IN THE SUPREME COURT OF TEXAS

No. 19-0167

CONWAY WAAK, JR., MARLENE WAAK
D/B/A/CARMINE CHAROLAIS RANCH,
AND CARMINE CHAROLAIS RANCH, PETITIONERS,

v.

RAUL AMPARO ZUNIGA RODRIGUEZ AND ANA MARIA ORTIZ MARTINEZ,
INDIVIDUALLY AND AS PERSONAL REPRESENTATIVES AND HEIRS OF
THE ESTATE OF RAUL AMPARO ZUNIGA ORTIZ, JR.; AND
JUANA GUADALUPE MARTINEZ, AS NEXT FRIEND OF
SEBASTIAN ZUNIGA AND WENDY ZUNIGA, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

JUSTICE BLACKLOCK, joined by JUSTICE BOYD, dissenting.

As the Court reads the Farm Animal Activities Act, "any person" means only some people. "Farm animal activities" are not covered if they take place on ranches. And not just anybody who engages in a "farm animal activity" is "a person who engages in the activity." Who decides whether these limitations exist and how far they extend? Not the Legislature, which did not include any of them in the Act's text. Instead, courts will decide when the statute's words mean exactly what they say and when they mean something else. The unfortunate result is that people cannot simply read the Act—and others similarly drafted—and know what it means based on its grammar and sentence structure. They must wait to see what the courts make of it.

The Act's verbiage is at times dense, but it has a firm and definite meaning under normal rules of English grammar. "Any person, including x, y, and z" does not mean "only people who resemble x, y, and z." There is no way to get from one to the other without making our middle school English teachers recoil in horror. Yet that seems to be how the Court reads the Act. Non-exhaustive lists following words like "including" are common in statutes. These illustrative catalogues, in dependent clauses set off by commas, do not affect the core meaning of a sentence. That does not make them superfluous, and even if it did, the superfluous language cannon is not an excuse to ignore the way the Legislature constructed a sentence. The goal in statutory construction is to understand the meaning of the legislative words "according to the rules of grammar and common usage." *Brazos Elec. Power Coop., Inc. v. Tex. Comm'n on Envtl. Quality*, 576 S.W.3d 374, 384 (Tex. 2019). That primary goal should always prevail over secondary interpretive tools like avoiding superfluous verbiage.

The Act limits the liability of "any person," not particular categories of people, who are sued for injuries to a "participant in a farm animal activity," as the statute defines that phrase. TEX. CIV. PRAC. & REM. CODE § 87.003. The decedent in this case was "loading [] or unloading a farm animal belonging to another" when the accident occurred, which makes him a "participant in a farm animal activity" under the statutorily supplied definitions. *Id.* § 87.001. Thus, the Act's liability limitations apply.

If the Legislature wants the Act to have a narrower scope, it can amend the law. We should not attempt to remedy a perceived disconnect between a broadly worded statute and the narrow concerns presumed to have motivated its enactment. That is a legislative function. We should apply the words of the law exactly as written. Doing so in this case requires reversal of the court

of appeals' judgment and remand for consideration of the Act's exceptions. Because the Court does otherwise, I respectfully dissent.

* * *

Understanding a statute's meaning begins and ends with the statute's text. *BankDirect Capital Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 86 (Tex. 2017). When the Legislature defines its terms, "we are bound to apply the statutory definition in deciding the question before us." *Nelson v. Union Equity Co-op. Exch.*, 548 S.W.2d 352, 355 (Tex. 1977).

Section 87.003 of the Farm Animal Activities Act[1] states:

> [e]xcept as provided by Section 87.004, any person, including a farm animal activity sponsor, farm animal professional, livestock producer, livestock show participant, or livestock show sponsor, is not liable for property damage or damages arising from the personal injury or death of a participant in a farm animal activity or livestock show if the property damage, injury, or death results from the dangers or conditions that are an inherent risk of a farm animal activity or the showing of an animal on a competitive basis in a livestock show . . . .

TEX. CIV. PRAC. & REM. CODE § 87.003.

