

# Supreme Court of Texas

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No. 23-0468

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Texas Right to Life and John Seago,

*Petitioners,*

v.

Allison Van Stean; Planned Parenthood of Greater Texas  
Surgical Health; Planned Parenthood South Texas Surgical  
Center; Planned Parenthood Center for Choice; Bhavik Kumar,  
M.D.; North Texas Equal Access Fund; Lilith Fund for  
Reproductive Equity, Inc.; The Afiya Center; Fund Texas Choice;  
West Fund; Frontera Fund; Clinic Access Support Network; The  
Bridge Collective; Monica Faulkner; Michelle Tuegel; Ghazaleh  
Moayedi, D.O.; and Jane Doe,

*Respondents*

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On Petition for Review from the  
Court of Appeals for the Third District of Texas

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## PER CURIAM

Although the underlying litigation involves the hotly disputed issue of abortion, the trial court correctly observed that, at least at this stage, the “case is not about abortion; it is about civil procedure.” More specifically, it is about subject-matter jurisdiction, which is always an antecedent requirement before a court may address the merits. In this

case, Texas Right to Life challenged the plaintiffs’ standing—and thus the trial court’s subject-matter jurisdiction—in both a plea to the jurisdiction and a motion to dismiss under the Texas Citizens Participation Act. An order resolving a TCPA motion constitutes a ruling on the merits. Any jurisdictional objections must therefore be addressed first, regardless of the form or label of the pleading in which such objections were raised, or whether they were raised by a party or by the court itself, or even whether they were raised before the trial court at all rather than for the first time on appeal. For that reason, it does not matter that the denial of the plea to the jurisdiction was not itself appealable. What matters is that the court of appeals could reach the merits of the TCPA motion only if the trial court had subject-matter jurisdiction over the case in the first place. Because the court of appeals failed to address standing, we grant the petition for review, reverse the court of appeals’ judgment, and remand to that court for further proceedings.

## I

In 2021, the Legislature enacted Senate Bill 8, also known as the Texas Heartbeat Act (the “Act”). The Act provides that “a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child . . . or failed to perform a test to detect a fetal heartbeat.” TEX. HEALTH & SAFETY CODE § 171.204(a). No one may aid or abet such an abortion, either. *See id.* § 171.208(a)(2). Unlike many laws, the Act may be enforced only through private civil actions, not through actions by government officials. *Id.* §§ 171.207(a), .208(a). A successful plaintiff can receive injunctive relief,

statutory damages, costs, and attorney’s fees. *Id.* § 171.208(b).

Allison Van Stean and the other plaintiffs in this case allege that defendants Texas Right to Life and John Seago (collectively, TRTL) have organized efforts to sue those who may be, or may be perceived to be, violating the Act. The plaintiffs filed more than a dozen separate suits challenging the Act’s constitutionality and sought injunctions preventing TRTL from seeking to enforce the law against them. On TRTL’s motion, the cases were transferred to a multidistrict litigation court, which we call “the trial court.” *See* TEX. R. JUD. ADMIN. 13.3, 13.5.

TRTL filed a plea to the jurisdiction and a motion to dismiss under the TCPA. Both motions challenged the plaintiffs’ standing to bring their claims. The trial court denied both motions, thus asserting subject-matter jurisdiction over the case and holding that it should proceed. The TCPA authorizes an interlocutory appeal to review the denial of a motion to dismiss, and TRTL appealed. While the appeal was pending, the U.S. Supreme Court decided *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), in which it overruled *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

Despite TRTL’s contention both at the trial court and on appeal that the plaintiffs lacked standing, the court of appeals did not address that question. The court instead affirmed the trial court’s order on the ground that the TCPA does not apply to the plaintiffs’ claims. \_\_\_ S.W.3d \_\_\_, 2023 WL 3687408, at \*7 (Tex. App.—Austin May 26, 2023). TRTL petitioned for review.

## II

The court of appeals erred by failing to address standing.

