Motion Granted; Order filed June 19, 2025.

In The

Fifteenth Court of Appeals

NO. 15-25-00093-CV

STATE OF TEXAS, Appellant

V.

CITY OF SAN ANTONIO, RON NIREMBERG, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF SAN ANTONIO, AND ERIK WALSH, IN HIS OFFICIAL CAPACITY AS CITY MANAGER OF THE CITY OF SAN ANTONIO, Appellees

On Appeal from the 407th Judicial District Court
Bexar County, Texas
Trial Court Cause No. 2025CI07833

ORDER

The State of Texas has filed a motion for temporary relief pertaining to its appeal from the trial court's order dismissing the State's lawsuit seeking to enjoin planned expenditures as unconstitutional under the Texas Constitution's Gift Clause.

The San Antonio City Council passed an ordinance authorizing expedited

procurement for the City's Reproductive Justice Health Care Fund to fund what the Council calls "downstream reproductive and sexual healthcare services." It is undisputed that these services may include out-of-state travel for abortions. The State sued the City of San Antonio; Ron Nirenberg, in his official capacity as Mayor of San Antonio; and Erik Walsh, in his official capacity as City Manager of San Antonio (collectively, the City Defendants), seeking a declaration that the City Defendants' anticipated downstream expenditures violate the Texas Constitution's Gift Clause. *See* Tex. Const. art. III, § 52(a). The State further sought an injunction prohibiting the City from using $100,000 in newly allocated taxpayer funds to support out-of-state travel for abortion services.

The City Defendants challenged the trial court's jurisdiction, contending that the State's suit is unripe because the City merely passed an ordinance authorizing a procurement process to review proposals for City contracts with downstream service providers. The existing ordinance does not authorize the City to enter into contracts or disburse funds. According to the City Defendants, a future ordinance would be required to officially select and fund contract recipients, but the recipient selection process is already underway. The trial court granted the City Defendants' plea and dismissed the State's suit.

After filing its notice of appeal from that order, the State filed a motion for temporary relief asking this court to enjoin the City Defendants from making payments from the new $100,000 allocation during the pendency of this appeal on the basis that such payments would violate the Gift Clause, and the State would suffer irreparable injury from such payments. The City opposes the motion and filed a response arguing that the State is not entitled to injunctive relief pending appeal because the case is not ripe. We grant the State's motion for temporary relief.

I.

The facts of the case are undisputed. The City of San Antonio's Reproductive Justice Fund (the Fund) provides financial resources for reproductive and sexual healthcare services. The City does not furnish these services directly; instead, it disburses money from the Fund to non-governmental organizations for them to use. Organizations apply for Fund money by submitting proposals explaining how they will spend it. The City then enters into contracts with recipient organizations and distributes funds to them.

In 2024, the City distributed approximately $500,000 from the Fund to organizations to provide San Antonio residents with "doula training, high school education on sexually transmitted infections (STIs), STI testing, contraception . . . , workshops on healthy pregnancies and sexual and reproductive health, and wraparound prenatal care services including doula, acupuncture[,] and mental health services." For the 2024 round of funding, none of the recipient organizations proposed to spend the money on "abortion transportation or navigation." The City finalized the 2024 funding agreements with those recipient organizations on November 21, 2024.

This case concerns the events that happened next. The day after the 2024 funding agreements were finalized, City Council members sent a memo to the Community Health Committee (CHC) expressing interest in providing "downstream services that were not met through the already awarded $500,000." CHC responded by forwarding the request to City Council to consider "an additional $100,000 to fund downstream services," which could include "travel out of State." On March 20, 2025, the City held a meeting with the ten organizations that had previously applied for the 2024 funding to "gauge interest" in the proposal. The next day, the City sent the organizations a form querying whether they would "have interest in pursuing a

new funding opportunity specific to downstream services," highlighting the option of out-of-state travel for abortions. The form also specifically asked the organizations whether they "would have interest in pursuing an additional funding opportunity specific to out of State travel" for abortions. Nine organizations expressed interest in the additional funding. Of those, three "indicated interest in an additional funding opportunity limited to out-of-state travel for abortion-related care"—that is, not including any other downstream services. A fourth conditioned its interest in providing out-of-state abortion travel "if the City were to provide legal protection for the organization."

