No.

In the Supreme Court of Texas

WARREN KENNETH PAXTON, JR.,
Petitioner,

v.

COMMISSION FOR LAWYER DISCIPLINE,
Respondent.

On Petition for Review
from the Fifth Court of Appeals, Dallas

PETITION FOR REVIEW

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Statement of the Case

Nature of the Case:	The State Bar of Texas, through its Commission for Lawyer Discipline ("Commission"), seeks an order imposing sanctions and declaring that the duly elected Attorney General of Texas, Warren Kenneth Paxton, Jr., engaged in professional misconduct when he filed an original action on behalf of the State of Texas in the United States Supreme Court. CR.9-12.
Trial Court:	471st Judicial District Court, Collin County Honorable Casey Blair, presiding by designation.
Disposition in the Trial Court:	The trial court denied the Attorney General's plea to the jurisdiction because there was a "disputed material fact regarding the jurisdictional issue." CR.1852.
Parties in the Court of Appeals:	The Attorney General was the appellant. The Commission for Lawyer Discipline was the appellee.
Disposition in the Court of Appeals:	A divided court of appeals dismissed this appeal for want of jurisdiction on the ground that the Attorney General is not a "governmental unit" who may seek an interlocutory appeal. *See Paxton v. Comm'n for Law. Discipline*, No. 05-23-00128-CV, 2024 WL 1671953 (Tex. App.—Dallas Apr. 18, 2024, pet. filed) (Nowell, J., joined by Kennedy, J.). Nevertheless, without engaging with the separation-of-powers and sovereign-immunity issues presented, the majority also concluded that the lawsuit is against the Attorney General in his individual capacity and that immunizing him would violate the separation of powers. *Id.* at *4. Justice Miskel dissented, explaining that the court had jurisdiction because the Attorney General is a "governmental unit." *Id.* at *4-5. She would have also reversed the order denying the plea on the ground that the Commission's suit violates the Attorney General's sovereign immunity, *id.* at *6-9, and the Separation of Powers, *id.* at *11.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.001(a).

Issues Presented

Five individuals who lack any connection to the underlying litigation filed complaints with the State Bar insisting that the duly elected Attorney General of Texas committed professional misconduct by filing a lawsuit in the U.S. Supreme Court regarding the 2020 presidential election. Although that original action was dismissed on standing grounds over the objection of two Justices, the U.S. Supreme Court neither reprimanded nor imposed sanctions against the Attorney General. Nevertheless, the Commission seeks to discipline him for filing that lawsuit.

The issues presented are:

1. Whether the Commission, acting on behalf of an administrative arm of the Texas judiciary, violated the Texas Constitution's Separation of Powers Clause, Tex. Const. art. II, § 1, by bringing a disciplinary action against the Texas Attorney General that was premised upon a disagreement with his assessment of the facts, law, and evidence at the time he filed an original action in the U.S. Supreme Court.

2. Whether the Commission's disciplinary action against the Attorney General is barred by sovereign immunity because it seeks to sanction him for conduct that could only be undertaken in his official capacity.

3. Whether the Attorney General, acting in his official capacity, may appeal the denial of a plea to the jurisdiction under sections 51.014(a)(8) and 101.001 of the Texas Civil Practice and Remedies Code.

Introduction

Like the now fully briefed case, *Commission for Lawyer Discipline v. Webster*, 676 S.W.3d 687 (Tex. App.—El Paso 2023, pet. filed), this petition arises from the State Bar's efforts to discipline the Attorney General (together with the First Assistant Attorney General) for alleged misrepresentations made in the pleadings of *Texas v. Pennsylvania*, No. 22O155, an original action filed in the U.S. Supreme Court on behalf of the State in the wake of the 2020 Presidential election. But for over a century, this Court has recognized that the Texas Constitution assigns the Attorney General the exclusive right to represent the State in civil appellate litigation, Tex. Const. art. IV, § 22, and with it the broad discretion to assess the facts and available legal theories to determine what claims to press. The Constitution's Separation of Powers Clause therefore precludes the State Bar from using a disciplinary action against the Attorney General to invade that core executive prerogative. And because the Bar's actions also necessarily attempt to control state action, sovereign immunity poses an additional jurisdictional hurdle.

Like the court of appeals in *Webster*, the majority below rejected both jurisdictional objections because it artificially bifurcated the Attorney General's decision to bring *Pennsylvania* from supposed "misrepresentations" contained therein, which it deemed to be made in the Attorney General's individual capacity. But, as in *Webster*, a careful review of the allegations in the Bar's petition demonstrates that the Commission merely seeks to second guess the Attorney General's good-faith assessments of the law, facts, and evidence at the time *Pennsylvania* was filed. The Fifth Court of

Appeals was therefore wrong to deploy this supposed distinction to sidestep both jurisdictional problems.

Here, however, the court of appeals committed an *additional* error: By applying its erroneous conclusion that this is an individual-capacity suit, it stripped the Attorney General of his ability to seek interlocutory relief from appellate courts under section 51.014(a)(8) of the Texas Civil Practice and Remedies Code. Specifically, the court held that because the Commission seeks a *remedy* that acts against the Attorney General's individual law license, he cannot be deemed a "governmental unit" for the purposes of the interlocutory-appeal statute. That conclusion cannot be squared with decades of this Court's precedent, which has routinely authorized interlocutory appeals of orders denying sovereign immunity when a plaintiff seeks monetary damages against a state officer (a remedy that would run against the individual every bit as much as a black mark on his law license).

The Court should take up these issues now because the question whether the Bar may superintend the Attorney General's exercise of his constitutional office is a question of statewide importance upon which this Court has not passed. Perhaps even more so is the question of whether a plaintiff can avoid this Court's review—and thereby the State's sovereign immunity—merely by styling a remedy against one of the Constitution's five elected executive officers as in that officer's "individual capacity." Such a rule would not just disenfranchise the voters who elected the Attorney General and impede the operation of the Office of the Attorney General, but it would also turn basic separation-of-powers and sovereign-immunity principles on their head.

Statement of Facts

The court of appeals correctly stated the nature of the case, except as provided below.

I. The Parties

The Attorney General is one of five elected executive officers listed in the Texas Constitution. Tex. Const. art. IV, § 1. Among other things, he is charged with "represent[ing] the State in all suits and pleas in the Supreme Court of the State in which the State may be a party." *Id.* art. IV, § 22. At its core, the Attorney General's chief function is "to represent the State in civil litigation." *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001).

The State Bar is an administrative agency that serves this Court and the judiciary. Tex. Gov't Code § 81.011. The Bar aids the judiciary in regulating the practice of law in various ways, including, as relevant here, attorney discipline. *See id.* §§ 81.011(b), 81.012, 81.071. Respondent, the Commission for Lawyer Discipline, is "a standing committee of the state bar." *Id.* § 81.076(b); Tex. Rules Disciplinary P. R. 4.01. The Commission functions as the "client"—and typically as plaintiff—in connection with "lawyer disciplinary and disability proceedings," Tex. Rules Disciplinary P. R. 4.06(A).

II. Factual Background

The disciplinary action at issue stems from the Texas Attorney General's decision to file an original action in the U.S. Supreme Court on behalf of Texas in December 2020. *See* CR.168-210.

A. In its bill of complaint, Texas alleged that "the 2020 election suffered from significant and unconstitutional irregularities in" the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin. CR.163-67. In support of that allegation, Texas's complaint advanced three federal constitutional claims under the Electors Clause, U.S. Const. art. II, § 1, cl. 2, Equal Protection Clause, *id.* amend. XIV, § 1, and Due Process Clause, *id.* amend. XIV, § 1. CR.205-08. Texas also made several allegations to demonstrate standing to sue under Article III of the federal Constitution, U.S. Const. art. III, § 2, cl. 1. CR.178-83, 231-34. In addition to its bill of complaint, Texas filed a motion for a preliminary injunction and a temporary restraining order or, alternatively, for a stay, CR.427-70, and a motion for expedited consideration of its pleadings, CR.256-72. In support of those motions, Texas cited dozens of publicly available sources such as court filings, media reports, and government sources, and it attached eleven declarations, affidavits, and verified pleadings. *See* CR.274-425.

Although the U.S. Supreme Court dismissed Texas's lawsuit for lack of standing, *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020), Texas's filings were supported by 17 States and 126 members of the U.S. House of Representatives, CR.540-69, 653-96. Moreover, the Court's decision was not unanimous: Justices Thomas and Alito voted to permit Texas's case to proceed, *Pennsylvania*, 141 S. Ct. at 1230, and one of Texas's federal constitutional theories was ultimately considered on the merits just a few Terms later in *Moore v. Harper*, 143 S. Ct. 2065 (2023). Notably, the U.S. Supreme Court did not sanction *any* lawyer in either *Moore* or *Pennsylvania* for pursuing the theory.

B. This lawsuit originated from five of approximately ninety grievances filed against the Attorney General between December 2020 and July 2021 in connection with his decision to file *Pennsylvania*. CR.10. None of the complainants has met the Attorney General. Instead, each claimed to act as a "citizen," who is "[d]isgusted by [the Attorney General's] behavior," CR.72, relying on various newspaper articles to claim that *Pennsylvania* was frivolous, CR.70 (quoting Chew). *But see Andrade v. NAACP of Austin*, 345 S.W.3d 1, 15 (Tex. 2011) (explaining that a "generalized grievance shared in substantially equal measure by all or a large class of citizens" is insufficient to invoke judicial processes). Initially, the Commission dismissed each complaint because "the information alleged does not demonstrate Professional Misconduct or a Disability Pursuant to the Texas Rules of Disciplinary Procedure." *See* CR.622 (Moran). Months later, the Board of Disciplinary Appeals overruled the Commission, reclassified the Inquiries as Complaints, and called for a response. *See, e.g.*, CR.624-25. Thereafter, the Commission convened an investigatory panel, *see* CR.80-81, which found "credible evidence" to proceed with a disciplinary action—albeit under a different rule than that identified by the Board. CR.643. The Attorney General was then put to a choice: Accept a public reprimand or proceed to a disciplinary action before either an evidentiary panel or a trial court. CR.643. The Attorney General rejected the proposed sanction and elected a trial in the district court.

In May 2022, the Commission filed suit against the Attorney General in the 471st District Court of Collin County. CR.9-12. The Commission alleged that, by filing *Pennsylvania*, the Attorney General violated Rule 8.04(a)(3), which forbids a lawyer to "engage in conduct involving dishonesty, fraud, deceit[,] or

misrepresentation." Tex. Disciplinary Rules Prof'l Conduct R. 8.04(a)(3). The Commission identified six alleged misrepresentations made over the course of ninety-two pages of allegations and briefing before the U.S. Supreme Court. CR.11.

The Attorney General filed a plea to the jurisdiction, arguing that this lawsuit was barred by both the Separation of Powers Clause, Tex. Const. art. II, § 1, and sovereign immunity, CR.39-50. After a hearing, the trial court denied the Attorney General's motion to dismiss the Commission's suit in an unreasoned order, CR.1852, and the Attorney General appealed, CR.1854-55.

Over the dissent of Justice Miskel, the court of appeals dismissed the appeal, holding that it lacked appellate jurisdiction. *See Paxton*, 2024 WL 1671953, at *4. Relying almost entirely on the faulty reasoning in *Webster* that whether a claim is against an officer in his official capacity depends on the remedy being sought, it concluded the Attorney General was being sued in his personal capacity and that he was thus not entitled to take an interlocutory appeal under the Civil Practice and Remedies Code. *See id*. This petition followed.

Summary of the Argument

This Court's review is necessary to address a question of statewide importance: whether an administrative auxiliary of the judiciary may register its disagreement with the Attorney General's decision to file a high-profile and contentious lawsuit in the U.S. Supreme Court by targeting his personal law license. The court of appeals erred thrice over by dismissing the Attorney General's appeal and authorizing this suit to proceed.

First, as in *Webster*, the separation-of-powers doctrine, Tex. Const. art. II, § 1, deprived the trial court of jurisdiction over this suit because it unduly interferes with the Attorney General's exercise of his core executive power: representing the State in civil litigation in appellate courts. *Id.* art. IV, § 22; Tex. Gov't Code § 402.021. A century of precedent demonstrates that the Constitution assigns the Attorney General "exclusive" control over such matters. *E.g.*, *Maud v. Terrell*, 200 S.W. 375, 376 (Tex. 1918) (orig. proceeding). Yet this disciplinary action invades that prerogative by attempting to second-guess the Attorney General's assessment of available facts and legal arguments in a case brought in another jurisdiction with which it disagrees. The Fifth Court erred by uncritically adopting the Eighth Court's conclusion that the Attorney General's constitutional duties are limited to the ministerial act of filing a lawsuit, separated from any consideration of the contents of his pleadings.

Second, as in *Webster*, sovereign immunity independently precludes this action, which seeks to sanction the Attorney General for conduct that took place entirely out of State and could only have been undertaken in his official capacity. Because the Commission has not argued that the Legislature waived the Attorney General's sovereign immunity or that he was engaged in *ultra vires* conduct, this lawsuit is jurisdictionally barred—regardless of the form of relief that the Commission seeks. *E.g.*, *Griffin v. Hawn*, 341 S.W.2d 151, 152 (Tex. 1960).

Third, the court of appeals compounded the errors in *Webster* by holding that because the Commission does not seek damages that would be paid out of the State's coffers—only sanctions against the Attorney General's law license—the court lacked jurisdiction to hear the appeal. But the Attorney General is unquestionably an

"organ of [the] government," Tex. Civ. Prac. & Rem. Code § 101.001(3)(D), who is entitled to bring an interlocutory appeal in an official-capacity suit, *id.* § 51.014(a)(8). And, as in the context of sovereign immunity, whether this is an individual capacity suit depends not on the relief being sought but on the nature of the conduct being challenged. The Commission cannot evade the conclusion that this lawsuit seeks to control state action by regurgitating its flawed view that its suit merely seeks to police misrepresentations, not the exercise of legal judgment.

ARGUMENT

I. The Court of Appeals Committed All of the Same Errors Present in *Webster*.

This Court should grant review in this case for the same reasons that the parties have already discussed in *Webster*, which is now fully briefed. Specifically, because the Commission seeks to use this suit as a vehicle to superintend the Attorney General's exercise of his core, constitutional prerogatives, the Commission's claim is precluded by *both* the separation of powers and sovereign immunity. To minimize repetition, the Attorney General adopts, summarizes, and refers the Court to the briefing in *Webster v. Commission for Lawyer Discipline*, No. 23-0694 (Tex.), which remains pending.

A. The Commission's disciplinary action against the Attorney General violates the Separation of Powers Clause.

The Commission's lawsuit is barred by the Texas Constitution's Separation of Powers Clause, which forbids one branch of government to unduly interfere with the exercise of another's core powers. *See* Tex. Const. art. II, § 1; *In re Turner*, 627

S.W.3d 654, 660 (Tex. 2021) (per curiam) (orig. proceeding). Because the Commission—an agent of the judiciary—aims to invade the Attorney General's exclusive, constitutional duty to represent the State of Texas in civil litigation in an appellate court, this case should have been dismissed as violating the separation of powers.

1. For well over a century, this Court has recognized that the Constitution expressly confers the "exclusive" power to represent the State in civil appellate litigation on the Attorney General. *Maud*, 200 S.W. at 376; *see also*; Tex. Const. art. IV, § 22; Tex. Gov't Code § 402.021. Because that power "will not be controlled by other authorities," *Charles Scribner's Sons v. Marrs*, 262 S.W. 722, 727 (Tex. 1924), the "Attorney General, as the State's chief legal officer, has broad discretionary power in carrying out his responsibility to represent the State," *Perry*, 67 S.W.3d at 92. The heartland of that discretion includes "the right to investigate the facts and exercise his judgment and discretion regarding the filing of a suit," *Agey v. Am. Liberty Pipe Line Co.*, 172 S.W.2d 972, 974 (Tex. 1943), including determining "that the evidence necessary to a successful prosecution of [a] suit can be procured," *Lewright v. Bell*, 63 S.W. 623, 624 (Tex. 1901) (orig. proceeding).

Under the guise of policing six "misrepresentations" made to the U.S. Supreme Court, CR.11, the Commission's lawsuit encroaches on this core executive prerogative. As Justice Miskel explained—and as the First Assistant exhaustively chronicled in *Webster*—examining the Commission's petition reveals that what the Commission calls "misrepresentations" amounts to little more than disagreements with the Attorney General's selection and presentation of legal arguments, investigation of facts, and assessment of evidence at the time he filed *Pennsylvania*. *See Paxton*, 2024

WL 1671953, at *10 (Miskel, J., dissenting); Brief for Petitioner at 26-33, *Webster v. Comm'n for Law. Discipline*, No. 23-0694 (Tex. Feb. 26, 2024).