### A

“Standing is a prerequisite to subject-matter jurisdiction, and subject-matter jurisdiction is essential to a court’s power to decide a case.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000). “The standing requirement derives from the Texas Constitution’s provision for separation of powers among the branches of government, which denies the judiciary authority to decide issues in the abstract, and from the [Constitution’s] open courts provision, which provides court access only to a ‘person for an injury done him.’” *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 484 (Tex. 2018) (quoting TEX. CONST. art. I, § 13). Because standing is a jurisdictional requirement, the lack of standing may be raised by the court or parties at any time. *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445-46 (Tex. 1993). Indeed, it would “violate constitutional principles” for “appellate courts to address the merits of cases without regard to whether the courts have jurisdiction.” *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012). That is why “[t]he fundamental rule is that the court may not reach the merits if it finds a single valid basis to defeat jurisdiction.” *Rattray v. City of Brownsville*, 662 S.W.3d 860, 868 (Tex. 2023). “As a corollary, the court may not move to the merits if even one jurisdictional argument remains unresolved.” *Id.* at 869.

Addressing the merits of the TCPA motion to dismiss without addressing subject-matter jurisdiction violated these principles. Resolving a dispute before resolving a jurisdictional challenge risks the rendition

of an unconstitutional advisory opinion. *See Tex. Ass'n of Bus.*, 852 S.W.2d at 444. Going beyond the judicial role, in turn, implicates the independence of the judiciary, which depends on its resolving only genuine disputes that are properly justiciable. Any erosion of that principle makes it easier to prematurely drag the judiciary into highly contentious and politicized debates that, unless and until they ripen into concrete disputes fit for judicial resolution, remain only within the domain of the other branches of government. The underlying subject matter of this case illustrates the point. But the requirement that courts must have subject-matter jurisdiction before proceeding to the merits applies in every case, ranging from the most banal to the most controversial.

The court of appeals was on notice that the plaintiffs' standing was in question, and it should have assured itself of subject-matter jurisdiction before proceeding. Three circumstances particular to this case may have led that court to think that the well-established rule of addressing jurisdiction before the merits did not apply here, but none absolved the court of its responsibility to decide whether the plaintiffs had standing to sue before addressing the substantive merits question of whether their lawsuit was one that implicates the TCPA.

First, the court of appeals may have believed that it was following its own precedent. In *de la Torre v. de la Torre*, the Third Court of Appeals treated "standing" as a "fundamental component of a prima facie case" under the TCPA. 613 S.W.3d 307, 312 (Tex. App.—Austin 2020, no pet.). Whether the plaintiff has made out a prima facie case is an inquiry that is subsequent to whether the TCPA applies at all. *See McLane*

*Champions, LLC v. Hous. Baseball Partners LLC*, 671 S.W.3d 907, 914 (Tex. 2023) (describing the “multi-step analysis” of TCPA motions to dismiss). The court in *de la Torre* therefore analyzed “standing” after determining that the TCPA applied to the plaintiff’s claims. 613 S.W.3d at 312.

That court’s use of the term “standing,” however, did not refer to standing in the constitutional sense. While *de la Torre* was pending, we decided *Pike v. Texas EMC Management, LLC*, in which we clarified the distinction between “standing in the true constitutional sense of that term” and “statutory or prudential considerations that ‘do[] not implicate subject-matter jurisdiction’ but determine whether a plaintiff ‘falls within the class of [persons] . . . authorized to sue’ or otherwise has ‘a valid . . . cause of action.’” 610 S.W.3d 763, 773-74 (Tex. 2020) (alterations in original) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 & n.4 (2014)). We have likewise acknowledged that “[s]ome of our older opinions use standing as a short-hand reference for a plaintiff’s ability to fulfill some statutory prerequisite to bringing suit or recovering on a claim.” *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 439 (Tex. 2023). “The phrasing is regrettable,” however, because it “has tangled the line demarcating issues that truly implicate a trial court’s subject-matter jurisdiction from those pertaining to the merits.” *Id.* at 439-40. The distinction is critical because standing, as that term is properly used, implicates subject-matter jurisdiction, while other issues sometimes referred to as standing, including whether a cause of action exists or whether a given plaintiff has the right to bring such a cause of action, pertain to the merits and generate judgments on

the merits. “The integrity of that line is fundamental to the working of the civil justice system because a court without subject-matter jurisdiction cannot decide the case at all.” *Id.* at 440.

