

SUPREME COURT OF TEXAS

Elizabeth C. Perez v. Sylvester Turner, Mayor, Karun Sreerama,
Director of Public Works and Engineering, and the City of Houston

Perez · No. 20-0382 · Decided June 10, 2022

SUMMARY

The Supreme Court of Texas addresses claims challenging Houston's assessment, collection, and expenditure of drainage fees authorized under a city charter amendment later held invalid. The Court holds that Perez had standing to seek reimbursement of fees she paid and to pursue a taxpayer-based injunction concerning allegedly illegal expenditures, but concludes that her pleadings did not adequately overcome governmental immunity. The Court affirms dismissal while remanding to permit Perez to replead in light of intervening events.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice James D. Blacklock
JURISDICTION	Texas
DECIDED	June 10, 2022
DOCKET	20-0382
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review from the First District Court of Appeals, which affirmed the district court's dismissal on a plea to the jurisdiction. The Texas Supreme Court affirmed dismissal of the claims but reversed insofar as the lower courts denied Perez an opportunity to replead and remanded for that purpose.
STANDARD OF REVIEW	The court reviewed subject-matter jurisdiction issues, including ripeness, standing, and governmental immunity, at the pleading stage. It assessed whether Perez pleaded facts that, if true, would affirmatively demonstrate a viable claim not barred by immunity.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential
PARTIES	Elizabeth C. Perez v. Sylvester Turner, Mayor, Karun Sreerama, Director of Public Works and Engineering, City of Houston

TOPICS

municipal law home rule ordinances standing appellate procedure

PRACTICE AREAS

municipal law constitutional law civil procedure appellate procedure remedies

QUESTIONS PRESENTED

1. Whether Perez's claims were unripe because the charter amendment's invalidity had not been finally adjudicated when she filed suit.
2. Whether Perez had standing to seek reimbursement of drainage fees she personally paid.
3. Whether Perez had taxpayer standing to seek an injunction against expenditure of allegedly illegal drainage-fee proceeds.
4. Whether the merits of the alleged illegality of the drainage fee were issues of standing or instead matters relevant to overcoming governmental immunity.
5. Whether Perez pleaded a viable theory that the drainage-fee ordinance exceeded Houston's authority by conflicting with the Municipal Drainage Utility Systems Act.
6. Whether Perez should be allowed to replead in light of the 2018 charter amendment and other intervening events.

HOLDINGS

1. A claim challenging an ordinance is ripe when the ordinance is currently causing the plaintiff injury or a likely future injury; a prior final judgment declaring the ordinance or underlying charter amendment invalid is not a jurisdictional prerequisite.
2. A plaintiff who personally paid allegedly illegal government charges has a particularized injury sufficient to confer standing to seek reimbursement, even if success depends on proving the invalidity of the ordinance.
3. A taxpayer who alleges that a tax or fee was unauthorized by law and seeks to enjoin expenditure of the proceeds may invoke taxpayer standing without showing that the tax or fee is actually illegal as a prerequisite to standing.
4. A plaintiff's failure to establish that a challenged government action was unlawful does not ordinarily defeat standing when the plaintiff has alleged injury, causation, and redressability; instead, the failure may show that the plaintiff has not pleaded a viable claim capable of overcoming governmental immunity.
5. The Municipal Drainage Utility Systems Act does not preempt or diminish a home-rule municipality's authority to establish a drainage utility or impose authorized drainage charges; Perez therefore did not plead a viable illegality theory based on conflict between the Act and Houston's drainage-fee ordinance.
6. When the pleadings do not affirmatively negate jurisdiction and intervening events have materially changed the case, the plaintiff should be given an opportunity to amend.