Yet there can be little dispute that such determinations fall within the Attorney General's broad "judgment and discretion regarding the filing of a suit." *Agey*, 172 S.W.2d at 974. And "[w]hen the Executive Branch acts within its constitutional discretion, nothing can be more perfectly clear than that [its] acts are only politically examinable." *Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 457 & n.10 (Tex. 2022) (citation omitted). Indeed, "[t]he State of Texas is not required to defend each allegation in each pleading to an unelected administrative committee of the judicial branch—that would constitute undue interference with the powers assigned to the attorney general." *Paxton*, 2024 WL 1671953, at *11 (Miskel, J., dissenting). But here, "[t]he Commission is attempting to interfere with the attorney general's exercise of his discretionary authority in carrying out his constitutionally assigned powers," including by seeking "to control how the attorney general may plead allegations in the state's lawsuit." *Id.* That "is an unconstitutional encroachment on [the] powers granted to the executive branch[] and it violates the separation-of-powers article of the Texas Constitution." *Id.*

2. To the extent that the Fifth Court addressed this argument at all, it did so by uncritically adopting the Commission's artificial distinction, endorsed by the Eighth Court, that its disciplinary action does not "challenge[] Paxton's decision to *file* the suit" but instead "specific alleged misrepresentations *within* the" pleadings. *Id.* at *3 (majority op.) (citing *Webster*, 676 S.W.3d at 698). But this Court has not confined the scope of the Attorney General's constitutional duty to represent the

State to the ministerial act of "filing" but has instead recognized that he must also investigate facts, assess legal theories, and select arguments. *See, e.g.*, *Agey*, 172 S.W.2d at 974; *Lewright*, 63 S.W. at 624. Moreover, the court's proposed distinction between the act of filing a lawsuit and that suit's contents is illusory: Legal filings necessarily require an assessment of the facts, law, and evidence behind proposed legal claims, which are then memorialized in filings lodged with a court. *See Lewright*, 63 S.W. at 624. Thus, the decision to file a lawsuit cannot logically—and should not legally—be decoupled from the contents of that lawsuit.

B. The Commission's suit is barred by sovereign immunity.

The Commission's lawsuit is also independently barred by sovereign immunity. The Attorney General, like other state officials, enjoys sovereign immunity "from both suit and liability" for actions taken in his "official capacit[y]." *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021). Because the Commission has never argued that the Attorney General's sovereign immunity has been waived or that he was engaged in *ultra vires* conduct, the application of sovereign immunity here turns on whether filing a lawsuit in another jurisdiction on behalf of the State is official-capacity conduct. It unquestionably is: only the Attorney General acting in his official capacity—or the First Assistant acting in his stead, Tex. Gov't Code § 402.001(a)—could file suit in the U.S. Supreme Court on behalf of the State. *See id.* § 402.021; *see also* Tex. Const. art. IV, § 22. Indeed, "[t]he Commission's suit against the attorney general is based on statements in a motion and brief[,] filed by the State of Texas, prepared by [OAG], and identifying the attorney general as counsel of record." *Paxton*, 2024 WL 1671953, at *5 (Miskel, J., dissenting). Its claims therefore "in

substance, arise from its challenges to the attorney general's performance of his official duties while acting in his official capacity." *Id.* at *7.

The Fifth Court nevertheless offered three reasons why filing *Pennsylvania* was somehow an individual-capacity act by the Attorney General. Each misunderstands what it means to be an official-capacity suit—and, by extension, sovereign immunity. *Id.* at *3-4 (majority op.).

First, the court looked to the remedy sought in the petition and held that, because the Commission's suit targets the Attorney General's "license to practice law in Texas," it is not a suit against the Attorney General in his official capacity. *Id.* at *3. Yet the same could be said if the Commission had sought monetary damages from the Attorney General and asserted it would come from his personal bank account. But this Court has held that sovereign immunity routinely protects against exactly that. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 370-71 (Tex. 2009). "Where the purpose of a proceeding against [a] state official[] is to control action of the State or subject it to liability," this Court has long held, "the suit is against the state and cannot be maintained without the consent of the Legislature." *Griffin*, 341 S.W.2d at 152. Thus, the form of relief is relevant but "is not dispositive" of the sovereign-immunity inquiry. *Creedmoor-Maha Water Supply Corp. v. TCEQ*, 307 S.W.3d 505, 515 (Tex. App.—Austin 2010, no pet.); *see also Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855-56 (Tex. 2002).

Second, the Fifth Court held that the Commission's suit would not "control state action" because the state action of "fil[ing] the suit" is "not at issue in this action," but instead what is at issue is the purportedly individual-capacity action of making

"specific alleged misrepresentations within the … pleadings." *Paxton*, 2024 WL 1671953, at *3. But as the Attorney General just explained, this putative distinction is illusory. And stripped of this canard, there can be little doubt that the Commission's suit seeks to "control state action." After all, "[t]he substance of the Commission's pleadings challenges the manner in which the attorney general engaged in the duties assigned to him by law," namely his assessment of "the facts, evidence, and law." *Id.* at *6 (Miskel, J., dissenting). And it proposes to do so by "sanction[ing] the state's listed counsel of record—the attorney general." *Id.*

Third, citing *Webster* the Fifth Court fell back on policy arguments, concluding that ruling for the Attorney General would be tantamount to "exempt[ing]" the Attorney General from his ethical obligations. *Id.* at *4 (majority op.). Not so. The Attorney General has readily acknowledged that government attorneys, including the Attorney General, remain bound by ethical rules in myriad ways, including (among other means) *ultra vires* actions. *See* Appellant's Br. at 28-30, *Paxton v. Comm'n for Law. Discipline*, No. 05-23-00128-CV (Tex. App.—Dallas, Mar. 16, 2023). But as the Fifth Court acknowledged, the Commission did not—likely because it *could* not—bring an *ultra vires* claim here by arguing that the Attorney General "acted without legal authority or beyond the discretion afforded to him under the government code in filing suit or in framing the State's pleading." *Paxton*, 2024 WL 1671953, at *4. But as Justice Miskel recognized, the net result of this suit is that "the Commission is attempting to advance an ultra vires claim under a lower standard than what the law requires." *Id.* at *7 (Miskel, J., dissenting). That alone is reason to grant review.

II. The Court of Appeals Compounded Its Error By Holding the Attorney General Is Not Entitled To Take An Interlocutory Appeal When He Is Denied Sovereign Immunity.

In addition to the errors committed in *Webster*, the court of appeals also wrongly held that "the civil practice and remedies code does not expressly permit [the elected Attorney General's] interlocutory appeal" because he is not a "governmental unit" within the meaning of the interlocutory-appeal statute. *Paxton*, 2024 WL 1671953, at *4. This conclusion departs from both the text of the Civil Practice and Remedies Code and decades of precedent construing it.

Start with text. The interlocutory-appeal statute provides that an interlocutory appeal may be taken from any order that "grants or denies a plea to the jurisdiction by a *governmental unit* as that term is defined in Section 101.001." Tex. Civ. Prac. & Rem. Code § 51.014(a)(8) (emphasis added). In turn, Section 101.001 defines "governmental unit" as "this [S]tate and all the several agencies of government that collectively constitute the government of this [S]tate, … and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;" as well as "any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." *Id.* § 101.001(3)(A), (D). The "Attorney General," is expressly listed in the Constitution as one component of the "Executive Department of the State," Tex. Const. art. IV, § 1, and assigned specific duties by that charter, *id.* art. IV, § 22. Thus, he is an "organ of government the status and authority of which are derived from the Constitution." Tex. Civ. Prac. & Rem. Code § 101.001(3)(D). For

the same reasons, he occupies an "office[]" of the Government of the State. *Id.* § 101.001(3)(A).

Precedent confirms this commonsense conclusion. "[A]n 'organ of government' is an entity that operates as part of a larger governmental system." *Univ. of the Incarnate Word v. Redus,* 518 S.W.3d 905, 910 (Tex. 2017). As "the State's chief legal officer" acting pursuant to constitutional authority, *Perry*, 67 S.W.3d at 92, the Attorney General surely qualifies as an "organ of government" and thus a "'governmental unit' within the purview of the statute." *Cornyn v. Fifty-Two Members of Schoppa Fam.*, 70 S.W.3d 895, 898 (Tex. App.—Amarillo 2001, no pet.). Furthermore, "the inclusion of the term 'offices'"—a reference to the concept of a "public office"—in section 101.001(3)(A) "indicates an intent to include state officials sued in their official capacity." *Perry v. Del Rio*, 53 S.W.3d 818, 823 (Tex. App.—Austin 2001). The Attorney General is the occupant of such an office by virtue of his second re-election in 2022 with the result that he "is invested with some portion of the sovereign functions of government for the benefit of the public." *Id.* at 822.

The court of appeals reached the opposite conclusion by conflating whether the Attorney General is a "governmental unit" with whether he is being sued in his official capacity. *Paxton*, 2024 WL 1671953, at *4. This was error. The question whether the Commission's action is against the Attorney General in his official capacity—and it *is* for the reasons described above, *supra* at 11-13—goes to the merits of his plea to the jurisdiction and ultimately of this appeal. *E.g.*, *Hall v. McRaven*, 508 S.W.3d 232, 240 (Tex. 2017) (collecting cases). But the "conclusion that [an entity] is a governmental unit is *not* a comment on the merits of [a] plea to the

jurisdiction"—only a conclusion that the denial of that plea can be reviewed on an interlocutory basis. *Redus*, 518 S.W.3d at 911 (emphasis added). Because the Attorney General *is* an organ of the government of this State, he is entitled to bring an interlocutory appeal to determine *whether* this suit was properly pleaded against him in his official capacity. *Cf. Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 431-32 (Tex. 2016).

III. The Decision Below Presents Undecided Questions of Statewide Importance.

This Court should grant review because the decision below, like *Webster*, presents questions of statewide importance over whether unelected members of an administrative body housed in the judicial branch may superintend how one of the five elected officers of the executive branch discharges core executive functions by threatening his ability to continue practicing his chosen profession. If left undisturbed, the court's decision would greenlight the notion that any government lawyer who appears on an initial pleading must personally guarantee, at the risk of his law license, that evidence sufficient to prevail on every allegation in a petition will be procured and that any unsettled question of law will be resolved in his favor. Application of such a standard in this case would grind the Office of the Attorney General to a halt, as the Attorney General is responsible for more than 30,000 civil cases at any given time—a not insignificant number of which involve uncertain facts or novel legal theories. CR.1769.

Moreover, because the Court's reasons for holding that the Attorney General is not a "governmental unit" could provide an easy path for plaintiffs to both

circumvent the sovereign immunity of scores of executive officers throughout the State and then block interlocutory review of such orders, this decision upsets not only the Constitution's allocation of powers between the executive and judicial branches, but it also weakens the protection that sovereign immunity affords.

Prayer

The Court should grant the petition, reverse the court of appeals' judgment, and instruct the trial court to dismiss the petition for lack of jurisdiction.

Respectfully submitted.

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No.

In the Supreme Court of Texas

WARREN KENNETH PAXTON, JR.,

Petitioner,

v.

COMMISSION FOR LAWYER DISCIPLINE,

Respondent.

On Petition for Review
from the Fifth Court of Appeals, Dallas

APPENDIX

Tab

Tab A:
Trial Court Order Denying Plea to the Jurisdiction

Filed: 1/30/2023 8:52 AM
Michael Gould
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CAUSE NO. 471-02574-2022

COMMISSION FOR LAWYER DISCIPLINE, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	OF COLLIN COUNTY, TEXAS
WARREN KENNETH PAXTON, JR.; 202006564; 202006566; 202101148; 202101678;202104762 *Defendant.*	§	471ST JUDICIAL DISTRICT

ORDER DENYING RESPONDENT'S PLEA TO THE JURISDICTION

On this day, the Court considered Respondent's Plea to the Jurisdiction only. The Court makes no finding as to the underlying merits of the case, solely as to whether the plaintiff has shown that there is a disputed material fact regarding the jurisdictional issue.

IT IS THEREFORE ORDERED the Respondent's plea to the jurisdiction is **DENIED.**

SIGNED this the 27th day of January 2023.

Honorable Casey Blair
Judge Presiding

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Tab B:
Fifth Court of Appeals
Majority and Dissenting Opinions

Dismissed and Opinion Filed April 18, 2024

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00128-CV

WARREN KENNETH PAXTON, JR., Appellant
V.
COMMISSION FOR LAWYER DISCIPLINE, Appellee

On Appeal from the 471st Judicial District Court
Collin County, Texas
Trial Court Cause No. 471-02574-2022

MEMORANDUM OPINION

Before Justices Nowell, Miskel, and Kennedy
Opinion by Justice Nowell

The Commission for Lawyer Discipline filed a disciplinary action against Warren Kenneth Paxton, Jr.; Paxton is the Attorney General of Texas. In response, Paxton filed a plea to the jurisdiction asserting the Commission's suit violates the separation-of-powers doctrine and is barred by sovereign immunity. The trial court denied Paxton's plea to the jurisdiction, and Paxton filed this interlocutory appeal pursuant to Texas Civil Practice and Remedies Code Section 51.014(a)(8). The Commission then filed a motion to dismiss on the ground that this Court lacks

jurisdiction to consider the appeal. We agree. We dismiss Paxton's interlocutory appeal for lack of jurisdiction.

A. Jurisdiction over Interlocutory Appeals

Jurisdiction is a question of law we review de novo. *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007). The civil practice and remedies code permits an appeal from an interlocutory order that "grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001." TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8). Paxton is not a "governmental unit as that term is defined in Section 101.001." *See id.* § 101.001. However, the supreme court has concluded that when a state official is sued in their official capacity, they may appeal from an interlocutory order that denies a plea to the jurisdiction in the same manner as their employing governmental unit. *See Koseoglu*, 233 S.W.3d at 844–45 (discussing TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8)). The supreme court explained:

> When a state official files a plea to the jurisdiction, the official is invoking the sovereign immunity from suit held by the government itself. It is fundamental that a suit against a state official is merely "another way of pleading an action against the entity of which [the official] is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099, 87 L. Ed. 2d 114 (1985) (quoting *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 n. 55, 98 S.Ct. 2018, 56 L. Ed. 2d 611 (1978)); *see also Tex. Dep't of Pub. Safety v. Petta*, 44 S.W.3d 575, 581 (Tex. 2001). A suit against a state official in his official capacity "is *not* a suit against the official personally, for the real party in interest is the entity." *Graham*, 473 U.S. at 166, 105 S.Ct. 3099 (emphasis in original). Such a suit actually seeks to impose liability against the governmental unit rather than on the individual specifically named and "is, in all respects other than name, . . . a suit against the

> entity." *Id.*; *see also Tex. Natural Res. Conservation Comm'n v. IT–Davy*, 74 S.W.3d 849, 855–56 (Tex. 2002).

Koseoglu, 233 S.W.3d at 844.

Therefore, to resolve whether we have jurisdiction over this interlocutory appeal, we must determine whether the Commission's suit against Paxton is, for all practical purposes, a suit against the Office of the Attorney General itself. Paxton argues the Commission's disciplinary action is an act against him in his official capacity; the Commission disagrees.

B. Commission's Allegations against Paxton

The Commission's Original Disciplinary Petition states the Commission brings the disciplinary action against Paxton pursuant to the State Bar Act, the Texas Government Code, the Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure.

The Commission alleges Paxton filed a case styled *State of Texas v. Commonwealth of Pennsylvania, State of Georgia, State of Michigan, and State of Wisconsin* in the Supreme Court of the United States on December 7, 2020 ("*Texas v. Pennsylvania*"). In *Texas v. Pennsylvania*, the State of Texas allegedly asked the Supreme Court to enjoin the "Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College" and sought to prevent those states from "meeting for purposes of the electoral college pursuant to 3 U.S.C. §5, 3 U.S.C. §7, or applicable law pending further order."

The Commission's petition alleges Paxton made "dishonest" representations to the Supreme Court in *Texas v. Pennsylvania*. Those alleged misrepresentations are that: "1) an outcome determinative number of votes were tied to unregistered voters; 2) votes were switched by a glitch with Dominion voting machines; 3) state actors 'unconstitutionally revised their state's election statutes'; and 4) 'illegal votes' had been cast that affected the outcome of the election." The Commission claims the "allegations were not supported by any charge, indictment, judicial finding, and/or credible or admissible evidence, and [Paxton] failed to disclose to the Court that some of his representations and allegations had already been adjudicated and/or dismissed in a court of law." Further, the Commission's petition alleges, Paxton "misrepresented that the State of Texas had 'uncovered substantial evidence . . . that raises serious doubts as to the integrity of the election process in Defendant States,' and has standing to bring these claims before the United States Supreme Court."

The Commission pleads that Paxton's actions in *Texas v. Pennsylvania* constitute professional misconduct and violate Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct. The petition alleges venue is proper in Collin County, Texas, pursuant to Texas Rule of Disciplinary Procedure Rule 3.03 because Collin County is the county of Paxton's principal place of practice. The Commission requests a judgment of professional misconduct be entered against Paxton.

C. Attorney Discipline

The Supreme Court of Texas supervises the conduct of attorneys admitted to practice in Texas. TEX. GOV'T CODE ANN. § 81.072(a). To advance this power, the Texas Legislature enacted the State Bar Act, which, among other things, created the State Bar of Texas to aid the supreme court in regulating the practice of law, including overseeing attorney discipline. *See id*. §§ 81.001–.0156.

