

SUPREME COURT OF TEXAS

In re Dr. Robert Tafel, et al.

No. 24-1062 (Tex. June 19, 2026) · No. No. 24-1062 · Decided June 19, 2026

SUMMARY

The Supreme Court of Texas considers a mandamus petition arising from a Texas Medicaid fraud qui tam action. The Court holds that pending claims under the Texas Health Care Program Fraud Prevention Act survive the death of the private relator because the claims belong to and are brought on behalf of the State. It further holds that the defendants did not conclusively establish application of the Act’s first-to-file bar or demonstrate that dominant jurisdiction required abatement, and therefore denies mandamus relief.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Brett Busby; Brett Busby; Jeffrey S. Boyd; Jane N. Bland; John P. Devine; J. Brett Busby; James D. Blacklock; Evan A. Young; James P. Sullivan; Rebeca Huddle; Peter P. Puryear
JURISDICTION	Supreme Court of Texas
DECIDED	June 19, 2026
DOCKET	No. 24-1062
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Bear Creek petitioned for a writ of mandamus challenging the trial court's denial of its plea to the jurisdiction, alternative motion to abate, and traditional motion for summary judgment in a qui tam Medicaid-fraud action. The court of appeals denied mandamus relief, and the Supreme Court of Texas denied the petition.
STANDARD OF REVIEW	Mandamus requires a clear abuse of discretion and no adequate appellate remedy. A trial court clearly abuses its discretion when it fails to apply the law correctly. Review of the first-to-file and public-disclosure issues, treated as merits questions, mirrors review of a traditional summary-judgment motion and requires the movant to conclusively establish the defense.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Texas

PARTIES

Dr. Robert Tafel, Bear Creek Family Dentistry, related management company and professional associations v. Lauren Ludlow, as representative of the estate of Dr. Scott Ludlow, State of Texas

TOPICS

medicare medicaid

health law

appellate procedure

statutory interpretation

civil procedure

PRACTICE AREAS

health law

Medicaid fraud

civil procedure

appellate procedure

statutory interpretation

remedies

QUESTIONS PRESENTED

1. Whether pending qui tam claims under the Texas Health Care Program Fraud Prevention Act survive the death of the private relator.
2. Whether the Act's first-to-file bar prevents Ludlow's action because it is based on the facts underlying LaFountain's earlier pending action.
3. Whether the Act's public-disclosure bar prevents Ludlow's action based on allegations in LaFountain's private civil pleadings.
4. Whether the Attorney General's opposition independently prevents application of the public-disclosure bar.
5. Whether the doctrine of dominant jurisdiction requires abatement of Ludlow's later-filed action in favor of LaFountain's Travis County action.

HOLDINGS

1. Pending qui tam claims under the Texas Health Care Program Fraud Prevention Act survive the death of the private relator because the claims are brought for and in the name of the State, establish liability to the State, and remain subject to the State's control.
2. The first-to-file bar did not prevent Ludlow's action from proceeding because Bear Creek did not conclusively establish that Ludlow's action was based on the core allegations and essential operative facts underlying LaFountain's earlier action.
3. The public-disclosure bar did not apply because LaFountain's private civil pleading was not a qualifying "Texas hearing" and because the Attorney General opposed dismissal.
4. The doctrine of dominant jurisdiction did not require abatement because Bear Creek failed to establish that the first-filed LaFountain action included or could be amended to include all parties and issues in the Ludlow action.

KEY QUOTATIONS

"We hold that pending qui tam claims under the Act survive the relator's death." (2)

“Because claims under the Act are on behalf of the State, they do not extinguish upon the death of the private relator prosecuting them.” (2)

“We therefore deny the petition.” (2)

“Accordingly, we hold that the trial court did not clearly abuse its discretion in concluding that the Ludlow suit was not “based on the facts underlying” LaFountain’s earlier action and thus the first-to-file bar did not prevent it from proceeding.” (18)

“Because the Attorney General opposes dismissal and the public-disclosure bar does not apply to pleadings in private civil actions in which the State is not a party, the trial court did not clearly abuse its discretion in refusing to dismiss the underlying proceeding under the Act’s public-disclosure bar.” (23)

FACTUAL BACKGROUND

Dr. Scott Ludlow worked for Bear Creek Family Dentistry and became its chief dental officer in February 2019, after which he claimed to discover a scheme involving pressure on dentists to perform unnecessary dental procedures and bill the Texas Medicaid program. He filed a qui tam action in August 2021 under the Texas Health Care Program Fraud Prevention Act. A different relator, Joshua LaFountain, had filed a 2012 Travis County Medicaid-fraud action involving overlapping defendants and allegations but emphasizing different procedures, billing codes, and time periods. Ludlow died while the case was pending, and the trial court substituted his widow as representative of his estate.

PROCEDURAL HISTORY

Dr. Scott Ludlow filed a qui tam action under the Texas Health Care Program Fraud Prevention Act in 2021. After Ludlow died, the trial court substituted his widow, Lauren Ludlow, as representative of his estate and denied Bear Creek's plea to the jurisdiction, motion to abate, and motion for summary judgment. The court of appeals denied Bear Creek's mandamus petition. The Supreme Court of Texas concluded that the claims survived Ludlow's death, that Bear Creek had not conclusively established either the first-to-file or public-disclosure bar, and that dominant jurisdiction did not require abatement.

DISPOSITION

writ_denied

REMAND INSTRUCTIONS

None. The petition for writ of mandamus was denied, leaving the trial court's orders in place and allowing the underlying action to proceed.

