



## Case Summaries October 7, 2022

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### OPINIONS

#### GOVERNMENTAL IMMUNITY

##### Ultra Vires Claims

*Henry v. Sullivan*, — S.W.3d —, 2022 WL — (October 7, 2022) (per curiam) [21-0032]

The primary issue in this case was whether a county commissioners court has authority to decide whether a statutory probate court judge receives a supplemental salary for serving as the local administrative statutory probate court judge.

Kimberly Sullivan serves as judge of the Galveston County statutory probate court and the county's local administrative statutory probate court judge. Sullivan submitted annual budgets for her court's operations to the commissioners court, each of which included a \$5,000 supplemental salary for her services as the local administrative statutory probate court judge. The commissioners court approved county budgets containing the supplemental salary for some years but struck that amount in other years.

Sullivan filed this suit against the commissioners, challenging both their authority and their decision to strike the supplemental salary. Sullivan argued that the commissioners have no authority over funds in the county's "contributions fund," and must approve the expenditures she proposes from that fund, so long as those expenditures are "for court-related purposes for the support of the statutory probate courts." The trial court found in Sullivan's favor, concluding that the commissioners' failure "to follow Judge Sullivan's direction to pay" her the \$5,000 supplemental salary was "ultra vires and beyond their granted authority" and thus "arbitrary and capricious." The court of appeals affirmed.

The Supreme Court reversed in a per curiam opinion. The Court held that the county's contributions fund exists as part of the county treasury, and the law grants the commissioners court the authority and discretion to decide whether and how to spend those funds, subject only to the limitation that they may be spent only for "court-related purposes for the support of the statutory probate courts." As a result, the commissioners could not have acted ultra vires by declining to spend the funds on Sullivan's proposed salary supplements. And although it did issue a conclusion of law that the commissioners' decision "was arbitrary and capricious," its final judgment based that conclusion only on its conclusion that the commissioners had no "authority" over payments made from the contributions fund.