The Commission is a standing committee of the State Bar that administers the Texas attorney-discipline system. *See id*. § 81.076. Every attorney admitted to practice in Texas, including those representing a government agency, is subject to the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure, both promulgated by the Texas Supreme Court. *See id*. § 81.072(b), (d); *see also id*. § 81.071 ("Each attorney admitted to practice in this state . . . is subject to the disciplinary and disability jurisdiction of the supreme court and the Commission for Lawyer Discipline, a committee of the state bar."). The Texas Rules of Disciplinary Procedure state "minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action." TEX. DISCIPLINARY R. PROF'L CONDUCT Preamble: A Lawyer's Responsibilities (7).

D. Analysis

The Commission asserts Paxton is an attorney licensed by the State Bar of Texas, and his conduct, as an attorney, is subject to the Texas Rules of Disciplinary Procedure and the Texas Disciplinary Rules of Professional Conduct. *See Comm'n*

for Law. Discipline v. Hall, No. 07-18-00336-CV, 2020 WL 4299115, at *1 (Tex. App.—Amarillo July 23, 2020, no pet.) (order on rehearing); *see also* TEX. GOV'T CODE ANN. §§ 81.071, 81.072(d). The Commission alleges Paxton violated Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct, which provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. TEX. DISCIPLINARY R. PROF'L CONDUCT 8.04(a)(3), *reprinted in* TEX. GOV'T. CODE ANN., tit. 2, subtit. G, app. A. The Commission's petition lists the alleged misrepresentations that Paxton, acting as a licensed attorney, made in violation of Rule 8.04(a)(3).

The Commission's role as the administrator of the Texas attorney-discipline system coupled with the substance of the Commission's allegations demonstrate Paxton, individually, is the subject of the lawsuit; the Commission's suit does not seek to impose any penalty on the Office of the Attorney General of Texas. *See Comm'n for Law. Discipline v. Webster*, 676 S.W.3d 687, 701 (Tex. App.—El Paso 2023, pet. filed). For example, the Commission seeks "a judgment of professional misconduct" against Paxton, "something that affects only his license to practice law in Texas and has no effect on the State" and would not control state action. *See id*. Further, the Commission filed its petition in the county of Paxton's principal place of practice in accordance with Rule 3.03 of the Texas Rules of Disciplinary Procedure. *See* TEX. RULES DISCIPLINARY P. 3.03, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1.

The focus of the Commission's allegations is squarely on Paxton's alleged misconduct—not that of the State. In the Commission's disciplinary proceeding against Paxton, the State is not the real party in interest. *See Koseoglu*, 233 S.W.3d at 844. The Commission's suit does not seek to impose liability against the governmental unit; it seeks disciplinary measures against Paxton individually as a licensed attorney for alleged misrepresentations made to the Supreme Court of the United States. *See id.* The Commission's suit cannot be considered a "suit against the entity," the Office of the Attorney General, in any respect. *See id.*

In his brief, Paxton argues the Commission seeks to discipline him for filing *Texas v. Pennsylvania* and asserts "the decision to file *Texas v. Pennsylvania* was a core (albeit controversial) exercise of the Attorney General's sole prerogative to represent the State in civil matters before a court of last result." He contends he could have filed the pleadings in *Texas v. Pennsylvania* only as a member of the Attorney General's office and, thus, the Commission's disciplinary action arises from his "exercise of his discretionary constitutional and statutory authority to file a lawsuit in the State's name that he believes to be in the State's best interest" and from his "assessment of the facts, evidence, and law at the time he filed the lawsuit," at issue. We disagree. The Office of the Attorney General's discretion to file a suit is not at issue in this action; nothing in the Commission's disciplinary proceedings challenges Paxton's decision to *file* the suit. *See generally Webster*, 676 S.W.3d at 698. Instead, the Commission's allegations relate to specific alleged misrepresentations *within* the

Texas v. Pennsylvania pleadings, which the Commission contends violate Rule 8.04(a)(3). *See id*.

Regulating the practice of law in Texas and maintaining minimum standards of conduct for its attorneys does not control state action or implicate the sovereign's liability for filing any particular suit, including *Texas v. Pennsylvania*. Nor does such regulation and maintenance restrain the attorney general's or his office's performance of official duties that are within their legal authority and discretion. The question here is not whether Paxton acted without legal authority or beyond the discretion afforded to him under the government code in filing suit or in framing the State's pleading; it is whether Paxton's alleged conduct—intentionally misrepresenting facts to a court as an officer of the court—fell below the minimum standards applicable to all attorneys under the Disciplinary Rules of Professional Conduct.

The Disciplinary Rules apply to all lawyers in Texas, specifically including government lawyers such as the attorney general. The Rules expressly state that they do not abrogate the attorney general's authority. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT, preamble ¶ 13. The Rules further state that compliance depends, in part, on enforcement through disciplinary proceedings when necessary. *See id.* ¶ 11. Subjecting Paxton to disciplinary proceedings does not violate separation of powers; immunizing him does.

The substance of the Commission's claims and the relief sought demonstrate the disciplinary action is not against Paxton in his official capacity. Rather, it is against Paxton in his capacity as a Texas-licensed lawyer and an officer of the legal system; a legal system that obliges lawyers to maintain the highest standards of ethical conduct but subjects them to discipline when they fall below certain minimum standards necessary to preserve an open society founded on the rule of law. Paxton "is not exempt from the judiciary's constitutional obligation to regulate the practice of Texas attorneys simply because he serves" as the Attorney General. *Webster*, 676 S.W.3d at 699. We agree with the court in *Webster*: "No amount of discretion in representing the State in civil litigation would permit an executive-branch attorney to bypass the Commission's disciplinary process if he engaged in alleged professional misconduct." *Id.* at 698.

E. Conclusion

We conclude the Commission's suit is against Paxton in his individual rather than official capacity. Accordingly, we lack jurisdiction to consider Paxton's appeal from an interlocutory order denying his plea to the jurisdiction because the civil practice and remedies code does not expressly permit his interlocutory appeal. We dismiss the appeal for lack of jurisdiction.

/Erin A. Nowell//
ERIN A. NOWELL
JUSTICE

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J. Miskel, dissenting

Dissenting Opinion Filed April 18, 2024

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00128-CV

WARREN KENNETH PAXTON, JR., APPELLANT

V.

COMMISSION FOR LAWYER DISCIPLINE, APPELLEE

On Appeal from the 471st Judicial District Court
Collin County, Texas
Trial Court Cause No. 471-02574-2022

DISSENTING OPINION

Before Panel Justice Nowell, Justice Kennedy, Justice Miskel
Dissenting Opinion by Justice Miskel

I respectfully dissent because this Court has jurisdiction over an appeal from the interlocutory order denying a plea to the jurisdiction by the attorney general, a governmental unit. For the reasons set out below, I would deny the motion to dismiss the appeal. I would also reverse the trial court's order denying the plea to the jurisdiction and dismiss the Commission for Lawyer Discipline's action with prejudice.

I. This Court Has Jurisdiction Because the Attorney General Is a Governmental Unit

This case requires us to decide whether the attorney general, acting in his official capacity, is a governmental unit under §§ 51.014(a)(8) and 101.001 of the Texas Civil Practice and Remedies Code. The Code provides for an appeal from an interlocutory order that "grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001." TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8). The definition of governmental unit in § 101.001 includes the attorney general:

> (3) "Governmental unit" means:
>
> (A) this state and *all the several agencies of government that collectively constitute the government of this state*, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, *offices*, agencies, councils, and courts;
>
> . . . .
>
> (D) any other institution, agency, or *organ of government the status and authority of which are derived from the Constitution of Texas* or from laws passed by the legislature under the constitution.

Id. § 101.001(3)(A), (D) (emphasis added).

The attorney general is an organ of government derived from the Constitution of Texas: "The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Commissioner of the General Land Office, and Attorney General." TEX. CONST. art. IV, § 1 ("Officers Constituting Executive

Department"); *Univ. of the Incarnate Word v. Redus*, 518 S.W.3d 905, 910 (Tex. 2017) ("[A]n 'organ of government' is an entity that operates as part of a larger governmental system."); *see, e.g.*, *Perry v. Del Rio*, 53 S.W.3d 818, 822 (Tex. App.—Austin), *pet. dism'd*, 66 S.W.3d 239, 242 (Tex. 2001) ("[T]he governor, who is the chief executive officer of the state, function[s] as [an] organ[] of state government whose status and authority is derived from the Texas Constitution.").

The attorney general's office is also an agency of the state government. *See* TEX. GOV'T CODE ANN. §§ 402.008 ("The attorney general shall keep the attorney general's office in Austin."), 402.035(f-1)(9) (describing the office of the attorney general as a state agency).

The attorney general is an organ of government derived from the Texas Constitution who also presides over the office of the attorney general, a state agency. CIV. PRAC. & REM. § 101.001(3)(A), (D). Therefore, the attorney general qualifies as a "governmental unit" who may appeal from an interlocutory order denying a plea to the jurisdiction under § 51.014(a)(8). *Id*. § 51.014(a)(8); s*ee also Att'y Gen. Cornyn v. Fifty-Two Members of Schoppa Fam.*, 70 S.W.3d 895, 898 (Tex. App.—Amarillo 2001, no pet.) ("[W]e hold that the Attorney General is likewise a 'governmental unit' within the purview of the statute. Thus, we do have jurisdiction to consider appellant's appeal."); *State v. Fernandez*, 159 S.W.3d 678, 688 (Tex. App.—Corpus Christi Edinburg 2004, no pet.) (Castillo, J., concurring and

dissenting) ("The attorney general is a 'governmental unit' for purposes of section 51.014(a)(8).").

The Commission's suit against the attorney general is based on statements in a motion and brief filed by the State of Texas, prepared by the office of the attorney general, and identifying the attorney general as counsel of record. As discussed further below, the Commission's lawsuit is based on alleged acts by the attorney general in his official capacity as a governmental unit. Section 51.014(a)(8) therefore permits the attorney general to take an interlocutory appeal from the denial of the plea to the jurisdiction filed by the office of the attorney general. CIV. PRAC. & REM. § 51.014(a)(8). Accordingly, I would deny the Commission's motion to dismiss the interlocutory appeal.

II. The Attorney General's Plea to the Jurisdiction Should Have Been Granted

Because I would deny the Commission's motion to dismiss the interlocutory appeal, I also address the merits of the attorney general's appeal of the trial court's denial of his plea to the jurisdiction.

A. The Attorney General Was Acting in His Official Capacity

The Commission argues that, because it alleges that certain statements in pleadings by the State of Texas amount to misrepresentations, the attorney general cannot have been acting in his official capacity. I disagree.

This Court has held that actions based upon a government officer's performance of his official duties are official-capacity suits. *See Miller v. Diaz*, No. 05-21-00658-CV, 2022 WL 109363, at *6 (Tex. App.—Dallas Jan. 12, 2022, no pet.) (mem. op.). The attorney general is the chief legal officer of the state. *Farmers Grp., Inc. v. Lubin*, 222 S.W.3d 417, 427 (Tex. 2007) (describing the attorney general as "the State's chief legal officer"); *Terrazas v. Ramirez*, 829 S.W.2d 712, 721 (Tex. 1991) (orig. proceeding) ("The Attorney General, as the chief legal officer of the State, has broad discretionary power in conducting his legal duty and responsibility to represent the State."). The attorney general's primary duties are to render legal advice in opinions to various political agencies and to represent the state in civil litigation. *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001). Specifically, "[t]he attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals." GOV'T § 402.021. Texas law grants this authority only to the attorney general, or the first office assistant acting in his place. *Id.*; *see also* § 402.001(a). Here, the Commission's lawsuit is expressly based on the attorney general's performance of this official duty. Warren Kenneth Paxton Jr. would have no power "in his individual/personal capacity as a Texas-licensed attorney," as the Commission argues, to plead original claims in the United States Supreme Court on behalf of the State of Texas.

The majority agrees that public officials sued in their official capacities are protected by the same immunity as their governmental units. *See Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 843–44 (Tex. 2007). To determine whether the complained-of conduct is individual-capacity or official-capacity conduct, courts look to the course of the proceedings to ascertain the nature of the liability sought to be imposed, reviewing the plaintiff's pleadings to determine the substance of the claims. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 377 (Tex. 2009); *Perez v. Physician Assistant Bd.*, No. 03-16-00732-CV, 2017 WL 5078003, at *4 (Tex. App.—Austin Oct. 31, 2017, pet. denied) (mem. op.). "[W]hether a suit is alleged explicitly against a government official in his 'official capacity,' it is the substance of the claims and relief sought that ultimately determine whether the sovereign is a real party in interest and its immunity thereby implicated." *GTECH Corp. v. Steele*, 549 S.W.3d 768, 785 (Tex. App.—Austin 2018), *aff'd sub nom. Nettles v. GTECH Corp.*, 606 S.W.3d 726 (Tex. 2020).

The substance of the Commission's pleadings challenges the manner in which the attorney general engaged in the duties assigned to him by law. *See Crampton v. Farris*, 596 S.W.3d 267, 275 (Tex. App.—Houston [1st Dist.] 2019, no pet.). The Commission disagrees with the facts, evidence, and law set forth in the State of Texas's suit and claims six statements rise to the level of misrepresentations. As a result, the Commission seeks to sanction the state's listed counsel of record—the

attorney general. In order to prove that the state's legal theories and factual allegations amount to "misrepresentations," the Commission apparently proposes to litigate the merits of *Texas v. Pennsylvania*[1] in a Collin County district court.

The Commission claims that, because it seeks a personal sanction against a government officer, its suit does not implicate the sovereign's liability. However, to determine whether this is an official–capacity suit, we look to the substance of the relief sought, and whether it would control state action. *GTECH Corp*., 549 S.W.3d at 785. Even a suit that purports to name no defendant, governmental or otherwise, implicates sovereign immunity if it seeks relief that would control state action. *Id*. at 786 (citing *Ex parte Springsteen*, 506 S.W.3d 789, 802 (Tex. App.—Austin 2016, pet. denied)). Here, the Commission seeks to restrain the state's official in the exercise of his discretionary statutory and constitutional authority and therefore seeks to control state action. *See Creedmoor-Maha Water Supply Corp. v. Tex. Comm'n on Env't Quality*, 307 S.W.3d 505, 514 (Tex. App.—Austin 2010, no pet.); *Univ. of Tex. of Permian Basin v. Banzhoff*, No. 11-17-00325-CV, 2019 WL 2307732, at *4 (Tex. App.—Eastland May 31, 2019, no pet.) (mem. op.).

Ultimately, the Commission's claims, in substance, arise from its challenges to the attorney general's performance of his official duties while acting in his official capacity. Because the Commission has alleged acts within the attorney general's

[1] 141 S. Ct. 1230 (2020).

legal authority and discretion, its suit seeks to control state action and is an official-capacity suit.

B. The Commission Has Not Shown an Exception to Sovereign Immunity

The Commission argues that, so long as it alleges that the State of Texas's pleadings contain misrepresentations, then the state's officer may be personally sued—that is not the legal standard for bringing personal claims against a state official. Essentially, the Commission is attempting to advance an ultra vires[2] claim under a lower standard than what the law requires.

The attorney general is a constitutional executive officer. TEX. CONST. art. IV, § 1. A public officer is an individual upon whom any sovereign function of the government is conferred, to be exercised by him for the benefit of the public largely independent of the control of others. *Green v. Stewart*, 516 S.W.2d 133, 135 (Tex. 1974). Sovereign immunity deprives a trial court of subject matter jurisdiction for lawsuits in which the state or certain governmental units have been sued unless the state consents to suit. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). "Governmental immunity[3] is premised in part on preventing suits

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[2] Ultra vires is a Latin phrase meaning "beyond the powers." *Ultra Vires*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[3] The difference between "sovereign" immunity and "governmental" immunity is the type of government entity being sued: "Sovereign immunity refers to the State's immunity from suit and liability. In addition to protecting the State from liability, it also protects the various divisions of state government, including agencies, boards, hospitals, and universities. Governmental immunity, on the other hand, protects political subdivisions of the State, including counties, cities, and school districts." *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n.3 (Tex. 2003) (internal citations omitted).

that attempt to control state action by imposing liability upon the state." *Houston Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 163–64 (Tex. 2016).

However, sovereign immunity "does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions." *Heinrich*, 284 S.W.3d at 369. "To fall within this *ultra vires* exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act." *Id*. at 372 (italics in original). "An *ultra vires* claim based on actions taken 'without legal authority' has two fundamental components: (1) authority giving the official some (but not absolute) discretion to act and (2) conduct outside of that authority." *Hall v. McRaven*, 508 S.W.3d 232, 239 (Tex. 2017) (italics in original).