CASES CITED

- In re Kappmeyer, 668 S.W.3d 651 (Tex. 2023)
- In re Academy, Ltd., 625 S.W.3d 19 (Tex. 2021)
- In re McAllen Med. Ctr., Inc., 275 S.W.3d 458 (Tex. 2008)

- In re Prudential Ins. Co. of Am., 148 S.W.3d 124 (Tex. 2004)
- In re Facebook, Inc., 625 S.W.3d 80 (Tex. 2021)
- In re Entergy Corp., 142 S.W.3d 316 (Tex. 2004)
- In re Crawford & Co., 458 S.W.3d 920 (Tex. 2015) (per curiam)
- Belt v. Oppenheimer, Blend, Harrison & Tate, Inc., 192 S.W.3d 780 (Tex. 2006)
- Malouf v. State ex rel. Ellis, 694 S.W.3d 712 (Tex. 2024)
- Mo. Pac. Ry. v. Shuford, 10 S.W. 408 (Tex. 1888)
- Doss v. State, 6 Tex. 433 (1851)
- In re Coppola, 535 S.W.3d 506 (Tex. 2017)
- Austin Nursing Ctr. v. Lovato, 171 S.W.3d 845 (Tex. 2005)
- In re UMTH Gen. Servs., L.P., 725 S.W.3d 424 (Tex. 2025)
- Pike v. Tex. EMC Mgmt., LLC, 610 S.W.3d 763 (Tex. 2020)
- Greenlaw v. United States, 554 U.S. 237 (2008)
- Clark v. Sweeney, 607 U.S. 7 (2025)
- Trump v. Illinois, 146 S. Ct. 432 (2025) (Alito, J., dissenting)
- Castro v. United States, 540 U.S. 375 (2003) (Scalia, J., concurring in part and concurring in the judgment)
- Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc., 659 S.W.3d 424 (Tex. 2023)
- Mission Consol. Indep. Sch. Dist. v. Garcia, 372 S.W.3d 629 (Tex. 2012)
- United States ex rel. Branch Consultants v. Allstate Ins. Co., 560 F.3d 371 (5th Cir. 2009)
- United States ex rel. LaCorte v. SmithKline Beecham Clinical Laboratories, Inc., 149 F.3d 227 (3d Cir. 1998)
- United States v. Planned Parenthood of Houston, 570 F. App'x 386 (5th Cir. 2014)
- In re Oncor Elec. Delivery Co., 716 S.W.3d 525 (Tex. 2025)
- Collin Creek Assisted Living Ctr., Inc. v. Faber, 671 S.W.3d 879 (Tex. 2023)
- In re Xerox Corp., 555 S.W.3d 518 (Tex. 2018)
- Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC, 591 S.W.3d 127 (Tex. 2019)
- Morath v. Lampasas Indep. Sch. Dist., 686 S.W.3d 725 (Tex. 2024)
- Wyatt v. Shaw Plumbing Co., 760 S.W.2d 245 (Tex. 1988)
- In re King, 478 S.W.3d 930 (Tex. App.—Dallas 2015, orig. proceeding)

OPINION

In Re Dr. Robert Tafel

BUSBY, J.

Supreme Court of Texas ===== No. 24-1062 ===== In re Dr. Robert Tafel,
et al., Relators ===== On Petition
for Writ of Mandamus =====

Argued December 3, 2025 JUSTICE BUSBY delivered the opinion of the Court, in which Justice Lehrmann, Justice Devine, Justice Bland, Justice Young, and Justice Sullivan joined, and in which

Chief Justice Blacklock, Justice Huddle, and Justice Hawkins joined except as to Part III.A. JUSTICE BUSBY filed a concurring opinion. JUSTICE BLAND filed a concurring opinion, in which Chief Justice Blacklock and Justice Young joined. JUSTICE YOUNG and JUSTICE SULLIVAN filed a concurring opinion. The Texas Health Care Program Fraud Prevention Act allows private persons to bring civil actions for fraud that harms the Texas Medicaid program. When an action leads to a recovery for the State, the private person bringing the action—the qui tam relator—receives a portion of the proceeds in return for their efforts. Here, the qui tam relator died while the Medicaid fraud suit was pending, and this mandamus petition asks us to decide whether the pending suit must therefore be dismissed. We hold that pending qui tam claims under the Act survive the relator’s death. Although prosecuted by a private party, these claims establish liabilities to the State for benefits wrongfully obtained from its health care programs. Because claims under the Act are on behalf of the State, they do not extinguish upon the death of the private relator prosecuting them. We are also asked to decide whether this suit is prevented from proceeding by another pending qui tam action or the public disclosure of Medicaid fraud allegations in that action. We hold the suit can proceed. The defendants failed to establish conclusively that this suit is based on the facts underlying the separate pending action, and that action was not a prior public disclosure of the relevant fraud allegations. Finally, we hold that the doctrine of dominant jurisdiction does not require abatement of this suit. We therefore deny the petition.

BACKGROUND

A. Dr. Ludlow sues Bear Creek alleging a Medicaid fraud scheme he discovered in 2019. Dr. Scott Ludlow filed the suit underlying this mandamus proceeding in August 2021. The defendants are Dr. Robert Tafel, a group of Dallas-area dental practices operating under the name Bear Creek Family Dentistry, and a related management company and professional associations (collectively “Bear Creek”). Dr. Ludlow began working for Bear Creek as a dentist in 2011 and was ultimately promoted in February 2019 to become its Chief 2 Dental Officer. Before that promotion, he spent his time at Bear Creek treating patients and supporting other pediatric dentists. After the promotion, Dr. Ludlow asserted, he took on administrative duties that included audit reviews, reviewing internal charts and conducting peer reviews of other Bear Creek dentists, and assisting in compliance matters. As his administrative responsibilities as Chief Dental Officer expanded after February 2019, Dr. Ludlow spent more time on clinical compliance issues and performing chart reviews of Bear Creek dentists. This is when Dr. Ludlow claims he learned of Bear Creek’s alleged fraud, waste, and abuse affecting the Texas Medicaid program. According to Dr. Ludlow, individual Bear Creek dentists performed unnecessary treatments on patients as part of a concerted scheme directed by Dr. Tafel for which Bear Creek sought reimbursement from the Texas Medicaid program: The primary focus of Dr. Tafel and his management team was to pressure dentists to excessively utilize dental procedures under certain procedures codes established by the American Dental Association (“ADA Codes”). The main codes Dr. Tafel pressured dentists to use

