cost of the damage to be between \$195 and \$295 billion.



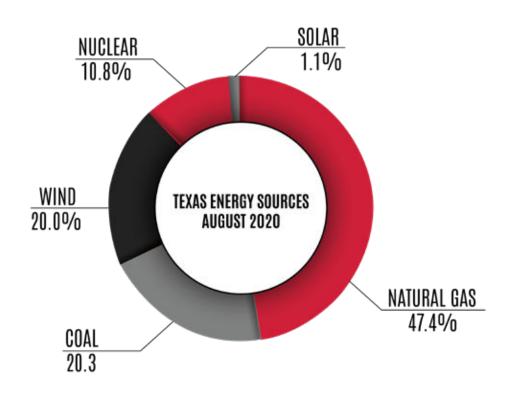


# A. WHAT HAPPENED?

Texas is both the largest producer and consumer of energy of all the states in the nation. ERCOT (Electric Reliability Council of Texas) maganges energy production for 213 of the 254 counties in Texas. ERCOT connects more than 46,500 miles of transmission lines and more than 650 power generation facilities, providing electricity to more than 26 million customers.4 ERCOT receives oversight from the Texas Public Utility Commission which ensures compliance with laws and established rates. ERCOT is responsible for maintaining power reliability and establishing competitive electricity markets.1 For more information on the role of ERCOT in Texas energy production, The Texas Comptroller provides details in it's August issue of Fiscal Notes. Michael Webber, an energy resources

professor at the University of Texas at Austin, says that as the weather worsened and temperatures dropped, much of the state's infrastructure for producing and delivering electricity...froze.<sup>1</sup>

Texas has a variety of energy sources, the majority of which being natural gas making up 47.4%, wind accounting for 20% and coal which is responsible for 20.3%. Texas also receives 11% of its energy from its four nuclear power plants. All of these sources were affected by the winter storm. Piles of coal — unsecured against the freezing temperatures — froze solid. Wind turbines, also unfit for such extreme cold, stopped working. Water vapor in natural gas lines froze as well, causing not only power loss, but widespread damage to residential communities.



# **B. ALONE ON AN ISLAND**

Essentially, Texas is alone in it's approach to providing power to residents.<sup>5</sup> While this provides Texas, and more specifically ERCOT (Electric Reliability Council of Texas), independence from federal regulations it also makes Texas especially vulnerable to widespread

outages. One reason is because Texas cannot easily borrow energy from neighboring states. Oklahoma, our neighbor immediately to the north, was also affected massively by the frigid temperatures of Winter Storm Uri, but did not incur the same power outage issues. This

is because Oklahoma was able to borrow electricity from nearby states who share the same grid. This level of flexibility allowed every state to adapt to temperatures that surpassed the capabilities of their energy production systems, with Texas as the exception.



# C. INEQUITIES

As photos circulated among social media feeds during the storm-related outages, questions regarding the equity of power distribution and the historical divide which has existed for nearly a century.

I-35 has long been a symbol of the divide between the "haves" and the "have nots" in what has been determined as one of the most segregated metro areas in the nation.<sup>6</sup> With income trends being so strongly intertwined with racial demographics, it's difficult to determine when someone is segregated because of their race and when someone is segregated because of their net-worth. Austin, along with San Marcos and Round-Rock who combined to make up this metro area, are all split by Interstate 35. Interstate 35 also serves as the primary highway and vein of transportation in each of these towns. Without having to delve into the long history of the interstate and land use differences on either side, it's apparent why there was discontent with this photo so dramatically depicting one of our city's most damning attributes.



"During this energy emergency, many people have noticed that buildings in the downtown area have remained with power. Here's why: The downtown network is excluded for now from load shedding (power outages) during controlled outages mandated by ERCOT. This is a complicated, inter-connected network which includes critical buildings like the Dell Seton Medical Center, warming centers, the COVID-19 Alternate Care Site, Capitol Complex and Austin City Hall, as well as other critical infrastructure and government buildings. Shutting down the downtown network would also cut off electricity to these critical buildings, which may also house vital communications equipment. Austin Energy is working with the Building Owners & Managers Association and the Downtown Austin Alliance in asking their members to curtail non-essential power use. Austin Energy is looking at additional conservation options downtown. If you're fortunate enough to have power, we're making an urgent plea to customers to please keep your power usage to a minimum."7

In this statement, Austin Energy specifically identifies the justification for the contrast as downtown's inclusion of and proximity to "critical infrastructure". Critical infrastructure being hospitals, police stations, warming centers and other government buildings deemed critical. This excluded the downtown area from the selective process of emergency load shedding that affected thousands of city residents. This unveils another problem with the development of infrastructure. The lack of critical infrastructure in proximity to Eastern Crescent Austin residents

The historic factors that contribute to a lack of hospitals and other critical infrastructure sites in East Austin are immutable, and moving forward with future development may be detrimental to current residents. Developing valuable structures in low-income areas has historically spurred the displacement of existing residents. Property value increases lead to an increase in development projects and the eventual

pricing-out of individuals who cannot afford higher rates. The end result is a decision between settling for substandard environmental conditions, drastically increasing the amount you can afford, or being forced to relocate.

A reasonable way to determine the presence or absence of equitable factors is by viewing a comprehensive map of areas which experienced a power outage due to the storm. Such a map was produced for the 2011 blackouts. Unfortunately, Austin Energy claims to be unable to produce an updated map of "load shed circuits" and "critical load circuits", displaying where exactly these critical infrastructure sites lie and validating the choices made regarding where to cut power, according to a report by KUT8. The same report states that the attorney general has determined that such a map is kept private for security reasons. Until such information is released and critical infrastructure circuits are identified, the general public remains in the dark.



Photo From: https://www.washingtonpost.com/nation/interactive/2021/photos-texas-winter-storm/

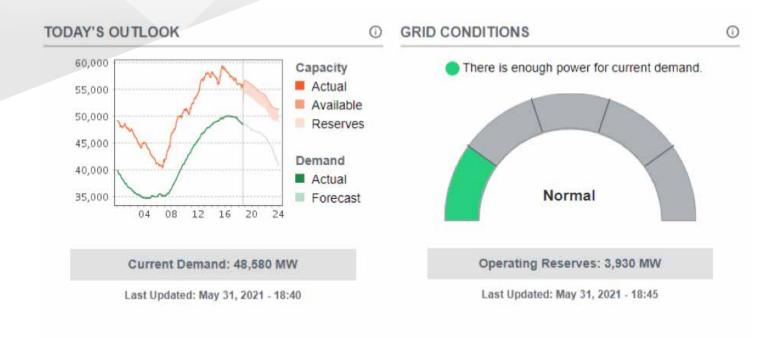
# D. YET AGAIN?

Unfortunately, future power incidents will become more likely as climate change pushes temperature beyond their historical extremes and our power production systems continue to be isolated from the major grids.

We've recently encountered another occurrence of power loss, this time due to a May 28th storm. This outage left 33,000 people without power at some point. As of May 31st, more than 450 people

were still without power. However, ERCOT grid conditions indicate an ample supply of energy, as shown in the graphic from the ERCOT homepage below.

Texas summers can be unforgiving, and we've yet to hit the pinnacle. It is harrowing to consider that we may have many more incidents ahead of us, unless a drastic change is made swiftly.



# E. PREVENTION

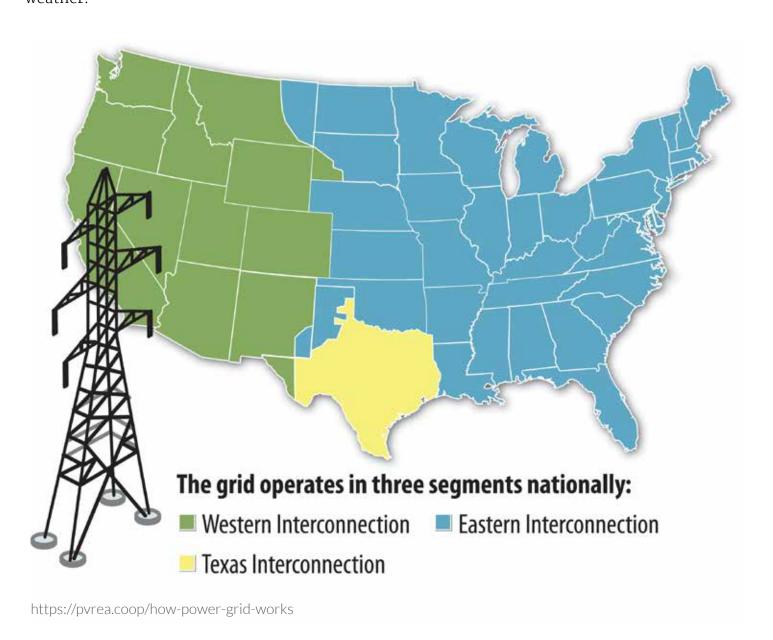
"If the most energy-abundant region of the world can run short on energy, it can happen anywhere," says Webber. "So climate science can be integrated into our energy planning to

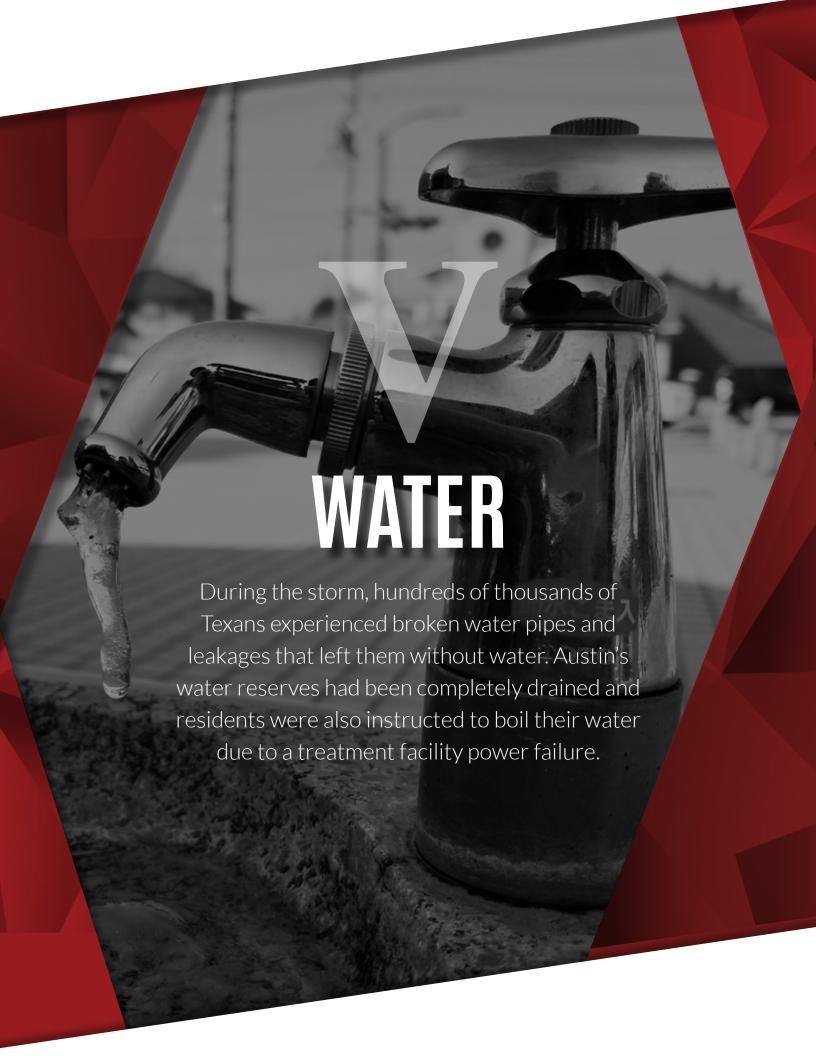
make the energy systems perform better. That's what we need to do."9

The need for reform is unquestionable, and as such The Senate Business and Commerce

Committee is considering changes to the way ERCOT operates. 10 ERCOT officials are under scrutiny for failing to warn officials of likely power loss prior to the storm and keeping electricity prices at their maximum amount for 30 hours post-crisis, resulting in billions in electric overcharges. Several ERCOT board members resigned following the storm. Senate Bills 2 and 3 were approved by the Texas House and Senate requiring major weatherization overhauls to the Texas power grid, to protect against extreme weather. 11

A potential solution, supported by many, is having Texas join one of the two larger and more adaptable national power grids. Potentially the western grid, which supplies power for fewer major cities, balancing the demand. That, coupled with the potential for Texas to produce more energy than it consumes can balance the high demand of the western coast. But, ultimately, merging Texas with one of the two existing grids may be futile if strategies such as the Macro Grid Initiative were adopted.





#### During the storm, hundreds of thousands of Texans experienced broken water pipes and leakages that left them without water.

Austin's water reserves had been completely drained and residents were also instructed to boil their water due to a treatment facility power failure. This was more than an inconvenience for some. Hospitals and residential buildings went

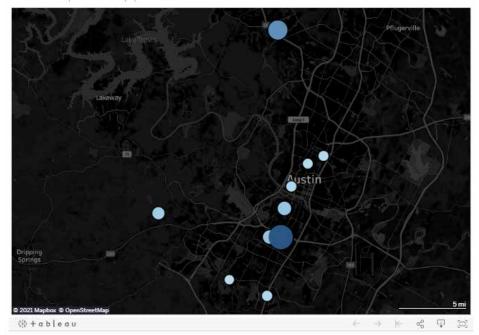
without access to potable water, affecting the ability to drink, bathe, cook, and toilet. In a week's time, Austin's aging water system leaked hundreds of millions of gallons of water. Old pipes combined with frigid temperatures resulted in tens of thousands of leaks in Austin.

