



## **Case Summaries January 21, 2022**

### **Opinions**

#### **JURISDICTION**

##### **Subject-Matter Jurisdiction**

**Preston v. M1 Support Servs., LP, \_\_ S.W.3d \_\_ (Tex. January 21, 2022) [20-0270].**

At issue in this case is whether the families of three deceased Navy servicemembers and an injured servicemember may sue a private Navy contractor for negligently maintaining a helicopter that crashed during a training exercise, or if their claims are barred by the political question doctrine.

The Navy hired M1 Support Services to perform maintenance on a fleet of Navy aircraft. After the maintenance had been completed, five Navy servicemembers took one of the maintained helicopters out for a training exercise. During the exercise, the helicopter caught fire and crashed into the ocean, killing three passengers and injuring two. The survivors of the deceased and one injured passenger sued M1 under the Death on the High Seas Act and maritime law. M1 filed a plea to the jurisdiction, arguing that review of this case would require judicial second-guessing of military decisions constitutionally committed to the Executive and Legislative Branches. The trial court granted M1's plea to the jurisdiction, and the court of appeals affirmed. The Supreme Court reversed.

The Court held that the Navy did not exercise plenary control over M1's maintenance activities such that M1's actions could be considered Navy actions. Further, the evidence that M1 adduced in its plea to the jurisdiction that would connect any negligence on the Navy's part to the cause of the crash raises questions that are capable of ordinary judicial management. While issues that implicate sensitive military decision-making are insulated from judicial review, the claims here did not implicate such sensitive matters. The Court held that the political question doctrine did not remove the case from the jurisdiction of the state courts.

The Court reversed the court of appeals' judgment and remanded the case to the trial court for further proceedings.

## Grants

### ADMINISTRATIVE LAW

#### Enforcement

#### ***Whole Woman's Health v. Jackson, certified question accepted, — Tex. Sup. Ct. J. — (January 21, 2022) [22-0033]***

At issue in this case is whether certain government entities are authorized to enforce the Texas Heartbeat Act.

Whole Woman's Health and the other plaintiffs are abortion providers who sought pre-enforcement review of Senate Bill 8 in federal court based on the allegation that SB8 violates the Federal Constitution. They sought an injunction barring several defendants from taking any action to enforce the statute: a state-court judge, a state court clerk, the Attorney General, the executive director of the Texas Medical Board; the executive director of the Texas Board of Nursing, the executive director of the Texas Board of Pharmacy, the executive commissioner of the Texas Health and Human Services Commission, and one private individual.

The public-official defendants moved to dismiss the complaint citing, among other things, the doctrine of sovereign immunity. The private individual also moved to dismiss, claiming that the petitioners lacked standing to sue him. The trial court denied these motions. The public-official defendants filed an interlocutory appeal with the Fifth Circuit under the collateral order doctrine, which allows immediate appellate review of an order denying sovereign immunity. The Fifth Circuit decided to entertain a second interlocutory appeal filed by the individual given the overlap in issues between his appeal and the appeal filed by the public-official defendants. The Fifth Circuit denied the petitioners' request for an injunction barring the law's enforcement pending resolution of the merits of the defendants' appeals, and instead issued an order staying proceedings in the trial court until that time.

The plaintiffs then filed a request for injunctive relief with the Supreme Court, seeking emergency resolution of their application ahead of SB8's approaching effective date. The Supreme Court affirmed the district court in part and reversed in part. It reversed as to the state-court judge, the state-court clerk, the Attorney General, and the private individual. It affirmed the denial of the Texas licensing officials' motion to dismiss.

On remand to the Fifth Circuit, the Texas licensing officials moved for certification of the novel issues of state law and for a briefing schedule regarding the

two issues that Texas raised on appeal but the Supreme Court passed on deciding—challenge to section 4 of SB8 on attorney fees and Article III standing to sue the licensing officials. The plaintiffs opposed the motions, arguing that the Supreme Court’s opinion foreclosed both of these possibilities and that the Fifth Circuit’s only remaining job was to remand to the district court without further action. The Fifth Circuit certified the following question to this Court: Whether Texas law authorizes the Attorney General, Texas Medical Board, the Texas Board of Nursing, the Texas Board of Pharmacy, or the Texas Health and Human Services Commission, directly or indirectly, to take disciplinary or adverse action of any sort against individuals or entities that violate the Texas Heartbeat Act, given the enforcement authority granted by various provisions of the Texas Occupations Code, the Texas Administrative Code, and the Texas Health and Safety Code and given the restrictions on public enforcement in sections 171.005, 171.207 and 171.208(a) of the Texas Health and Safety Code.

The Court accepted the certified question. Oral argument as not yet been set.

## **GOVERNMENTAL IMMUNITY**

### **Standing**

***Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives, granted on notation of probable jurisdiction over direct appeal, — Tex. Sup. Ct. J. — (January 21, 2022) [22-0008]***

This direct appeal arises from two suits challenging the constitutionality of the Legislature’s recent reapportionment of the State’s senatorial and representative districts based on the 2020 census. The suits were transferred to and consolidated before a special three-judge district court under Chapter 22A of the Government. In the direct appeal, the State parties challenge the special trial court’s interlocutory order on their pleas to the jurisdiction.

In November 2021, the Mexican American Legislative Caucus, Texas House of Representatives (MALC) sued the Governor and the Secretary of State in Travis County district court to challenge the constitutionality of HB1, which reapportioned Texas’s representative districts. MALC alleges that HB1 is unconstitutional because it violates Article III, section 26 of the Texas Constitution—the “county line rule”—by splitting the Cameron County line twice, extending in two different directions into two different contiguous counties to form two distinct state representative districts. MALC seeks declaratory and injunctive relief.

In a separate case filed the same month, two state senators, a registered voter, and the Tejano Democrats (collectively, the Gutierrez plaintiffs) sued the State of Texas in Travis County district court to challenge the validity of both HB1 and SB4—

SB4 reapportioned the Texas senatorial districts. The Gutierrez plaintiffs allege that (1) HB1 and SB4 are invalid because they were enacted during a special session of the Legislature rather than during “the first regular session” after the publication of the census or, if not then, by the Legislative Redistricting Board, as required by the Texas Constitution and (2) HB1 violates the county line rule and dilutes the legislative representation of Cameron County.

Both cases were transferred to and consolidated before a special three-judge district court under Chapter 22A of the Government Code. The State filed pleas to the jurisdiction against the plaintiffs and their claims. As to MALC, the State argued (1) that the special trial court lacks jurisdiction over MALC’s claims because its purported ultra vires claims against the Governor and the Secretary of State are based on allegations that these two government officials were acting consistently with an unconstitutional statute and (2) that MALC has not established associational standing or organizational. The trial court granted the State’s motion on those grounds.

As to the Gutierrez plaintiffs, the State argued that the special trial court lacks subject-matter jurisdiction over these plaintiffs because the claims are not traceable to or redressable by the State of Texas and they cannot overcome sovereign immunity. The State also argued that the Gutierrez plaintiffs lack standing because (1) one of the state senators and the voter do not claim to be injured and the other state senator’s alleged injury is not traceable to the new map and an injunction would not redress that alleged harm, and (2) the Tejano Democrats have not plausibly alleged associational or organizational standing. The trial court denied the plea in part and granted it in part as to the claims for injunctive relief.

The State filed a direct appeal in the Supreme Court. The Court may hear a direct appeal from an order of from a special three-judge district court. Accordingly, the Court noted probable jurisdiction to address the merits of the appeal and ordered briefing. Oral argument is set for March 23, 2022.