were ADA Codes for tooth fillings or “Class 1 Fillings.” The ADA Codes for such fillings were D2391 and D2392. In face-to-face “production meetings,” Dr. Tafel or someone from the management team would pressure and intimidate dentists that he felt were under-utilizing these ADA Codes. (Cleaned up.) Dr. Ludlow also claimed that Dr. Tafel hired new dentists with student-loan debt that he compensated based on collections, making them more likely to follow these instructions. Dr. Ludlow alleged that this scheme resulted in Bear Creek billing the Texas Medicaid program for fillings that were performed but not medically 3 necessary and later billing to redo those fillings, which had been performed in a hurried manner with low-quality materials. B. Bear Creek seeks dismissal based on a 2012 Medicaid fraud action by another qui tam relator and on Dr. Ludlow’s death. Bear Creek filed an amended plea to the jurisdiction, arguing that the same allegations against it were already being litigated in a separate pending action in Travis County. Thus, according to Bear Creek, Dr. Ludlow’s suit could not proceed under provisions of the Texas Health Care Program Fraud Prevention Act addressing earlier-filed actions and publicly disclosed allegations. Bear Creek alternatively moved to abate and argued that the Travis County court presiding over the separate action had dominant jurisdiction over Dr. Ludlow’s suit. The separate pending action was a Medicaid fraud suit that Joshua LaFountain brought nine years earlier against many of the Bear Creek parties. LaFountain filed his suit in 2012 in Travis County (Cause No. D-1-GV-12-000277), and he included claims against an affiliate of Xerox Corporation that processed the reimbursement requests. *State v. Ellis*, 681 S.W.3d 501, 504, 506 (Tex. App.—Austin 2023, no pet.). LaFountain alleged a similar scheme that Dr. Tafel directed dentists to perform invasive dental treatments regardless of medical necessity, especially pulpotomies, stainless steel crowns, and deep cleaning or “scaling,” resulting in Bear Creek dental practices becoming state leaders in amounts billed to Medicaid for these procedures. Like Dr. Ludlow, LaFountain alleged that Bear Creek dentists were receptive to these instructions because they were in debt 4 following dental school and being paid by Bear Creek based on a percentage of collections. LaFountain’s action was one of three filed under the Act in early 2012 against Xerox Corporation or its affiliates concerning alleged Medicaid fraud in the provision of dental and orthodontic services and related payment processing. *Id.* at 506. The State eventually filed its own action against Xerox in 2014, alleging that it fraudulently operated payment review processes while serving as the administrator for the Texas Medicaid program. *Id.* at 506-07. In February 2019—the same month Dr. Ludlow was promoted as Bear Creek’s Chief Dental Officer— Xerox Corporation and its subsidiaries agreed to a \$235.9 million settlement to resolve the State’s suit. Following this settlement, LaFountain intervened in the State’s action and claimed that he was entitled to a portion of the State’s recovery because the State’s claims against Xerox were based on allegations in his 2012 Travis County action. *Id.* at 507. 1 In the Travis County action, the trial court granted summary judgment against LaFountain after striking his experts as 1 The trial court ultimately awarded LaFountain a portion of the State’s recovery against Xerox after denying the State’s motion for summary judgment, which argued that LaFountain’s Travis County action was

barred by the prior public disclosure of similar allegations against Xerox in news reports and legislative hearings, among other sources. The Fifteenth Court of Appeals recently reversed the trial court's award of a share of the Xerox proceeds to LaFountain and rendered judgment for the State on LaFountain's claim in intervention. *State v. Alvarez*, ___ S.W.3d ___, 2026 WL 942691 (Tex. App.—15th Dist. Apr. 7, 2026, no pet. h.). We express no view on the merits of that decision. 5 untimely designated, and LaFountain has an appeal pending in the Fifteenth Court of Appeals. 2 Meanwhile, before Bear Creek's plea to the jurisdiction could be heard in this suit, Dr. Ludlow passed away. The trial court granted a motion to substitute his widow Lauren Ludlow to prosecute the case as a representative of his estate. Bear Creek filed a traditional motion for summary judgment and a supplement to its amended plea to the jurisdiction, arguing that the suit must be dismissed because the claims "extinguished" upon Dr. Ludlow's passing. Lauren Ludlow and the State of Texas opposed Bear Creek's motion for summary judgment, arguing that the pending claim is survivable. The State's opposition emphasized the State's interest in the outcome of the pending action and its right to intervene in the case, settle the claims against Bear Creek, and recover a portion of the proceeds of the action. The State did not file an opposition to Bear Creek's plea to the jurisdiction or alternative motion to abate. The trial court denied Bear Creek's plea to the jurisdiction and alternative motion to abate and motion for summary judgment. Bear Creek challenged these rulings by filing a petition for writ of mandamus with the court of appeals, which denied the petition. This mandamus petition followed. 2 *State ex rel. LaFountain v. BLT Mgmt. Co.*, No. 15-25-00067-CV, Court of Appeals for the Fifteenth District of Texas. 6

STANDARD OF REVIEW

The extraordinary remedy of mandamus is available only on a showing that the trial court clearly abused its discretion and that there is no adequate appellate remedy. *In re Kappmeyer*, 668 S.W.3d 651, 654 (Tex. 2023). A trial court clearly abuses its discretion when its ruling fails to apply the law correctly. *Id.* at 655. Mandamus is "generally unavailable when a trial court denies summary judgment." *In re Academy, Ltd.*, 625 S.W.3d 19, 32 (Tex. 2021) (quoting *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 465 (Tex. 2008)). This general rule recognizes that many summary judgments do not implicate substantive rights—like a party's right to arbitration or the right to be represented by its chosen attorney—that would be defeated if trial proceeded. *McAllen Med. Ctr.*, 275 S.W.3d at 465-66. The rule also prevents undue interference with trial court proceedings by adding to the expense and delay of civil litigation through parallel appellate proceedings. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004). But mandamus relief can be appropriate when the act of proceeding to trial defeats a substantive right that cannot be protected by a normal appeal, as when a party is forced to defend a suit despite Congress immunizing it from such suits. *Academy*, 625 S.W.3d at 35; accord *In re Facebook, Inc.*, 625 S.W.3d 80, 87 (Tex. 2021). The Legislature has provided for interlocutory appellate review of trial court rulings on pleas to the jurisdiction by governmental units, but that statute does not apply here. See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8). We have recognized that "the hardship of a full-blown

trial” is not sufficient to warrant mandamus relief from the denial of 7 other pleas to the jurisdiction absent “unique circumstances mandat[ing] the Court’s intervention,” such as exclusive agency jurisdiction over the dispute. *In re Entergy Corp.*, 142 S.W.3d 316, 321 (Tex. 2004); see also *In re Crawford & Co.*, 458 S.W.3d 920, 929 (Tex. 2015) (per curiam).