The San Antonio Metropolitan Health District (Metro Health) then asked the City Council to "authorize an expedited procurement to support downstream reproductive and sexual healthcare services, which could include out-of-state travel." On April 3, 2025, Metro Health gave a presentation to the City Council, highlighting the four specific organizations that had expressed interest in "an additional funding opportunity limited to out-of-state travel for abortion-related care." That same day, the City Council passed the ordinance creating an expedited procurement process for organizations to seek funding for downstream services and allotting $100,000 for those services. The ordinance specifically highlights the option for out-of-state travel to obtain abortions. Applications were due in mid-May, 30 days after passage of the ordinance, and the City anticipates completing the evaluation and scoring process around "mid-June." The City plans to decide through a public vote whether to provide funds identified through the evaluation and scoring process, and the City anticipates that payments could commence this summer. Any vote would require 72-hour public notice.

The State filed the underlying suit alleging the City's ordinance violated the Gift Clause of the Texas Constitution and seeking declaratory and injunctive relief.

The City filed a plea to the jurisdiction in which it alleged the State's claims were not ripe because no funds have yet been distributed. The trial court granted the City's plea to the jurisdiction and dismissed the State's claim. The State appealed the trial court's dismissal and filed a motion for temporary relief asking this Court to enjoin the City from releasing any of the additional $100,000 during the pendency of this appeal.

II.

We are presented with a motion for temporary relief while the State's appeal from the trial court's dismissal order is pending.

"There are several ways to either suspend the execution of a trial court judgment or order, or enjoin other actions by litigants, while a matter remains pending before the court of appeals." *In re Alamo Defs. Descendants Ass'n,* 619 S.W.3d 363, 366 (Tex. App.—El Paso 2021, no pet.). When an order is on interlocutory appeal, this Court "may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal" unless "the appellant's rights would be adequately protected by supersedeas[.]" *See* Tex. R. App. P. 29.3. If the trial court has rendered a final judgment on the merits, and a party seeks to suspend the execution of that judgment pending appeal, that party must follow the supersedeas rules set out in Rule 24 of the Texas Rules of Appellate Procedure. *In re Alamo Defs. Descendants Ass'n,* 619 S.W.3d at 366.

These are not the only tools, however. "[A]n appellate court is fully armed with authority in a direct appeal to protect its own jurisdiction and the subject matter of the appeal." *In re Sheshtawy*, 154 S.W.3d 114, 120 (Tex. 2004) (emphasis omitted). Indeed, "[i]t is well settled that an appellate court is authorized to protect its jurisdiction by preserving the subject matter of the appeal in order to make its decrees effective." *In re Teague*, No. 2-06-033-CV, 2006 WL 302123, at *2 (Tex.

App.—Fort Worth Feb. 6, 2006, no pet.) (mem. op.) (citations omitted); *In re Alamo Defs. Descendants Ass'n*, 619 S.W.3d at 367. Although the primary question to be answered in the State's appeal is whether the trial court erred in granting the City Defendants' plea to the jurisdiction, the issue we must decide in determining whether to grant temporary relief is whether the disbursement of funds would interfere with this Court's jurisdiction over the subject matter of the appeal by rendering this Court's resolution of the appeal moot.

The Texas Supreme Court recently addressed a request for injunctive temporary relief through the lens of original proceedings and Texas Rule of Appellate Procedure 52.10. *See In re State*, 711 S.W.3d 641, 644 (Tex. 2024). Recognizing that a stay pending appeal of a litigant's action, as opposed to a stay of the trial court's order, is "a kind of injunction," the Court applied traditional considerations governing injunctive relief. *Id*. at 645. While not foreclosing consideration of other matters, the Court determined whether injunctive relief was warranted by considering (1) the likely merits of the parties' positions; (2) whether the party seeking relief demonstrated that it will suffer irreparable harm if relief is not granted; and (3) the harm other parties or the public will experience if temporary relief is granted as well as any potential injury to non-parties caused by granting or denying relief. *Id*. The temporary relief the State asks us to provide—to protect the Court's jurisdiction—is "a kind of injunction," so we apply those same considerations here. *See id*.

III.

Applying the *In re State* considerations, we conclude that the State met its burden to show that temporary relief is warranted. Although we make no definitive statement about the merits, the State has raised serious doubt about the constitutionality of the proposed Fund distribution and the trial court's determination

that the matter is unripe.

"'[J]ust relief' that 'preserve[s] the parties' rights' cannot be afforded without some consideration of the merits." *In re State*, 711 S.W.3d at 644–45. Accordingly, we consider the merits first, mindful of the Texas Supreme Court's instruction that the merits "need not—and often should not—be definitively determined at this preliminary stage." *Id*. at 645. The State alleges that the City's allocation of $100,000 to fund downstream services, which undisputedly may include travel for out-of-state abortions, violates the Texas Constitution's Gift Clause. The City Defendants respond that no funds have been allocated and the State's suit is not ripe until the funds are allocated.