In *de la Torre*, the court of appeals concluded that the TCPA respondent could not bring an action under Section 261.107 of the Family Code because that provision does not create a private right of action. 613 S.W.3d at 312-13. Assuming the accuracy of that holding—a question on which we offer no view—it would not indicate that the party lacked constitutional standing. Whether the party had a cause of action under the statute was instead a merits question. *See Molina Healthcare*, 659 S.W.3d at 440. Thus, it was *because* the court of appeals in *de la Torre* used “standing” in its merits sense that it could properly analyze the cause-of-action issue when determining whether the TCPA non-movant had established clear and specific evidence of the elements of his claim.

But here, TRTL has challenged the plaintiffs’ “standing in the true constitutional sense of that term.” *Pike*, 610 S.W.3d at 773. TRTL specifically invokes the traditional elements of standing and argues that the plaintiffs have not shown that their injuries are traceable to TRTL or likely to be redressed by their requested relief. The decision in *de la Torre* is thus inapposite.

Second, and perhaps also influenced by *de la Torre*, TRTL urged the court of appeals to analyze standing through the lens of the TCPA. TRTL presented standing as an element of the plaintiffs’ claims and argued that they needed to produce “‘clear and specific evidence’ of standing” to survive the TCPA motion to dismiss. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c). If that framing had been correct, then the court

of appeals' order of operations would have made sense. Because the court held that the TCPA did not apply to the plaintiffs' claims, 2023 WL 3687408, at \*4-7, it felt no need to move to the next step in the TCPA analysis and consider whether the plaintiffs established each element of their claims by clear and specific evidence.

TRTL's framing puts the cart before the horse. It delays a consideration of standing until the second step of a TCPA analysis and would then subject the standing analysis to the stringent requirements applicable to the elements of a cause of action. To even reach that step, however, a court must already have decided that the TCPA movant met its burden to show that "the TCPA applies to the legal action against it," *McLane Champions*, 671 S.W.3d at 914—a merits determination.

Perhaps the term "merits," like "jurisdiction," "is a word of many, too many, meanings." *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 305 (Tex. 2010) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90 (1998)). For example, we have referred to the "merits" of a plea to the jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). We meant, of course, whether the law required the court to grant rather than deny the plea. Other "merits" questions are likewise distinct from the ultimate merits question of whether the plaintiff's claims justify rendition of judgment for the plaintiff. Whether to certify a class action involves merits questions concerning the applicability of Texas Rule of Civil Procedure 42, not whether the claims are well-founded; whether the statute of limitations applies is a merits question, even though the reason to invoke limitations is to avoid consideration of the merits of the plaintiff's claim. The applicability of



the TCPA is a “merits” determination in the same way. Deciding any such issue would be an impermissible advisory opinion in the absence of subject-matter jurisdiction.

By contrast, “[c]ourts always have jurisdiction to determine their own jurisdiction,” *Hous. Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 158 (Tex. 2007), so it is never advisory for a court to resolve an issue that disposes of a jurisdictional objection. Any issue *not* necessary to a jurisdictional determination, therefore, goes only to the merits. A court may reach such a merits issue only after assuring itself of its subject-matter jurisdiction.

This Court’s cases have already recognized the TCPA’s applicability to a non-movant’s claims as a merits question. For that reason, as we recently explained, the TCPA does not authorize inverting the normal requirements of establishing jurisdiction first: “Because standing is a threshold jurisdictional issue that is essential to a court’s power to decide a case, we address that issue *before turning to the substance of the TCPA motion.*” *McLane Champions*, 671 S.W.3d at 912 (emphasis added) (quotation marks omitted). The court of appeals should have done the same here, no matter how the parties framed the issue. And because standing is a constitutional requirement independent of any particular cause of action or procedural vehicle, the court should have analyzed standing in the ordinary way, without putting a thumb on the scales.

Third, the court of appeals may have failed to address standing because TRTL could not appeal the trial court’s denial of its plea to the jurisdiction. The court of appeals stated that “this interlocutory appeal concerns only the [trial] court’s ruling on the TCPA motion to dismiss.”