ANALYSIS

I. A pending qui tam action survives the relator’s death. A. Qui tam claims belong to the State. Bear Creek’s first issue concerns whether a pending qui tam action under the Texas Health Care Program Fraud Prevention Act survives the relator’s death when the State has not chosen to intervene as a party. Because the Act does not address survivability, Bear Creek argues that such a claim does not survive under the common-law rule that “all causes of action for damages die with the person of the party injured, or the person inflicting the injury, except such damages as grow out of acts affecting the property rights of the injured party.” *Belt v. Oppenheimer, Blend, Harrison & Tate, Inc.*, 192 S.W.3d 780, 784 (Tex. 2006). According to Bear Creek, qui tam actions under the Act are personal and punitive in nature—not property-based—and must be dismissed under this rule upon the death of the individual prosecuting the action. 3 But if pending claims under the Act instead qualify as suits 3 Bear Creek raised this issue in a motion for summary judgment, and it contends we may consider the denial of the motion via mandamus partly because the trial court lost subject-matter jurisdiction when Dr. Ludlow died. We need not determine whether survivability is a jurisdictional question 8 by the State even if it has not yet intervened, Bear Creek asks us to determine whether common-law survivability principles are inapplicable. To resolve the question whether claims in a qui tam action must be dismissed upon a private relator’s death, we start with the provisions of the Act that authorize and govern these claims. The Act prohibits misrepresentations to the Texas Medicaid program to obtain an unauthorized benefit. See TEX. HUM. RES. CODE § 36.002(1). Private persons are authorized to pursue civil actions for violations of this prohibition. *Id.* § 36.101. If the private relator bringing the action establishes that an unlawful act was committed, the person committing the unlawful act “is liable to the state.” *Id.* §§ 36.052(a), 36.101(b). Actions initiated by private persons under the Act are therefore brought “for the person and for the state” and “in the name of the person and of the state.” *Id.* § 36.101(a). The Act gives the State substantial powers over a private relator’s qui tam action, including the right to “proceed with the action” early in the suit. *Id.* § 36.102(c). The State may also participate in the action later upon good cause shown, *id.* § 36.104(b-1), which surely includes the relator’s death. The State may settle the action with the defendant over the relator’s objection. *Id.* § 36.107(c). And the relator lacks control over the disposition of the claims: private actions under the Act can be dismissed only if the “court and the attorney general consent in writing to the dismissal and state their reasons for consenting.” *Id.* § 36.102(e). because we conclude Bear Creek is not entitled to mandamus relief for the reasons that follow. 9 Private relators have an incentive to bring these actions because they can receive a portion of the State’s proceeds. *Id.* § 36.110. But a relator’s potential entitlement to compensation does not change the nature of a civil suit under

the Act, which seeks to prove that a defendant is “liable to the state” for sums including “the amount of any payment or the value of any monetary or in-kind benefit” received from Texas Medicaid and similar health care programs because of unlawful acts committed against those programs. *Id.* § 36.052(a). 4 These statutory provisions show that the claims pending in the trial court for violations of Section 36.002 are not Dr. Ludlow’s but the State’s. We therefore reject Bear Creek’s argument that the underlying proceeding must be dismissed because the qui tam claims extinguished upon the relator’s death under the common-law survivability rule that personal claims “die with the person of the party injured, or the person inflicting the injury.” *Belt*, 192 S.W.3d at 784. The State is the party allegedly injured; it is still very much in existence and has filed a brief in this Court opposing summary judgment. Similarly, the Bear Creek defendants inflicted the alleged injuries, and all are still alive or continue to exist. Thus, there is no survivability question to be decided, and we need not conduct a common-law analysis of whether the claim is personal or property-based. 4 This Court has long treated actions filed by qui tam relators as justiciable. See, e.g., *Malouf v. State ex rel. Ellis*, 694 S.W.3d 712, 716 (Tex. 2024); *Mo. Pac. Ry. v. Shuford*, 10 S.W. 408, 411 (Tex. 1888); *Doss v. State*, 6 Tex. 433, 434 (1851). The parties before us have not questioned justiciability in any court, and we decline to exercise our discretion to address it in denying this mandamus petition. See *In re Coppola*, 535 S.W.3d 506, 510 (Tex. 2017). 10 In sum, the claims against Bear Creek are for injury and liability to the State, brought in its name and subject to its control, and neither the State nor the Bear Creek defendants have ceased to exist. Accordingly, the qui tam claims pending in the trial court survived Dr. Ludlow’s death. The trial court did not abuse its discretion in denying Bear Creek’s motion for summary judgment asserting that the claims extinguished upon Dr. Ludlow’s death. B. Bear Creek has not challenged capacity. According to Bear Creek’s brief, if a qui tam action brought by a private relator “qualifies as a suit by the State” such that common-law “survivability principles do not apply—and the . . . claims thus survived [Dr.] Ludlow’s death—then the Executrix [of his estate, Lauren Ludlow,] may continue to litigate the claims.” In this Court, neither the parties nor the State say anything against either the executor’s ability to proceed with the action, see TEX. HUM. RES. CODE § 36.104(b); TEX. R. CIV. P. 150-151, or the estate’s continued interest in a share of any proceeds recovered, see TEX. HUM. RES. CODE § 36.110; TEX. EST. CODE §§ 101.003, 351.151. Nor was any such issue presented to the trial court, so there has been no exercise of discretion that we can review by mandamus. Whether the personal representative of a deceased person may act on behalf of that person’s estate is a question of capacity. *Austin Nursing Ctr. v. Lovato*, 171 S.W.3d 845, 848-49 (Tex. 2005). Capacity must be challenged by filing a verified plea. See TEX. R. CIV. P. 93; *In re UMTH Gen. Servs., L.P.*, 725 S.W.3d 424, 429-430 & n.22 (Tex. 2025). The record does not disclose that such a plea raising capacity has been filed. 11 Our adversary system of justice “depends on the parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present.” *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 782 (Tex. 2020) (alteration in original) (quoting *Greenlaw v.*