But this problem isn't new. Austin's water system has portions that are

nearly a century old. These aged pipes contribute to the loss of billions of gallons of water each year, equating to millions of dollars in total loss. Data sourced from an audit by the Texas Water Development Board<sup>12</sup> reveals a steady increase in real cost of water loss since 2012. The average loss over this 8 year period amounts to just over \$2.08 million annually.



Austin's Top 10 water pipe leaks since 2016



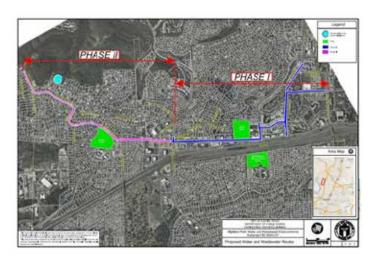
Prior to the winter storm, KXAN produced this map of Austin's top ten water leaks. The map indicates a large concentration in and around the downtown area and a large leak near the Hwy 71 and I-35 intersection.



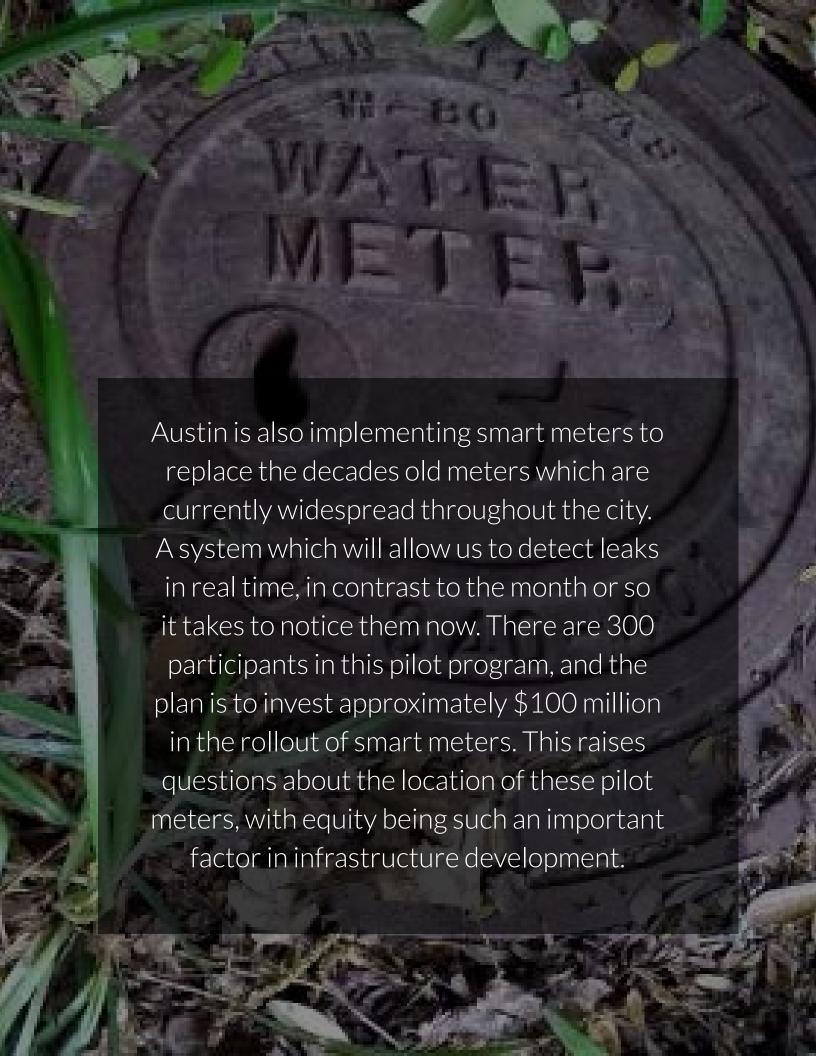
In order to combat the rising trend in costs and water loss, along with other infrastructure issues, Austin has implemented "Renewing Austin" which describes itself as "an ongoing program to replace and upgrade aging water lines." The program uses sound to locate and inspect pipes for leakages. This technology has been used to inspect 1,500 miles of pipeline.

This is a five year program that will cause some disturbance to traffic and potentially resident property. In the end, the goal is to have an updated and dependable water system. Currently, there are projects improving water lines in the Highland Park and West Allandale areas.

West Allandale Project Map http://www.austintexas.gov/sites/default/files/files/Public\_Works/Capital\_Improvement/WADT-FINAL-MAP.pdf



Highland Park Project Map http://austintexas.gov/sites/default/files/files/Public\_ Works/Capital\_Improvement/Highland\_Park\_map.pdf



# THE STATES

The most obvious feature of the Renew Austin project selections is their placement on the west side of Austin. It's very possible that this is due to an need identified using the acoustic technology mentioned before, but with Austin's history of disinvestment in low-income areas we would be wise to ask probing questions about the selection process.

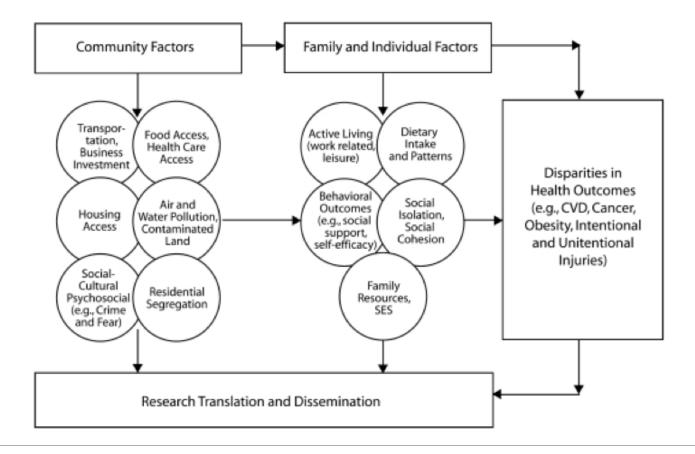
The most obvious feature of the Renew Austin project selections is their placement on the west side of Austin. It's very possible that this is due to an need identified using the acoustic technology mentioned before, but with Austin's history of disinvestment in low-income areas we would be wise to ask probing questions about the selection process. Questions such as; Is there an updated comprehensive map of all leaks found by the acoustic system since winter storm Uri?; Does a map exist which details all areas surveyed thus far and when?; and What protocols are in place to ensure an equitable surveying process?

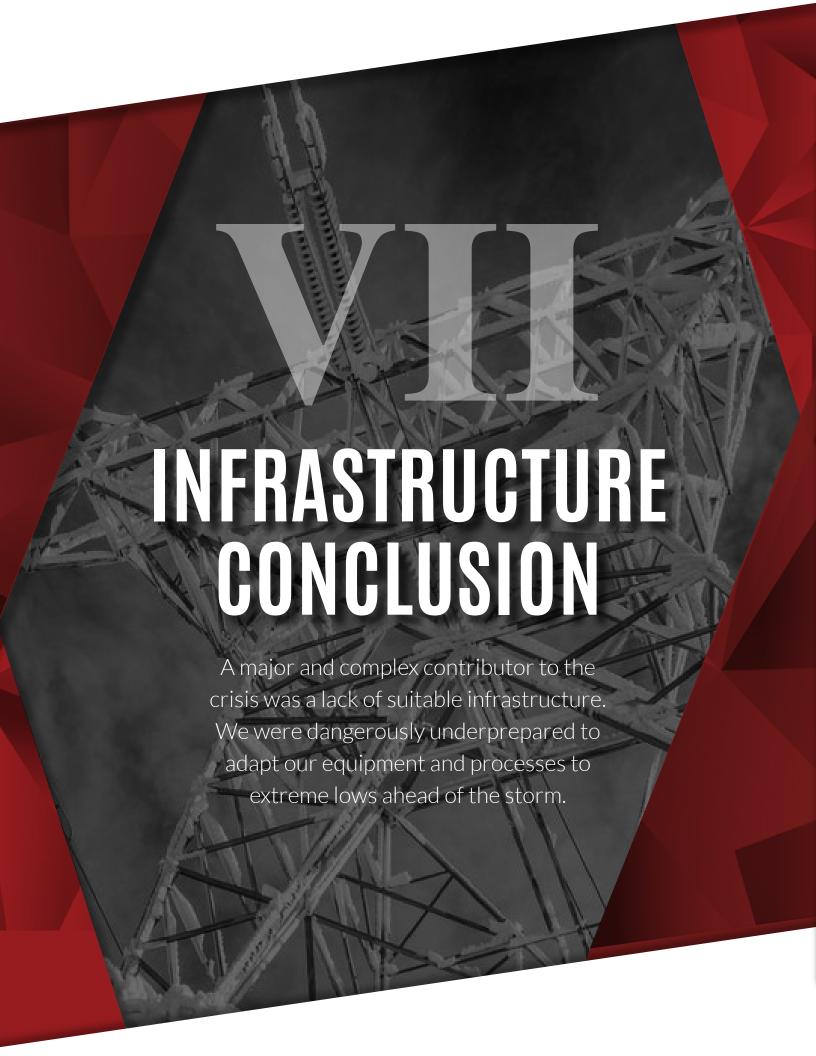
Austin isn't the only city with a long history of disinvestment in lower income communities. President Biden has declared it the policy of his administration to, "spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by

pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care."

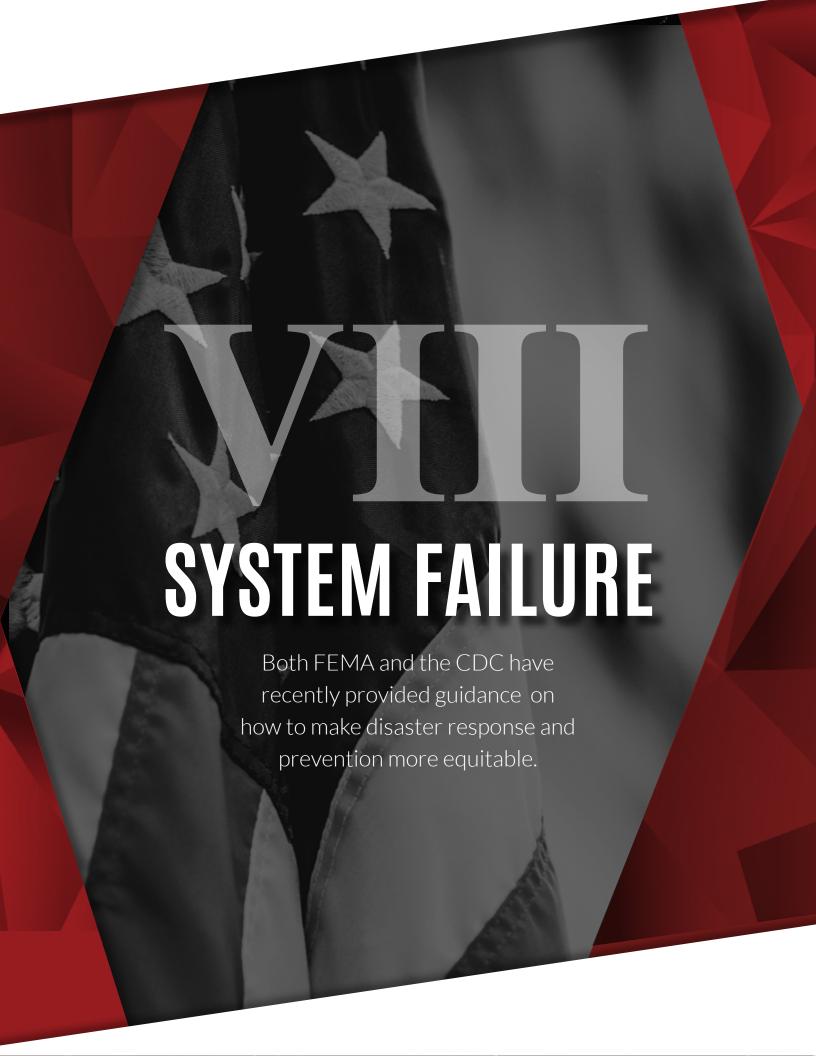
This public acknowledgement recognizes the widespread pattern of infrastructure neglect in communities with lower incomes, but it will take a major effort to turn the tide and change these inequities. The United States Environmental Protection Agency identifies a need of \$472.6 billion over a 20 year period in their 6th national assessment of public water system infrastructure needs. African American and Hispanic households lack adequate plumbing at twice the rate of white households.

The Federal Collaboration on Health Disparities Research identifies several infrastructure-related issues that lead to health disparities in their conceptual framework of the built environment and disparities in health.









Both FEMA and the CDC have recently provided guidance<sup>14, 15</sup> on how to make disaster response and prevention more equitable. FEMA lists 12 population categories that should be prioritized, and the CDC suggests relying heavily on local organizations, direct–service groups and groups serving specific populations for partnership in planning and outreach. What these guiding documents miss, is that it's already happening.

Communities have been taking care of themselves during disasters throughout human history, and marginalized communities are no exception. Leaders and community organizations step up and fill the gaps left over by government led disaster response efforts.

However, in a society that has already displaced, disadvantaged, and disproportionately penalized communities of color, low income communities, and other vulnerable populations, shouldn't rescue and recovery operations, knowing that these vulnerabilities exist, intentionally prioritize these same communities? To do so, this intentional operationalizing of equity would have to be planned for, and if Storm Uri tells us anything, no such plan exists.