The Act defines "Participant" as, "with respect to a farm animal activity, a person who engages in the activity, without regard to whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free." *Id.* § 87.001(9)(A). "Engages in a farm animal activity" is defined as

> riding, handling, training, driving, loading, unloading, assisting in the medical treatment of, being a passenger on, or assisting a participant or sponsor with a farm

[1] The Court's focus on comparable acts in other states and on the original language of the Equine Act provides interesting historical context, but it does not illuminate the meaning of the *current* text of *Texas*'s Act. For that, we must look first to the words themselves. Only if ambiguity existed in the current text of the Act should we consider looking to what prior versions of it said. The statute has been amended several times since its original passage as the Equine Act, and we must presume with each amendment the Legislature chose its words carefully. *See., e.g.*, *In re Canales*, 52 S.W.3d 698, 703 (Tex. 2001); *Berry v. Powell*, 104 S.W. 1044, 1045 (Tex. 1907). All that matters here is what the latest version of the statute means in plain English.

> animal. The term includes management of a show involving farm animals. The term does not include being a spectator at a farm animal activity unless the spectator is in an unauthorized area and in immediate proximity to the farm animal activity.

Id. § 87.001(1). "Farm animal activity" means:

> (A) a farm animal show, fair, competition, performance, rodeo, event, or parade that involves any farm animal;
> (B) training or teaching activities involving a farm animal;
> (C) boarding a farm animal, including daily care;
> **(D) riding, inspecting, evaluating, handling, loading, or unloading a farm animal belonging to another, without regard to whether the owner receives monetary consideration or other thing of value for the use of the farm animal or permits a prospective purchaser of the farm animal to ride, inspect, evaluate, handle, load, or unload the farm animal;**
> (E) informal farm animal activity, including a ride, trip, or hunt that is sponsored by a farm animal activity sponsor;
> (F) placing or replacing horseshoes on an equine animal;
> (G) examining or administering medical treatment to a farm animal by a veterinarian; or
> (H) without regard to whether the participants are compensated, rodeos and single event competitions, including team roping, calf roping, and single steer roping.

Id. § 87.001(3) (emphasis added).

* * *

When the statutory text and its legislatively supplied definitions are applied to the alleged facts of Zuniga's accident, there is little question the Act's liability limitations apply. Section 87.003 provides that "any person, including a farm animal activity sponsor, farm animal professional, livestock producer, livestock show participant, or livestock show sponsor, is not liable . . . ." The sentence's operative language is "any person . . . is not liable." "[A]ny person" obviously includes the Waaks. The word "including" introduces a dependent clause that does not alter the meaning of the sentence's operative language. As always, a list following the word "including" is not an exclusive enumeration of the covered categories. *See, e.g.*, *Sneed v. Webre*, 465 S.W.3d 169, 190 (Tex. 2015); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The*

Interpretation of Legal Texts 132 (2012) ("The verb *to include* introduces examples, not an exhaustive list."). Whether or not the Waaks are any of the things mentioned in the list, they are "any person," so the statute protects them from liability, assuming its other requirements are met.

In addition, Zuniga was a "participant" under the Act, which defines "participant" as, "with respect to a farm animal activity, a person who engages in the activity." *Id.* § 87.001(9). That is the sentence's operative language. It is followed by a comma and a dependent clause: "*without regard to* whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free." *Id.* (emphasis added). In English grammar, dependent clauses may be restrictive or non-restrictive.[2] Non-restrictive clauses provide additional, nonessential information and are typically set off by commas. If a non-restrictive clause is omitted, the sentence still makes sense. *Id.* So it is with section 87.001(9). A "participant" is "a person who engages in the [farm animal] activity." Everything following the comma before "without regard to . . . ." is a non-restrictive clause that does not change the operative portion of the definition. *See id.* § 87.001(9).[3]

[2] These are also known as "defining" and "non-defining," or "essential" and "nonessential," respectively. *See Defining, The Oxford Dictionary of English Grammar* 119–20 (2d ed. 2014); Barney Latimer, *Commas: Essential and Nonessential Elements*, The Modern Language Association (Aug. 13, 2019), https://style.mla.org/commas-and-essential-elements/.

[3] The United States Supreme Court used similar grammatical analysis in *District of Columbia v. Heller*, in which it acknowledged that the Second Amendment provides an individual right to keep and bear arms. 554 U.S. 570 (2008). The Second Amendment provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II. The issue was what to make of the prefatory clause, "A well regulated Militia, being necessary to the security of a free State." The Court held that, grammatically, "apart from [a] clarifying function, a prefatory clause does not limit or expand the scope of the operative clause." *Heller*, 554 U.S. at 578. Thus, while the modifying clause of the Second Amendment announces a purpose, it does not limit the scope of the right to keep and bear arms announced by the operative clause. *Id*. at 577–78. Similarly here, the non-restrictive clause beginning with "without regard to" announces criteria that may not be considered, but it does not limit the operative clause's definition of who qualifies as a "participant."