United States, 554 U.S. 237, 243 (2008)). 5 The Supreme Court of the United States refers to this understanding of the judicial role as “the principle of party presentation.” *Clark v. Sweeney*, 607 U.S. 7, 9-10

(2025). “If a party passes up what seems to us a promising argument, we do not assume the role of advocate.” *Trump v. Illinois*, 146 S. Ct. 432, 437 (2025) (Alito, J., dissenting). Instead, the “adversary system is designed around the premise that the parties know what is best for them.” *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in the judgment). Because the parties confine their challenge in this Court to the survival of the claim, we do not address capacity. II. Bear Creek has not conclusively established that the first- to-file bar applies to this suit. We next consider whether this suit is “based on the facts underlying” LaFountain’s still-pending 2012 suit and therefore is 5 See also *City of Houston v. Rodriguez*, 704 S.W.3d 462, 471 n.35 (Tex. 2024); *In re Off. of Att’y Gen.*, 702 S.W.3d 360, 366 (Tex. 2024); *Powell v. City of Houston*, 628 S.W.3d 838, 843 (Tex. 2021) (“We do not seek out issues but ‘wait for the cases to come to us, and when they do we normally decide only questions presented by the parties.’” (quoting *In re Abbott*, 601 S.W.3d 802, 809-810 (Tex. 2020) (quoting *Greenlaw*, 554 U.S. at 244))). 12 prevented from proceeding by the so-called “first-to-file” bar. 6 Bear Creek asserts that it is and sought dismissal on that basis in a plea to the jurisdiction. Without deciding whether the first-to-file bar’s prohibition on “bring[ing] a related action” based on the same underlying facts is jurisdictional, see TEX. HUM. RES. CODE § 36.106, we consider its application as “a pure issue of law pertaining to the merits” of Bear Creek’s request to dismiss the underlying action. See *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 439-441 (Tex. 2023) (considering non-jurisdictional legal issue improperly raised in plea to the jurisdiction). Our review of the issue “mirrors that of a traditional summary judgment motion,” requiring Bear Creek to prove conclusively that the first-to-file bar applies. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). The parties disagree about how a court should determine whether one action under the Act is “based on the facts underlying” another. See TEX. HUM. RES. CODE § 36.106. Bear Creek argues that the Ludlow suit cannot proceed because it is based on the same alleged overarching scheme led by Dr. Tafel of performing unnecessary dental procedures and billing them to Medicaid. According to Bear Creek, these are the “essential facts” and “material elements” that would drive the inquiry in a federal False Claims Act case under *United States ex rel. Branch Consultants v. Allstate Ins. Co.*, 560 F.3d 371, 378 (5th Cir. 2009). Federal courts apply the False Claims Act’s first-to-file bar if the first- 6 See TEX. HUM. RES. CODE § 36.106 (“A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.”). 13 filed suit provides sufficient information for the federal government “to discover related frauds.” *Id.* (quoting *United States ex rel. LaCorte v. SmithKline Beecham Clinical Lab’ys, Inc.*, 149 F.3d 227, 234 (3d Cir. 1998)); accord *United States v. Planned Parenthood of Houston*, 570 F. App’x 386, 389 (5th Cir. 2014). Lauren Ludlow responds that this

suit is not based on the “facts underlying” LaFountain’s action because it concerns different transactions resulting in impermissible benefits and payments to Bear Creek. Neither standard is correct. Nothing in the text of the Act’s first- to-file bar indicates that it applies based on a court’s inference that an earlier suit would facilitate the government’s discovery of related frauds. Nor does the text indicate that so long as a suit targets separate transactions or instances of fraudulent conduct, it will not be “based on the facts underlying” another suit concerning an identical fraudulent scheme by the same actors at the same time. Instead, we conclude that the “facts underlying a pending action” are “core allegations” necessary to establish that the Act has been violated. Cf. *In re Oncor Elec. Delivery Co.*, 716 S.W.3d 525, 532 (Tex. 2025) (describing the standard courts apply in considering a Rule 91a motion). Like the standard courts apply in determining whether a petition alleges a health care liability claim, the inquiry “focus[es] on the set of operative facts underlying the claim that are relevant to the alleged injury, not on how the plaintiff’s pleadings describe the facts or legal theories asserted.” *Collin Creek Assisted Living Ctr., Inc. v. Faber*, 671 S.W.3d 879, 885 (Tex. 2023) (internal quotation marks omitted). As the movant, Bear Creek has the burden to show conclusively that these 14 essential operative facts are materially the same. *Mission Consol.*, 372 S.W.3d at 634. It is not enough that Dr. Ludlow’s and LaFountain’s pleadings allege a scheme directed by Dr. Tafel to perform unnecessary dental treatments and bill them to Medicaid, as the alleged violations could be committed at such different times and through such different means that they constitute two separate schemes. We must therefore consider the extent of the overlapping allegations and any differences to determine whether Bear Creek has conclusively shown that the Ludlow suit alleges merely additional aspects of the same fraudulent scheme rather than identifying a new one. One key difference is that Dr. Ludlow filed this suit in 2021, more than nine years after LaFountain’s action. Dr. Ludlow and LaFountain also overlapped very little during their respective employment with Bear Creek: LaFountain worked there from 2004 to 2012, and Dr. Ludlow from late 2011 to 2021. The two relators also describe first observing an alleged fraud scheme fifteen years apart. LaFountain began his Bear Creek employment in 2004 as an office manager for one of its dental clinics and alleges that he observed Medicaid fraud the same year. Dr. Ludlow began as a dentist at Bear Creek and described learning of Medicaid fraud only after his promotion to a new administrative leadership role in February 2019. The Ludlow suit also includes five additional defendants not in LaFountain’s suit, while LaFountain sued a Xerox affiliate and a professional corporation not in the Ludlow suit. 15 That two suits generally cover different time periods is not alone dispositive of whether the first-to-file bar applies; a scheme, especially one that is successfully concealed, can last a long time. But the difference in timing is notable here given that the two relators reported learning of fraud schemes fifteen years apart. This significant time gap requires further inquiry to determine whether defendants common to both suits engaged in separate schemes with similar goals but employed different essential means. And that inquiry reveals an important development during the gap: Dr. Ludlow reported learning of the underlying fraud in February 2019—the same