# A. OUR PUBLIC WARNING SYSTEM FAILED.

Looking back to public announcements and media advisories, it is clear very few people were prepared for what Storm Uri would bring. While several meteorologists did warn, few emphasized the potential stress on the state electric grid, or that it could mean days without power during a life-threatening winter storm. Few media advisories penetrated the haze of complacency that

led us all to believe that this was going to be bad, but not that bad.

#### **B. OUR SHELTER SYSTEM FAILED.**

Centralized shelters don't work when the roads are so icey that driving across town is hazardous. Though initially, Cap Metro offered rides to the downtown location, eventually they had to cease the operation due to near accidents on the ice. This left many people with no way to get transportation to shelter, and no nearby shelter to walk to.

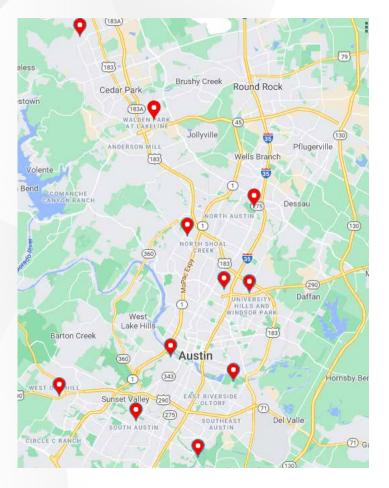
# C. OUR UNHOUSED NEIGHBORS WERE FORGOTTEN.

Travis County and the City of Austin had no plan for ensuring that people experiencing homelessness were able to get to shelter. Police and EMS repeatedly declined giving rides to shelter, even as community groups stepped up to do the job.

# D. POWER AND WATER OUTAGES WERE POORLY PLANNED AND COMMUNICATED.

At about 9 PM on February 17, COA issued this warning: "Austin Water has issued a city-wide boil water notice as a result of extreme weather conditions. What the announcement failed to address was the power outages many were dealing with during this time. Some could not boil water because they had no power. Some had no water to boil because the water main in their neighborhood had broken, or the pipes in their house had. Public communications did not address this reality or what to do about it.

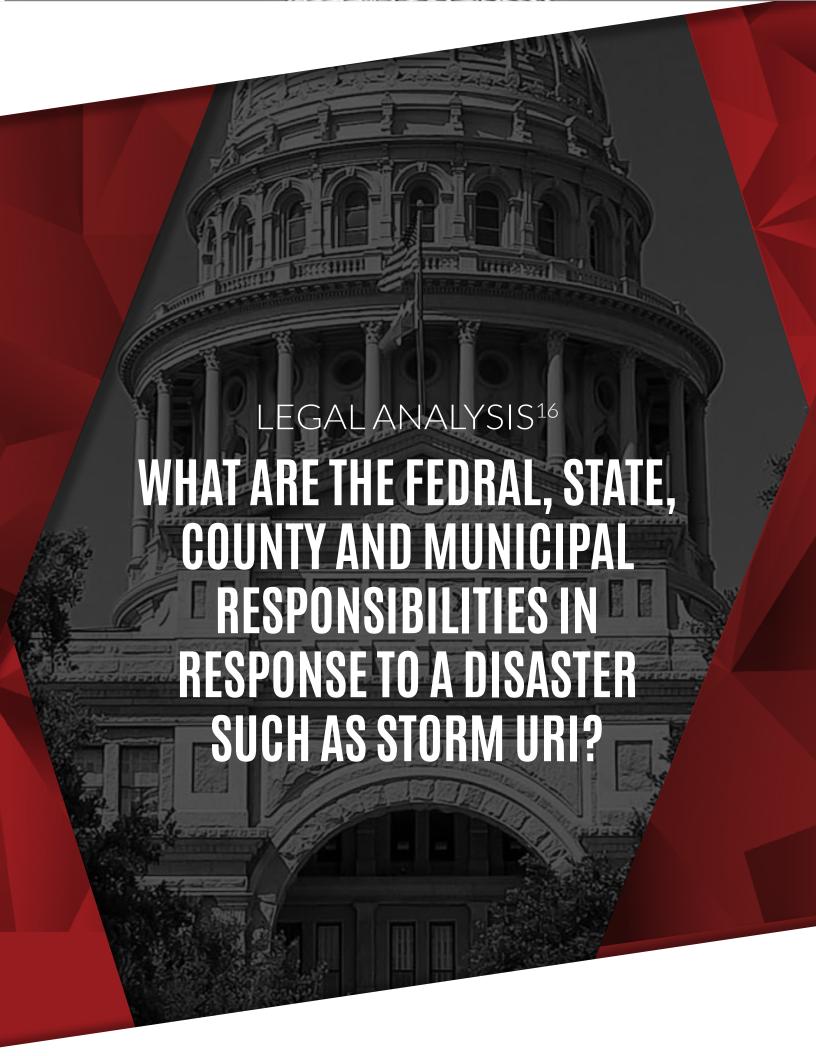
Photo from: cbsaustin.com



# E. WATER AND FOOD DISTRIBUTION WAS UNNECESSARILY DELAYED.

Without a plan to quickly distribute stores of water and food, Austin and Travis Count had to wait for roads to clear and resources to come from elsewhere. Gas and supply shortages made this difficult. But even as roads began to clear, there was no clear plan for determining which communities were in most need. As some communities became more and more desperate for water, a chaotic planning scramble ensued. Community organizations competed with government entities for water trucks, and breweries started boiling and distributing water, which, while helpful, brought logistical problems.

Unincorporated areas were hit particularly hard. Austin's Colony had lost gas, power and water earlier that week. With gasoline shortages limiting transportation, and the nearest grocery 6–10 miles away, Austin's Colony had been particularly hard it. It was not until February 21 that water was finally delivered to Austin's Colony. This was the first of many in the coming days. On February 21, COA announced that it would host 10 distribution sites, one per district. Unfortunately, two were placed close to each other, and none were placed East of 183.



# **FEDERAL**

#### **GENERAL RESPONSIBILITIES**

The most relevant federal agency and therefore the most likely target for litigation is FEMA. According to its internal documentation, the federal government has three key obligations when a state asks for federal relief.<sup>17</sup> The first of which is to perform an initial assessment of damages alongside state and local governments. In doing so it must determine the damages undertaken by individuals, farms, business, public agencies, special districts, non-profit organizations and identify actions that can be implemented during and after repairs to mitigate the costs of another disaster.<sup>18</sup>

The second responsibility of the federal government to screen applications for federal aid and approve or deny them. This will entail assigning a Federal Coordinating Officer to lead the Emergency Response Team, establishing a Disaster Field Office for the purposes of response and recovery coordination and working with the State Coordinating Officer for every request that is approved.<sup>19</sup>

The third and final task for the federal government is to activate the federal response plan which includes the establishment of an Emergency Support Team and the identification of the Emergency Support Functions this team must perform.<sup>20</sup>

# **VULNERABLE POPULATIONS**

FEMA's internal documentation also demonstrates a self-imposed heightened degree of

responsibility for vulnerable populations.<sup>21</sup> These include people living in poverty, the elderly, rural communities and racial minorities such as African Americans and Latino Americans.<sup>22</sup> There is substantial precedence for courts requiring agencies to abide by their internal regulations,<sup>23</sup> therefore any failure by FEMA to support uniquely susceptible populations would be subject to heightened scrutiny.

The rare occasion where federal agencies have been allowed to deviate from internal policy happens when the purpose of the policy is to govern the agency rather than protect the public interest, or when deviating from policy serves the public interest.<sup>24</sup> Neither of which is the case here.



# STATE - COUNTY - MUNICIPAL

## **GENERAL RESPONSIBILITIES**

The Texas Disaster Act outlines various requirements for the state government and local governmental units such as counties and municipalities to meet. Relevant provisions include minimum standards for the training of government employees in emergency management<sup>25</sup>, a requirement for there to be a disaster management plan<sup>26</sup>, requirements for collaboration and cooperation between various levels of government<sup>27</sup>, providing rapid and effective communication both internally and with the public<sup>28</sup>, monitoring weather conditions that could result in a disaster<sup>29</sup>, insulating critical infrastructure such as hospitals so that they can

continue to operate<sup>30</sup> and maintaining a disaster contingency fund<sup>31</sup> among others.

Counties and municipalities also need to maintain emergency management programs that can effectively meet local needs.<sup>32</sup>

## **VULNERABLE POPULATIONS**

The Texas Disaster Act places additional requirements on the State and all government units therein (including counties and municipalities) to have plans in place to protect "speciality care populations" in the event of a disaster such as Storm Uri.<sup>33</sup> It specifically mandates the preparation of shelters for such individuals but does not suggest the responsibilities end there.<sup>34</sup>

While the statute is ambiguous in terms of what constitutes a "specialty care population" internal state government documentation suggests that it "may include, but are not limited to, individuals with disabilities, seniors, and populations having limited English proficiency, limited access to transportation, and/or limited access to financial resources to prepare for, respond to and recover from an emergency."<sup>35</sup>



Photo by Viswanath Muddada on Unsplash

LEGAL ANALYSIS<sup>16</sup> WERE THOSE RESPONSIBILITIES MET?

# **FEDERAL**

There is a long history of FEMA failing to abide by its internal regulations that require it to provide adequate relief to vulnerable communities. The agency's own internal reports indicate a significant disparity between rich and poor, with the former far more likely to receive aid. The supposed to serve lower income individuals to a greater extent, but rather does so for higher income individuals instead. Documentation requirements for aid applications are difficult to meet for vulnerable communities and the lack of diversity in FEMA's workforce has been cited as an additional factor. Section 1981.

In the case of the Texas energy grid collapse a spokesperson for FEMA has stated the agency has provided generators, waters, diesel and blankets.<sup>39</sup> Yet FEMA's response has been criticized for being insufficient. A significant delay in distributing aid was observed on the part of the

federal government, forcing local organizations to bridge the gap.<sup>40</sup>

The disparity in receiving federal aid has been continued, with vulnerable communities receiving less aid than their wealthier counterparts. 41 Black communities in particular are reporting receiving insufficient funding. 42 This is similar to FEMA's failure in helping disadvantaged communities after Hurricane Harvey. 43 For instance the entirely white Taylor's Landing received an average of \$60,000 per person from FEMA. Port Arthur, a community with a lower average income and a third of its residents being African American received only \$84 per person. 44

There is a clear pattern of FEMA failing to abide by its internally outlined responsibilities to provide better relief for vulnerable communities, instead doing the very opposite.



# STATE - COUNTY - MUNICIPAL

The state clearly failed in its responsibilities to provide a heightened level of care for vulnerable populations. There have been various reports that the power grid collapse disproportionately affected minority and lower income communities. For example, areas of Texas that were able to maintain power were disproportionately wealthy.45 There were observed failures at the municipal and county levels to distributing federal and state aid to lower-income and minority communities.46 More assistance from state actors was provided to wealthier communities for applying for federal relief.<sup>47</sup> Even when the power came back there was no subsidization for energy bills for minority communities, despite such communities already spending more on energy.48

The Living Hope Wheelchair Association, reported that there was insufficient treatment

for people with physical disabilities and the elderly.<sup>49</sup> It observed a lack of preparation as there were no backup power for people who needed electricity to power key medical devices such as oxygen machines.<sup>50</sup> Shelters were poorly equipped, lacking various live-saving medical treatments such as dialysis.<sup>51</sup> There was a lack of coordination between various state agencies, counties and municipalities in providing relief for the physically disabled and non-English speakers.<sup>52</sup>

The poor response by the government indicates that the various provisions of the Texas Emergency Act mandating proper preparation for calamities such as Storm Uri at the state, county and municipal level were evidently not met. There ought to have better training and preparation at each level.





## **FEDERAL**

FEMA is indisputably a government agency, thus any argument for it not to have sovereign immunity based on not being one would not succeed.

A case was recently field by Texas RioGrande Legal Aid requesting FEMA disclose its internal procedures for deciding when to grant and when to deny aid under the Freedom of Information Act (FOIA).<sup>53</sup> At this point it is unclear how the organization intends to circumvent sovereign immunity, but it would be well worth paying attention to and possibly assisting with that lawsuit.

As a general rule, sovereign immunity is waived by the Administrative Procedures Act (APA) when a person suffers a legal wrong because of agency action, provided that another statute does not apply.<sup>54</sup> In addition, judicial review of a federal agency can only occur when "there is no other adequate remedy in a court."<sup>55</sup> Thus, there are four things that need to be proven: that a legal wrong was endured, that agency action caused the legal wrong, that no other statute overrules the APA and that there is no other adequate remedy.

#### **LEGAL WRONG**

The Supreme Court has held that a legal wrong must be defined in the context of the relevant statute,<sup>56</sup> in this case the Stafford Disaster Relief and Emergency Assistance Act (SDREAA). It does not define "legal wrong" nor provide any

guidance as to what that would constitute. Thus, deferral to common law is appropriate.

The Fifth Circuit defines a "legal wrong" as actions that result in "harm for which courts will impose civil liability." <sup>57</sup> Courts have civil liability for misallocation of funding of other federal agencies as the IRS <sup>58</sup> and significant harm was suffered by Texans due to not receiving sufficient federal support. <sup>59</sup> The argument for there having been a legal wrong is clear.