Justiciability doctrines, such as ripeness, are rooted in the prohibition against advisory opinions. *Perry v. Del Rio*, 66 S.W.3d 239, 249 (Tex. 2001). "Ripeness concerns not only whether a court *can* act—whether it has jurisdiction—but prudentially, whether it *should*." *Id*. at 249–50 (citing *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 733 n.7 (1997); *Reno v. Catholic Social Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)). Under the doctrine of ripeness, courts must consider whether "at the time a lawsuit is filed, the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Patel v. Texas Dep't of Licensing & Reg.*, 469 S.W.3d 69, 78 (Tex. 2015) (internal quotations and emphasis omitted). The determination of ripeness depends on the fitness of the issues for judicial decision and the hardship occasioned to the party by the court's denial of judicial review. *Perry*, 66 S.W.3d at 250. Ripeness should be decided on the basis of all the information available to the court, and we may consider intervening events that occur after the decision in the lower court. *Id*. In considering whether an action is ripe, we do not limit our focus to the date that the case is filed, but we consider evidence of circumstances after that date. *Id*. at 252

(holding that "a claim's lack of ripeness when filed is not a jurisdictional infirmity requiring dismissal if the case has matured").

In this case, the trial court determined the case was not ripe and granted the City Defendants' plea to the jurisdiction. The State has appealed that decision to this Court. Therefore, the "merits" before this court revolve around the ripeness of the State's claim that the City has passed an ordinance that violates the Texas Constitution. The City Defendants insist that the ordinance does not require the disbursement of funds and the State's claim is not ripe until funds are authorized for disbursement. The City's ordinance, however, does not contemplate actions other than disbursement of taxpayer funds for "downstream" services, which will address "individual needs."

The State responds by noting that while the State's motion has been pending, the time for applying for funding expired. The City represented that it will begin processing applications for funds this month, in June. The City argues that it cannot distribute funds until after it holds an open meeting for which it must give 72 hours' notice.[1] The State may, the City argues, seek a temporary restraining order from the trial court at that time. While the State could wait until that time, no jurisdictional bar compels the State to do so.

Jurisdiction here is not like an avocado, good only for a few days between unripeness on one end and spoiling on the other, once funds are disbursed to contract recipients. Although the City has not yet disbursed funds, the threat of harm is more than conjectural, hypothetical, or remote. Article III, section 52(a) of the Texas

[1] The State argues that obtaining a TRO within this 72-hour window would be practically impossible because Bexar County requires 72 hours' notice before a TRO hearing.

Constitution "prohibits the Legislature from authorizing any [city] . . . to grant public money[,]" which the Texas Supreme Court has stated "means that the Legislature cannot require *gratuitous* payments to individuals, associations, or corporations" and cannot "authorize a county, city, town or political subdivision of the State to lend credit or grant public funds." *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 380, 383–84 (Tex. 2002). A government in Texas that wants to distribute public funds must, among other things, "ensure that the [ordinance's] predominant purpose is to accomplish a public purpose, not to benefit private parties[.]" *Id*. at 384. The Court presumes that an ordinance's "predominant purpose is to accomplish a legitimate public purpose unless petitioners show that it clearly is not." *Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, 692 S.W.3d 288, 304 (Tex. 2024) (citing *Tex. Mun. League*, 74 S.W.3d at 381).

The record reflects that the City's ordinance permits organizations to apply for public funds that will benefit private parties. In fact, while this appeal has been pending, the parties represent that the organizations have made their applications and the City is considering to whom to grant funds. The City does not dispute that it may allocate funds to out-of-state abortion travel, but asserts that its payments to individuals would be in service of a public health initiative. But the City ignores that "[f]ormer Texas Penal Code articles 1191–1196, last amended in 1925, and now codified at Chapter 6 1/2 of the revised civil statutes, [make] it a criminal offense to provide an abortion," *State v. Zurawski*, 690 S.W.3d 644, 654 (Tex. 2024), with certain exceptions not at issue here. We preliminarily conclude, without making a dispositive determination at this juncture, that a municipality does not "accomplish a public purpose" by expending funds to send its residents to undergo procedures outside the state that Texas prohibits within its own state borders. *Tex. Mun. League*, 74 S.W.3d at 384; *see State v. City of San Marcos*, No. 15-24-00084-CV, 2025 WL

1142065, at *7 (Tex. App.—15th Dist. Apr. 17, 2025, no pet. h.) (holding that state statutes reflect the public policy of the state). The City Defendants argue that it is not illegal for an individual to travel out of state for an abortion, but not every legal action is eligible for public funding as accomplishing a public purpose. Prudentially, under these circumstances, the court should act to determine whether the City's ordinance violates the Texas Constitution. *See Perry*, 66 S.W.3d at 249–50.