The test for whether immunity bars a suit against a government official is whether the law grants an official *absolute* discretion or whether the official was acting within *limited* discretion:

> governmental immunity bars suits complaining of an exercise of *absolute* discretion but not suits complaining of *either* an officer's failure to perform a ministerial act or an officer's exercise of judgment or *limited* discretion without reference to or in conflict with the constraints of the law authorizing the official to act. Only when such absolute discretion—free decision-making without any constraints—is granted are *ultra vires* suits absolutely barred.

Houston Belt, 487 S.W.3d at 163 (italics in original). In *Houston Belt*, the supreme court held that the government official was not granted absolute discretion because the governing ordinance specified data and formulas for the official to use. *Id*. at 158–59. Because the ordinance limited the official's discretion, he acted without authority when he used a method that was inconsistent with the ordinance. *Id*. at 169. Similarly, in *Heinrich*, the supreme court held that the plaintiff had pleaded an exception to governmental immunity because there was a fact issue as to whether board members acted outside their discretion by retroactively lowering pension payments despite a statute that prohibited a reduction in benefits. 284 S.W.3d at 378–79.

In *Hall*, however, the supreme court held that, because the chancellor was given unrestricted authority to interpret federal privacy law, the allegation that he misinterpreted the law did not constitute an ultra vires act or an exception to sovereign immunity. 508 S.W.3d at 241–43. Because the chancellor's discretion was not limited in *how* he reached his conclusions, even if he erred, he did not act outside his authority. *See id*. at 242.

Here, the statute granting authority to the attorney general does not impose specific restraints or otherwise limit his discretion: "The attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals." GOV'T § 402.021. Unlike in *Heinrich* and *Houston*

Belt, this grant of authority specifies no limits and effectively grants the attorney general absolute discretion in how to carry out this sovereign function. "The office of Attorney General is one of ancient origin, and in all jurisdictions its duties have been multifarious, necessarily involving at all times the exercise of broad judgment and discretion. Even in the matter of bringing suits the Attorney General must exercise judgment and discretion, which will not be controlled by other authorities." *Charles Scribner's Sons v. Marrs*, 262 S.W. 722, 727 (Tex. 1924) (internal citations omitted). "The Attorney General is the chief law officer of the State, and it is incumbent upon him to institute in the proper courts proceedings to enforce or protect any right of the public that is violated. He has the right to investigate the facts and exercise his judgment and discretion regarding the filing of a suit." *Agey v. Am. Liberty Pipe Line Co.*, 172 S.W.2d 972, 974 (Tex. 1943).

Of course, the law does not imply a grant of authority to government officials to act unlawfully. *See, e.g.*, *City of Dallas v. Gadberry Constr. Co., Inc.*, No. 05-22-00665-CV, 2023 WL 4446291, at *5 (Tex. App.—Dallas July 11, 2023, no pet.) (mem. op.). A state official's illegal or unauthorized actions are not acts of the state. *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997). Here, though, the Commission did not plead or present evidence showing that the attorney general was acting without legal authority; rather, the Commission's petition complains about

how the attorney general exercised his discretion under the legal authority conferred by Texas law. *See* GOV'T § 402.021.

The Commission claims that, out of ninety-two pages of Texas's allegations and briefing, six statements amount to misrepresentations. The attorney general responds that the Commission took three of the six statements out of context, and the other three statements reveal the Commission's policy disagreements with the merits of Texas's suit. Regardless, allegations that a government official reached an incorrect or wrong result when exercising his delegated authority are not facts that would demonstrate that the government official exceeded that authority. *See Creedmoor-Maha*, 307 S.W.3d at 517–18; *Banzhoff*, 2019 WL 2307732, at *4 ("That a state official reaches an incorrect or wrong result when exercising his delegated authority does not necessarily demonstrate that he has exceeded his authority.").

The Commission has failed to plead or present evidence showing that the attorney general acted wholly without authorization in his prosecution of this "action[] in which the state is interested before the supreme court," and it has therefore failed to meet the requirements of the ultra vires exception to sovereign immunity. *See* GOV'T § 402.021. The Commission might be entitled to have an opportunity to amend its pleadings to attempt to cure this defect. *See Koseoglu*, 233 S.W.3d at 839–40 (plaintiff must be given a reasonable opportunity to amend its

pleadings to attempt to cure the jurisdictional defects unless the pleadings are incurably defective). However, because I conclude below that the Commission has failed to state a claim for "Professional Misconduct," I would find that the defects cannot be cured and would grant the plea to the jurisdiction without allowing an opportunity to replead.

C. Separation of Powers Bars the Commission from Seeking to Control an Executive Officer

The Texas Constitution divides the powers of government into legislative, executive, and judicial departments. *See* TEX. CONST. arts. II, § 1, III, IV, V. The attorney general is an officer of the executive branch of the Texas government. TEX. CONST. art. IV, § 1. The State Bar of Texas is an administrative agency of the judicial department of the Texas government. GOV'T § 81.011(a). The Commission for Lawyer Discipline is a standing committee of the State Bar of Texas composed of twelve members: six attorneys appointed by the president of the state bar and six public members appointed by the Supreme Court of Texas. *Id.* § 81.076(b). The Commission is therefore part of the judicial branch of the Texas government.

The Texas Constitution expressly states, "[N]o person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." TEX. CONST. art. II, § 1. The separation-of-powers doctrine prohibits one branch of government from exercising a power belonging inherently to another. *In re Dean*,

393 S.W.3d 741, 747 (Tex. 2012) (orig. proceeding). For example, the supreme court has explained that the attorney general is part of the executive department and is empowered by the constitution to issue advisory opinions to the governor and other officials. *See Patterson v. Planned Parenthood of Hous.*, 971 S.W.2d 439, 442–43 (Tex. 1998) (citing TEX. CONST. art. IV, §§ 1, 22). The constitution's separation-of-powers article therefore prohibits courts from issuing advisory opinions, because that is the function of the executive rather than the judicial department. *Id*. at 443.

A separation-of-powers violation can occur when one branch unduly interferes with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers. *Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010); *see also In re Turner*, 627 S.W.3d 654, 660 (Tex. 2021) (per curiam) (orig. proceeding) (explaining that "the interference by one branch of government with the effectual function of another raises concerns of separation of powers"). Where one branch of government unduly interferes with the powers of another, any resulting order is void. *See, e.g.*, *Ex parte Giles*, 502 S.W.2d 774, 780 (Tex. Crim. App. 1973); *In re Tex. Dep't of Fam. & Protective Servs.*, 679 S.W.3d 266, 271 (Tex. App.—San Antonio 2023, orig. proceeding); *In re D.W.*, 249 S.W.3d 625, 635 (Tex. App.—Fort Worth 2008, pet. denied) (en banc). To determine whether there has been an undue interference, courts first review the scope of the

powers constitutionally assigned to the governmental actor and then consider the impact of another branch's conduct on that governmental actor's exercise of those powers. *Tex. Comm'n on Env't Quality v. Abbott*, 311 S.W.3d 663, 672 (Tex. App.—Austin 2010, pet. denied).

Both sides agree that courts retain the inherent judicial power to sanction attorneys practicing before them. *See, e.g.*, *Brewer v. Lennox Hearth Prods., LLC*, 601 S.W.3d 704, 718 (Tex. 2020). The question presented in this case is whether the Commission may sue the attorney general in his private capacity over statements in a pleading by the State of Texas.

First, I consider the scope of the powers constitutionally assigned to the attorney general. The constitution assigns the attorney general the power to "represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party . . . and perform such other duties as may be required by law." TEX. CONST. art. IV, § 22. Texas law provides that the attorney general has the duty to represent the state and requires that he "shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals." GOV'T § 402.021. The attorney general's investigation of a case and determination of the facts are outside the judicial branch's control: "Since the duty of the attorney general to institute suits in such cases requires an investigation of the case, and a determination [of the facts and the probability of success] . . . the courts

cannot control his judgment in the matter and determine his action." *Lewright v. Bell*, 63 S.W. 623, 624 (Tex. 1901) (holding that courts cannot compel the attorney general to perform an official duty that involves discretion). When the executive branch acts within its constitutional discretion, its acts are only politically examinable and are insulated from judicial second-guessing. *Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 457–58 (Tex. 2022).

Texas law has given the attorney general the exclusive power to prosecute and defend all actions in which the state is interested before the supreme court, and it has not limited his discretion as to what legal claims and factual allegations to plead in those actions. Therefore, the Commission's claims are within the scope of authority assigned to the attorney general.

Second, I consider the impact of the judicial branch's conduct on the attorney general's exercise of those powers. The "misrepresentations" alleged by the Commission's petition challenge the attorney general's assessment of the facts, evidence, and law at the time the State of Texas's suit was filed. The attorney general argues that "through the threat of sanctions affecting his personal law license, the Commission aims to deter the Attorney General from instituting high-profile and contentious matters of which the State Bar disapproves" and that "this effort is directed at controlling the conduct of the State's chief legal officer in the exercise of core executive functions." The attorney general further argues that "[i]f

the Commission's standard were correct, it would mean that any lawyer who appears on an initial pleading must personally guarantee, at the risk of his law license, that evidence sufficient to prevail on every allegation in a petition will be procured." The attorney general represents that "[a]pplication of such a standard in this case would grind the Office of the Attorney General to a halt, as the Attorney General is responsible for more than 30,000 civil cases at any given time."

Here, the State of Texas filed the underlying suit, and the Commission disagrees with the state's allegations. The State of Texas is not required to defend each allegation in each pleading to an unelected administrative committee of the judicial branch—that would constitute undue interference with the powers assigned to the attorney general.

As discussed above, the Commission has not shown that the attorney general's actions were unlawful or without authority. The Commission is attempting to interfere with the attorney general's exercise of his discretionary authority in carrying out his constitutionally assigned powers. This attempt by the judicial branch to control how the attorney general may plead allegations in the state's lawsuit is an unconstitutional encroachment on powers granted to the executive branch, and it violates the separation-of-powers article of the Texas Constitution. Any order resulting from the Commission's suit would be void. *See Giles*, 502 S.W.2d at 780; *DFPS*, 679 S.W.3d at 271; *D.W.*, 249 S.W.3d at 635.

D. The Commission Has Not Alleged "Professional Misconduct" Under the Rules

The Texas Rules of Disciplinary Procedure establish the rules to be used in the professional disciplinary and disability system for attorneys in the State of Texas.[4] TEX. R. DISCIPLINARY P. 1.02, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1.

The Chief Disciplinary Counsel investigates a Complaint to determine whether Just Cause exists. *Id.* 2.12(A); 1.06(G). "'Just Cause' means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed . . . ." *Id.* 1.06(Z). "Professional Misconduct" includes eight categories of conduct defined by Rule 1.06(CC). *Id.* 1.06(CC). An investigatory hearing on a disciplinary Complaint will be set before an Investigatory Panel and may result in the Chief Disciplinary Counsel's finding Just Cause. *Id.* 2.12(F), (G). If there is a finding of Just Cause to believe an attorney has committed "Professional Misconduct," the Chief Disciplinary Counsel must give the respondent written notice of which rules of professional conduct were violated. *Id.* 2.14(D). Upon receiving this notice, the respondent may seek to have the Complaint heard in a district court. *Id.* 2.15.

[4] Notably, Rule 1.02 expressly narrows the objective of the rules to attorneys *in* the State of Texas, rather than broadly referring to attorneys *licensed by* the State of Texas. TEX. R. DISCIPLINARY P. 1.02.

If the respondent elects to proceed in district court, the Commission must transmit a petition that contains a description of the acts and conduct that gave rise to the alleged "Professional Misconduct." *Id.* 3.01(E), 1.06(CC) (definition of "Professional Misconduct"). At trial, the Commission has the burden to prove its Disciplinary Action by a preponderance of the evidence. *Id.* 3.08(C), (D). If the trial court finds that the Respondent's conduct constitutes "Professional Misconduct," the court shall determine the appropriate Sanction to be imposed. *Id.* 3.09. Therefore, in this suit, the Commission is asking the trial court to find that the allegations in its petition constitute "Professional Misconduct" as defined by Rule 1.06(CC). *Id.* 1.06(CC).

The Commission's petition generally alleges that "[t]he acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct." However, the petition does not specify which of the eight categories of "Professional Misconduct" defined by Rule 1.06(CC) it alleges the respondent committed. The petition further states, "The facts alleged herein constitute a violation of the following Texas Disciplinary Rules of Professional Conduct: 8.04(a)(3) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The Commission's petition does not allege that the respondent's conduct resulted in discipline in any other jurisdiction.

Under Rule 1.06(CC), the first category of "Professional Misconduct" includes "[a]cts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct." *Id.* 1.06(CC)(1).

However, the second category of "Professional Misconduct" expressly governs attorney conduct that occurs in another jurisdiction, like the United States Supreme Court. Under category 2, "Professional Misconduct" includes "[a]ttorney conduct that occurs in another jurisdiction, including before any federal court or federal agency, and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct." *Id.* 1.06(CC)(2). In other words, if the respondent attorney's conduct occurs in another jurisdiction, to be "Professional Misconduct," it must result in the discipline of the attorney in the other jurisdiction *and* be Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct. *Id*.

The Commission argues that it need only show a violation of the Texas Disciplinary Rules of Professional Conduct to prove "Professional Misconduct" in this suit. However, that interpretation of the Rules would make category 2 entirely redundant. Under the surplusage canon, "[i]f possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*) . . . . None should needlessly be given an interpretation that causes it to duplicate another provision or

to have no consequence." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012); *cf. Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008) ("The Court must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous."); *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005) ("[C]ourts should examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless"). There would be no need to express a separate rule for conduct in another jurisdiction, with the added requirement of discipline in that other jurisdiction, if all violations of the Texas Disciplinary Rules of Professional Conduct can be punished under category 1, regardless of where they were committed.

To defeat the plea to the jurisdiction, the Commission must allege facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Von Dohlen v. City of San Antonio*, 643 S.W.3d 387, 393 (Tex. 2022) (citing *Miranda*, 133 S.W.3d at 226). For example, a statute may waive sovereign immunity, but to defeat a plea to the jurisdiction, the plaintiff must state a claim that actually violates the statute. *See id.* at 392; *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). A trial court's review of a plea to the jurisdiction mirrors that of a traditional summary judgment motion. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). If the relevant evidence is undisputed or the plaintiff

fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea as a matter of law. *Id*.

To prevail on its claim at trial, the Commission has the burden to prove that the respondent's conduct constitutes "Professional Misconduct." TEX. R. DISCIPLINARY P. 3.08(D), 3.09, 1.06(CC). For conduct occurring before a federal court, the Commission must allege *both* that the conduct violates the Texas Disciplinary Rules of Professional Conduct and that it resulted in the discipline of the attorney in that other jurisdiction. *Id.* 1.06(CC)(2). The Commission has not claimed that the respondent was disciplined by the U.S. Supreme Court, and the attorney general represents that the U.S. Supreme Court has not disciplined any lawyer in connection with Texas's suit. Therefore, even if the Commission has alleged a violation of the Disciplinary Rules of Professional Conduct, the Commission has not alleged "Professional Misconduct." *See id*.

The Commission has failed to raise a fact question or state a claim that satisfies the requirements of the Rules. It has not pleaded a claim for which there is an exception to immunity, and it cannot defeat the plea to the jurisdiction. *See Miranda*, 133 S.W.3d at 227 ("If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend.").

III. Conclusion

I conclude that the Commission's suit complains of actions taken by the attorney general in his official capacity as a governmental unit. Because the Commission's suit is based on an executive officer's discretionary performance of the powers assigned exclusively to him, I would deny the Commission's motion to dismiss the interlocutory appeal and reverse the trial court's order. For the reasons stated, I would render judgment granting the attorney general's plea to the jurisdiction on sovereign-immunity and separation-of-powers grounds and dismissing the Commission's suit with prejudice. *See Koseoglu*, 233 S.W.3d at 846.

/Emily Miskel/
EMILY MISKEL
JUSTICE

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Tab C:
Fifth Court of Appeals Judgment

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

WARREN KENNETH PAXTON, JR., Appellant	On Appeal from the 471st Judicial District Court, Collin County, Texas Trial Court Cause No. 471-02574-2022.
No. 05-23-00128-CV V.	Opinion delivered by Justice Nowell.
COMMISSION FOR LAWYER DISCIPLINE, Appellee	Justices Miskel and Kennedy participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 18th day of April, 2024.

Tab D:
Texas Constitution art. II, § 1

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article II. The Powers of Government

Vernon's Ann.Texas Const. Art. 2, § 1

§ 1. Separation of powers of government among three departments

Currentness

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Credits
Adopted Feb. 15, 1876.

Editors' Notes

INTERPRETIVE COMMENTARY

2022 Main Volume

A fundamental principle of American constitutional jurisprudence, here expressed in Article II, is that the exercise of executive, legislative and judicial powers are to be vested in separate and independent organs of government. Montesquieu might be said to be the originator of the doctrine of separation of powers, for he set forth the principle in his book, “Spirit of the Laws” in 1748.

The fear of power concentrated in the hands of a single person or class or group has, among other things, influenced the doctrine of the separation of powers. Madison wrote in the Federalist that the accumulation of the legislative, executive and judicial powers in the same hands may be pronounced the very definition of tyranny. John Adams was of the opinion that only by balancing one of the powers against the other two that the efforts in human nature can be checked and any degree of freedom preserved.