## AGENCY ACTION CAUSED LEGAL WRONG

As for the second component, the Supreme Court has upheld an exemption for liability for any federal government action done because a statute or internal regulation requires them to perform that action. <sup>60</sup> If a government actor does not perform their duty as required by the statute, then the government is liable. <sup>61</sup>

FEMA workers have many applicable responsibilities such as a requirement to report waste, fraud, abuse and corruption. If any harm was incurred by victims of the Texas power grid collapse due to a failure of any FEMA worker to perform their statutorily obliged responsibilities, then litigation on the matter would not be barred by sovereign immunity.

An action more likely to succeed would be to argue negligence in failing to adequately provide aid. As aforementioned, there are various instances where harm was suffered due to FEMA

not providing sufficient assistance to vulnerable communities its internal rules require it to serve. <sup>64</sup> The third step of the analysis, whether another statute takes priority over the APA, is now in play.

#### **NO PRECLUSION**

Denial of funding would be an instance where it is unclear whether a government actor's conduct is statutorily required. In such circumstances the Federal Torts Claims Act (FTCA) and the SDREAA are the relevant statutes to assessing whether the APA applies. The former establishes sovereign immunity for the federal government under the Discretionary Function Exception (DFE). 65

This clause exempts litigation in instances pertaining to "exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." <sup>66</sup> A similar clause is found in the SDREAA, which protects the federal government for being sued for "for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty." <sup>67</sup> The argument to be made is thus that neither statute takes authority over the APA because FEMA's conduct was not discretionary, and these clauses do not apply.

The Supreme Court in United States v. Gaubert, provided a two-part test for assessing whether the DFE applies. First, is if the actor has discretion; if this is not the case, then this clause does not apply.<sup>68</sup> The Fifth Circuit has recognized

matters pertaining to allocation of funds by FEMA to be discretionary in nature.<sup>69</sup> However this case is distinguishable as it does not FEMA's internal requirements mandating it provide better assistance to vulnerable communities. FEMA's allocation of funding may be discretionary, but its failure to abide by its own internal policies which resulted in harm is not.<sup>70</sup> It would be within the discretion of the agency to selectively choose when and when not follow its own rules, to determine otherwise would be absurd.

Should discretion be established, the next step of the test is to ascertain whether the actor's decision is based on public policy considerations. If the decisionmaker's decision is susceptible to policy analysis, then the answer is yes and there would be sovereign immunity. The best argument to made at this stage would be that allocation of funding under FEMA is more so driven by FEMA's internal policy considerations and not necessarily the public interest.

#### NO OTHER ADEQUATE REMEDY

Government attorneys will argue there is an adequate remedy for denial of funding via FEMA's own internal appeals system. According to the Fifth Circuit, the alternative remedy does not need to be "as effective as an APA lawsuit," but merely provide the "same genre" of relief. The argument to be made is thus that the type of relief offered through FEMA's internal appeals courts is not the "same genre" that can found via judicial review.

There is little guidance as to the adequacy of FEMA's internal procedures, however in the case

of other agencies courts turn to the type of relief claimed and the extent to which it is available.<sup>75</sup> For instance, in the case of a Medicare carrier the Supreme Court looked to the governing statute and assessed if the relief sought was available under it.<sup>76</sup> The court held that the relief being sought was an order obliging the agency to provide payments that were denied, something that was not covered by the statute.<sup>77</sup> Monetary relief equivalent to the amount denied was available via an alternative remedy, but this was not what the court held as being sought.<sup>78</sup>

Therefore, in the case of FEMA, we have a strong chance at contending the insufficiency that the relief being sought is not simply damages but rather an injunction demanding FEMA take a particular course of action which in this case

would be giving appropriate monetary relief. The argument could also be construed as seeking a retrial for the wrongful denial of an appeal, which has persuaded the Fifth Circuit before.<sup>79</sup>

The SDREAA is unclear in terms of the exact type of relief FEMA provides through its appeals process.<sup>80</sup> This ambiguity works in our favor, as the lack of clarify in the statute would generate a stronger presumption in favor of judicial review to resolve the uncertainty.

Courts tend to rule against plaintiffs when they fail to utilize the internal procedures of a government agency before filing an APA claim.<sup>81</sup> It is important to seek relief through FEMA's internal procedures before appealing to the courts.

### **STATE**

For our purposes, the most likely target of litigation at the state level would be ERCOT. The initial consideration to be made is whether it constitutes a "governmental unit" that would possess sovereign immunity under Texas common law, as defined by the Texas Tort Claims Act. 82 The Texas Supreme Court has declined to make a judgment call on the matter, tossing out a case for which ERCOT's classification was an essential question for lack of jurisdiction. 83 There is another widely anticipated case with the same central issue, Electric Reliability Council of Texas Inc. v. Panda Power Generation Infrastructure Fund LLC, awaiting a decision from the Texas Fifth Circuit 84 and following it closely is advised.

Given that the former CEO of ERCOT Bill Magness testified under oath to the Texas Legislature that ERCOT is not a government unit but rather "a private Texas corporation",<sup>85</sup> there is a strong presumption in finding ERCOT to not be a governmental unit and therefore not have sovereign immunity.

In addition, ERCOT and Attorney General Ken Paxton are currently arguing that it is not a governmental unit and therefore not subject to the disclosure requirements of the Texas Freedom of Information Act. <sup>86</sup> By its own admission, ERCOT should have sovereign immunity.

ERCOT is also simultaneously arguing that it is

a governmental unit that should have sovereign immunity but is also not a governmental unit and thus is not subject to disclosure requirements.<sup>87</sup> This strategy has been attempted before by the University of the Incarnate Word and ended in the Texas Supreme Court ruling that it is not a governmental unit and therefore does not have sovereign immunity.<sup>88</sup> These cases are quite analogous and bode well for ERCOT not being exempt from liability.

#### **EXCEPTIONS**

Nevertheless, assuming that ERCOT is a government unit, the Texas Tort Claims Act would waive its sovereign immunity for tort claims, such as our negligence claim for failing to winterize the power grid, under certain circumstances. <sup>89</sup> The most relevant of which are as follows.

#### **USE OF PROPERTY**

Governmental units in Texas are liable for "personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." 90 For this argument to work, we need to prove (1) the energy grid constitutes "personal or real property" of which (2) the use of (3) caused (4) personal injury and/or death and (5) a private person in ERCOT's position would be liable.

As for the first requirement, Texas courts typically assess whether or not something constitutes "personal or real property" on the basis of tangibility. The energy grid is tangible in that it physically exists, and it is run by ERCOT and there constitutes "personal or real property."

The second criterion is more difficult to prove. Failing to properly winterize the energy grid would not constitute a "use" as it would be more of a non-use. A failure to do something, not using property when one ought to have, would not waive liability under the Texas Torts Claims Act according to the Texas Supreme Court.92 However, the decision by ERCOT to shut down the power grid could be construed as a relevant "use" that would trigger a waiver of sovereign immunity. According to the Supreme Court, a "use" requires tangible property to be employed towards a particular purpose.93 The grid is tangible property that is being shut down for the purpose of preventing wider scale blackouts, this condition is therefore met.94

The third condition also presents a high bar. For the usage of the energy grid to have caused the injury there has to be proximate cause. For this to be the case there must be but–for causation, and this is true. Government attorneys will argue that the personal death and injury endured was caused by adverse weather conditions, and not a lack of electricity. However, had victims had electricity and heating available they would not have suffered injuries from the cold. In addition, we would need to show foreseeability, which is self–evident. People suffering injuries due to not having heating during a blizzard is readily foreseeable.

The fourth criterion is evidently met, there have been countless cases of personal injury and deaths in the aftermath of Storm Uri. The fifth criterion is met as well, a landlord in Texas that was negligent in maintaining energy for a unit would certainly be liable for damages incurred due to the tenant lacking energy.

#### PREMISE/SPECIAL DEFECT

Governmental units in Texas are liable for damages when a claim arises from a premise or special defect. Liability is greater for a special defect, 98 however the text of the statute when giving examples refers to "traffic signs, signals or warning devices,"99 suggesting the special defects are only applicable in the context of traffic accidents. This interpretation is supported by the Fifth District of the Texas Court of Appeals, narrowly defining special defects as referring to highway obstructions specially. 100 Nevertheless, we can raise the argument that defects in the power grid, a lack of winterization, led to highway obstructions as traffic signals and warning devices ceased working as a result. 101

If the lack of winterization of the power grid is found to be a "special defect" then ERCOT "owes the duty that a private person would owe to an invitee". This entails the duty to use (1) reasonable care to eliminate (2) an unreasonable risk of harm (3) created by a premises condition of which (4) the government unit is or reasonably should be aware." 103

Winterizing the grid certainly falls under reasonable care and would not be an undue burden. The cost doing so is not only minimal, but ERCOT would have make long-term profit in energy savings. The severe personal injury/death experienced would naturally be an unreasonable risk of harm. A "special condition" is a type of "premises condition" 5, so this is already proven

in prior analysis. ERCOT certainly was aware or should have been aware that their energy grid was not winterized and there would be severe dangers in not doing so. After all, the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation had warned the state of Texas a decade ago that its energy infrastructure was ill–equipped to handle cold conditions. <sup>106</sup> Not to mention the state had experienced energy issues prior due to the 2011 Groundhog Day Blizzard, <sup>107</sup> they ought to have seen a power collapse such as this coming. Thus, sovereign immunity can be circumvented. <sup>108</sup>

Should the "special defect" argument fail there is still a case to be made that there was a "premises defect". Neither term is defined by the Texas Tort Claims Act, however the Supreme Court of Texas has determined that analysis of the matter requires one to see if an injury was caused by a condition or an activity. 109 If it is the former, then there is greater consideration in determining something to be a "premises defect" 110. The relevant condition in this case would that the power grid was not winterized, injuries resulted from this lack of winterization causing the entire grid to collapse. Thus, there is a clear argument to be made that there was a "premises defect" ERCOT can be held liable for.

The liability for a "premises defect" if the victim is paying for the premises is that same as that for a "special defect"<sup>111</sup>, of which the analysis was already discussed. Nevertheless, government attorneys will contend that Texan residents are not paying for the grid itself but rather the power it generates, that the entity being paid are

power companies and not ERCOT and that some who were injured were not Texas residents and therefore do not pay for the use of the premises. In such cases, ERCOT would be held to the lesser standard of "the duty that a private person owes to a licensee."<sup>112</sup>

To prove liability under a licensee duty, one must prove the same conditions as that of an invitee duty<sup>113</sup> of which we have already done so in the special defect analysis. However there two key differences, first we must demonstrate that ERCOT knew that the power grid was unwinterized as the ought to have known standard is not sufficient.<sup>114</sup> The aforementioned warnings from various federal agencies and that ERCOT experienced a similar loss of power due to a blizzard ten years ago would be naturally sufficient to meet this standard. Second, we need to prove that the victims did not know the power grid was not winterized.<sup>115</sup> That should be straightforward, the average Texan would not have a strong

understanding of the power grid of their own state and affirmations from victims under oath that they did not know should be enough to meet this standard.

#### **JOINT ENTERPRISE**

When a government unit in Texas engages in a joint enterprise with another party, it is considered to have waived sovereign immunity and is responsible for the conduct of the other party. 116 As a membership-based organization, ERCOT is comprised of consumers, electric cooperatives, generators, power marketers, retail electric providers, investor-owned electric utilities (transmission and distribution providers), and municipally owned electric utilities. 117 This could be argued to effectively form a joint enterprise under which each member is liable for the conduct of its other members.

The first requirement for proving a joint enterprise exists is there must be an agreement among



the members of the group. 118 This is quite clearly the case, ERCOT's membership agreement is publicly accessible. 119 The second requirement is that there must be a "a common purpose to be carried out by the group." 120 In this case it would be to facilitate energy transactions in the state of Texas. 121

The third requirement is that a joint enterprise must be "a community of pecuniary interest." The strongest argument we can make to this end is that every member has financial considerations, some want to consume energy at the lowest price possible while others wish to make a profit. The fourth and final criterion is that

"an equal right to a voice in the direction of the enterprise." While the Texas legislature does have ultimate authority in governing ERCOT's actions, it can be argued that the organization enjoys considerable autonomy and that each member has an equal say in influencing its decision–making.

Should a joint enterprise be proven to exist between the various members of ERCOT or ERCOT and its partners such as various Texas power companies, then sovereign immunity is waived and ERCOT can be sued for the negligent conduct of its partners.

## **EXCEPTIONS TO EXCEPTIONS**

#### **EMERGENCY SITUATION**

The Texas Tort Claims Act also outlines conditions under which the above waivers of sovereign immunity do not apply. The most relevant is that giving immunity to governmental units reacting to an emergency situation if the action is in compliance with the laws and ordinances applicable to emergency action.

There is no question that Storm Uri was an emergency situation, however there is a lack of clarity as to what laws govern. The Texas Disaster Act is concerned with preparing for a disaster and not responding during one, and ERCOT's internal regulations are similarly unclear. In situations lacking clarity the Texas Tort Claims Act provides a separate test, if "the action is not taken with

conscious indifference or reckless disregard for the safety of others."<sup>127</sup>

The Texas Supreme Court defines both "conscious in difference" and "reckless disregard" as "an act or omission involving an extreme risk to others, an actual awareness of that risk, and knowledge that harm was a highly probable consequence of the act or omission." Employees of ERCOT reacted to Storm Uri and chose to avert a longer-term blackout by temporarily shutting down the power grid. This act certainly involved an extreme risk to the entire Texas population, a risk that anyone but especially highly trained electrical engineers at a state agency would be aware of and would absolutely result in harm.