month that the State of Texas announced a nine-figure settlement with Xerox and affiliates, including the Xerox defendant in LaFountain's suit, concluding a period of enormous scrutiny of dental and orthodontic Medicaid service providers and claim processors. LaFountain was initially awarded a portion of that settlement based on the allegations in his 2012 action, which the court of appeals recently reversed. See Alvarez, ___ S.W.3d ___, 2026 WL 942691, at *7-14. Before the State and Xerox settled, the State "vigorously opposed [Xerox's] efforts to bring the Medicaid service providers into the Xerox litigation" after Xerox argued that the providers were the recipients of any disputed Medicaid payments processed by Xerox. *In re Xerox Corp.*, 555 S.W.3d 518, 521 (Tex. 2018). Thus, at the same time Dr. Ludlow claims he learned of a fraudulent scheme at Bear Creek to perform unnecessary dental services for reimbursement by Medicaid, the State of Texas had just announced "the largest single resolution in a case filed by the attorney general's office for Medicaid-related claims" with one of Bear Creek's co- 16 defendants in LaFountain's 2012 suit. Given the substantial statewide scrutiny of claims by Medicaid dental and orthodontic providers between LaFountain's employment at Bear Creek from 2004 to 2012 and Dr. Ludlow's promotion to an administrative role at Bear Creek in 2019, it is quite possible that any alleged Medicaid fraud scheme existing at Bear Creek in 2019 was newer, more sophisticated, or had changed in some material way in response to the seismic transformation in the regulatory landscape in the years leading up to the State's \$235.9 million settlement with a co-defendant in LaFountain's suit. Comparing the petitions in the two actions indicates that such a material change did occur: the Ludlow suit alleges a narrower fraud scheme that emphasizes less invasive procedures. This suit alleges that Bear Creek's primary fraud method is performing and billing for unnecessary tooth fillings and sending corresponding fraudulent bills for payment to Medicaid under American Dental Association Billing Codes D2391 and D2392. It alleges that these fillings were not performed based on patient needs but on Bear Creek's standing treatment plan to place fillings on every posterior tooth either in a single appointment or over a one-to-two-year period regardless of the patient's needs. According to Dr. Ludlow, Dr. Tafel pressured and intimidated dentists to generate more bills under these two codes. The Ludlow suit also alleges that Dr. Tafel instructed Bear Creek dentists more generally to "[l]eave no tooth untouched," "[p]ut a filling in every groove," "[p]ut a root canal under every crown," and that every patient who had not visited the dentist recently needed "scaling." LaFountain's suit includes similar allegations—including Dr. Tafel's "no 17 tooth untouched" motto—and identifies specific Bear Creek dentists who performed unnecessary fillings, scaling, and crowns. But LaFountain's suit emphasizes the over-utilization of other billing codes for pulpotomies (D3220), stainless steel crowns (D2930-34), administering nitrous oxide (D9230), and certain evaluation and preventative services (D145) as the primary instances of fraud against the Medicaid program. According to LaFountain, Bear Creek clinics were among state leaders in the millions of dollars billed to Medicaid under these codes during 2011, the year preceding LaFountain's action and the State's investigation of a co-defendant in his suit. LaFountain also alleged that Dr. Tafel directed dentists who were not

credentialed with Medicaid to submit Medicaid claims using Dr. Tafel's Medicaid credentials. Another key component of the scheme LaFountain alleges is the performance of highly invasive and medically unnecessary procedures on children and Bear Creek's programmatic efforts to conceal the children's suffering during these painful procedures from parents. Although there is some overlap between the core allegations of the two suits, Bear Creek has failed to conclusively establish that Dr. Ludlow's action is based on the essential facts underlying LaFountain's suit rather than a narrower, more sophisticated fraudulent scheme that Bear Creek developed to skirt the increased scrutiny over Medicaid dental and orthodontic service providers during the period leading up to the Xerox settlement and Dr. Ludlow's promotion to an administrative leadership role at Bear Creek in 2019. At this stage, at least, it is not clear that Dr. Ludlow has merely alleged further instances of the same scheme rather than identified a new scheme. Accordingly, we hold that 18 the trial court did not clearly abuse its discretion in concluding that the Ludlow suit was not "based on the facts underlying" LaFountain's earlier action and thus the first-to-file bar did not prevent it from proceeding. III. The public-disclosure bar does not apply to this suit. Bear Creek also contends that LaFountain's suit "publicly disclosed" "substantially the same allegations or transactions" as those later alleged in the Ludlow suit, which must be dismissed. TEX. HUM. RES. CODE § 36.113(b). Again, Bear Creek raised this "public-disclosure bar" in its plea to the jurisdiction, and we address the merits of the issue without deciding whether the bar is jurisdictional. See *Molina*, 659 S.W.3d at 439-441. For the reasons discussed above, we conclude that the allegations in the two suits are not "substantially the same." But even if they were, the public-disclosure bar would not apply for two reasons. First, the bar does not apply to private civil actions in which the State is not a party. TEX. HUM. RES. CODE § 36.113(b). Second, it does not apply if the Attorney General opposes dismissal, as he does here. A. The bar does not apply to private civil actions in which the State is not a party. The Act's public-disclosure bar provides: The court shall dismiss an action or claim under this subchapter, unless opposed by the attorney general, if substantially the same allegations or transactions . . . were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a Texas legislative or administrative report, or 19 other Texas hearing, audit, or investigation, or from the news media Id. Bear Creek does not assert that the bar applies because the State is a party to the LaFountain action, and it appears that the State ultimately declined to intervene in that action, which LaFountain continues to pursue in the Fifteenth Court of Appeals. Nor does LaFountain's live pleading constitute a disclosure from the news media, a Texas legislative or administrative report, or a Texas audit or investigation. Bear Creek's contention that the public-disclosure bar applies thus assumes that LaFountain's pleading is "[an]other Texas hearing." Id. We disagree. We apply the plain meaning of undefined statutory terms unless that meaning leads to absurd results or another meaning is apparent from the statutory context. *Creative Oil & Gas, LLC v. Lona Hills Ranch, LLC*, 591 S.W.3d 127, 133 (Tex. 2019). When a term is undefined, "we generally consult dictionaries for the term's commonly understood meaning." *Morath v. Lampasas Indep. Sch. Dist.*,