Although the Federal Constitution does not expressly provide for the separation of powers, the Supreme Court of the United States has decided that the equivalent of a distributing clause is contained therein.

The Texas Constitution in express words provides for the separation of powers, such a provision having been incorporated in the Constitution of the Republic of Texas, 1836. The exact wording of the present section has been incorporated in all of the state constitutions.

While the lines which separate the powers of the three departments of government, *i.e.,* the legislative, the executive and the judicial, are not always clearly drawn, still, and broadly speaking, the legislative power prescribes what the law shall be in future cases arising under it, it creates the law; the executive power executes the law and discharges and fulfills the duties required by the functions of office; while the judicial power ascertains and enforces the law as created by the legislative power.

The three departments are coordinate with and independent of each other, and none can enlarge, restrict or destroy the powers of another. See Lytle v. Halff, 75 T. 128, 12 S.W. 610 (1889); Houston Tap Ry. Co. v. Randolph, 24 T. 317 (1859).

Article I is a direct prohibition of the blending of the departments. Each department acts under a delegated limited authority, and if one exceeds its authority by usurping powers not belonging to it, its acts are a nullity, not binding upon the other departments, and may be disregarded by them. See Houston Tap Ry. Co. v. Randolph, supra.

Now, despite the fact that the principle of separation of powers is accepted as binding and prohibits blending of the powers of the three departments, still the practical necessities of efficient government have prevented its complete application. The Texas Constitution itself vests in each of the three departments certain powers which, in their essential nature, have not belonged to it. Article II recognizes this when it states that "no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in instances herein expressly permitted."

Thus, the Constitution expressly permits the Supreme Court to exercise the essentially legislative power of making certain rules of procedure, and the executive power to appoint a clerk. The executive has been granted the legislative veto, and the judicial right of pardoning. The legislature has been given the judicial powers of impeachment and the right to judge of the qualifications and elections of its own members; and the Senate, the essentially executive power of participating in the appointment of officials.

Thus, it is not exactly correct to state the principle of separation of powers as absolutely prohibiting performance by one department of acts which by their essential nature belong to another. Rather, the correct statement is that a department may constitutionally exercise any power whatever its essential nature, which has, by the constitution, been delegated to it; but that it may not exercise powers not so constitutionally granted which from their essential nature do not fall within its division of governmental functions.

Notes of Decisions (966)

Vernon's Ann. Texas Const. Art. 2, § 1, TX CONST Art. 2, § 1
Current through legislation effective July 1, 2023, of the 2023 Regular Session of the 88th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

Tab E:
Texas Constitution art. IV, § 22

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article IV. Executive Department

Vernon's Ann.Texas Const. Art. 4, § 22

§ 22. Attorney General

Currentness

The Attorney General shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law.

Credits
Adopted Feb. 15, 1876. Amended Nov. 3, 1936; Nov. 2, 1954; Nov. 7, 1972; Nov. 2, 1999.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

The office of attorney general has existed in Texas since its creation during the days of the Republic. The office was filled by appointment until 1850 when the Constitution of 1845 was amended and the attorney general was required to be chosen by qualified electors. In the present constitution he is elected by the voters for a two year term. The Constitution of 1876 fixed his compensation at two thousand dollars annually. A constitutional amendment was adopted in 1936 which raised this salary to ten thousand dollars per year.

In November, 1954, this section was amended, abolishing the fixed constitutional limitation on the salary of the Attorney General and authorizing the Legislature to establish his salary. But the Legislature's power is limited by Article 3, Section 61, also adopted in November, 1954, which provides that any salary which the Legislature adopts may not be less than the $10,000 provided by the 1936 amendment.

The attorney general is the chief law officer of the state and performs two principal functions: 1. the giving of legal advice in the form of opinions to the governor, heads of departments and state institutions, committees of the legislature, and county authorities; and 2. representing the state in civil litigation.

He is especially charged with the enforcement of all laws pertaining to the regulation of private corporations. He may seek a forfeiture of their charters, and may prosecute them for a violation of state laws.

Such a duty was placed upon him by the framers because of a strong prejudice and distrust which existed at the time against corporations. Such was based to a large extent on a fear of monopolies, a fear of unfair competition, and a fear that there would be a concentration of economic power in the hands of a few. The post-Civil War activities of the railroad companies and of the oil companies in the eastern portion of the nation, re-enforced the Texas concept that corporations were an evil to be carefully watched.

Thus, whenever charters of incorporation were granted, broad, regulatory powers were reserved to the state. See Art. XII, Sec. 4, Tex.Const. In order to make certain that effective use was made of these regulatory powers, the attorney general was placed under a mandate to inspect periodically corporate activities, and to instigate actions against those which were acting beyond the scope of their charters or the laws regulating them.

The attorney general is also called to perform such other duties as may be required by law.

Notes of Decisions (117)

Vernon's Ann. Texas Const. Art. 4, § 22, TX CONST Art. 4, § 22
Current through legislation effective July 1, 2023, of the 2023 Regular Session of the 88th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

Tab F:
Texas Civil Practice & Remedies Code § 51.014

V.T.C.A., Civil Practice & Remedies Code § 51.014

§ 51.014. Appeal from Interlocutory Order

Effective: September 1, 2023
Currentness

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;

(10) grants relief sought by a motion under Section 74.351(l);

(11) denies a motion to dismiss filed under Section 90.007;

(12) denies a motion to dismiss filed under Section 27.003;

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section 75.0022;

(14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section 54.012(6) or 214.0012, Local Government Code;

(15) makes a preliminary determination on a claim under Section 74.353;

(16) overrules an objection filed under Section 148.003(d) or denies all or part of the relief sought by a motion under Section 148.003(f); or

(17) grants or denies a motion for summary judgment filed by a contractor based on Section 97.002.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

(g) If a court of appeals does not accept an appeal under Subsection (f), the court shall state in its decision the specific reason for finding that the appeal is not warranted under Subsection (d).

(h) The supreme court may review a decision by a court of appeals not to accept an appeal under Subsection (f) de novo. If the supreme court concludes that the requirements to permit an appeal under Subsection (d) are satisfied, the court may direct the court of appeals to accept the appeal.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, § 3.10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 915, § 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 855, § 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1296, § 1, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1389, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, § 1.03, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 97, § 5, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1051, §§ 1, 2, eff. June 18, 2005; Acts 2011, 82nd Leg., ch. 203 (H.B. 274), § 3.01, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 44 (H.B. 200), § 1, eff. May 16, 2013; Acts 2013, 83rd Leg., ch. 604 (S.B. 1083), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 916 (H.B. 1366), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 961 (H.B. 1874), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 4, eff. June 14, 2013; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), §§ 3.001, 3.002, eff. Sept. 1, 2015; Acts 2019, 86th Leg., ch. 1273 (H.B. 36), § 1, eff. June 14, 2019; Acts 2021, 87th Leg., ch. 167 (S.B. 232), § 1, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 528 (S.B. 6), § 1, eff. June 14, 2021; Acts 2021, 87th Leg., ch. 813 (H.B. 2086), § 1, eff. June 16,

2021; Acts 2023, 88th Leg., ch. 209 (S.B. 1603), § 1, eff. Sept. 1, 2023. Reenacted and amended by Acts 2023, 88th Leg., ch. 768 (H.B. 4595), § 4.002, eff. Sept. 1, 2023.

Notes of Decisions (1233)

O'CONNOR'S CROSS REFERENCES

See also TRAP 28, 29; TRCP 42, 168, 681; ***O'Connor's Texas Appeals***, "Considerations Before Appeal," ch. 1-B, §1 et seq.; ***O'Connor's Texas Rules***, "Special Appearance--Challenging Personal Jurisdiction," ch. 3-B, §1 et seq.; ***O'Connor's Texas Rules***, "Motion for Summary Judgment--General Rules," ch. 7-B, §1 et seq.; ***O'Connor's Texas Rules***, "Judgment," ch. 9-C, §1 et seq.

O'CONNOR'S ANNOTATIONS

Generally

City of Houston v. Swinerton Builders, Inc., 233 S.W.3d 4, 8 (Tex.App.--Houston [1st Dist.] 2007, no pet.). "Generally, an appellant may amend its petition in such a way as to render an interlocutory appeal moot, thereby depriving the appellate court of jurisdiction. *At 9:* [D] is correct that the 2003 amendment to §51.014 … differentiates this case from the general rule. … We conclude that [P's] actions before the trial court [to dismiss its quantum-meruit claim] are … without force, and do not deprive this court of jurisdiction over the present interlocutory appeal."

Kaplan v. Tiffany Dev. Corp., 69 S.W.3d 212, 217 (Tex.App.--Corpus Christi 2001, no pet.). "When a party appeals from two interlocutory orders, only one of which is made appealable by statute, the proper course is to dismiss that portion which is non-appealable, and to rule on the portion from which an appeal may be taken." *See also* ***Sanders v. City of Grapevine***, 218 S.W.3d 772, 776 (Tex.App.--Fort Worth 2007, pet. denied).

Raymond Overseas Holding, Ltd. v. Curry, 955 S.W.2d 470, 471 (Tex.App.--Fort Worth 1997, orig. proceeding). "When an interlocutory appeal is available, the 'extraordinary circumstances' dictating mandamus relief from the denial of a special appearance usually will not be present if the interlocutory appeal is an adequate remedy."

§51.014(a)(2)--Receiver

Bayoud v. North Cent., 751 S.W.2d 525, 526-27 (Tex.App.--Dallas 1988, writ denied). "[Ps'] appeal bond states that they are appealing from two orders. [T]he appeal from the appointment of receiver is interlocutory. However, complaint of the order denying the motion to terminate the receivership should be brought by regular appeal as a final order…. The correct procedure, therefore, would have been to file two appeals, one interlocutory and one from a final order. Then this Court could have consolidated the two appeals."

§51.014(a)(3)--Class Action

Phillips Pet. Co. v. Yarbrough, 405 S.W.3d 70, 77 (Tex.2013). "[A]n order that changes the class in such a way as to raise significant concerns about whether certification remains proper alters the fundamental nature of the class and is therefore appealable."

Stary v. DeBord, 967 S.W.2d 352, 352 (Tex.1998). "Courts of appeals have jurisdiction over trial courts' interlocutory orders certifying or refusing to certify a class under [TRCP] 42. [T]his grant of jurisdiction does not extend to interlocutory orders striking corporate shareholder derivative claims."

John M. O'Quinn. P.C. v. Wood, 244 S.W.3d 549, 552-53 (Tex.App.--Tyler 2007, no pet.). "An interlocutory order … that certifies or refuses to certify a class is appealable by interlocutory appeal…. However, there is no similar provision in §51.014 authorizing an interlocutory appeal of either a class certification by an arbitration panel or a decision by the trial court refusing to vacate such a certification."

In re M.M.O., 981 S.W.2d 72, 79-80 (Tex.App.--San Antonio 1998, no pet.). "[A] litigable controversy is required in order for the court to exercise subject matter jurisdiction over any case, be it a class action or not. … Thus, in reviewing the propriety of the trial court's decision to certify this class action, the first question we must address is whether a justiciable controversy exists." *See also* ***Shell Cortez Pipeline Co. v. Shores***, 127 S.W.3d 286, 292 (Tex.App.--Fort Worth 2004, no pet.) (probate-court order).

St. Louis Sw. Ry. v. Voluntary Purchasing Grps., 929 S.W.2d 25, 29 (Tex.App.--Texarkana 1996, no pet.). "[A]lthough a party can appeal from an order that certifies or refuses to certify a class, if the party does not appeal from the first version of the order, a later amended version of the order expanding the class may not be appealable, except perhaps so far as it changes the original order." *See also* ***Pierce Mortuary Colls., Inc. v. Bjerke***, 841 S.W.2d 878, 880 (Tex.App.--Dallas 1992, writ denied).

§51.014(a)(4)--Temporary Injunction

Qwest Comms. v. AT&T Corp., 24 S.W.3d 334, 336-38 (Tex.2000). Held: When an order, by its character and function, grants a temporary injunction, it is an appealable order under §51.014(a)(4), even if the order has procedural defects that render it void. *See also* ***Del Valle ISD v. Lopez***, 845 S.W.2d 808, 809-10 (Tex.1992).

Easton v. Brasch, 277 S.W.3d 558, 561 (Tex.App.--Houston [1st Dist.] 2009, no pet.). "When a portion of an order is injunctive, and another portion is not, we may review only that portion granting or denying injunctive relief and may not address the other portions." *See also* ***Clark v. Clark***, 638 S.W.3d 829, 837 (Tex.App.--Houston [14th Dist.] 2021, no pet.).

Ahmed v. Shimi Ventures, L.P., 99 S.W.3d 682, 689 (Tex.App.--Houston [1st Dist.] 2003, no pet.). "An order *modifying* a temporary injunction order is not exactly an order that 'grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction.' Nonetheless, this Court has construed §51.014(a)(4) to grant interlocutory review of an order modifying a temporary injunction, given the similarity of that order to the orders listed in §51.014(a)(4). Allowing an interlocutory appeal of such an order is especially appropriate when, as here, the modified order implicitly vacates and then replaces the original one: that situation is very much like a dissolution, followed by a granting, over both of which rulings §51.014(a)(4) expressly allows an interlocutory appeal. [¶] [W]e hold that we have jurisdiction to review an order modifying a temporary injunction by interlocutory appeal." *See also* ***Danbill Partners v. Sandoval***, 621 S.W.3d 738, 751 (Tex.App.--El Paso 2020, no pet.).

Swanson v. Community State Bank, 12 S.W.3d 163, 165 (Tex.App.--Houston [1st Dist.] 2000, no pet.). "The classification of an order as a temporary injunction is controlled by the character and the function of the order, not by its form. A trial court cannot circumvent an interlocutory appeal merely by the label it attaches to the order; it is the substance of the order that determines whether it is appealable." *See also* ***Gruss v. Gallagher***, __ S.W.3d __, 2023 WL 1975016 (Tex.App.--Houston [14th Dist.] 2023, n.p.h.) (No. 14-21-00178-CV; 2-14-23) (determination of whether trial court granted or refused temporary injunction in order is based on substance, character, and function of order, not on its form or title).

§51.014(a)(5)--Official Immunity

William Marsh Rice Univ. v. Refaey, 459 S.W.3d 590, 594-95 (Tex.2015). "We conclude that the 'officer … of the state' language in §51.014(a)(5) applies to private university peace officers. They are charged with enforcing state law on private university campuses and must take an oath of office to 'faithfully execute the duties of the office of [peace officer] of the State of Texas.' … The Legislature … provided that private university peace officers are 'vested with all the powers, privileges, and immunities of peace officers.' This includes the ability to pursue an interlocutory appeal under §51.014(a)(5). [¶] [A]n employer may rely on its employee's assertion of immunity for purposes of invoking interlocutory appellate jurisdiction under

§51.014(a)(5). Because the court of appeals should have considered the merits of [peace officer's] appeal, including whether he was entitled to official immunity, the court of appeals should have decided the merits of [private university's] appeal as well."

Austin State Hosp. v. Graham, 347 S.W.3d 298, 301 (Tex.2011). "The point of §51.014(a)(5), like §51.014[(a)](8), is to allow an interlocutory appeal from rulings on certain issues, not merely rulings in certain forms. Therefore, we hold that an appeal may be taken from orders denying an assertion of immunity, as provided in §51.014(a)(5), regardless of the procedural vehicle used." *See also* ***City of Beverly Hills v. Guevara***, 904 S.W.2d 655, 656 (Tex.1995) (same as annotation); ***Krause v. Mayes***, 652 S.W.3d 880, 885 (Tex.App.--Houston [14th Dist.] 2022, no pet.) (D could take interlocutory appeal from trial court's order denying his TRCP 91a motion to dismiss that was based on assertion of immunity under CPRC §101.106).

Klein v. Hernandez, 315 S.W.3d 1, 2 (Tex.2010). Under H&SC §312.007(a), "a resident physician at a private medical school is to be treated like a state employee for purposes of [CPRC] §51.014[(a)](5) when the underlying litigation arises from a residency program coordinated through a supported medical school at a public hospital."

City of Houston v. Kilburn, 849 S.W.2d 810, 812 (Tex.1993). "Under [CPRC §101.021(1),] a governmental entity may be held liable for the torts of its employees if … 'the employee would be personally liable to the claimant according to Texas law.' Conversely, if the employee is protected from liability under the doctrine of qualified immunity, then the governmental entity's sovereign immunity remains intact. To that extent, a claim of sovereign immunity may be 'based on' an individual's assertion of qualified immunity and therefore within the ambit of [CPRC] §51.014[(a)](5)." *See also* ***Thomas v. White***, 102 S.W.3d 318, 320 (Tex.App.--Beaumont 2003, pet. denied).