However, this analysis is complicated by the fact

that the act was undertaken to avert an even greater calamity. Government attorneys would argue that to not shut down the power grid is what would demonstrate conscious indifference, as not doing so would result in a longer blackout that would cause even more harm. That employees of ERCOT acted to minimize harm would suggest a lack of conscious indifference or reckless disregard. The harm that was incurred as a result of their actions would have been suffered anyway.

It is unclear what the standard is when harm is caused to prevent a greater harm.

Nonetheless this exception can be circumvented by contending that we are not pursuing legal action for ERCOT's conduct in reacting to Storm Uri but rather their negligence in not winterizing the power grid prior to it.

#### **DISCRETIONARY POWERS**

Governmental units are also exempt for liability for not "performing an act that the unit is not required by law to perform." If ERCOT is not required by law to winterize the power grid (assuming that it is a governmental unit) then it cannot be held liable for not doing so. The strongest argument we can make is that ERCOT is legally required to "maintain the reliability and security of the ERCOT region's electrical network" and that doing so entails ensuring that the power grid is sufficiently winterized. 132

#### **DAMAGE LIMITATIONS**

The Texas Tort Claims Act restricts damages for actions against a governmental unit to \$250,000

per person, \$500,000 for each occurrence of bodily injury or death and \$100,000 for each occurrence of property damage. 133

#### **COUNTY**

Counties are explicitly described as "government units" that would be exempt from liability in the Texas Tort Claims Act. <sup>134</sup> Unlike municipalities, the Texas Tort Claims Act does provide a separate framework and thus they would be subject to the same exceptions, tests and analysis that any other state agency would be.

Which exceptions do and do not apply would depend on the county in question, however premises defect claims would be especially useful in this context. Any injuries that resulted from poor local infrastructure or other structural defects of county property that were exuberated by Storm Uri would have a strong claim for waiving sovereign immunity.

#### **MUNICIPAL**

Municipalities are "governmental units" under the Texas Tort Claims Act. <sup>135</sup> However the statute itself acknowledges several relevant exceptions under which they can be liable. <sup>136</sup> In general, a municipality is not liable for damages resulting from its "governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public." <sup>137</sup> What constitutes such functions will vary by municipality however the Texas Tort Claims Acts provides a limited, but not comprehensive, list of examples in Section 101.0215(a). <sup>138</sup>



The most relevant ones for our purposes would be the exceptions for damages resulting from misuse of "police and fire protection and control," "hospitals," "operation of emergency ambulance services," 141 and "engineering functions," 142.

On the other hand, municipalities can be sued for "proprietary functions."<sup>143</sup> These will vary by municipality but the Texas Tort Claims Acts provides a limited, but not comprehensive, list of examples in Section 101.0215(b).<sup>144</sup>

The most relevant one for our purposes is "the operation and maintenance of a public utility," which would include electricity. This greatly increases the litigation that can be undertaken against municipalities, as they can be held responsible for failures in providing adequate energy services in the wake of Storm Uri. Litigation pertaining to a general failure to prepare for an emergency will be more difficult, the key will be to frame emergency preparation as "proprietary functions" and not "government functions".



### **FEDERAL**

Federal law waives sovereign immunity when the federal government violates a constitutional right. <sup>146</sup> In the context of FEMA it is unclear if a failure to provide adequate implicates the constitution. There has been speculation that FEMA's prior policy to not funding to churches was a violation of one's freedom to practice religion <sup>147</sup> under the First Amendment. <sup>148</sup> However, this was never tested by the courts as FEMA changed its internal policy. If that was a constitutional violation, then it would be reasonable to argue that inadequacy in funding minority communities would violate anti-discrimination protections based on race under the Fourteenth Amendment. <sup>149</sup> Proving deliberate discrimination would be

almost impossible, however a systematic argument could work although it is unclear if the Fourteenth Amendment protects against systematic or unintentional discrimination in addition to deliberate discrimination.

On a final note, should litigation against FEMA be successful, there will still be substantial limitations on available damages. Specifically, the Fifth Circuit has ruled there is to be no pretrial interest in cases against the federal government unless explicitly created by statute of contractual relationship. 150 Neither of which is the case here.



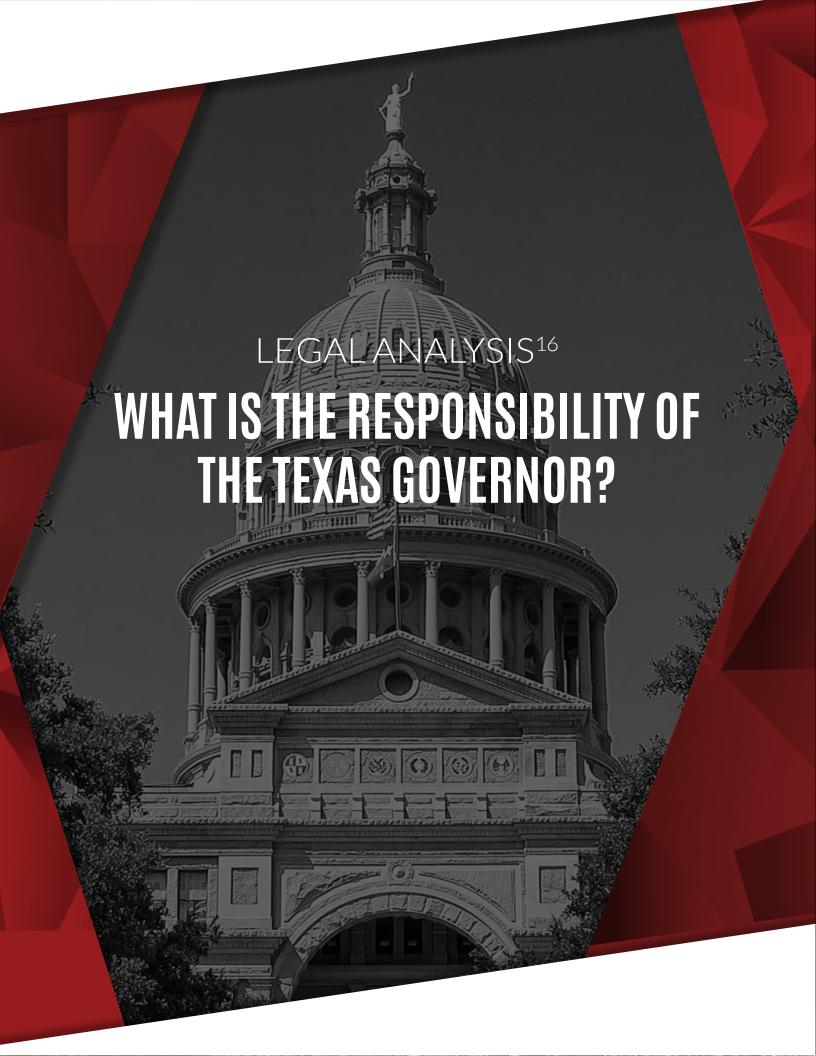
## STATE

Sovereign immunity is waived in instances where Texas' conduct is in violation of the federal<sup>151</sup> or its own constitution.<sup>152</sup> There have already been lawsuits being filed against ERCOT alleging state constitutional violations<sup>153</sup>, albeit by power companies and municipalities, and it is advised to follow them closely.

In addition, the Abrogation Doctrine allows federal Congress to waive sovereign immunity for states via statute or constitutional amendment when states exercise power delegated to them by the federal government under any Amendment passed after the Eleventh. This is frequently used in civil rights litigation under the Fourteenth Amendment, and a cause of action alleging systematic discrimination in how ERCOT and other Texas state agencies failed to meet the need of minority communities has a strong chance of succeeding. Putting pressure on members of Congress at the federal level to remove ERCOT's sovereign immunity would also a useful course of action.

Also, the Texas Supreme Court has held that sovereign immunity at the state level can be ignored with consent from the state legislature. This is because state law allows for immunity to be waived if "the governmental unit consents. The legislature has the authority to consent to lawsuits on behalf of any Texas state agency, county or municipality via the passing of a statute. The state of th

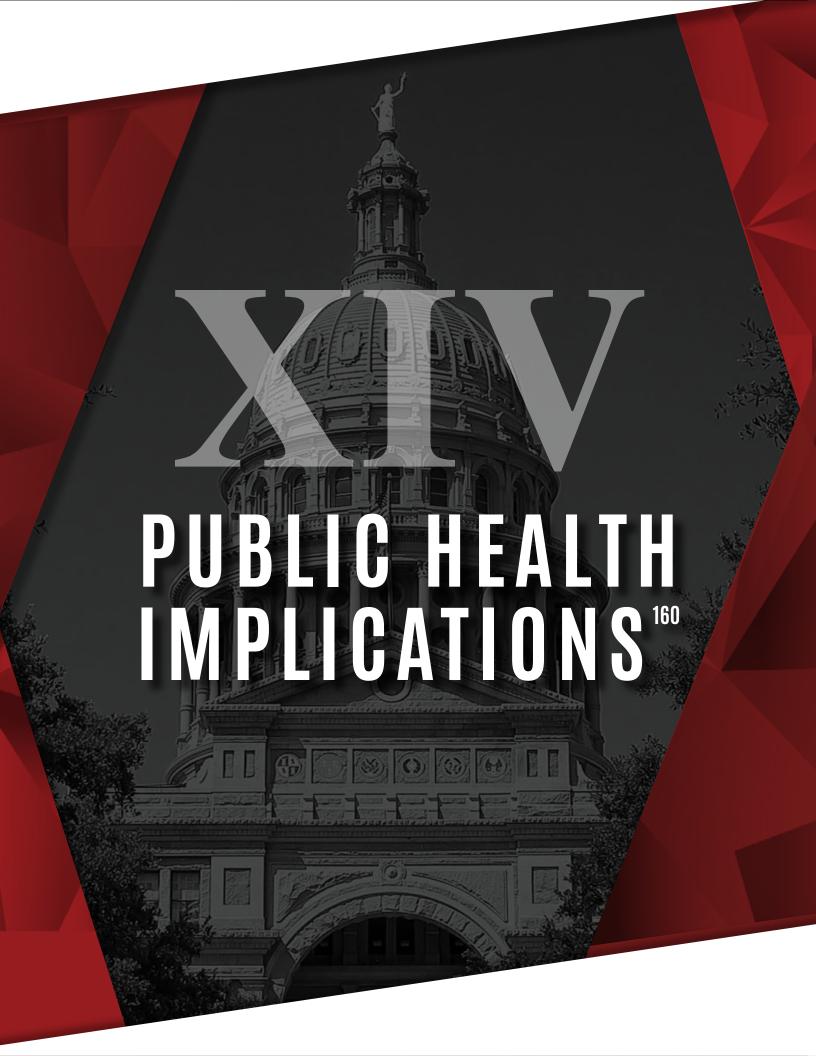
Though there is nothing in the Texas Public Utility Regulatory Act suggesting that the legislature has already waived immunity on behalf of ERCOT<sup>158</sup>, it would still be an advisable tactic to pressure the state legislature into doing that just that. It would be wise to exploit their tendency towards self-preservation and encourage redirecting the ire of voters away from them and towards ERCOT. Further, ERCOT's argument that it is not a governmental unit for the purposes of the Texas Freedom of Information Act could be construed as an internal waiver of sovereign immunity.



The Texas Disaster Act contains various provisions mandating that Governor take perform or not perform certain acts. Most notably the "governor is responsible for meeting (1) the dangers to the state and people presented by disasters; and (2) disruptions to the state and people caused by energy emergencies." 159 Though the statute does not outline penalties should the governor fail to meet his responsibilities and there is a

lack of judicial clarification, it would still be advised to file an against Gregg Abbott for failing to meet those responsibilities. Various pieces of successful litigation have been filed against sitting Texas governors. If nothing else the optics of the public suing their governor for failing to help them in a time of crisis would be a powerful force to scare him into taking action.





#### **GENERALLY**

Given the loss of life and injury directly and indirectly resulting from the freezing temperatures, it goes without saying that at the moment the City of Austin knew there was going to be a freeze, an emergency management plan from EOC should have been widely distributed in an accessible format. In order for this emergency plan to be effective in reaching hard-to-reach populations, it should employ the considerable reach of community-based organizations and the limiting aspects of Austin's great digital divide. Guidelines should be provided to assist the public in understanding and navigating the emergency plan. Walking through the plan with community organizations may be a simple way to distribute information widely among residents with limited access to media sources and the internet.

Ideally, COVID-19 testing would have been conducted prior to the moving of storm displaced and unhoused neighbors into shelters. Test providers and administrators would have to be prepared to provide rapid tests with mouth swab or at the tip of the nose, in order to prevent reluctance and/or triggering additional trauma. Self-administered testing would be ideal for clients who are able. Those with a positive test result should be placed in shelters with staff and volunteers who are completely vaccinated, to minimize the risk of spread. Those with a negative result would be given access to general shelters implementing the practices of social distancing, masking, hand washing, sanitation, etc. On the third-day, testing should be done

again. Thus, ample testing kits and supplies should be on hand or available for quick distribution to shelters. Plans should be made to funnel unhoused, positive testing, individuals to adequate healthcare services once the weather crisis has passed. Consider the moral implications of testing an unhoused person with a positive result and releasing them, "back on the street and telling them they are on their own." – Dr. Hockaday

## PROTECTING PERSONS WITH CHRONIC HEALTH ISSUES

As we exit the most devastating phases of the pandemic, we are prompted to look beyond the risk of pathogen spread in emergency shelters and toward the management of serious, potentially chronic, disorders during the emergency period. One example is the inability to serve individuals undergoing outpatient dialysis treatments. The loss of electricity and water affect an outpatient center's capability to perform both peritoneal and hemodialysis. "Half of dialysis centers across Texas -- more than 750, serving some 54,000 patients -- are affected by power outages and water issues, according to Tiffany Jones-Smith, CEO of the Texas Kidney Foundation."161 Although it is possible to survive days to weeks without dialysis, this is all dependent on the level of kidney function a patient has. For those with very serious kidney function loss and those who are awaiting a life-saving transplant, this seemingly short delay could lead to significant damage or even death.

