



## Case Summaries March 17, 2023

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### OPINIONS

#### FEDERAL LAW

Regulatory Interpretation

*Wal-Mart Stores, Inc. v. Xerox State & Loc. Sols., Inc.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. March 17, 2023) [[20-0980](#)]

The central issue in this tort and breach-of-contract case is whether a federal regulation, which authorizes retailers to store electronic transactions when the cardholder verification system is unavailable and later forward them “at the retailer’s own choice and liability,” insulated a state agency contractor from liability for retailers’ losses in connection with an outage of the contractor’s verification system.

The federally funded, state-administered Supplemental Nutrition Assistance Program (SNAP) provides nutritional financial support for low-income individuals and families. Wal-Mart accepts SNAP benefits for qualifying food items, and Xerox contracts with state agencies to provide retailers like Wal-Mart with electronic verification of SNAP purchases. On a busy Saturday, Xerox’s verification system went offline for around 10 hours due to a power failure while Xerox performed unannounced maintenance at its data center. During the outage, Wal-Mart continued to allow customers to make purchases but held the electronic transactions in abeyance for later submission and reimbursement, as authorized by the federal regulation. When Xerox’s system came back online, and the stored transactions were forwarded, Wal-Mart was ultimately denied reimbursement for nearly 90,000 transactions worth around \$4 million.

All parties agreed that the federal regulation precluded Wal-Mart from seeking reimbursement from SNAP beneficiaries or the government. But Wal-Mart sought to hold Xerox liable for its losses under tort theories and as a third-party beneficiary under Xerox’s agreements with state agencies. Xerox moved for summary judgment, arguing that the federal regulation insulated it from liability for Wal-Mart’s losses and submitting contractual excerpts disclaiming third-party beneficiaries from its contracts with state agencies. The trial court rendered a take-nothing judgment against Wal-Mart, and the court of appeals affirmed.

The Supreme Court, after examining the text, structure, history, and purpose of the federal regulation allowing retailers to store and forward transactions at their “own choice and liability,” concluded that the regulation did not insulate Xerox, as the state contractor, from liability. Accordingly, the Court reversed the summary judgment on

the tort claims and remanded those claims to the court of appeals to consider alternative grounds for affirmance. But the Court affirmed summary judgment on the breach-of-contract claim, holding that the relevant disclaimer provisions were sufficient to shift the burden to Wal-Mart to produce evidence of its third-party-beneficiary status and the contract provisions Wal-Mart identified in response failed to raise a fact issue on its status.

## **ELECTIONS**

### **Injunctive Relief**

*In re Morris*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Mar. 17, 2023) [[23-0111](#)]

The issue in this case is whether a voter is entitled to pre-election relief to delay an election on a proposed city charter amendment, divide the proposed amendment into single subjects, and amend the wording of the ballot language describing the amendment.

Advocacy organizations drafted a proposed amendment to the San Antonio City Charter. The proposed amendment purports to, among other things, prohibit local enforcement of state laws related to marijuana possession, theft offenses, and abortion. The City Clerk certified that the proposed amendment met the requirements to appear on the ballot. The City Council ordered it placed on the ballot for the May election, but the abstention of three councilmembers caused the order to take effect fewer than the required seventy-eight days before the election.

A prospective voter sought relief in an original proceeding in the Supreme Court. The voter argued that (1) the election was untimely ordered and should be reset for the November election, (2) the proposed amendment violates a state law requiring such amendments to contain only a single subject, and (3) the ballot language misleads voters as to which city officials would be barred from enforcing abortion laws.

The Court denied the petition for writ of mandamus, continuing the Court's jurisprudence of judicial noninterference with elections. The Court observed that the City Council had dual ministerial duties to order the election at least seventy-eight days ahead of the election date and to set the charter amendment on the earliest lawful uniform election date. The Court declined to supersede the City Council's decision, noting the absence of any particularized harm and the availability of post-election remedies for election irregularities. The Court declined to order the City Council to divide the proposed amendment into single subjects because the City Council lacks authority to redraft the citizen-initiated amendment, and the alleged violation of the single-subject rule may be determined in an election contest. Finally, the Court held that the voter lacked standing to challenge the ballot language before the election because she had not identified an injury distinct from that to the general public.

Justice Young issued a dissenting opinion, joined by Justice Devine and Justice Blacklock. The dissent would have granted partial relief to move the election to November. The dissent concluded that the seventy-eight-day deadline for ordering the election is express and unambiguous, and that the proper relief is to direct the City Council to hold the election at the correct time.