Supreme Court of Texas

No. 24-0772

Comprehensive Training Center, LLC and
ERI Funding Group, Inc.,

Petitioners,

v.

Edcouch-Elsa Independent School District,

Respondent

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

JUSTICE HAWKINS, concurring.

This could have been a simpler case. School districts are immune from suit unless the plaintiff alleges breach of a "properly executed" contract. *See* TEX. LOC. GOV'T CODE §§ 271.151(2), .152(A). Determining whether these contracts are "properly executed" requires analysis of no more than two publicly available and undisputed documents. First is the Board Policy, which requires purchases greater than $25,000 to be approved by the board. Second are the contracts themselves—contingency arrangements with variable payments and no stated ceiling on liability. An unbounded commitment is not a commitment under

$25,000. And everyone agrees that no board approval occurred. The contracts therefore are not "properly executed." This case could have been dismissed swiftly at the outset, on the face of the petition, with minimal expense and burden.

Regrettably, that is not how things played out. Shortly after commencement of the suit, the parties set out to build evidentiary records through discovery designed to elucidate the circumstances surrounding the contracts' formation. The District evidently thought that "proper execution" posed a question of fact, and to that end, the parties subpoenaed witnesses, conducted depositions, elicited affidavits, and burdened their plea-to-the-jurisdiction papers with extensive exhibits. The parties argued about budgeting categories, decisionmakers' intent, and various stakeholders' subjective views on likely outcomes. The court of appeals in turn reached its decision relying largely on the superintendent's deposition testimony regarding whether the contingent-fee contract was a "budgeted" purchase permitted by law and by district policy. 732 S.W.3d 927, 930 (Tex. App.—Corpus Christi–Edinburg 2024). All of this happened in the name of assessing the threshold jurisdictional question of the District's immunity—that is, whether the trial court had the power to entertain this lawsuit in the first place.

Why did the litigants pursue this unnecessarily complicated (and surely expensive) path through jurisdictional discovery? My guess is that a substantial share of the blame lies with our Court's decision in *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), and its progeny. *Miranda*, we recounted recently, "divided pleas

to the jurisdiction into two broad categories." *City of Austin v. Powell*, 704 S.W.3d 437, 447 (Tex. 2024). The first category attacks the pleadings: no factual allegations are disputed, and "evidence is irrelevant." *Id.* When confronted with such a challenge, the plaintiff must offer "legal argument showing the court that, as a matter of law, its allegations demonstrate an immunity waiver despite the government's contrary arguments." *Id.* The trial court then either dismisses the petition for lack of jurisdiction or proceeds to the merits.

Miranda's second category—the one the parties pursued here—challenges "the existence of jurisdictional facts" and requires the trial court to "consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised." 133 S.W.3d at 227. We have likened this attack to "a traditional motion for summary judgment" in that "the plaintiff must produce enough evidence to raise a genuine issue of material fact to survive the plea." *Powell*, 704 S.W.3d at 448. A factual attack on jurisdiction kicks off an evidentiary burden-shifting regime. *See id.* (citing *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012)). And that in turn leads parties to pursue discovery—depositions, affidavits, interrogatories, document productions, and the like—all to assess whether the trial court has any power over these parties and this dispute.

I find this second *Miranda* category, and its regime of "jurisdictional discovery," conceptually problematic. Its premise is that a court may command parties to participate in discovery before that court has determined that it has the power to adjudicate the dispute. That premise finds some support in the venerable refrain that "[c]ourts

always have jurisdiction to determine their own jurisdiction." *In re C.S.*, 740 S.W.3d 448, 450 (Tex. 2026); *see also Paxton v. City of Austin*, 741 S.W.3d 109, 113 (Tex. 2026) ("A court 'must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed.'" (quoting *Miranda*, 133 S.W.3d at 226)). But *determine* and *command* are distinct judicial acts, and it is far from obvious to me the extent to which a court may conscript parties and strangers into producing testimony in service of a power the court may never have possessed in the first place. Put another way, there may be a defensible tradition of some *limited* factual investigation to assess jurisdiction, but our recent experience proves that the power to assess power is all too often treated as functionally unbounded.

Worse still, what starts out as "jurisdictional discovery" often cuts deep into the merits. *See generally Tex. S. Univ. v. Young*, 682 S.W.3d 886, 888-89 (Tex. 2023) (Young, J., concurring in denial of petition for review). This is especially problematic where, as here, the jurisdictional question is bound up with governmental immunity. The entire point of immunity from suit—as distinct from immunity from liability—is that the government and its officials should not bear the burdens of litigation until jurisdiction is secure. *Id.* at 887. Jurisdictional discovery inflicts precisely those burdens as the price of establishing that they need never have been borne. When the discovery succeeds in defeating the plea, the cost may seem justified in hindsight; when it fails, the protection has been irrevocably lost on a case the court had no power to hear. I worry our judiciary has strayed from *Miranda*'s parchment admonishment to

limit jurisdictional discovery tightly to "*relevant* evidence submitted by the parties *when necessary* to resolve the jurisdictional issues raised." 133 S.W.3d at 227 (emphases added).

I do not see how fact-intensive jurisdictional discovery was "necessary" here. *Id.* As the Court explains, the plea to the jurisdiction turns on whether a contract is "properly executed." To my mind, that invites a simple two-step inquiry:

Step one: Gather three publicly available and undisputed documents: (1) the operative petition; (2) the contract(s); and (3) the governmental entity's publicly adopted policy. No other evidence is relevant, and no jurisdictional discovery is necessary.

Step two: Assess whether those materials on their face establish as a matter of law that the signatory lacked authority. Does the signatory hold the proper office? If not, then the contract is unauthorized, and the plea should be granted. If so, then ask whether the contract commits the entity beyond a limit stated in the public documents. If it does, the plea should be granted. Everything else—ratification history, subjective understandings, who expected what, the idiosyncrasies of any entity's budgeting practices, the consultants' past performance, and so on—all get tabled. They will be confronted at the merits stage if necessary.

Applying that rubric here leads me to the same place the Court ends up: no jurisdiction. The contracts have no stated cap on liability. And the Board Policy forgoes Board approval only for contracts below $25,000. The contracts are therefore unauthorized. It does not matter

what anyone subjectively expected, or what successes the grant applications yielded. No one's deposition or affidavit is necessary.

This illustrates that *Miranda*'s so-called factual jurisdictional attack should be a last recourse, not a first impulse. *Miranda*'s first category, a pleading-based attack, should be the norm, departed from only in unusual circumstances. Any contrary approach risks trial courts ordering parties to participate in a process over which the court has no power.

Kyle D. Hawkins
Justice

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