"Without regard to" means what it says: "whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free" *cannot be considered* in determining whether a person is a "participant" for purposes of the FAAA. Properly construed, the statute's operative definition of "participant" is "a person who engages in [a farm animal] activity." The dependent clause following "without regard to" attempts to make doubly sure courts will not decide that some people who meet the definition are not "participants" (although ironically it seems to have had the opposite effect). Zuniga was a "participant" if he was "engaged in a farm animal activity." Whether he fits any of the descriptions following the words "without regard to" is irrelevant.

Thus, in determining whether section 87.003 applies, the key question is whether Zuniga was engaged in "farm animal activity" at the time of his death. The Act defines "farm animal activity" to include "riding, inspecting, evaluating, handling, loading, or unloading a farm animal belonging to another." *Id*. § 87.001(3)(D). It also defines "engages in a farm animal activity" as "riding, handling, training, driving, loading, [or] unloading . . . a farm animal." *Id.* § 87.001(1). Under either definition, "handling," "loading," or "unloading" a "farm animal" qualifies as a "farm animal activity." The plaintiffs' petition alleges Zuniga was killed by a bull "while [he] was moving cattle" belonging to the Waaks. Thus, under the facts as pleaded, Zuniga was engaged in a farm animal activity because he was "handling, loading, or unloading a farm animal belonging to another" when the accident occurred. There is no genuine dispute he was doing so.

The Act's text does not exclude any category of people who handle, load, or unload farm animals. Contrary to the Court's holding, the Act contains no exception for ranch work. When a statute's text is this clear, courts should not use interpretive aides or rules of construction to conjure

up the possibility that unspoken exceptions lurk beneath clearly written, broadly phrased text. There is no doubt about what "handling, loading, or unloading a farm animal" means. When the statute says it applies to "a person" who does so, it does not also need to specifically say it covers "an employee" who does so. Employees are persons. Nor does it need to specifically say it applies on ranches, which are in the very business of "handling, loading, or unloading a farm animal."

The Legislature's chosen words have only one meaning, and we have no license to look behind those words for hidden exceptions.[4] Our job is simply to read the words and apply them. I agree with the Court that the context in which words appear can sometimes contribute to understanding their meaning. *TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011). But context does not change text. Even when looking to context, the task is still to understand the meaning of the words chosen by the Legislature. We may look to context to better understand what the statute's words mean, but we may not use context to make the words mean something they do not say. Consideration of context is not license to import caveats and restrictions that are not supported by the common, ordinary meaning of the text itself.

The Court cites the superfluous language canon to support its conclusion that "any person" does not include the Waaks. "Any person," is followed by the word "including" and a lengthy illustrative list. The Court reasons that if "any person" really meant "any person," the list would serve no purpose, a result which must be avoided. But the superfluous language canon "cannot

[4] When the Legislature wishes to limit definitions of this kind, it has done so. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE §§ 75A.001–.002. That statute, which is similar in form and substance to the FAAA, limits liability for agritourism activities. *See id.* § 75A.002. However, unlike the FAAA, it defines "Agritourism participant" as "an individual, *other than an employee of an agritourism entity*, who engages in an agritourism activity." *See id.* § 75A.001 (emphasis added). The FAAA's definition of "participant" contains no such carve-out for employees. *See id.* § 87.001(9).

always be dispositive because . . . [s]ometimes drafters do repeat themselves and do include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." Scalia & Garner, *supra*, at 176–77 (emphasis omitted). Moreover, the illustrative list following "any person" is not superfluous. Concerned (not without reason) that courts may not stick strictly to the text, the Legislature often makes doubly sure its meaning is understood by providing non-exhaustive explanatory lists within statutes. This "lamentably common belt-and-suspenders approach" is not a license for courts to depart from a sentence's objective grammatical meaning in a bid to avoid surplusage. There may be hundreds of such statutory lists in Texas's code books. If we must depart from normal rules of grammar to give these dependent clauses more work to do, many statutes may unexpectedly require reexamination.