2023 WL 3687408, at \*3. And it cited Section 51.014 of the Civil Practice and Remedies Code, which allows an interlocutory appeal from the denial of a TCPA motion to dismiss but not from the denial of a plea to the jurisdiction filed by a non-governmental party. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(12). We have explained, however, that because standing is a prerequisite to subject-matter jurisdiction, the absence of standing “may be raised by a plea to the jurisdiction, *as well as by other procedural vehicles.*” *Blue*, 34 S.W.3d at 554 (emphasis added) (footnote omitted). “If an appeal on the merits is properly pending before an appellate court . . . , that court needs no separate procedural vehicle (like an appealable denial of a plea to the jurisdiction) before it can and must first discharge its duty to ensure its own jurisdiction.” *Dickson v. Am. Gen. Life Ins. Co.*, 698 S.W.3d 234, 235 (Tex. 2024) (Young, J., concurring in denial of petition for review). What matters is not the title of a pleading but rather its jurisdictional nature. *See, e.g., Oscar Renda Contracting, Inc. v. Bruce*, 689 S.W.3d 305, 311 (Tex. 2024) (noting that “our Court has consistently held that we examine the substance of a motion or pleading rather than requiring the formality of a title”); *Thomas v. Long*, 207 S.W.3d 334, 339 (Tex. 2006) (treating a summary-judgment motion as a plea to the jurisdiction for purposes of appellate jurisdiction).

TRTL quickly and properly raised its jurisdictional objections in the trial court, but it would not make a difference if doubts about standing—or anything else with jurisdictional significance—had not been raised until after the interlocutory appeal was perfected. True, it is more than preferable that any jurisdictional issue first be presented to the trial court, and as soon as possible. Counsel’s duty to the court

includes “rais[ing] alleged defects in subject-matter jurisdiction when they first become apparent, not merely when doing so becomes strategically expedient.” *I.L. v. Alabama*, 739 F.3d 1273, 1284 n.6 (11th Cir. 2014); *see also, e.g., Richardson v. Koch Law Firm, P.C.*, 768 F.3d 732, 734 (7th Cir. 2014) (noting that counsel “had an ethical duty to alert the court” to a development that “affects subject-matter jurisdiction”). But “[s]ubject-matter jurisdiction cannot be waived, and can be raised at any time.” *Alfonso v. Skadden*, 251 S.W.3d 52, 55 (Tex. 2008).

It follows that jurisdiction must be addressed in a properly filed interlocutory appeal, regardless of the order appealed. *See Rusk State Hosp.*, 392 S.W.3d at 95. Thus, the fact that TRTL could formally appeal only the order denying its TCPA motion was no bar to the court of appeals’ determining whether the plaintiffs had standing. To the contrary, because standing was cast in doubt, the court could render no decision on the merits of the interlocutory appeal until it confirmed the plaintiffs’ standing.

## B

As this Court’s cases have already made clear, a pending TCPA motion does not create jurisdiction when there is no jurisdiction to entertain the underlying case. We made this point in *McLane Champions*, 671 S.W.3d at 913 (first determining standing and then “turn[ing] to the applicability of the TCPA”), but it was even more clearly the holding in *Diocese of Lubbock v. Guerrero*, 624 S.W.3d 563 (Tex. 2021).

There, a Catholic deacon sued the Diocese after it included his name “on a list of clergy credibly accused of sexual abuse.” *Id.* at 564. The Diocese filed a plea to the jurisdiction arguing that the ecclesiastical-abstention doctrine barred the deacon’s claims and also filed a TCPA

motion to dismiss. *Id.* After the trial court denied both, “[t]he Diocese appealed the order denying the motion to dismiss and sought mandamus relief from the order denying its jurisdictional plea.” *Id.* In an original proceeding, we held that the ecclesiastical-abstention doctrine applied, conditionally granted the Diocese’s petition for writ of mandamus, vacated the trial court’s order denying the plea, and directed the trial court to dismiss the case for want of jurisdiction. *In re Diocese of Lubbock*, 624 S.W.3d 506, 519 (Tex. 2021). In the companion appeal, we explained that, “[i]nasmuch as the trial court lacks jurisdiction to proceed in the underlying litigation, the collateral matters under the TCPA asserted in this interlocutory appeal are moot.” *Guerrero*, 624 S.W.3d at 564. We reiterated that “[i]f the trial court lacks subject matter jurisdiction, the appellate court can make no order other than reversing the judgment of the court below and dismissing the cause.” *Id.* (quoting *City of Garland v. Louton*, 691 S.W.2d 603, 605 (Tex. 1985)). Accordingly, we vacated the trial court’s order denying the TCPA motion and dismissed the case. *Id.*