KEY QUOTATIONS

“The outcome of ancillary litigation has nothing to do with whether a plaintiff has a ripe claim that the government’s unlawful action is causing her injury.” (at 7)

“Standing, on the other hand—which looks to matters such as injury, causation, and redressability—involves not the viability of the pleaded claim but the nature of the injury alleged.” (at 8)

“That merits-related inquiry is not a proper part of a standing analysis—although it may come into play at the pleading stage when assessing governmental immunity, as explained below.” (at 14)

“The court of appeals’ judgment of dismissal is affirmed, but that judgment is reversed in part to the extent it denied Perez the opportunity to replead.” (at 21)

FACTUAL BACKGROUND

Houston voters approved a 2010 charter amendment authorizing a dedicated drainage and street-renewal fund, and the City later enacted a drainage-fee ordinance requiring fees on real property. Perez paid drainage fees from 2011 through 2018 and alleged that the ordinance was invalid because it rested on the defective charter amendment addressed in *Dacus* and conflicted with the Municipal Drainage Utility Systems Act. In 2018, Houston voters adopted a new charter amendment curing the defect identified in *Dacus*. By the time of Supreme Court review, Perez’s remaining theories sought reimbursement of fees paid before 2018 and a narrow injunction against expenditure of any pre-2018 fees that remained in the City’s accounts.

PROCEDURAL HISTORY

Perez sued in 2015, challenging Houston’s drainage-fee ordinance and seeking declaratory relief, injunctive relief, reimbursement, and class relief. The district court granted the City’s plea to the jurisdiction on all claims, concluding in part that the claims were unripe, that Perez lacked standing, and that the ultra vires claims were inadequately pleaded. The court of appeals affirmed. While the case was pending, Houston adopted a new charter amendment curing defects identified in *Dacus*. The Texas Supreme Court held that Perez had standing and that the claims were ripe, but that the theory advanced to overcome governmental immunity failed as a matter of law; it nevertheless remanded to permit repleading in light of intervening events.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirm the dismissal of the claims, but remand to the district court to allow Perez an opportunity to replead in light of the 2018 charter amendment and other intervening events.

CASES CITED

- *Dacus v. Parker*, 466 S.W.3d 820, 822, 828-29 (Tex. 2015)
- *Dall. Cnty. Cmty. Coll. Dist. v. Bolton*, 185 S.W.3d 868, 877 (Tex. 2005)

- Waco Indep. Sch. Dist. v. Gibson, 22 S.W.3d 849, 852 (Tex. 2000)
- Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc., 971 S.W.2d 439, 442 (Tex. 1998)
- Heckman v. Williamson County, 369 S.W.3d 137, 154-55 (Tex. 2012)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Data Foundry, Inc. v. City of Austin, 620 S.W.3d 692, 696 (Tex. 2021)
- DaimlerChrysler Corp. v. Inman, 252 S.W.3d 299, 305 (Tex. 2008)
- Andrade v. NAACP of Austin, 345 S.W.3d 1, 7, 11 (Tex. 2011)
- Andrade v. Venable, 372 S.W.3d 134, 137-39 (Tex. 2012)
- Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 555-56 (Tex. 2000)
- Osborne v. Keith, 177 S.W.2d 198, 200 (Tex. 1944)
- Williams v. Lara, 52 S.W.3d 171, 179 (Tex. 2001)
- Jones v. Turner, 2022 WL 1815031, at *4, *7 (Tex. June 3, 2022)
- Garcia v. City of Willis, 593 S.W.3d 201, 208-10 (Tex. 2019)
- City of Arlington v. Scalf, 117 S.W.3d 345, 346-48 & n.1 (Tex. App.—Fort Worth 2003, pet. denied)
- Matzen v. McLane, 2021 WL 5977218, at *4 (Tex. Dec. 17, 2021)
- Proctor v. Andrews, 972 S.W.2d 729, 733 (Tex. 1998)
- City of Sweetwater v. Geron, 380 S.W.2d 550, 552 (Tex. 1964)
- Beck Steel, Inc. v. City of Lubbock, No. 14-19-00060-CV, 2020 WL 4461277, at *5 (Tex. App.—Houston [14th Dist.] Aug. 4, 2020, no pet.)
- Fort Worth Transp. Auth. v. Rodriguez, 547 S.W.3d 830, 849 (Tex. 2018)
- Tex. Dep't of Transp. v. Sefzik, 355 S.W.3d 618, 623 (Tex. 2011)
- City of Waco v. Kirwan, 298 S.W.3d 618, 622 (Tex. 2009)