The Court invokes the statutory "context" of the many recreational activities listed in the definition of "farm animal activity" to conclude that "handling, loading, or unloading a farm animal" is only covered if it happens at a recreational activity. But there is no reason to question the common meaning of "handling, loading, or unloading a farm animal" or to resort to contextual analysis to impose limitations the text does not support. True, much of the conduct covered under the definition of "farm animal activity" occurs only at livestock shows or recreational events, not on ranches. But not all of it does. As the court of appeals acknowledged, "farm animal activity" is "defined to include a broad number of activities." 562 S.W.3d at 577. Indeed, much of the conduct covered under the definitions of "engages in a farm animal activity" and "farm animal activity" is precisely the kind of thing ranch employees do: "riding, inspecting, [and] evaluating" farm animals; "placing or replacing horseshoes"; and "examining or administering medical

treatment to a farm animal." *See* TEX. CIV. PRAC. & REM. CODE § 87.001(3). The Act's text covers these everyday animal husbandry activities without regard to where they take place or whether they have anything to do with a livestock show or recreational event. Similarly, the Act applies in the same way to "handling, loading, or unloading a farm animal belonging to another," whether on ranches or anywhere else. *See id.*

It would have been very easy to write a statute that applies only at recreational livestock events, a statute that only covers horseshoeing, veterinary treatment, and loading or unloading animals at such events, not on ranches. There are several places in the Act's overlapping maze of definitions where such a limitation could have been imposed. It was not. Only by focusing on what most of the Act's examples and illustrations seem concerned with, while discounting the Act's broadly worded operative language, is the Court able to impose limitations on the Act's scope that do not appear in its text. The main problem with this approach is that the Act's broadly worded operative language is *in the Act*. Words limiting the Act's scope to recreational livestock events are *not in the Act*.

Finally, the Court's focus on the "context" of the statutory language, as opposed to its objective grammatical meaning, risks bleeding over into the fraught realm of purposive statutory interpretation. Courts should not stray from the language of the statute in pursuit of achieving the result judges imagine to be consistent with legislative "purpose." Focusing on presumed legislative purpose instead of statutory text presents well-known problems. It can lead to results that are unpredictable and easily manipulated. Scalia & Garner, *supra*, at 18–19.[5] It can ignore

[5] "Five judges are no more likely to agree than five philosophers upon the philosophy behind an Act of Parliament, and five different judges are likely to have five different ideas about the right escape route from the prison of the text." Scalia & Garner, *supra*, at 19 (quoting Patrick Devlin, *The Judge* 16 (1979)).

the reality that statutes may incorporate multiple purposes and compromises reached by a legislature composed of many people. *See id.* at 21. Most troubling, when a court strays from text and instead endeavors "to produce sensible, desirable results, since that is surely what the legislature must have intended," courts risk replacing legislative policy choices with their own. *Id.* at 22, 57.

Again, if the Legislature had wished to write a statute that only covered "farm animal activities" at recreational events and not at ranches, it could easily have done so. Instead, it wrote a much broader statute that protects "any person" against lawsuits by "a person" who "engages" in the activities.[6] When the statute is applied as written, it covers this case. Courts should not second-guess that result or plumb the depths of the statute's "context" for unwritten exceptions to the text's plain meaning. If a majority of the Legislature thinks the text it enacted is unduly broad, it can change the law.

* * *

[6] The court of appeals relied on legislative history to reach a conclusion similar to the Court's. 562 S.W.3d at 579. The Court correctly avoids that mistake. "Any imagined gains from rummaging around in legislative minutiae, particularly absent any textual ambiguity, are more than dwarfed by multiple realities." *In re Reece*, 341 S.W.3d 360, 397–98 (Tex. 2011) (Willett, J., concurring). One such reality is that legislative history is easily manipulable. If people think courts will consider legislative history when applying statutes, opportunistic legislators and interest groups will put all kinds of things into the legislative record. Bill summaries like the one relied upon by the court of appeals are typically written by legislative staff. Even if the bill author himself wrote the summary, it takes only one legislator to state a bill's intent as he sees it (or, perhaps, as he wishes courts to see it). Making law, on the other hand, requires majorities of the elected representatives in both houses and the governor. This practical reality—that legislative history is easily manipulated by individual legislators and interest groups—points to a much deeper reason courts should not consult legislative history when interpreting statutes. "The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators." *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring). Legislative history reflects the unilateral view of one legislator, not the collective view of the body empowered by the constitution to make laws. "The Legislature does not speak through individuals . . . it speaks through its enactments." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 447 (Tex. 2009) (Hecht, J., concurring). The text of those enactments is the law, and our role extends no further than applying it as written.

The Court expresses concern that if the Act covers this case, farm hands like Zuniga will unfairly lose the benefit of Texas's workers' compensation laws. The Court even goes so far as to suggest the Texas Constitution might prohibit the Act from applying to ranch hands. In my view, the Court overstates the impact the Act has on the normal employee-employer relationship. The Act modestly limits the litigation rights of some injured employees. It by no means cuts them off altogether. This is a legislative choice similar to that contained in many other Texas statutes. It is not a constitutional matter.