To be sure, we have held that a claim for TCPA fees and sanctions can “breathe[] life” into an otherwise-moot appeal. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 8 (Tex. 2018). That happens, however, only “if the party prevailed *before* the substantive claim became moot.” *Id.* at 7 (emphasis added). In *Harper*, the movant prevailed, and *then* the claim became moot, so this Court proceeded to consider the TCPA’s applicability. *Id.* at 8.

Here, by contrast, TRTL never prevailed on its motion, either in the trial court or the court of appeals. More importantly, if TRTL is correct that the plaintiffs *never* had standing, then TRTL never *could*

have prevailed on its TCPA motion—at no time did any court have subject-matter jurisdiction to reach any merits question or to declare TRTL a prevailing party as to such a question. *Cf. id.* at 7-8 (noting that “if the party did not prevail before the substantive claim became moot, the party’s claim for attorney’s fees is also moot because the party can never prevail and thus can never be entitled to attorney’s fees”).

Central to this principle is the important distinction between standing and mootness. A case in which no plaintiff ever had standing is a case in which a court *never* had subject-matter jurisdiction, so dismissal was always the only permissible outcome. By contrast, a case that becomes moot is one in which the trial court *did* have subject-matter jurisdiction at the outset, which means that the court could properly entertain a TCPA motion and address other merits issues. For that reason, the subsequent mootness of the underlying claim would not destroy entitlement to rights that had properly attached under the TCPA at a point in which the trial court had jurisdiction to reach merits issues.

We are mindful that, at first glance, this rule may sometimes appear unfair to the TCPA movant. After all, a prevailing movant is entitled to costs and attorney’s fees and may receive sanctions “sufficient to deter the party who brought the legal action from bringing similar actions” in the future. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). Some of the most egregious lawsuits aimed at chilling speech and participation in government may be brought by those without standing to bring them. Denying fees and sanctions under the TCPA in this circumstance may seem strange.

Several circumstances, however, mitigate this concern without

requiring a court that lacks subject-matter jurisdiction to opine on merits issues. For one thing, immediate dismissal for lack of jurisdiction does advance one key TCPA goal—“to expedite the dismissal of claims brought to intimidate or to silence a defendant’s exercise of these First Amendment rights.” *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 898 (Tex. 2017). In addition, if a plaintiff who lacks standing brings a truly frivolous or vexatious suit, the court is empowered to impose sanctions wholly apart from the TCPA. *See* TEX. R. CIV. P. 13; TEX. CIV. PRAC. & REM. CODE § 11.054 (permitting a court to find a plaintiff to be a vexatious litigant). These and other tools allow courts to respond to abuses of the judicial process but do not depend on the result of the merits questions underlying a plaintiff’s suit or a defendant’s TCPA motion.

Thus, the court of appeals should apply *Guerrero* on remand. If the plaintiffs lack standing, the court should not address the TCPA motion at all. Instead, it should vacate the trial court’s orders and dismiss the case without any remand to the trial court. If the court concludes that the case is justiciable—because the plaintiffs had standing and because there is no other jurisdictional defect—it should do what it prematurely did last time: address the merits of the motion to dismiss, beginning with the applicability of the TCPA to the plaintiffs’ claims. *See McLane Champions*, 671 S.W.3d at 913.

### III

Accordingly, without hearing oral argument, we grant the petition for review, reverse the court of appeals’ judgment, and remand the case to the court of appeals for further proceedings. *See* TEX. R. APP. P. 59.1.

**OPINION DELIVERED:** November 22, 2024