Extreme weather events are unavoidable, and

almost always result in tragedy. We can't always prevent nature from ravaging the technology we've come to depend on for the quality and preservation of our very lives. But we are able to take creative steps toward reducing, with the hope of eliminating, the damages incurred. Due to the COVID-19 outbreak, we've grown to further explore the establishment and implementation of emergency and crisis hotlines and online resources. Developing a similar model for those with chronic medical issues and/or loss of medical treatment options during times of crisis would provide a harm-reduction safety net of sorts. A more direct, and possibly more effective, option would be to allow patients undergoing regular treatment to opt-in to a crisis management program. The program will seal their private health information (PHI) until a crisis occurs. At the point of crisis, case managers would be activated to conduct wellness checks and coordinate medically necessary emergency treatment. Special consideration should be given to those receiving outpatient services who identify themselves as having very little support, and senior centers which may house dozens of medically sensitive individuals and would suffer staffing shortages during emergencies that compromise roadways and transportation.

The Copewell model is highly accessible, but only one of many assessment models from which an effective assessment plan can be derived. These models will typically have either a "top-down" or "bottom-up" approach to community resilience assessment. The "top-down" approach is implemented by an agency or organization from outside of the community being assessed. This

external agency makes determinations based on observations and information collected through inquiry. The limitations of this type of assessment are obvious; the lack of lived experience and potential for data skewing by way of observer bias. The "bottom-up" approach is dependent on the assessment and lived experiences of members of the community in question. Though being strong in it's inclusive qualities, this method may be limited in its incorporation of individuals who are skilled in implementing assessments, conducting research, and preserving data validity. An inclusive and collaborative process for assessment can help generate social capital and cohesion as well as build up the capacity to solve problems collectively—traits often associated with greater community resilience.162 The Copewell model is a combination of the two approaches, including community voice in an assessment process conducted by professionals. Other models include The Urban Community Resilience Assessment, which measures vulnerability, resilience and access to municipal services across different neighborhoods. This model also supports officials in integrating local knowledge into traditionally top-down urban development and adaptation priorities, and provides a forum for poor, oftentimes marginalized communities to have a voice in resilience plans, policies and programs. Through on-theground field testing and refinement, the Red Cross has adopted a community assessment tool consisting of household surveys, official (topdown) committee input, and community leadership interviews.163



Community Resilience Trust (CRT) was just one of the organizations supported and powered by the Austin Area Urban League in their collaborative efforts.

Based on input from staff at the Austin Area Urban League, CRT decided to mobilize emergency support for the unhoused in a special called meeting on Friday, Feb 11 to address issues related to the unhoused. Saturday at 6:30 PM, CRT hosted a zoom meeting that included staff from council offices, county offices, and several COA departments. From there, the action never stopped. CRT's collaborative space included many organizations, individual leaders and a few city staffers over a 2 week period. This included roughly 70 volunteers self organizing into 6 departments, at least 10 of which worked full time for up to two weeks. CRT hosted two meetings a day at 8 AM and 3 PM, with many people staying until the wee hours of the morning.

Working with over 15 organizations and partly powered and inspired by the Austin Area Urban League, CRT helped shelter and feed hundreds of unhoused residents, served 75 locations and 6,308 people with food and water, served 20,731 hot meals and 28,000 additional meals, 20,671 cases of water, an additional 9,961 gallons of water in mass quantities, 10,000 diapers, and 75 bags of dog food. In addition to the two distribution locations, additional service areas supported included 30 high needs schools, 4 HACA properties, 4 mobile home communities, and 20 apartment complexes. And this was just one initiative.

Many other organizations, such as El Buen Samaritano, GAVA, Communities of Color United, Del Valle Coalition, Black Leaders Collective, Austin Justice Coalition and 10,000 Fearless also worked to get food and water to people throughout East Austin.



Photo credit: Candice Bernd, https://truthout.org/articles/texas-blackout-reveals-deep-impact-of-environmental-racism-aid-organizers-say/

# 15+ ORGANIZATIONS SERVED:

75+
LOCATIONS

30 HIGH NEEDS SCHOOLS

4 HACA PROPERTIES 20
APARTMENT COMPLEXES

4 MOBILE HOME COMMUNITIES

6,308
PEOPLE WITH FOOD AND WATER

**20,731** HOT MEALS

**20,671** CASES OF WATER

28,000 ADDITIONAL MEALS

9,961
GALLONS OF WATER IN MASS QUANTITIES



	Feb 11-12 Preparation	Feb 13-18 RESCUE	Feb 19-25 Recovery - Part 1	Feb 26 - March 1 RECOVERY - PART 2
	High of 47. Low of 32. Temperatures began to drop.	High of 32. Low of 0. Super low temperatures began Sunday the 14th & continued.	Low of 20. High of 83. Temperatures varied.	Low of 49. High of 79.
WHAT HAPPENED	Roads are clear. No new infrastructure issues. Existing conditions in the Eastern Crescent are will make the storm outcomes disproportionately severe. Weather advisories are clear, and some meteorologists warn that we are not prepared. In general, the community and city move as though this is a normal storm. On February 12, a power failure at a North Austin wastewater treatment plant resulted in an overflow of 100K gallons of untreated water.	Freezing ice and snow storm combined with widespread power outages throughout the city starting as early as Sunday night. Power outages included planned outages according to proximity of "critical infrastructure." Photos of downtown showed some office buildings were lit. Some infrastructure failures also caused additional, unintentional outages. COA issues boil water notice. Additionally, widespread power outages continued in many areas, leaving some communities with no way to boil water. Some areas had water main breakage, leaving entire neighborhoods without any water to boil.	As temperatures rose, water pipes on houses broke, leading to flooding and additional need for freshwater. As roads began to clear, many communities were still left with no water due to local stores being emptied of supplies and gas shortages leading to transportation issues. Demands for freshwater deliveries rose. The boil water notice was finally lifted on February 23.	As roads cleared, Austin Water organized water and food distribution to areas identified as high-risk. EOC water distribution continued. Austin Needs Water ran water distribu- tion out of the Palmer Event Center. Residents in multifamily dwellings throughout the city report problems with flooding and water access due to broken pipes. Property managers tell different stories, confusing relief operations. City attention shifts to repairs. Plumbers Without Borders begin assistance.
COA & COUNTY	Feb 11 - County delays opening on  Feb 12 until noon.  Feb 11 COA announces closure Monday for President's day.	Feb 14 - Judge Brown declares a disaster.  Feb 16 - Judge Brown declaration related to price gouging  Feb 17 - COA Issues a boil water notice due to power outage at the water plant.  Feb 18 - COA releases its first Severe Weather update.	Feb 20 - County order suspending car washing.  Feb 20 - County announces legal resources - price gouging.  Feb 21 - COA establishes 10 water distribution sites None are east of 183.  Feb 24 - COA storm relief website focusing on repair.	February newsletter from the County Sheriff

Austin and Travis County's response to disaster is guided by the county's Emergency Management Basic Plan, The Travis County Hazard Mitigation Plan, and in Austin's case, the Austin's Emergency Operations Basic Plan and the City of Austin Hazard Mitigation Plan Further guidance is given by the Annexes and standard operating procedures within the departments responsible. Templates for the Annexes can be found on the Texas Department of Emergency Management Website.

Analysis of these plans reveals enormous gaps in diversity, equity and inclusion. Not only are communities of color not prioritized, they are barely mentioned. Neither are many other specific vulnerable populations.

This should come as no surprise when one reviews the process by which the plans were developed. The Texas (and perhaps national) template for forming the various teams and committees that work together during disasters and ultimately manage federal funds, are based in a longstanding traditional model that prioritizes Christian and white-led organizations. This blueprint has yet to be scrutinized with an equity lens.

To make matters worse, the models for disaster response are based on historical understandings of weather events, not the new and emergent realitybroughtonbyclimatechange. For example, winter storms are classified as a "moderate" risk, and provoke very little guidance for addressing the majority of Travis County's vulnerable populations.

Austin and Travis County's mitigation plans are equally, if not more inequitable. But that did not happen by accident. Evaluation of the planning process revealed that the authors of the plan, H2O Partners, while boasting a high success rate in FEMA approved plans (translating to federal compensation), can in no way claim to provide an equitable process. Not only were many Travis County municipalities left out of (as in not even mentioned) the Travis County plan, only 47 people in total participated in community input. And of those, only 14 were from a residence east of I-35.

To blame anyone within the jurisdiction, however, would be short-sighted, because both Travis County's and Austin's disaster management and mitigation plans were based on a statewide template that prioritizes a very traditional (white) approach to disaster management. Whether it's the institutional composition of the Donation Management Committee, the priority status given to Christian-leaning and white-led organizations, or the lack of representation in VOAD and the Emergency Management Council, the model unequivocally fails to represent marginalized communities.



## **COMMUNITY ASSESSMENT**

Everyone was struck by the devastating effects of the winter storm, but some communities were hit harder, simply due to pre-existing environmental conditions. Lower income communities are particularly vulnerable to extreme weather situations due to suboptimal housing structures and other socioeconomic factors. Recovery efforts, such as housing, prove to be an additional barrier for low-income city residents, with middle class homeowners being favored if the process does not account for equity.

In order to get an accurate mapping of our most vulnerable communities, a comprehensive community assessment would be ideal. The assessment would gauge the strengths and weaknesses of the target community across multiple fields of resilience. This allows for better preparation in times of crisis and prediction of lingering traumatic occurrences postcrisis. It would also allow us to direct resources based on need determined by evidence. Largescale, blanket, resource distribution efforts, while necessary, are taxing and at high risk for inefficiency.

## **COMPARATIVE STUDY**

Existing data identifies many differences in quality of life between communities below the poverty line (A) and communities with more general access to monetary resources (B). In many cases, these cumulative differences result in a reduced lifespan for those who place lower on the income distribution scale when compared to those who place higher.

For the purposes of this assessment, a study comparing two obviously distinct environments isn't to prove what we already know — that environment (B) is more privileged than environment (A), but to give us a realistic goal for how close a community in the region can come to achieving the ideal standards expressed in

the assessment. The assessment provides an example of a fully potent community, unable to account for the challenges and limitations which may be present in a given community that result from resource availability, governmental structure and policy, etc. A comparison would give the change agent a practical and attainable goal for community modification. Further improvement, beyond the standards set by community (B), would also be an option for community (A) given the proper conditions. The change agent should prepare to conduct the comparative study prior to the selection of the target communities. This will allow for the control of several factors, such as proximity to transit lines and food sources.

#### 1.COMMUNITY SELECTION

Selecting a community that is especially at risk of being identified as "low capacity" in most areas may establish an "if here, then anywhere" methodology for transitioning low capacity communities to optimal capacity. Said community should reflect as many "low capacity" traits as possible, while also not being such an outlier that its variation from the mean makes a broad application of any solutions / approaches developed unfeasible. Relying on general knowledge of high poverty under-served areas is a way to whittle the options down to a few, but code compliance, census, emergency response and crime data should be used to find the most viable option.

As an example of how a formal assessment can be applied to vulnerable communities following a critical event, the following excerpts have been pulled from the five Copewell Model assessment tools, which fall under their three subcategories pre-event functioning, resistance and recovery. This assessment tool is not only a tool for evaluation, but a roadmap to an ideally resistant community, with the cultural practices, protections, and resources necessary to endure and recover from massive traumatic events. Such a community would be functionally resistant to the long-term negative effects of natural disasters, economic decline, or violent events.

# 2.RESISTANCE PREVENTION / MITIGATION: RULES, REGULATIONS AND NORMS

This portion of the assessment addresses standards of behavior which encourage developers and property owners to adopt standards of practice that serve to protect residents. A low-capacity environment places residents at greater risk and provides fewer protective factors that make them resilient against actions and decisions made solely by, and in the sole interest of, developers and property owners.

Another important aspect of community resilience that this portion of the assessment addresses is the capacity of engineered systems. This includes retrofitting existing structures to improve resilience against extreme weather. A low-capacity community would include public structures that have not been retrofitted and privately owned communities that are at-risk for harm or collapse during a weather crisis. An optimal capacity community will have minimal exposure to hazardous risks, safe and reliable transportation options, and buildings of good stock and regulatory compliance.

#### RULES, REGULATIONS, AND NORMS INVOLVES

Standards of behavior—inherent in legal mandates, funding priorities, regulatory measures, best practices, and/ or social ideals—that encourage developers and property owners to adopt habits and routines that protect against disaster-related losses

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

Community leaders and residents maintain a reactive stance, facing disasters only after they happen. Broad awareness of mitigation's return-on-investment is lacking, so few to no public dollars are allocated to minimize disaster impacts. Local mitigation plan development is perfunctory, with no system for tracking progress. Comprehensive planning efforts do not incorporate risk assessment and hazard mitigation principles. Development occurs in an ad hoc, unregulated manner, with little concern over building in high-hazard areas or using construction materials that offer subpar hazard resistance. Developers and homeowners see little reason to prioritize mitigation; no tax incentives or other motivations for risk reduction activities exist. Few to no property owners have hazard insurance, and those with insurance rebuild in the same location without mitigating hazards/risks.