Moncada v. Brown, 202 S.W.3d 794, 797-98 (Tex.App.--San Antonio 2006, no pet.). "In this case, the trial court's order first granted the motion for new trial and then denied the motion for summary judgment. [¶] Although the trial court's order granting the new trial set aside the first order granting the motion for summary judgment, this did not prevent the trial court from rendering a new judgment. Furthermore, nothing prevented the trial court from rendering the new judgment in the same order in which it granted the new trial. [¶] [T]he order has the effect of denying the motion for summary judgment based on an assertion of immunity. Accordingly, the order is appealable under [CPRC] §51.014(a)(5). *At 799:* [W]e hold that an assertion of the absence of liability pursuant to [Gov't Code] §497.096[, which covers liability of TDCJ employees,] is an assertion of immunity for purposes of §51.014(a)(5)."

Bexar Cty. v. Giroux-Daniel, 956 S.W.2d 692, 694 (Tex.App.--San Antonio 1997, no pet.). "[I]nterlocutory appeals under §51.014[(a)](5) are not limited to assertions of state common-law official immunity."

§51.014(a)(6)--Media First Amendment

Scripps NP Oper., LLC v. Carter, 573 S.W.3d 781, 788 (Tex.2019). "[P] asserts that §51.014 does not authorize multiple interlocutory appeals by the same party in one case. He contends that the statutory language providing that '[a] person may appeal from an interlocutory order ... that denies a motion for summary judgment' does not permit an appeal from any interlocutory order that denies a second motion for summary judgment. We disagree that the statute restricts interlocutory appeals in this way. *At 789:* [A] court has jurisdiction over a subsequent appeal if the second motion is a new and distinct motion and not a mere motion to reconsider previous grounds for summary judgment. [P] asserts that [D's] second motion was a motion for rehearing because it raised the same category of issues as its first motion--First Amendment issues. We disagree that [D's] second motion was a motion to reconsider and not a distinct motion. [¶] Although the second motion raised issues related to the First Amendment, it raised new and distinct grounds for relief, which entitled [D] to further interlocutory review. [¶] [N]othing in the statutory language limits a party to only one appeal. We decline to read a limitation in the statute that the Legislature has not provided."

Dallas Symphony Ass'n v. Reyes, 571 S.W.3d 753, 755 (Tex.2019). "A divided court of appeals held that 'order' [in §51.014(a)(6)] refers only to the ruling on the constitutional grounds stated in the motion [for summary judgment]. We hold that 'order'

means the ruling on the entire motion, including nonconstitutional grounds, and that [Ds] were entitled to summary judgment on all claims against them."

Franco v. Cronfel, 311 S.W.3d 600, 609 (Tex.App.--Austin 2010, no pet.). "Texas courts have consistently recognized … that [§51.014(a)(6)] does not permit the plaintiff to bring [an] interlocutory appeal, nor does it confer jurisdiction over cross-points raised on appeal by the plaintiff."

Phillips v. Clark, 575 S.W.3d 882, 885 (Tex.App.--Dallas 2019, no pet.). "Several courts have addressed the application of §51.014(a)(6)'s media defendant requirement in this age of easy mass communication. [In ***Kaufman***, the court] set out a number of factors to be considered, including the 'circumstances relating to the character and text of the communication itself, its editorial process, its volume of dissemination, the communicator's extrinsic notoriety unconnected to the communication, [and] the communicator's compensation for or professional relationship to making the communication.' [To qualify as a member of the media,] the appellant's communications must be made in the context of professional news reporting or professional investigation and commentary on matters of public concern. *At 886:* We recognize that §51.014(a)(6) contains a second, independent basis to bring an interlocutory appeal if the appellant's communications appeared in the media. There is no suggestion in the statute, however, that the 'media' in which the appellant's communications must appear is any different than the 'media' of which the appellant must be a member. Accordingly, not every publication falls within the scope of §51.014(a)(6). For example, although the internet has been recognized as a type of 'nontraditional electronic media,' not every website will qualify as 'media' for purposes of §51.014(a)(6). ... The media in which the appellant's communications appear, therefore, must also be in the business of news reporting or professional investigation and commentary on matters of public concern." *See also* ***Service Empls. Int'l Un. Local 5 v. Professional Janitorial Serv.***, 415 S.W.3d 387, 394-95 (Tex.App.--Houston [1st Dist.] 2013, pet. denied); ***Kaufman v. Islamic Soc'y***, 291 S.W.3d 130, 142 (Tex.App.--Fort Worth 2009, pet. denied).

Grant v. Wood, 916 S.W.2d 42, 45 (Tex.App.--Houston [1st Dist.] 1995, orig. proceeding). "It is a clear abuse of discretion for a trial court to refuse to rule on a timely submitted motion for summary judgment when the trial court's express purpose in refusing to rule is to preclude the movant from perfecting [an appeal under §51.014(a)(6)]."

§51.014(a)(7)--Special Appearance

Bonsmara Nat. Beef Co. v. Hart of Tex. Cattle Feeders, LLC, 603 S.W.3d 385, 393 (Tex.2020). Section 51.014(a)(7) "provides that parties 'may appeal from' interlocutory orders on special appearances contesting personal jurisdiction. Five out of six courts of appeals to consider the issue have held that a special appearance order also may be challenged on appeal after final judgment. *At 393 n.14:* We disapprove the court of appeals' contrary holding in ***Matis v. Golden***, 228 S.W.3d 301, 305 (Tex.App.--Waco 2007, no pet.). *At 393-94:* Texas appellate courts addressing other interlocutory appeal statutes using the word 'may' agree that a party's failure to take an interlocutory appeal of an order does not bar it from challenging the order on appeal from a final judgment. In many of these cases, the parties resisting this holding invoked extra-statutory policy considerations concerning efficiency and the need for immediate resolution. [H]owever, those considerations cannot override the statutory text." *See also* ***DeWolf v. Kohler***, 452 S.W.3d 373, 383 (Tex.App.--Houston [14th Dist.] 2014, no pet.) (grant of special appearance can be appealed after final judgment); ***GJP, Inc. v. Ghosh***, 251 S.W.3d 854, 866-67 (Tex.App.--Austin 2008, no pet.) (denial of special appearance can be appealed after final judgment).

BMC Software v. Marchand, 83 S.W.3d 789, 793-94 (Tex.2002). "This Court has never clearly articulated the standard for reviewing a trial court's order denying a special appearance. The Fourth Court of Appeals has held that, because personal jurisdiction involves both legal and factual questions, appellate courts should review the trial court's decision for an abuse of discretion. However, other courts of appeals review the trial court's factual findings for legal and factual sufficiency and review the trial court's legal conclusions *de novo*. [¶] We agree with the latter view and disapprove of those cases applying an abuse of discretion standard only."

CHEK Invs. v. L.R., 260 S.W.3d 704, 707 (Tex.App.--Dallas 2008, no pet.). "[P's] suit is one 'brought under the Family Code,' and [Ds] are attempting to bring an interlocutory appeal from the denial of their special appearance 'in a suit brought under

the Family Code.' [Ds'] contention that [P] has not asserted any allegations or causes of action arising under the family code against them is immaterial. [CPRC] §51.014(a)(7) does not limit its prohibition of interlocutory special-appearance appeals to defendants 'sued under' the family code. Rather, the prohibition applies if the defendant specially appears 'in a suit brought under the Family Code.' We must honor the legislature's choice of words. Under the plain language of §51.014(a)(7), we lack appellate jurisdiction over this interlocutory appeal." *See also* ***In re Marriage of Loya***, 290 S.W.3d 920, 921 (Tex.App.--Houston [14th Dist.] 2009, no pet.).

§51.014(a)(8)--Governmental Unit's Plea to Jurisdiction

CPS Energy v. Electric Reliability Council, __ S.W.3d __, 2023 WL 4140460 (Tex.2023) (No. 22-0056; 6-23-23). "[A] private, non-governmental entity can qualify as a governmental unit [for purposes of §51.014(a)(8)], but only if (1) it is an institution, agency, or organ of government; and (2) it derives its status and authority as such from the Texas Constitution or statutes. [¶] An 'organ of government' is an entity that 'operates as part of a larger governmental system and performs a 'uniquely governmental' function. Here, ERCOT operates as part of the state's broader electricity-regulation system under [the Public Utility Regulatory Act (PURA)] and performs the uniquely governmental function of utilities regulation. [¶] Because ERCOT performs a 'uniquely governmental' function as part of a 'larger governmental system,' it is an organ of government. [¶] ERCOT also derives its 'status and authority' from statute. [A]lthough ERCOT is a private, nonprofit corporation, its 'status' as the [independent system operator] for the Texas power region and its 'authority' to act in that capacity derive directly from PURA. [¶] Because ERCOT is an 'organ of government the status and authority of which are derived from' statute, it is a 'governmental unit' entitled to take an interlocutory appeal from the denial of a plea to the jurisdiction."

Town of Shady Shores v. Swanson, 590 S.W.3d 544, 549 (Tex.2019). "[D] appealed under … §51.014(a)(8), which authorizes an interlocutory appeal from an order that grants or denies a plea to the jurisdiction. [P] argues that §51.014(a)(8) did not confer jurisdiction on the court of appeals because the appeal was taken from an order denying summary judgment on the merits. However, [D] argued in its summary judgment motions that it was immune from suit on [P's] declaratory judgment claims. And §51.014(a)(8) allows an interlocutory appeal to be taken when 'the trial court denies the governmental entity's claim of no jurisdiction, whether it has been asserted by a plea to the jurisdiction, a motion for summary judgment, or otherwise.' *At 550:* [W]e … address whether a no-evidence summary judgment motion may be used to defeat jurisdiction on the basis of governmental immunity. [W]e hold that it can. *At 552:* [W]hen jurisdiction is intertwined with the merits, the evidence supporting jurisdiction and the merits is necessarily intertwined as well. Thus, when a challenge to jurisdiction that implicates the merits is properly made and supported, whether by a plea to the jurisdiction or by a traditional or no-evidence motion for summary judgment, the plaintiff will be required to present sufficient evidence on the merits of her claims to create a genuine issue of material fact. … Accordingly, the court of appeals erred in refusing to review the trial court's denial of [D's] no-evidence motion for summary judgment challenging jurisdiction on the basis of governmental immunity."

Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc., 571 S.W.3d 738, 744 (Tex.2019). "Economic development corporations [(EDCs)] are authorized under and subject to the Development Corporation Act.... [¶] Depending mainly on the size of the authorizing municipality, [EDCs] are categorized as either Type A or Type B. *At 747-48:* [CRPC] §101.001's definition of 'governmental unit' does not include [EDCs] by name or by reference to the Development Corporation Act. Subsection (3)(D), however, broadly applies the governmental-unit label to any 'institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.' The court of appeals undertook an analysis of subsection (3)(D)'s definition as applied to [EDCs], but we find it unnecessary to do so because [the Development Corporations Act, Tex. Loc Gov't Code] §505.106(b)[,] states that '[f]or purposes of [CPRC] Ch. 101 ..., a Type B corporation is a governmental unit....' Because the Legislature expressly expanded §101.001's governmental-unit definition to include [EDCs, D, a type B EDC,] is a governmental unit for purposes of the interlocutory appeal authorized by [CPRC] §51.014(a)(8)."

University of the Incarnate Word v. Redus, 518 S.W.3d 905, 906 (Tex.2017) (***Redus I***). "The term 'governmental unit' has the same meaning [under §51.014(a)(8)] as it does in the [TTCA]. The issue we must decide is whether a private university that operates a state-authorized police department is such a 'governmental unit.' *At 909:* To be a governmental unit under the

[TTCA, private university] must (1) be an 'institution, agency, or organ of government' and (2) derive its 'status and authority' as such from 'laws passed by the Legislature.' … The question is whether [private university] is an 'institution, agency, or organ of government.' *At 910:* ***In LTTS Charter School***, we concluded that a private charter school was an 'institution, agency or organ of government' based on a legislative scheme that made private charter schools part of the Texas public-education system. Many of the same indicators of governmental-unit status present in ***LTTS Charter School*** are present here. [¶] [But u]nlike the charter school, [private university] lacks public funding, and the Legislature does not consider [private university] a governmental entity under the Government Code and Local Government Code provisions relating to property held in trust and competitive bidding. *At 911:* Nevertheless, the Legislature has authorized [private university] to enforce state and local law using the same resource municipalities and the State use to enforce law: commissioned peace officers. [Private university's] officers have the same powers, privileges, and immunities as other peace officers. Because law enforcement is uniquely governmental, the function the Legislature has authorized [private university] to perform and the way the Legislature has authorized [private university] to perform it strongly indicate that [private university] is a governmental unit as to that function. We … conclude that [private university] is a governmental unit for purposes of law enforcement and that [private university] is therefore entitled to pursue an interlocutory appeal under §51.014(a)(8)…."

LTTS Charter Sch., Inc. v. C2 Constr., Inc., 342 S.W.3d 73, 74-75 (Tex.2011). "Is an open-enrollment charter school a 'governmental unit' as defined in [CPRC] §101.001(3)(D) … and thus able to take an interlocutory appeal [under CPRC §51.014(a)(8)] from a trial court's denial of its plea to the jurisdiction? We answer yes."

Texas A&M Univ. Sys. v. Koseoglu, 233 S.W.3d 835, 846 (Tex.2007). "[W]e hold a state official may seek interlocutory appellate review from the denial of a jurisdictional plea." *See also* ***Texas Parks & Wildlife Dept. v. E.E. Lowrey Rlty., Ltd.***, 235 S.W.3d 692, 693-94 (Tex.2007).

Thomas v. Long, 207 S.W.3d 334, 339 (Tex.2006). "The court of appeals correctly observed that the record does not contain an order explicitly denying a plea to the jurisdiction. [Government employee] did not file a document titled 'plea to the jurisdiction' with the trial court. However, [government employee's] summary judgment motion clearly challenged the trial court's subject matter jurisdiction. The Legislature provided for an interlocutory appeal when a trial court denies a governmental unit's challenge to subject matter jurisdiction, irrespective of the procedural vehicle used. *At 340:* By ruling on the merits of [P's] declaratory judgment claim, the trial court necessarily denied [government employee's] challenge to the court's jurisdiction. That implicit denial satisfies §51.014(a)(8) … and gives the court of appeals jurisdiction to consider [government employee's] interlocutory appeal." *See also* ***City of Magnolia 4A Econ. Dev. Corp. v. Smedley***, 533 S.W.3d 297, 299 (Tex.2017); ***TDCJ v. Simons***, 140 S.W.3d 338, 349 (Tex.2004).

City of Brady v. Scott, 650 S.W.3d 156, 161-62 (Tex.App.--El Paso 2021, no pet.). "[S]ection 51.014(a)(8) … permits a governmental body to file an appeal from an interlocutory order of ... a county court that ... 'grants or denies a plea to the jurisdiction ...'[.] However, when a trial court subsequently renders a final judgment in favor of a plaintiff on the merits of his case, the trial court's interlocutory order denying a governmental body's plea to the jurisdiction is merged into the final judgment. In turn, this renders a governmental body's interlocutory appeal from the denial of its plea moot, as an appellate court's decision on the interlocutory appeal could have no 'practical effect' on the final judgment. Accordingly, when a trial court has already entered a final judgment, an appellate court has no jurisdiction to hear a governmental body's interlocutory appeal from an order denying its plea to the jurisdiction, and the governmental body must instead pursue an appeal from the final judgment if it wishes to challenge the order."

Office of Atty. Gen. v. Brickman, 636 S.W.3d 659, 663 n.4 (Tex.App.--Austin 2021, pet. abated 2-16-23). "The [Office of the Attorney General (OAG)] challenged jurisdiction via a [TRCP] 91a motion rather than through a plea to the jurisdiction and then took an appeal under the statute that allows for an interlocutory appeal--which are generally disallowed--from an order that 'grants or denies a plea to the jurisdiction by a governmental unit.' We agree with our sister court, which, while recognizing the 'useful analogy between a 91a motion and a plea to the jurisdiction,' observed that courts should be 'wary of turning analogy into actuality' because the two procedures have important differences. Not only is rule 91a 'designed to allow for the

dismissal of baseless claims, [while] the purpose of a plea to the jurisdiction is to defeat a cause of action without regard to whether the claims asserted have merit,' a rule 91a ruling 'must not be based on extrinsic evidence, whereas the trial court must consider extrinsic evidence if necessary to resolve a plea to the jurisdiction.' We agree that permitting 'the blending of standards for 91a motions and pleas to the jurisdiction' could allow government defendants to challenge the existence of jurisdictional facts while 'artfully avoid[ing] any responsive evidence,' 'foreclose[ing] appellants' ability to introduce evidence' while still challenging the pleadings on issues that 'may be evidence-intensive and fact-specific.' Because we look to the substance of the OAG's arguments more than the vehicle used to assert them, the appeal may proceed pursuant to [CPRC] §51.014(a)(8), but our review is limited to the pleadings, as required by rule 91a.6." *See also* ***Reaves v. City of Corpus Christi***, 518 S.W.3d 594, 605 (Tex.App.--Corpus Christi 2017, no pet.).