The City Defendants respond that this entire case may be for naught because they still have the option to choose not to fund out of state abortion travel at all. That is true, but jurisdiction does not turn on waiting to see what could happen if the result is likely. The ripeness doctrine does not compel Texas courts to wait until the football is inches from the endzone before blowing a whistle to stop the play. Rather, "ripeness asks whether the facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote." *See Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998).

Here, we discern from the plain text of the ordinance that had been passed at the time of the lawsuit's filing that payment for out-of-state abortion travel is sufficiently likely to occur even if such payment is not guaranteed. Proof of this likelihood is in the title of the ordinance that already passed: "AUTHORIZING AN EXPEDITED PROCUREMENT FOR REPRODUCTIVE JUSTICE HEALTH CARE TO SUPPORT DOWNSTREAM REPRODUCTIVE AND SEXUAL HEALTHCARE SERVICES WHICH *MAY INCLUDE OUT OF STATE TRAVEL*." (emphasis added).

This ordinance's recitals are replete with acknowledgements that the services for which funds are ultimately distributed may include "out of State travel for abortion-related care":

> WHEREAS, questions posed on the Interest Form were whether the organizations would have interest in pursuing an additional funding opportunity for downstream services, and whether they would have interest in pursuing an additional funding opportunity *specific to out of State travel for abortion-related care*; and
>
> WHEREAS, all 10 firms responded with nine of the 10 indicating interest in an additional funding opportunity for downstream services; and
>
> WHEREAS, three firms indicated interest in an additional funding opportunity limited to *out of State travel* with one additional firm indicating interest if the City were to provide legal protection for the organization; and
>
> WHEREAS, Metro Health requests City Council provide direction on whether to proceed with an expedited procurement for an additional $100,000.00 to support downstream services for reproductive health care which *may include out of State travel*;

(emphasis added).

Pursuant to these recitals, the City Council ordained that:

> SECTION 1. A Reproductive Justice Fund expedited procurement for downstream services to support reproductive and sexual healthcare services which may include out of State travel is hereby authorized. The City Manager or designee, or the Director of the San Antonio Metropolitan Health District or designee, is authorized to execute any and all documents to effectuate the solicitation referenced in this ordinance.
>
> SECTION 2. The $100,000 to support the expedited Reproductive Justice Fund solicitation to fund downstream services are available in Metro Health's FY 2025 General Fund Budget. Staff recommendations of funding reallocations will come back to Council for consideration at the time of award.

The Texas Supreme Court has instructed that "it is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent." *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999). The same goes for a City Council. The City

Council's existing ordinance sets the stage for public funding of travel to procure out-of-state abortions. Although it is possible that the City Council may abandon any plans to fund travel for out-of-state abortions through the procurement process that it has created and expedited, the ordinance that the City Council passed and the subsequent actions taken by the City Defendants give no indication that the ship will change course.

Turning to the balance of harms, the Texas Supreme Court recognized that "ultra vires conduct" by local officials "automatically results in harm to the sovereign as a matter of law." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020); *see also City of San Marcos*, 2025 WL 1142065, at *10. The harm alleged here, as it was in *In re State*, is likewise irreparable in that once the funds are distributed, they cannot feasibly be recouped if it is later determined the Texas Constitution was violated. *See In re State*, 711 S.W.3d at 647.

As to harm to other parties and to the public, the City Defendants will not suffer cognizable injury unless their legal rights are incorrectly circumscribed while the appeal is pending. *See id*. at 648. The City and the public in general will not be harmed by being required to follow the Texas Constitution. "Temporarily preventing expenditure of these funds while the State's appeal proceeds ensures public funds are not irrecoverably spent in violation of the Texas Constitution." *Id*.

We grant the State's motion and **ORDER** that Appellees refrain from distributing payments from the $100,000 in funding that was newly allocated to the Reproductive Justice Fund during the pendency of this appeal or until further order of this Court.

PER CURIAM

Panel consists of Chief Justice Brister and Justices Field and Farris.