## OPTIMAL CAPACITY

Aware of local hazards and thinking ahead, community leaders and residents take proactive steps to offset potential disaster impacts. Elected officials prioritize mitigation support: e.g., they set up a local reserve fund for public mitigation measures, allocate funds for a full complement of building inspectors, and bolster EM/PH budgets for engaging the community on mitigation benefits and techniques. A cross-sector committee monitors progress on the local mitigation plan which comprehensive planning efforts also complement. Land use regulations (e.g., restricted development in high-hazard zones) and building codes (e.g., resistant construction materials) reduce disaster risk. Incentives (e.g., tax breaks for development of low-risk parcels) prompt smarter development. Property owners see adopting mitigation measures and taking out hazard insurance as essential, routine investments.

#### ENGINEERED SYSTEMS INVOLVES

Design, construction, relocation, and/or retrofitting of structures and critical facilities/infrastructure to withstand hazardous conditions such as wildfire, extreme wind events, and ground-shaking from earthquakes.

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

Major portions of critical infrastructure are exposed to potential hazards (e.g., power lines to major ice storms, low-lying bridges to flooding or storm surge). City managers have not retrofitted older public buildings (e.g., strengthen non-reinforced masonry in earthquake country), nor repositioned critical facilities and functions out of harm's ways (e.g., police stations out of flood zones; records and generators out of basements). Few newly built structures incorporate hazard-resistant materials (e.g., non-combustibles at wildland-urban interface). A significant portion of low income, rental housing is located in hazardous areas (e.g., floodplain). Most homeowners have not taken any mitigation measures, lacking knowledge (e.g., seismic zone: securing furnishings, anchoring bookcases, using flexible gas lines)

## OPTIMAL CAPACITY

Most residents of this community have a low likelihood of exposure to risk, are prepared for and have options to respond to the threat of hazards, and are less likely to be in places where they may be harmed. Most residents are mobile and have access to private vehicles or safe, reliable, and accessible public transportation, walking, biking and/or devices that aid mobility. The economy of the community is strong, with low rates of unemployment, new businesses and sustainable development plans. Residents share common languages and can communicate with one another. There are trusting relationships among community members built upon shared history and/or sense of civic responsibility. High quality schools and residences are in reasonable proximity to one another and are considered safe and affordable. Building stock is of good quality and in compliance with regulations. Residents are aware of the environmental/biophysical hazards that pose greater risk to the community and they actively engage in risk mitigation and preparedness activities.

## COUNTERMEASURES INVOLVE

Health-related policies, programs, and products that enable the community to counteract—through pharmaceutical and non-pharmaceutical means—the impact of emerging infectious disease threats as well as chemical, biological, radiological, nuclear, and explosive (CBRNE) agents.

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

EM, PH, EMS, and healthcare organizations meet infrequently and rarely exercise. A nascent healthcare coalition includes hospitals, but little of the wider system (e.g., mental/behavioral health, dialysis centers). Public health has limited capacity for laboratory testing, surveillance, and epi investigation, thus hampering ability to recommend and monitor countermeasures. Poor agency coordination, lack of outreach to trusted CBO/FBOs, and low priority on risk communication curbs the ability to provide consistent, timely, and accurate information about countermeasures. Mass vaccination exercises show slow through-put. Misunderstandings about NPI efficacy and proper application abound. Pockets of public wariness toward health authorities exist, especially among underserved, at-risk groups. Vaccine hesitancy is emerging in some quarters.

## OPTIMAL CAPACITY

The network for health emergencies is vibrant and expanding, from staid founders (EM, PH, EMS, hospitals) to home health, long-term care, methadone clinics, and beyond. Public health agencies are well-staffed, with adequate capacity (ie., laboratory testing, surveillance, epi investigation) to recommend, monitor, and analyze countermeasures. Mass vaccination exercises demonstrate high efficiency and social learning for further improvement. An ethical framework for allocating scarce medical resources exists and is socialized among all relevant groups. NPI decision-making processes are designed to be driven by science, ethics, and partner consultations. An exercise of the Community Reception Center plan for a rad/nuke incident is scheduled. Vaccination rates, vaccine literacy, and public trust are high.

#### 3.EMERGENCY MANAGEMENT

This section of the assessment involves a thorough analysis of all potential threats and hazards to a community, their anticipated effects on members of the community, and the capabilities / capacities needed to respond to said threats. This section also calls for the inclusion of community members in the disaster management and planning process, specifying a planning team reflecting the makeup of the population in question as well as representatives from various sectors; private, faith-based, philanthropic, non-profit, and individual residents. The readiness and response section of this assessment calls for a well-established emergency response, including an Emergency Response Center.

Such a center would be similar to the emergency response hubs established by CRT and outlined in their comprehensive report. The final section noted in this report is the assessment of the strength of the communities recovery and planning operations. This section specifically highlights the importance of assigning roles for planning and managing recovery.

#### HAZARD AND VULNERABILITY ANALYSIS AND AWARENESS INVOLVES

The identification—derived via experience, forecasting, and expert consultation—of locally relevant threats and hazards, their possible effects on the whole community, and the community capabilities needed to manage potential crises, accompanied by community-wide understanding of the risk environment and its management.

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

Local governmental emergency planning is not based on a careful and complete analysis of threats and hazards. Past emergency events have not been considered. There is an ad hoc understanding, with limited data, of the threats and hazards that the community faces. Identified hazards and threats have not been translated into concrete community impacts, including potential effects for vulnerable populations, nor into any remediating actions. The hazard and vulnerability analysis has not been updated in many years. Residents, community leaders, businesses, and government officials are neither aware of the risks in their environment, nor what is a positive course of action to manage them.

#### OPTIMAL CAPACITY

The jurisdiction's planning team has developed a comprehensive Hazard and Vulnerability Analysis (HVA), updating it every 3 years to address the changing threat environment. The team has sought out HVAs from local institutions, the private sector, and neighboring jurisdictions to understand their partners' hazards and vulnerabilities. Threats and hazards, including past emergency events, have been translated into impacts upon the community, and the capabilities/capacities needed to respond to them have been identified and set as the jurisdiction's planning objectives. Local residents, community leaders, businesses, and human/social service organization heads are knowledgeable about the community's risk environment and the implications for their organizations and constituents

# WHOLE COMMUNITY INVOLVEMENT INVOLVES

An emergency planning process that reflects the community's actual composition and that allocates a shared responsibility for disaster management across private, public, faith based, philanthropic, and non-profit sectors as well as with individual residents.

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

Jurisdictional emergency management officials develop emergency operations plans with limited input from community stakeholders. Thus, the plans focus primarily on first responders and public safety providers, and do not meaningfully address access and functional needs of populations or pets. Local businesses see no reason to prepare their own disaster plans, or to review insurance coverage or take steps to protect critical data. Local human and social services organizations fail to consider how to maintain services in a disaster, support disaster-affected staff, and/or accommodate increased client demands due to disasters. Individuals and families assume disasters only happen to other people, and they have taken no measures to prepare their households for emergencies.

## OPTIMAL CAPACITY

The jurisdiction's community emergency planning team reflects the makeup of the local population; taking ownership of whole-of-community planning, the team actively engages community leaders, the private sector, and those with access and functional needs. The planning addresses the issues of medically and socially vulnerable groups (e.g., children, elderly, limited English proficient populations) and pets. Firms of varying scale have conducted continuity of operations planning, invested in sufficient insurance (including business interruption), and shared contingency plans with clients, vendors, and employees. Non-profits have planned for crisis conditions, mindful of both client and employee needs. Households are characterized by having hazard insurance, stockpiled necessities, and family communication plans.

#### READINESS AND RESPONSE INVOLVES

The planning, practice, and operation of systems to protect human lives, property, and the environment in a disaster; to stabilize the incident; to meet basic human needs; and to restore basic community functionality.

#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

The jurisdiction's emergency response capacity is inadequate to meet the operational objectives of its plans. The emergency operations plans are seldom exercised. The resources and horizontal and vertical relationships needed to respond to an emergency are not in place. No real-world emergencies have challenged the jurisdiction in several years. The jurisdiction does not have a designated Emergency Operation Center (EOC), nor a plan to establish one. The exercises that the jurisdiction participated in were not challenging, and were not community wide, nor did they engage community infrastructure and institutions. Exercise After Action reports were incomplete or the improvement opportunities identified were not acted upon.

## OPTIMAL CAPACITY

The jurisdiction and planning partners have worked to improve and maintain the response capabilities and capacity to meet the operational objectives of their plans. The jurisdiction has a well-established emergency operations plan that includes the operation of an Emergency Operations Center (EOC). The resources and horizontal and vertical relationships needed to respond and implement the plans are in place and have redundancies established. Community-wide exercises are held at least annually, and the jurisdiction has a multiyear exercise plan in place. The jurisdiction has been challenged by significant emergencies over the last several years. After Action Reports from these emergencies and from the exercise series are routinely translated into improvement actions, including plan and operational objective amendments, and resource enhancements

#### RECOVERY PLANNING AND OPERATIONS INVOLVES

The ability to affect the timely restoration, revitalization, and strengthening of the community's economic, health, social, cultural, historic, built, and natural assets, and to improve readiness and response systems in the aftermath of a disaster

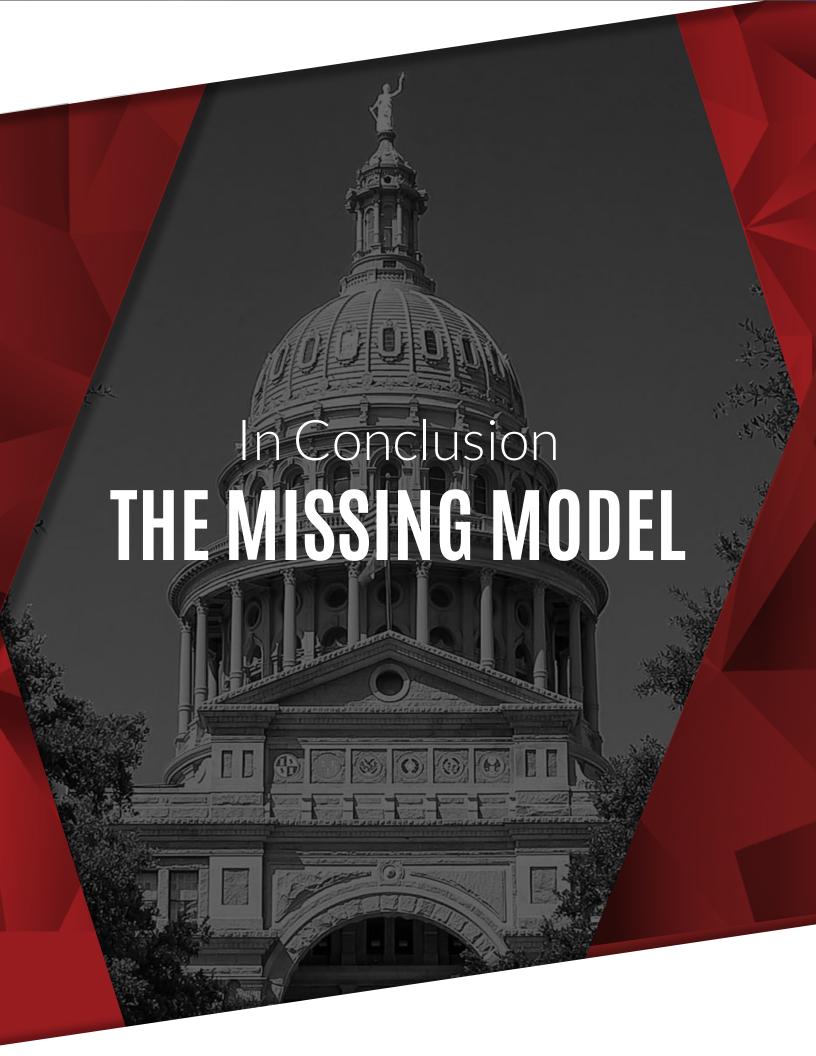
#### WHAT COMMUNITIES MIGHT LOOK LIKE WITH...

#### LOW CAPACITY

The jurisdiction is not prepared to lead recovery and mitigation planning. Jurisdictional leaders have not identified or assigned roles. No systems exist to communicate with community partners, NPOs, and businesses to facilitate recovery operations. The jurisdiction has no meaningful Continuity of Operations Plan; it has not been tested in either a real-world event or a full-scale or functional exercise. Other than emergencies with minor and/or short-lived effects, the jurisdiction has no real experience nor practice in long-term recovery operations. The jurisdiction has no local disaster recovery manager.

## OPTIMAL CAPACITY

The jurisdiction has a robust and continuous pre-disaster planning strategy; plans are integrated and comprehensive; roles for planning and managing recovery have been identified and assigned. Communication systems have been established with community partners, NPOs and the businesses to facilitate recovery operations. The local jurisdiction has a robust Continuity of Operations Plan that has been tested and improved through drills, exercises and real-world events. The jurisdiction is poised to begin a recovery process rapidly once the immediate emergency has been stabilized. Prior to a disaster, the jurisdiction has appointed a local disaster recovery manager who is well trained.