City of El Paso v. Collins, 440 S.W.3d 879, 883 (Tex.App.--El Paso 2013, no pet.). Governmental unit's "complaints regarding alleged deficiencies in the pleadings and lack of notice do not constitute a challenge to the trial court's subject matter jurisdiction. [Governmental unit] is permitted to appeal a trial court's denial of its plea to the jurisdiction under §51.014(a)(8) …, regardless of the basis on which it asserts a lack of jurisdiction. A governmental unit's challenge to the court's subject matter jurisdiction need not be based upon a claim of sovereign immunity for it to bring an interlocutory appeal under §51.014(a)(8). We bear in mind, however, that §51.014(a)(8) is a narrow exception to the general rule that only final judgments and orders are appealable, and for that reason, the statute must be strictly construed. [¶] Whether a party has alleged facts that affirmatively demonstrate a trial court's subject matter jurisdiction and whether undisputed evidence of jurisdictional facts establishes a trial court's jurisdiction are questions of law which we review *de novo*. In a plea to the jurisdiction, a defendant may challenge either the plaintiff's pleadings or the existence of jurisdictional facts. The [governmental unit's] plea to the jurisdiction is directed exclusively at the pleadings. Accordingly, our review is restricted to the pleadings and we will construe them liberally in favor of conferring jurisdiction."

Tirado v. City of El Paso, 361 S.W.3d 191, 196 (Tex.App.--El Paso 2012, no pet.). "Where … a defendant tenders evidence to establish that the trial court lacks subject-matter jurisdiction as a matter of law, the burden shifts to the plaintiff to demonstrate the existence of a material fact regarding the jurisdictional issue. Under this procedure, [D] cannot simply deny the existence of jurisdictional facts and force [Ps] to raise a fact issue. To prevail on its plea to the jurisdiction, [D] must demonstrate an incurable defect in the pleadings. In other words, [D] has the burden to show through its plea to the jurisdiction and attached evidence that it did not owe a duty as a matter of law and therefore the claims are barred by sovereign immunity."

Ross v. Linebarger, Goggan, Blair & Sampson, L.L.P., 333 S.W.3d 736, 742 (Tex.App.--Houston [1st Dist.] 2010, no pet.). Tax-collecting law firm, "as an agent of [county], stands as the equivalent of a state official or employee." Held: Law firm may bring an interlocutory plea to the jurisdiction.

Harris Cty. MUD v. United Somerset Corp., 274 S.W.3d 133, 138 (Tex.App.--Houston [1st Dist.] 2008, no pet.). "We hold that we have jurisdiction in this interlocutory appeal to address ripeness, even though that matter was not part of the plea to the jurisdiction before the trial court."

Baylor Coll. of Med. v. Tate, 77 S.W.3d 467, 472 (Tex.App.--Houston [1st Dist.] 2002, no pet.). "In §51.014[a](8), the Legislature intended that interlocutory appeal be available only to challenge the granting or denial of a plea to the jurisdiction by a governmental unit. Clearly, this section applies to … assertions of immunity from suit. It does not apply to assertions of immunity from liability. Hence, it is necessary to determine the nature of [the] claim."

§51.014(a)(9)--Expert Report

Columbia Valley Healthcare Sys. v. Zamarripa, 526 S.W.3d 453, 459 (Tex.2017). "'[A] motion to dismiss based on a timely but deficient [expert] report can be reviewed by interlocutory appeal.'"

Hernandez v. Ebrom, 289 S.W.3d 316, 317 (Tex.2009). "A defendant in [an HCLC] may appeal from the interlocutory order denying its objection to the plaintiff's expert report. The statutes authorizing the defendant's objection and appeal do not impose

consequences if an interlocutory appeal is not pursued. In this case, we consider whether a defendant health care provider's failure to challenge the adequacy of an expert report by interlocutory appeal precludes a challenge of the report by appeal from a final judgment when the plaintiff later nonsuits before trial. The court of appeals held it does; we hold it does not."

Badiga v. Lopez, 274 S.W.3d 681, 685 (Tex.2009). "A provider may pursue an interlocutory appeal of the denial of a motion to dismiss when no expert report has been timely served, whether or not the trial court grants an extension of time."

Central Tex. Spine Inst. v. Brinkley, 344 S.W.3d 537, 543 (Tex.App.--Austin 2011, pet. denied). "It would be … illogical to suggest that, once an extension of time to cure has been granted [under CPRC §74.351(c)], [CPRC §51.014(a)(9)] permits a defendant to appeal the sufficiency of the *original* report that has been superceded by an amended report…."

§51.014(a)(12)--Denial of Motion to Dismiss Under TCPA

In re Panchakarla, 602 S.W.3d 536, 538 (Tex.2020). See annotation under CPRC §27.005.

D Mag. Partners v. Rosenthal, 529 S.W.3d 429, 441 (Tex.2017). Held: D was entitled to an interlocutory appeal of the trial court's order partially denying D's motion to dismiss, including D's motion for attorney fees on the dismissed claims.

Schlumberger Ltd. v. Rutherford, 472 S.W.3d 881, 890 (Tex.App.--Houston [1st Dist.] 2015, no pet.). CPRC §51.014(a)(12) "expressly grants a right of interlocutory appeal from an order that denies a motion to dismiss filed under [CPRC] §27.003. It does not mention orders that grant a motion to dismiss filed under §27.003. [¶] The statute does not explicitly address the circumstance of a written 'interlocutory order' that partially denies and partially grants a motion to dismiss filed under §27.003. To the extent a party appeals from the part of such an order that denies the motion to dismiss, the statute applies and permits an interlocutory appeal. But does the authority to appeal from an interlocutory order that 'denies a motion to dismiss filed under §27.003' also permit an appeal from such an order to the extent that it also partially grants the motion to dismiss? [¶] [P's] argument assumes that the trial court's interlocutory ruling that partially granted [D's] TCPA motion to dismiss is an appealable component of one 'interlocutory order' that also 'denies a motion to dismiss filed under §27.003.' But the statute's reference to an 'interlocutory order' also could be understood as a specific interlocutory ruling, as opposed to a document containing multiple interlocutory rulings. [¶] Applying 'interlocutory order' as a reference to a specific ruling is consistent with the courts' general approach of 'strictly' applying statutory authorizations of interlocutory appeals as narrow exceptions to the general rule disallowing interlocutory appeals. *At 891:* We conclude that the denial of a motion to dismiss does not provide an avenue of interlocutory appeal to all other ancillary rulings contained within the same written 'interlocutory order.'" *See also* ***El-Saleh v. Aldirawi***, 606 S.W.3d 1, 2-3 (Tex.App.--Waco 2020, pet. denied); ***Walker v. Pegasus Eventing, LLC***, No. 05-19-00252-CV, 2020 WL 3248476 (Tex.App.--Dallas 2020, pet. denied) (memo op.; 6-17-20); ***Trane US, Inc. v. Sublett***, 501 S.W.3d 783, 786 (Tex.App.--Amarillo 2016, no pet.).

Paulsen v. Yarrell, 455 S.W.3d 192, 195 (Tex.App.--Houston [1st Dist.] 2014, no pet.). CPRC §51.014(a)(12) "reflects the legislative response to a split in authority that had developed in the courts of appeals concerning whether a right of interlocutory appeal had been created by [CPRC] §27.008. [¶] The order that [P] challenges on appeal is a denial of attorney's fees ancillary to granting a motion to dismiss filed under [CPRC] §27.003. Because §51.014(a)(12) permits an appeal only from an order that 'denies a motion to dismiss filed under §27.003,' and because we are obliged to interpret the scope of our interlocutory appellate jurisdiction narrowly, we conclude that [P's] interlocutory appeal from the denial of attorney's fees is not authorized by statute."

Supreme Court Jurisdiction

McAllen Med. Ctr. v. Cortez, 66 S.W.3d 227, 231 (Tex.2001). "When a court of appeals determines that it lacks jurisdiction over an interlocutory appeal, this Court has jurisdiction to review that decision. … But the interlocutory appeal statute does not supplant the constitutional requirement that the court of appeals have subject-matter jurisdiction, and both ripeness and standing are necessary components of that jurisdiction."

§51.014(b)--Automatic Stay

Electric Reliability Council v. Panda Power Generation Infrastructure Fund, LLC, 619 S.W.3d 628, 639 (Tex.2021). "Although the statutory stay is mandatory, parties must seek the stay and object to court actions in violation of the stay." *See also* ***Escalante v. Rowan***, 251 S.W.3d 720, 724-25 (Tex.App.--Houston [14th Dist.] 2008) (Ps did not object to trial court hearing Ds' motion for summary judgment, thus, Ps waived their complaint concerning interlocutory stay), *rev'd on other grounds*, 332 S.W.3d 365 (Tex.2011).

In re Geomet Recycling LLC, 578 S.W.3d 82, 86 (Tex.2019). "The dispute concerns whether and to what extent the court of appeals may lift the statutory stay during the appeal. *At 87:* The statute creates a clear and definite rule, and its text admits of no exceptions to that rule. The stay is of '*all* other proceedings in the trial court,' and the text dictates that the stay lasts until 'resolution of th[e] appeal,' not until the court of appeals lifts the stay. Here, the court of appeals' order lifted the stay only for a limited purpose, but the statute contains no indication that courts of appeals may authorize further trial court proceedings as long as those proceedings are 'limited.' ... The limited nature of the court of appeals' order may have reduced the extent to which the order conflicted with §51.014(b), but it conflicted nonetheless. *At 88:* [In addition,] a court may not invoke [TRAP] 29.3 to issue an order denying a party its statutory right under §51.014(b) to avoid further trial court proceedings pending resolution of the appeal, even if doing so seems necessary to protect the parties' rights."

Roccaforte v. Jefferson Cty., 341 S.W.3d 919, 923 (Tex.2011). "We agree with those decisions that have held that a party may waive complaints about a trial court's actions in violation of the stay imposed by §51.014(b). [¶] [A] court's action contrary to a statute or statutory equivalent means the action is erroneous or voidable, not that the ordinary appellate or other direct procedures to correct it may be circumvented. That is the case here. The trial court's rendition of final judgment while the stay was in effect was voidable, not void, and [P's] failure to object to the trial court's actions waived any error related to the stay." (Internal quotes omitted.) *Compare* ***San Jacinto River Auth. v. Lewis***, 629 S.W.3d 768, 774-75 (Tex. App.-Houston [14th Dist.] 2021, no pet.) (held that ***Roccaforte*** and its progeny applied to P's amended petition; thus, amended petition filed during period D was entitled to stay was voidable, not void), *and* ***In re University of Tex. MD Anderson Cancer Ctr.***, No. 01-19-00202-CV, 2019 WL 3418568 (Tex.App.--Houston [1st Dist.] 2019, orig. proceeding) (memo op.; 7-30-19) (party's amended expert report and opposing party's motion to dismiss that report, both of which were filed during the pendency of §51.014(b) stay, were voidable, not void), *with* ***Hernandez v. Sommers***, 587 S.W.3d 461, 467 (Tex.App.--El Paso 2019, pet. denied) (amended petition filed in violation of §51.014(b) stay was nullity and without force).

Evans v. C. Woods, Inc., 34 S.W.3d 581, 583 (Tex.App.--Tyler 1999, no pet.). "[W]e … hold that [CPRC] §51.014(b) does not absolve the trial court from its mandatory [TRCP] 683 duty to include within its temporary injunction order an order setting the cause for trial on the merits."

§51.014(d) & (f)

Editor's note: In 2023, the Legislature amended §51.014 in response to ***Industrial Specialists, LLC v. Blanchard Ref. Co.***, 652 S.W.3d 11 (Tex.2022) (plurality op.), in which the Texas Supreme Court held that §51.014(f) did not limit the court of appeals' discretion to reject a permissive interlocutory appeal, even when the requirements in â51.014(d) had been met, and that TRAP 47.1 only required courts to state their basic reasons for accepting or rejecting the appeal. Senate Cmte. on Jurisprudence, Bill Analysis, Tex. S.B. 1603, 88th Leg., R.S. (2023). Specifically, the Legislature added §51.014(g) to require a court of appeals to state its specific reasons for rejecting a permissive appeal under §51.014(f), and §51.014(h) was added to authorize the Texas Supreme Court to review a court of appeal's rejection of an appeal under §51.014(f) de novo. *Id*.

Elephant Ins. Co. v. Kenyon, 644 S.W.3d 137, 147 (Tex.2022). "When an appellate court--this or any other--accepts a permissive interlocutory appeal, the court should do what the Legislature has authorized and 'address the merits of the legal issues certified.' In doing so, permissive appeals are resolved according to the same principles as any other appeal, including addressing all fairly included subsidiary issues and ancillary issues pertinent to resolving the controlling legal issue. The permissive interlocutory appeal statute expressly allows an appeal from *an order* that is otherwise unappealable if '*the order to be appealed* involves

a controlling question of law' and if 'an immediate appeal from *the order* may materially advance the ultimate termination of the litigation.' While 'involve[ment]' of a controlling legal issue is essential to securing a permissive appeal, the statute plainly provides that it is the order (or, as the case may be, the relevant portion of the order) that is on appeal, and the rules of appellate procedure preclude a strict construction of issues presented on appeal. In the context of a permissive interlocutory appeal, giving the parties half a loaf is not better than giving them nothing; it is worse than nothing."

Sabre Travel Int'l v. Deutsche Lufthansa AG, 567 S.W.3d 725, 732 (Tex.2019). "Texas courts of appeals have discretion to accept or deny permissive interlocutory appeals certified under [CPRC] §51.014(d).... Here, the trial court certified an interlocutory appeal under §51.014(d), but the court of appeals exercised its discretion--as it is entitled to do--to decline acceptance of the appeal.... Under the plain language of §51.014(d) and (f), we cannot say that the court of appeals abused its discretion. *At 733-34:* No statute or rule says, nor have we ever held, that this Court lacks jurisdiction when a court of appeals declines to accept a permissive interlocutory appeal. The word 'appeal,' as used in §51.014(d), is conditioned only on the trial court permitting an appeal, and not on the court of appeals' acceptance of a party's request for permissive interlocutory review. In other words, when the trial court issues an order certifying the case for interlocutory review, it becomes an 'appeal.' Moreover, nowhere does the text of §51.014 support some sort of distinction in terminology between a pre-acceptance request for interlocutory review and a post-acceptance appeal. ... Without any indication that the Legislature intended 'appeal' to refer only to a case accepted for permissive interlocutory review, we can conclude only that [former Gov't Code] §22.225(d) authorizes this Court to review a case certified for interlocutory review under §51.014(d), regardless of whether the court of appeals accepts the appeal." *See also* ***Industrial Specialists, LLC v. Blanchard Ref. Co.***, 652 S.W.3d 11, 15-16 (Tex.2022) (plurality op.) (same as annotation); ***Gulley v. State Farm Lloyds***, 350 S.W.3d 204, 207-08 (Tex.App.--San Antonio 2011, no pet.) (CPRC §51.014(d) is not intended to relieve trial court of its role in deciding substantive legal issues).

Gulf Coast Asphalt Co. v. Lloyd, 457 S.W.3d 539, 543-45 (Tex.App.--Houston [14th Dist.] 2015, no pet.). "In its statement of permission granting an interlocutory appeal under §51.014, a trial court must identify the controlling question of law as to which there is a substantial ground for difference of opinion and must state why an immediate appeal may materially advance the ultimate termination of the litigation. [¶] There has been little development in the case law construing §51.014 regarding just what constitutes a controlling legal issue about which there is a difference of opinion and the resolution of which disposes of primary issues in the case. At least one Texas commentator suggests looking to federal cases interpreting similar language in the federal counterpart to §51.014…. [The commentator] concludes that 'a controlling question of law is one that deeply affects the ongoing process of litigation. If resolution of the question will considerably shorten the time, effort, and expense of fully litigating the case, the question is controlling. Generally, if the viability of a claim rests upon the court's determination of a question of law, the question is controlling…. Substantial grounds for disagreement exist when the question presented to the court is novel or difficult, when controlling circuit law is doubtful, when controlling circuit law is in disagreement with other courts of appeals, and when there simply is little authority upon which the district court can rely…. Generally, a district court will make [a finding that the appeal will facilitate final resolution of the case] when resolution of the legal question dramatically affects recovery in a lawsuit.'" *See also* ***Austin Commercial, L.P. v. Texas Tech Univ.***, No. 07-15-00296-CV, 2015 WL 4776521 (Tex.App.--Amarillo 2015, order) (8-11-15) (issue of contractual ambiguity is not "controlling question of law" because it does not dispose of controlling question in case).