686 S.W.3d 725, 735 (Tex. 2024). We may also consider former versions when construing statutes. TEX. GOV'T CODE § 311.023(4). Here, the ordinary meaning of “hearing,” the statutory context, and prior versions of the public-disclosure bar all confirm that LaFountain’s state-court civil pleadings are not a “Texas hearing” for purposes of the public disclosure bar. A hearing is commonly understood as a “formal, scheduled setting in which an affected person presents arguments to a decision-maker.” Hearing, BLACK’S LAW DICTIONARY (12th ed. 2024). Hearings often occur before members of the judicial, legislative, or executive branches of government. A hearing before the judicial branch is commonly understood as a “judicial session, usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.” Id. And a legislative hearing is a “proceeding in which legislators or their designees receive testimony about legislation that might be enacted.” Id. None of these dictionary definitions encompass a pleading filed in a Texas court. Even if the term “hearing” could include writings filed in civil actions, reading the term “other Texas hearing” in context confirms that it would apply only to actions in which the State is a party. The phrase “other Texas hearing” is part of a list of proceedings—including reports, audits, and investigations—conducted by or before the “legislative” branch or an “administrative” agency. Construing “other Texas hearing” to include all “Texas civil hearings” would nullify the earlier provision in this subsection limiting civil court hearings triggering the public-disclosure bar to those in which the State is a party. That construction would also render surplusage the first-to-file bar and its limitation to pending actions. Comparing the current statute against prior versions confirms that “other Texas hearing” does not include private civil actions. The version enacted in 1997 applied broadly to Texas and federal governmental proceedings in all three branches: A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media 21 Act of June 1, 1997, 75th Leg., R.S., ch. 1153, § 4.08, 1997 Tex. Gen. Laws 4328, 4348 (emphases added) (amended 2011) (current version at TEX. HUM. RES. CODE § 36.113(b)). This version covered all hearings— criminal, civil, federal, and state— regardless of whether the State or any governmental entity was a party to the hearing or action. Thus, the “criminal or civil hearing” prong of the public-disclosure bar initially covered all judicial proceedings. And the remaining references to governmental proceedings—“a legislative or administrative report, hearing, audit, or investigation”—encompassed public proceedings before the other two branches of government. Then, in 2011, an amendment limited the relevant judicial proceedings triggering the public-disclosure bar to those in which the State or its agent was a party: A person may not bring an action . . . based on the public disclosure of allegations or transactions in a criminal or civil hearing in which the state or an agent of the state is a party, in a legislative or administrative report, hearing, audit, or investigation, or from the news media Act of May 23, 2011, 82d Leg., R.S., ch. 398, § 5, 2011 Tex. Gen. Laws 1054, 1056 (emphasis altered) (current version at TEX. HUM. RES. CODE § 36.113(b)). This amendment narrowed the

category of judicial proceedings to which the public-disclosure bar applies, but it did not change the provision concerning public proceedings before the other branches. The statute was amended once more in 2013 to reach its current form. These amendments clarified that the relevant criminal or civil hearings in which the State is a party include “Texas or federal” 22 hearings, and they removed federal government proceedings before the other branches: The court shall dismiss an action or claim under this subchapter, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a Texas legislative or administrative report, or other Texas hearing, audit, or investigation, or from the news media TEX. HUM. RES. CODE § 36.113(b) (emphases added). This statutory evolution confirms that the “other Texas hearing” language on which Bear Creek relies has never referred to judicial proceedings but rather hearings before the other branches. It does not apply to public disclosures in LaFountain’s petition in the 2012 Travis County action. B. The bar does not apply because the Attorney General opposes dismissal. We also conclude that the public-disclosure bar does not require dismissal of the underlying proceeding because the Attorney General opposes dismissal. *Id.* (“[t]he court shall dismiss an action . . . unless opposed by the attorney general”). The Attorney General opposed Bear Creek’s motion for summary judgment in the underlying proceeding and asks this Court to deny mandamus given the State’s “interest in the survival and resolution of Dr. Ludlow’s claims to ensure that health care providers are held accountable for any unlawful acts and to protect the integrity of the Texas Medicaid program.” Denying mandamus relief would leave in place the trial court orders denying Bear Creek’s motion 23 for summary judgment and plea to the jurisdiction and allow this case to proceed. * * * Because the Attorney General opposes dismissal and the public-disclosure bar does not apply to pleadings in private civil actions in which the State is not a party, the trial court did not clearly abuse its discretion in refusing to dismiss the underlying proceeding under the Act’s public-disclosure bar. IV. The Travis County court does not have dominant jurisdiction over the Ludlow suit. Bear Creek alternatively argues that the trial court abused its discretion by denying Bear Creek’s request to abate the Ludlow suit because Travis County acquired dominant jurisdiction in 2012 when LaFountain filed his Travis County suit. When there is “an inherent interrelation of the subject matter” between two pending lawsuits, the doctrine of dominant jurisdiction requires the later-filed suit to be abated. *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988). “It is not required that the exact issues and all the parties be included in the first action . . . , provided that the claim in the first suit may be amended to bring in all necessary and proper parties and issues.” *Id.*; see also *In re King*, 478 S.W.3d 930, 933 (Tex. App.—Dallas 2015, orig. proceeding) (“to prevail on a motion to abate in a second-filed suit, a movant must establish . . . the first-filed suit does include, or could be amended to include, all of the parties”). Bear Creek has not established that LaFountain’s pending action can be amended to include the Ludlow parties and issues. LaFountain 24 lost his Travis County action on summary judgment and his appeal is now pending before the Fifteenth Court of

Appeals. Rather than arguing that LaFountain’s action can be amended to include Ludlow, Bear Creek takes the opposite position. If the Fifteenth Court of Appeals affirms the judgment against LaFountain, Bear Creek contends that the Ludlow suit would be precluded by res judicata even though Dr. Ludlow was never a party and did not know about LaFountain’s action, which proceeded for years under seal. And if the Fifteenth Court instead reverses the judgment, the Act is clear that private persons “may not intervene” in the LaFountain action while it remains pending. TEX. HUM. RES. CODE § 36.106. Because Bear Creek has not established that LaFountain’s suit includes or could be amended to include the Ludlow parties and issues, the trial court did not abuse its discretion in denying Bear Creek’s alternative motion to abate the underlying proceeding. Having addressed each of Bear Creek’s issues, we deny its petition for writ of mandamus. J. Brett Busby Justice

OPINION DELIVERED: June 19, 2026

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BUSBY, concurring.