Community organizations, flexible and scrappy, often rise to the occasion to fill in the gaps. In the case of marginalized communities, these organizations are vital. However, many of these same organizations have members and leaders who are concurrently experiencing the trauma of systemic racism, while dealing with funding challenges.

When being served, especially by institutions that are not community-led, the lived-experiences of clients we serve need to be safeguarded and not used in a way that feels exhabbarate their trauma. Community organizations that know their constituents are a vital solution, but only if they have been supported in getting the funding and resources they need to care for the community. Too often, lacking these resources, organizations must reach out to local or federal agencies, only to have those agencies take over in ways that exacerbate trauma and cause real harm.

Organizations benefit when acting in coordinated collaboration, while sharing information and resources and avoiding the duplication of efforts. Shared funding models, while potentially challenging, can provide co-marketing opportunities that bring larger dollars to everyone's efforts.

This brings us to a missing model — a venue for collaborative action that is truly community led. The question is, who facilitates this collaboration? The current lack of funding of grassroots organizations translates to reduced capacities and, in some cases, competition for funding. Prioritizing any one organization over another, or any marginalized community over another, presents many challenges, and is inappropriate

to the real community need. In the absence of coordination, traditional models such as those offered by Austin Disaster Relief Network and the VOAD system (Volunteer Organizations Active in Disasters) have reliable models for disaster response. However these organizations also tend to be white-led, Christianity-based, charity-focused, lacking diversity, and lacking relationships with diverse grassroots organizations. From an antiracist lens, this brings up concerns for challenges brought by saviorism and potential pitfalls such as solving for the community and not with the community.

In addressing the missing model, it is also vital to collectively address issues related to digital access and access to transportation, food, and medical facilities. East Austin has historic challenges in this regard, but the way these challenges play out is unique to each area. For example 78724 is bound by Hwy 183, Hwy 71 and the Colorado river. There is no walkability to any services, no medical access, and no voting location. 78719 is located over 10 miles from downtown. The zip code includes 3 churches, a few taco trucks, industrial warehouses, the airport, a nightclub, an outdoor market, a landfill and about 1,000 residents. 78721 includes the highest population of Black Austinites, who make up 45% of this geographic region outlined by MLK, Airport Blvd and 183. This area is also home to Ortega Elementary, Greater Mt. Zion and the Sahara Lounge. Communication challenges need to be customized according to the unique needs of the hyper-local community. Each local entity represents a potential community hub and, potentially, communication partner.

In reviewing community outcomes from Storm Uri, it becomes clear that Travis County lacks a model for successfully integrating community-led disaster response into its Emergency Operation Plan. The Austin Area Urban League urges for the inclusion of the following:

- Inclusion of a diverse set of community organizations to fully represent vulnerable communities in disaster management planning and implementation. (Such as inclusion in the Emergency Management Council, the VOAD calls, and the Donation Management team.)
- Establish contracts, centered around reimbursement for pre-determined services, with community organizations to provide emergency services during times of crisis. Prioritizing organizations uniquely positioned to reach the under-served and vulnerable. Direction of these organizations should come directly from the Public Health Department, in order to avoid delay in service provision.
- Conducting community resilience assessments, identifying systemic inequities and high vulnerability areas, in communities known to be high-risk for disruption with a reduced ability to rebound following times of crisis.
- Develop models that use disaster phasing to predict and strategize for inequities likely to be amplified by disasters, such as poor infrastructure, food deserts and barriers to communication.

- Develop a community-wide communications plan that includes alternative modes led by trusted community organizations and utilizes more equitable communication channels, such as AISD robo-calls and mass texting.
- Employ trusted community leaders to develop community resilience hubs that provide resources year round and serve as shelters and distribution centers during disasters.
- Conduct comprehensive mapping to overlay community assets, service areas, resource hub locations and existing vulnerabilities.
- Develop a shared service model in which residents' needs are met holistically and with a human-centered approach.
- Develop a shared data model to support shared service and to identify and address unmet needs.
- Develop a shared and pre-approved funding pool for organizations operating in disasters.
- Comprehensive equity audit of the County Disaster Plan according to FEMA and CDC's guidance on vulnerable populations.

## **APPENDIX**

## Appendix 1: Mention Count of Vulnerability

Disproportionately Impacted Populations from FEMA's "Guide to Expanding Mitigation: Making the Connection to Equity"	# of Times Mentioned in Austin Basic Plan	# of Times Mentioned in COA Hazard Mitigation Plan	# of Times Mentioned in Travis County "Emergency Management Basic Plan"	# of Times Mentioned in Travis County Hazard Mitigation Plan
low socioeconomic status	No mention.	4	No mention.	No mention.
People of color	No mention.	No Mention.	No mention.	No mention.
Tribal and first nation communities	1 mention, in the context of the joint field office.	No mention.	No mention.	No mention.
women	No mention.	1	No mention.	No Mention.
LGBTQ	No mention.	1 (in context of AIDS)	No mention.	No Mention.
People experiencing homelessness	1 mention, in the context of heat exposure	1 in context of a flood fatality	No mention.	Only mentioned in the context of extreme heat:
Limited English proficiency	1 mention	1 in community profile section.	No mention.	"Travis County, in coordination with the City of Austin, developed standard operations to monitor extreme heat conditions and coordinate outreach efforts to at-risk populations during extreme heat events. The phased approach includes monitoring conditions, utilizing media and local organizations to inform vulnerable populations, and providing direct relief to those at risk when necessary including but not limited to: cooling stations, water distribution, and increased capacity for homeless shelters."

Disproportionately Impacted Populations from FEMA's "Guide to Expanding Mitigation: Making the Connection to Equity"	# of Times Mentioned in Austin Basic Plan	# of Times Mentioned in COA Hazard Mitigation Plan	# of Times Mentioned in Travis County "Emergency Management Basic Plan"	# of Times Mentioned in Travis County Hazard Mitigation Plan
Service workers	No mention.	No mention.	No mention.	No mention.
Migrant laborers	No mention.	No mention.	No mention.	No mention.
Populations with limited cogni- tive or physical abilities	3 mentions	"Disability" mentioned 11 times, but only in the context of risk and not in the context of people with disabilities.	No mention.	No mention.
Renters (or "multifamily")	No mention.	No mention.	No mention.	One mention in the context of evacuation. (See below)
Institutionalized communities (prisons / nursing homes)	No mention except one mention of schools.	32 mentions of schools. None of nursing homes or prisons.	In reference to evacuation on page 22: "Assist in evacuation planning for individuals with functional and access needs and institutional facilities (schools, hospitals, nursing homes, and other institutions)."	No mention.

In reference to facilities of concern: "According to the Texas Department of State Health Services (2013), there are 23 acute care and psychiatric hospitals in the planning area. According to the Texas Department of Aging and Disability Services there are 31 nursing homes in the planning area (2017). (Mentioned schools, hospitals, nursing homes, military institutions -- not prisons)

Additional disproportionately Impacted Populations not mentioned in FEMA's "Guide to Expanding Mitigation: Making the Connection to Equity"	# of Times Mentioned in Austin Basic Plan	# of Times Mentioned in COA Hazard Mitigation Plan	# of Times Mentioned in Travis County "Emergency Management Basic Plan"	# of Times Mentioned in Travis County Hazard Mitigation Plan
Undocumented	No mention.		No mention.	No Mention.
Black	No mention.	No mention.	No mention.	No Mention.
Hispanic/Latinx	No mention.	1 mention in commu- nity profile.	No mention.	No Mention.
Unincorporated areas	No mention.	2 mentions in community profile.	No mention.	Mentioned 24 times. Mostly in the context of geigrophy. And: "The unincorporated areas of the County and the jurisdictions of Lakeway, Manor, Pflugerville, Sunset Valley, and Village of the Hills typically experience extended heat Waves Page 165 And in reference to the above, Evaluate the feasibility of structural elevations as flood mitigation throughout unincorporated Travis County. Other contexts include fuel reduction and flood mitigation in unincorporated areas.
Mobile home communities	No mention.	2 mentions. One addresses the impact of wildfire.	No mention.	Mentioned 8 times in reference to tornadicwinds only.
Elderly	2 mentions.	2 mentions regarding tornadoes and heat exposure.	No mention.	Mentioned 13 times.
Infants	No mention.	11 mentions	No mention.	Mentioned 3 times.
Children	1 mention	3 mentions	No mention.	1 mention
"vulnerable"	3 Mentions	22 mentions.	1 mention.	70 times. However, the mentions refered to numbers of elderly and low-income in broad areas, and in general terms such as structural, geographic and climate vulnerability, rather than in the context of populations and pre-existing vulnerabilities. When populations are mentioned, it is with no specificity of impact. Very few actions are mentioned to address anything related to vulnerable populations.
				In reference to facilities of concern: "According to the Texas Department of State Health Services (2013), there are 23 acute care and psychiatric hospitals in the planning area. According to the Texas Department of Aging and Disability Services there are 31 nursing homes in the planning area (2017). (Mentioned schools, hospitals, nursing homes, military institutions not prisons)

## **FOOTNOTES**

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- Practically impossible to win at this point, given that our very own argumentation is engaging in policy analysis of FEMA's decisions.
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- 90 Id. § 101.021(2)
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- This argument is a bit of a stretch, but what is exactly a "use" is inconsistent in the Texas courts.
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- <sup>96</sup> Id.
- <sup>97</sup> Id.
- 98 Tex. Civ. Prac. & Rem. Code § 101.022, Retrieved from: https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm; Generally speaking, this is a dubious route to go down. Premises liability has to do with someone being injured on the premises of another due to the faulty condition of the premises, it is a real stretch to claim that the power grid was a "premises" that people would be injured upon.
- 99 Id. § 101.022(b)
- <sup>100</sup> City of Dall. v. Freeman, 2019 Tex. App. LEXIS 6090 at \*8, (Tex. App.—Dallas July 17, 2019)

- <sup>101</sup> Difficult argument to win, "special defects" are defined very narrowly.
- <sup>102</sup> Freeman, 2019 Tex. App. LEXIS 6090 at \*8
- <sup>103</sup> City of Austin v. Rangel, 184 S.W.3d 377, 383 (Tex. App.—Austin 2006)
- How Much Will, HOW MUCH WILL IT COST TO WINTERIZE THE TEXAS POWER GRID?, (Jul.19, 2021), Retrieved from: https://howmuch.news/how-much-will-it-cost-to-winterize-the-texas-power-grid/#:~:text=RELATED%3A%20Texas%20House%20stands%20ready%20to%20pass%20laws,even%20higher%20at%20%24%2060%2C000%20to%20%24%20600%2C000
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- Michael Cooper, As Much of the Nation Digs Out, a Freeze Sets In, The New York Times, (Feb. 2, 2011), Retrieved from: https://www.nytimes.com/2011/02/03/us/03storm.html
- <sup>108</sup> Proving that the duty of care was not met will be straightforward, initially proving that there was a "special defect" will be much more difficult.
- 109 Sampson v. Univ. of Tex. at Austin, 500 S.W.3d 380, 388 (Tex. 2016), Retrieved from: https://plus.lexis.com/document/?pdmfid=1530671&crid=b422f60f-d5e4-4d55-8a96-c8dea00a4eb1&pddocfullpath=%2F-shared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5K03-9N61-F04K-D0FJ-00000-00&pdcontentcomponentid=10617&pdteaserkey=&pdislpamode=false&pdworkfolderlocatorid=NOT\_SAVED\_IN\_WORKFOLDER&ecomp=gf4hk&earg=sr0&prid=2fc537bd-96fc-41c4-82a1-002b82c66b87
- 110 Id.
- <sup>111</sup> City of Fort Worth v. Posey, 593 S.W.3d 924, 927 (Tex. App.—Fort Worth 2020), Retrieved from: https://plus.lexis.com/document/?pdmfid=1530671&crid=9259a495-d5ef-4442-b2f7-7050c5b241ac&pddocfullpath=%2F-shared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A5Y0H-SFK1-JTNR-M2HF-00000-00&pdcontentcomponentid=10618&pdteaserkey=&pdislpamode=false&pdworkfolderlocatorid=NOT\_SAVED\_IN\_WORKFOLDER&ecomp=gf4hk&earg=sr1&prid=0955c8a0-a455-42f5-ba24-2295541ea8ae
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- 115 Id.
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- <sup>118</sup> Able, 35 S.W.3d 608 at \*613

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- We are probably going to lose on this point, as the members of ERCOT all have different goals: to make a profit, to consume energy, to regulate the energy market...
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   See Avery Travis, Winter preparedness not mandatory at Texas power plants and generators, despite 2011 report, (Feb.17, 2021), Retrieved from: https://www.kxan.com/investigations/winter-preparedness-not-mandatory-at-texas-power-plants-and-generators-despite-2011-report/
- Tex. Civ. Prac. & Rem. Code § 101.023(a), Retrieved from: https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm
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- 137 Id.
- 138 Id.
- 139 Id. § 101.0215(a)(1); For failing to provide sufficient assistance in the wake of the crisis.
- <sup>140</sup> Id. § 101.0215(a)(8); For failing to provide adequate healthcare in the wake of Storm Uri.

- <sup>141</sup> Id. § 101.0215(a)(18); For failing to provide adequate healthcare in the wake of Storm Uri.
- <sup>142</sup> Id. § 101.0215(a)(30); For failing to provide backup power, or other engineering failures that exacerbated the power failure in the wake of Storm Uri.
- 143 Id. § 101.0215(b)
- 144 Id. § 101.0215(b)
- <sup>145</sup> Id. § 101.0215(b)(1)
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