V. T. C. A., Civil Practice & Remedies Code § 51.014, TX CIV PRAC & REM § 51.014
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

Tab G:
Texas Civil Practice & Remedies Code § 101.001

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 5. Governmental Liability
Chapter 101. Tort Claims (Refs & Annos)
Subchapter A. General Provisions

V.T.C.A., Civil Practice & Remedies Code § 101.001

§ 101.001. Definitions

Effective: June 17, 2011
Currentness

In this chapter:

(1) "Emergency service organization" means:

(A) a volunteer fire department, rescue squad, or an emergency medical services provider that is:

(i) operated by its members; and

(ii) exempt from state taxes by being listed as an exempt organization under Section 151.310 or 171.083, Tax Code; or

(B) a local emergency management or homeland security organization that is:

(i) formed and operated as a state resource in accordance with the statewide homeland security strategy developed by the governor under Section 421.002, Government Code; and

(ii) responsive to the Texas Division of Emergency Management in carrying out an all-hazards emergency management program under Section 418.112, Government Code.

(2) "Employee" means a person, including an officer or agent, who is in the paid service of a governmental unit by competent authority, but does not include an independent contractor, an agent or employee of an independent contractor, or a person who performs tasks the details of which the governmental unit does not have the legal right to control.

(3) "Governmental unit" means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority;

(C) an emergency service organization; and

(D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(4) "Motor-driven equipment" does not include:

(A) equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state; or

(B) medical equipment, such as iron lungs, located in hospitals.

(5) "Scope of employment" means the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.

(6) "State government" means an agency, board, commission, department, or office, other than a district or authority created under Article XVI, Section 59, of the Texas Constitution, that:

(A) was created by the constitution or a statute of this state; and

(B) has statewide jurisdiction.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 693, § 1, eff. June 19, 1987; Acts 1991, 72nd Leg., ch. 476, § 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 827, § 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 968, § 1, eff. Sept. 1, 1997; Acts 2011, 82nd Leg., ch. 1101 (S.B. 1560), § 1, eff. June 17, 2011.

Notes of Decisions (281)

O'CONNOR'S CROSS REFERENCES

See also ***O'Connor's Texas COA***, "Suits Against the Government," ch. 24, § 1 et seq.; *O'Connor's Texas COA,* "General Concepts," ch. 25-A, § 1 et seq.

O'CONNOR'S ANNOTATIONS

Employee

Brown & Gay Eng'g v. Olivares, 461 S.W.3d 117, 122 (Tex.2015). "[A] private company that performed allegedly negligent acts in carrying out a contract with a governmental unit seeks to invoke the same immunity that the government itself enjoys. [¶] [Private company argues] that sovereign immunity extends to private entities contracting to perform government functions, unless otherwise provided by statute. We disagree. The fact that a statute recognizes that private contractors are not entitled to sovereign immunity under certain circumstances does not imply that such entities are entitled to immunity in all other situations. *At 124:* We have never directly addressed the extension of immunity to private government contractors…. *At 126:* [Private company cites] appellate court decisions … addressing the extension of immunity to private agents of the government. [¶] Regardless of whether these cases were correctly decided, the government's right to control that led these courts to extend immunity to a private government contractor is utterly absent here. … We need not establish today whether some degree of control by the government would extend its immunity protection to a private party; we hold only that no control is determinative. *At 127:* [W]e cannot adopt [D's] contention that it is entitled to share in [governmental unit's] sovereign immunity solely because [governmental unit] was statutorily authorized to engage [D's] services and would have been immune had it performed those services itself. [Ps'] suit does not threaten allocated government funds and does not seek to hold [D] liable merely for following the government's directions. [D] is responsible for its own negligence as a cost of doing business and may (and did) insure against that risk, just as it would had it contracted with a private owner. *At 129:* We decline to extend sovereign immunity to private contractors based solely on the nature of the contractors' work when the very rationale for the doctrine provides no support for doing so." *See also* ***Nettles v. GTECH Corp.***, 606 S.W.3d 726, 733, 736-37 (Tex.2020) (as in ***Brown & Gay***, Court did not decide whether it should recognize doctrine of derivative sovereign immunity for private contractors or what standard would apply to determine scope of that immunity; in dicta, Court applied control-based immunity standard to examine extent to which governmental unit had control over private contractor's actions, stating that "where a contractor has been granted discretion to perform a task and the government approves those discretionary plans, the government has not specified the manner in which the task is to be performed"); ***Fort Worth Transp. Auth. v. Rodriguez***, 547 S.W.3d 830, 842 (Tex.2018) (Tex. Transp. Code §452.056 does not amount to legislative grant or extension of immunity to private contractors, but it does limit liability of private contractors performing function of regional authority under Tex. Transp. Code ch. 452).

Texas A&M Univ. v. Bishop, 156 S.W.3d 580, 584-85 (Tex.2005). "There are several factors to consider in determining whether or not a worker is an independent contractor: (1) The independent nature of his business; (2) his obligation to furnish necessary tools, supplies, and material to perform the job; (3) his right to control the progress of the work, except as to final results; (4) the time for which he is employed; and (5) the method of payment, whether by time or by the job." *See also* ***Harris Cty. Flood Control Dist. v. Halstead***, 650 S.W.3d 707, 717-18 (Tex.App.--Houston [14th Dist.] 2022, no pet.); ***EPGT Tex. Pipeline, L.P. v. Harris Cty. Flood Control Dist.***, 176 S.W.3d 330, 336 (Tex.App.--Houston [1st Dist.] 2004, pet. dism'd).

Murk v. Scheele, 120 S.W.3d 865, 866 (Tex.2003). "The principal question in this case is whether a physician who exercises independent judgment in treating patients can be an employee of a governmental unit within the meaning of the Act. We answer in the affirmative…." *See also* ***Harris Cty. Appr. Dist. v. Texas Workforce Comm'n***, 519 S.W.3d 113, 119-20 (Tex.2017).

Harris Cty. v. Dillard, 883 S.W.2d 166, 167 (Tex.1994). Deputy sheriff "was not in the paid service of Harris County at the time of the accident. He was a volunteer reserve deputy subject to being called into service. [Deputy] was therefore not an 'employee,' within the meaning of the [TTCA], for whose conduct Harris County was liable."

Roades v. Henderson, 645 S.W.3d 289, 293-94 (Tex.App.--Corpus Christi 2022, pet. denied). See annotation under CPRC §78.103.

Powell v. Knipp, 479 S.W.3d 394, 401 (Tex.App.--Dallas 2015, pet. denied). "Only if the governmental entity's control of its employee is negated would a borrowed employee come within the exception clause in §101.001(2). [¶] There is a presumption

that an employee remains in his general employment as long as the employee is performing the work entrusted to him by the general employer, absent evidence to the contrary."

Texas Bay Cherry Hill, L.P. v. City of Fort Worth, 257 S.W.3d 379, 399 (Tex.App.--Fort Worth 2008, no pet.). "[D], in her capacity as a City council member, was a City employee as defined by the [TTCA]."

TDFPS v. Atwood, 176 S.W.3d 522, 529 (Tex.App.--Houston [1st Dist.] 2004, pet. denied). "[F]oster parents … do not meet the definition of government employees under the Act. Unlike employees, foster parents … are not paid a salary, nor are they otherwise 'in the paid service of a governmental unit.' Instead, foster parents are only reimbursed for expenditures made on behalf of the child."

Dillard v. Austin ISD, 806 S.W.2d 589, 592 (Tex.App.--Austin 1991, writ denied). "[T]he state is generally not liable for the acts of public servants. *E.g.*, ***Lowe v. Texas Tech Univ.***, 540 S.W.2d 297, 298 (Tex.1976); ***Whitfield v. City of Paris***, … 19 S.W. 566, 567 (1892) (doctrine of respondeat superior does not apply against the state); ***City of Galveston v. Posnainsky***, 62 Tex. 118, 125 (1884)…."

Hein v. Harris Cty., 557 S.W.2d 366, 368 (Tex.App.--Houston [1st Dist.] 1977, writ ref'd n.r.e.). "The rule is that when a servant turns aside, no matter how short the time, from the prosecution of the master's work to engage in an affair wholly his own, he ceases to act for the master, and the responsibility for his actions in pursuing his own business or pleasure is upon him alone. The action of [government employee] in attempting to remove the clip from the pistol for the purpose of showing it to a friend was something wholly disconnected from his employment and not for the benefit of his employer. When he turned aside from the prosecution of his duties for the county, although for only a short time, he ceased to act for the county and the responsibility of any act done by him during that time rested upon him alone."

Governmental Unit

El Paso Educ. Initiative, Inc. v. Amex Props., LLC, 602 S.W.3d 521, 524 (Tex.2020). "Although the legislature has directed that open-enrollment charter schools have governmental immunity, we have not expressly held that they do. We hold today that open-enrollment charter schools and their charter-holders have governmental immunity from suit and liability to the same extent as public schools." *See also* ***KIPP Tex., Inc. v. Doe #1***, 649 S.W.3d 850, 854-55 (Tex. App.--Houston [1st Dist.] 2022, no pet.) (D, open-enrollment charter school, was immune from Ps' claims for assault and negligence based on sexual abuse of their children by school counselor employed by D).

University of the Incarnate Word v. Redus, 602 S.W.3d 398, 402 (Tex.2020) (***Redus II***). "[T]he legislation authorizing private university police departments [does not] reflect an intent that private universities possess sovereign immunity. *At 407:* Because the University is private, the extent to which the government exercises control over the activities the University characterizes as governmental is relevant--sovereign immunity potentially extends to the University if the complained-of conduct was not the University's 'independent action,' but rather 'action taken by the government.' *At 408:* That control is absent here. Though the University obtained State approval to form its police department, the University's governing board is in charge. That board is not accountable to the taxpayers or to public officials. Sovereign immunity 'prohibits suits against the government without the state's consent.' Because the University's police department is not accountable to the government, we conclude that the University is not an arm of the State government. *At 413:* We conclude that private universities do not operate as an arm of the State government through their police departments."

University of the Incarnate Word v. Redus, 518 S.W.3d 905, 906 (Tex.2017) (***Redus I***). See annotation under CPRC §51.014, *§51.014(a)(8)--Governmental Unit's Plea to Jurisdiction*.

LTTS Charter Sch., Inc. v. C2 Constr., Inc., 342 S.W.3d 73, 76 (Tex.2011). See annotation under CPRC §51.014, *§51.014(a)(8)--Governmental Unit's Plea to Jurisdiction*.

San Antonio ISD v. McKinney, 936 S.W.2d 279, 283 (Tex.1996). "[T]he Legislature has defined school districts as political subdivisions of the State … for purposes of sovereign immunity. … The fact that a school district enjoys sovereign immunity does not mean that it is in effect the State for purposes of the 11th Amendment."

Electric Reliability Council of Tex. v. Panda Power Generation Infrastructure Fund, LLC, 552 S.W.3d 297, 306 (Tex.App.--Dallas 2018), *pet. dism'd*, 619 S.W.3d 628 (Tex.2021). See annotation under CPRC §51.014, *§51.014(a)(8)--Governmental Unit's Plea to Jurisdiction*.

City of New Braunfels v. Carowest Land, Ltd., 578 S.W.3d 668, 675 (Tex.App.--Austin 2019, no pet.). "To qualify as a governmental unit under §101.001, [D] must be an 'organ of government,' and it also must derive its status and authority from the Constitution of Texas or from laws passed by the legislature under the constitution. ... The Court has explained that an 'organ of government' is an entity that operates as part of a larger governmental system. *At 676:* [D] argues that it should be considered an 'organ of government' essentially because [D's] actions relevant to this lawsuit have been on the City's behalf, [D] is being sued for merely following the City's directives, and [D's] position is aligned with the City. However, the delay claim at issue in this appeal is a claim that [D] had, if at all, *against* the City. In submitting the delay claim to the City and maintaining the claim even after the City opined that the claim had been released, it does not appear that [D] was carrying out the City's directives with no independent discretion. … Nor are we persuaded that the existence of statutes authorizing the City to enter into contracts with private entities satisfies §101.001's requirement that an entity's status and authority be derived from the Constitution of Texas or from laws passed by the legislature under the constitution." (Internal quotes omitted.)

Orion Real Estate v. Sarro, 559 S.W.3d 599, 603 (Tex.App.--San Antonio 2018, no pet.). "[D] is a public facility corporation that is owned and operated by [Housing Authority], which is a governmental unit. [¶] Thus, [D] is an 'institution, agency, or organ' of government whose 'status and authority' are derived from laws passed by the legislature. Accordingly, [D] is a 'governmental unit' under [§101.001(3)(D)]." *See also* ***152 Lakewest Cmty., LP v. Ameristar Apt. Servs.***, No. 05-20-00483-CV, 2021 WL 5710553 (Tex.App.--Dallas 2021, no pet.) (memo op.; 12-2-21).

San Antonio Water Sys. v. Smith, 451 S.W.3d 442, 449 (Tex.App.--San Antonio 2014, no pet.). The San Antonio Water System (SAWS) "is a municipally-owned utility. Although SAWS is not an entity independent from the City of San Antonio, management and control of the utility has been delegated by the City to the SAWS board of trustees. In exercising such management and control, the SAWS board acts as an agent of the City. *At 450-51:* SAWS argues that its status and authority are ultimately derived from the Texas Constitution because the constitution grants home-rule municipalities the full powers of state government unless restricted by the constitution or legislature and because the City passed [an ordinance] in exercise of those powers. We do not believe that is what the legislature intended by its definition of 'governmental unit' in §101.001(3)(D)…. The Texas Constitution and statutes authorize home-rule *municipalities* to own their water systems. The statutes authorize home-rule *municipalities* to encumber the system assets and create dedicated funds for operating the system, and authorize *municipalities* to place management of the system in the hands of a board of trustees. However, neither the Texas Constitution nor any statute purports to confer any status or authority on such boards or systems. Instead, the legislature has expressly provided that the proceedings of the *municipality* are to specify the powers and duties of the board of trustees and the manner of exercising those powers and duties. [¶] The actual status and authority of SAWS and its board derives exclusively from the city ordinance and the encumbrance documents. We therefore conclude that SAWS is not an agency of the City…. Therefore, SAWS is not a 'governmental unit' within the meaning of §101.001(3)…."

Teague v. City of Dallas, 344 S.W.3d 434, 438 (Tex.App.--Dallas 2011, pet. denied). "When the governmental unit is a municipality, the waiver of immunity analysis begins with the determination of whether the governmental unit was engaged in a governmental function [under CPRC §101.0215] at the time of the action giving rise to the claim. When the governmental unit is a county, however, this step of the inquiry is unnecessary because all of the functions of a county are governmental."

City of Texarkana v. City of New Boston, 141 S.W.3d 778, 783 (Tex.App.--Texarkana 2004), *pet. denied*, 228 S.W.3d 648 (Tex.2007). "[S]overeign immunity principles are to be applied horizontally between governmental entities. That is, political

subdivisions of government cannot assert immunity against the sovereign from which its immunity is derived, but can assert immunity against other governmental entities deriving their rights and privileges from the same source."

Alamo Workforce Dev. Inc. v. Vann, 21 S.W.3d 428, 433 (Tex.App.--San Antonio 2000, no pet.). "The tier-like structure of the Texas workforce boards derives directly from the State and therefore we hold they fall within the protective umbrella of sovereign immunity. We are careful not to extend the blanket of sovereign immunity to every entity which at first blush exhibits the characteristics of a governmental unity. However, [P] established through the affidavits of credible witnesses its status as a recognized workforce board under statutory authority." *See also* ***Arbor E&T, LLC v. Lower Rio Grande Valley Workforce Dev. Bd., Inc.***, 476 S.W.3d 25, 33 (Tex.App.--Corpus Christi 2013, no pet.).

University of Houston v. Elthon, 9 S.W.3d 351, 354 (Tex.App.--Houston [14th Dist.] 1999, pet. dism'd), *disapproved on other grounds*, ***Texas Dept. of Parks & Wildlife v. Miranda***, 133 S.W.3d 217 (Tex.2004). The definition of governmental unit "does not include employees or officials of governmental units."

TRST Corpus, Inc. v. Financial Ctr., Inc., 9 S.W.3d 316, 321 (Tex.App.--Houston [14th Dist.] 1999, pet. denied). "We hold that [D] is entitled to assert sovereign immunity. Its articles of incorporation show that [D] is owned and entirely controlled by the [Teacher Retirement System of Texas]. [D's] sole purpose is to hold title to a multi-million-dollar asset for the benefit of [retirement-system] members. Under these circumstances, a lawsuit that may implicate [D's] assets necessarily implicates [retirement system's] assets. Consequently, a lawsuit against [D] is also a lawsuit against [retirement system], a state agency."

Sharpe v. Memorial Hosp., 743 S.W.2d 717, 718 (Tex.App.--Houston [1st Dist.] 1987, no writ). "[W]e need not decide whether [D] is a governmental unit under [CPRC §101.001(3)(B)], because [§101.001(3)(D)] clearly includes a county hospital within the meaning of 'governmental unit.' Section [101.001(3)(D)] is a broad, 'catch-all' definition of 'governmental unit,' which includes, 'any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.' [H&SC chs. 263-265] provide for the creation and operation of county hospitals. Therefore, [D], a county hospital, is a governmental unit." *See also* ***Gracia v. Brownsville Hous.***, 105 F.3d 1053, 1056 (5th Cir.1997).

V. T. C. A., Civil Practice & Remedies Code § 101.001, TX CIV PRAC & REM § 101.001
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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