To begin with, applying the Act to this case does not mean the Waaks necessarily walk. The majority suggests that if the Act applies, the courthouse doors are barred. That is not the case. At the trial court, the Waaks moved for partial summary judgment concerning the applicability of section 87.003, acknowledging that "the parties will still need to try the Act's potential exceptions to the limitations of liability as set forth in Texas Civil Practice and Remedies Code Section 87.004(2) and (4)." Those exceptions apply when the defendant "did not make a reasonable and prudent effort to determine the ability of the participant to engage safely in the farm animal activity or . . . manage the farm animal," *id.* § 87.004(2), or committed "an act or omission with wilful or wanton disregard for the safety of the participant and that act or omission caused the injury." *Id.* § 87.004(4). The first exception—for failing to ensure the activity can be done safely—could certainly apply in Zuniga's case and in many others like it. In the context of employee accidents, the Act's preservation of employer liability for failing to reasonably ensure the employee could do his job safely leaves many—perhaps most—negligence claims viable.

There is nothing remarkable, unusual, or constitutionally suspect about a non-subscribing employer asserting statutory defenses in a case brought by an injured employee under section 406.033 of the Labor Code. In such a case, "it is not a defense that:

> (1) the employee was guilty of contributory negligence;
> (2) the employee assumed the risk of injury or death; or
> (3) the injury or death was caused by the negligence of a fellow employee."

TEX. LAB. CODE § 406.033(a). Assuming those rules apply to this case, the Waaks cannot raise these common-law defenses. But the Labor Code does not say the Waaks cannot assert the defense provided by section 87.004 of the Farm Animals Activity Act or any other statutory defense. Just as defendants in such cases can assert statutes of limitation, they can also assert any statutory defenses that do not conflict with the Labor Code's liability rules. In addition to statutes of limitation, the code books are replete with defenses that might be raised by non-subscribing employers in lawsuits over work-related accidents.[7] To the extent some fear the availability of these defenses "undermines" the workers' compensation laws, their beef is with the Legislature, which enacted these generally applicable limitations on liability without making employee vs. employer suits exempt from them.

Here, the plaintiffs might very well have been able to demonstrate that section 87.004's exceptions apply. But even if the FAAA ultimately protected the Waaks from all liability in this

[7] *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 16.008(a) (limiting the time by which a person must bring a suit against an architect, engineer, interior designer, or landscape architect for injuries related to his work); *id.* § 72.001 (limiting liability for motor vehicle owners for injuries to passengers); *id.* § 75.006 (limiting liability for landowners for injuries to others due to actions by first responders); *id.* § 84.006 (limiting money damages against nonhospital charitable organizations for injuries to others for which they are responsible); *id.* § 100A.002 (limiting liability for space flight entities for injuries to space flight participants).

case, that result is within the prerogative of the Legislature, which does not violate the Constitution by limiting litigation over the unpredictable and uncontrollable behavior of livestock.[8]

* * *

We should stick strictly to the statutory text, even when the result is unexpected or seems unfair. Because Zuniga was a "participant" engaged in a "farm animal activity" at the time of the accident, the Farm Animal Activities Act's liability limitations apply. I would reverse the judgment of the court of appeals and remand the case to the trial court for consideration of the statutory exceptions in section 87.004. I respectfully dissent.

James D. Blacklock
Justice

OPINION DELIVERED: June 12, 2020

[8] Both common law and statute provide numerous limitations on liability for the unpredictable behavior of livestock. *See, e.g.*, *Pruski v. Garcia*, 594 S.W.3d 322, 328 (Tex. 2020) (holding that a statutory limitation of liability applied against a rancher whose bull escaped its fenced pasture and was hit by vehicle in the road); *Marshall v. Ranne*, 511 S.W.2d 255, 258, (Tex. 1974) (noting that the common law did not impose liability on a person for injury caused by his domestic animal unless the animal was abnormally dangerous and the person had reason to know it); *Tex. Cent. Ry. v. Pruitt*, 109 S.W. 925, 927 (Tex. 1908) (noting the statutory limitation of liability for railroad companies who build and maintain adequate fencing to keep out livestock); *Gulf, C. & S. F. Ry. v. Trawick*, 4 S.W. 567, 569 (Tex. 1887) (noting that the common law did not impose liability against common carriers for injury to livestock that results from the animal's "vicious propensities or inherent character").