Supreme Court of Texas ===== No. 24-1062 ===== In re Dr. Robert Tafel,
et al., Relators ===== On Petition
for Writ of Mandamus =====

JUSTICE BUSBY, concurring. The Court holds that these qui tam claims belong to the State, so they survive the death of the private relator who brought them. As our opinion explains, there is no controversy among the parties to this case regarding the executor’s capacity to proceed with these claims and seek a share of any proceeds for the relator’s estate. To the contrary, Bear Creek admits in its brief that the executor has that authority: if the “qui tam action qualifies as a suit by the State”—and the “claims thus survived [the relator’s] death—then the Executrix may continue to litigate the claims” against Bear Creek. 1 And 1 A concurring opinion contends that this unequivocal statement is not a waiver or admission and develops a potential argument to the contrary regarding capacity. Post at 8 n.25 (Bland, J., concurring). The parties have not addressed whether Bear Creek may later change its position regarding the executor’s capacity—which informed the scope of today’s decision—should it seek to do so. Accordingly, I express no view on that question. the State agrees that the executor can “proceed” with these claims brought “for” and “in the name of the [relator] and of the state.” TEX. HUM. RES. CODE §§ 36.101(a) (emphasis added), 36.104(b). As it explains, “both the State of Texas and Lauren Ludlow, the independent executrix of Dr. Ludlow’s estate, have an interest in the survival and resolution” of these claims. Not only do the claims stand to benefit the relator’s estate financially, they help to “ensure that health care providers are held accountable for unlawful acts and to protect the integrity of the Texas Medicaid program.” This agreement is unsurprising given our rules. Texas Rule of Civil Procedure 150 provides that where, as here, “the cause of action is one which survives,” the death of a plaintiff does not abate a pending suit, which “may proceed to judgment” by following certain procedures. TEX. R. CIV. P. 150. Specifically, the executor “may appear and upon suggestion of

such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name.” *Id.* R. 151. That is precisely what happened in this case: the trial court granted the executor’s unopposed motion to be substituted in place of Dr. Ludlow—not the State—based on her statutory right to possession of his estate. See TEX. EST. CODE § 101.003; *Austin Nursing Ctr. v. Lovato*, 171 S.W.3d 845, 851 (Tex. 2005) (“Lovato acquired the capacity to sue as the estate’s personal representative when she was appointed administrator”) (emphasis omitted). Thus, the claims are now proceeding “for” and “in the name of” the executor (as personal representative of relator’s estate) as well as the State, and they remain 2 subject to the State’s control. No intervention occurred. Cf. TEX. R. CIV. P. 60. A concurring opinion questions whether substituting an executor in such circumstances would effect an impermissible “transfer, devise, or assign[ment of] the State’s claims.” Post at 1 (Bland, J., concurring). Because that unraised issue is likely to arise in future cases, I concur to offer some additional considerations that may assist parties and courts in addressing it. Under the Act, any transfer or assignment of an interest in the State’s claims occurred when Dr. Ludlow—the “person . . . bring[ing] [the] civil action”—filed this *qui tam* suit “for” and “in the name of the person and of the State.” TEX. HUM. RES. CODE § 36.101(a) (emphases added). Interpreting the federal *qui tam* statute, the Supreme Court of the United States has characterized this occurrence as “a partial assignment of the Government’s damages claim” rather than a mere designation of agency, as the statute “gives the relator himself an interest in the lawsuit, and not merely the right to retain a fee out of the recovery.” *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772-73 (2000). 2 2 Federal courts overwhelmingly hold that the relator’s interest in the government’s claim—together with the ability to continue the suit—survives to the relator’s heirs. E.g., *United States ex rel. Kennard v. Comstock Res., Inc.*, No. 9:98-CV-266-TH, 2009 WL 10709091, at *2-5 (E.D. Tex. Feb. 20, 2009) (collecting cases). But it seems doubtful that survivability is the correct conceptual framework for analyzing whether a partial interest in a claim or other asset lawfully acquired by assignment passes to the assignee’s heirs. For example, a person’s assigned interest in a debt obligation could surely be collected by her executor after she dies. 3 Another concurrence highlights the question whether our Act similarly assigns an interest in the State’s claim to the relator, only makes the relator the State’s agent, does both, or creates some other relationship between the parties. Post at 2 (Young & Sullivan, JJ., concurring). But the answer to that question, while consequential in its own right, seems unlikely to matter much to the capacity analysis. Upon filing this action for himself and the State, Dr. Ludlow acquired the rights to continue as a party if the State proceeds with the action, proceed with the action himself if it does not, share in the proceeds of the action, and recover the fees, costs, and expenses he incurred in bringing the action. See TEX. HUM. RES. CODE §§ 36.104(b), 36.107(a), 36.110. Importantly, because the State declined to proceed with the action in the time allotted, a court cannot “limit[]” this “status and right” of the relator. *Id.* § 36.104(b-1) (emphasis added). When Dr. Ludlow later died, nothing further was transferred or assigned away from the State. Instead, the person representing Dr. Ludlow’s estate succeeded

automatically to the status and rights Dr. Ludlow previously acquired as relator. See TEX. EST. CODE §§ 101.001, 101.003, 351.054(a), 351.151; TEX. R. CIV. P. 150-151. 3 Under our cases, this succession appears sufficient to give the executor capacity to proceed with the action on behalf of the relator plaintiff's estate. Austin 3 As one concurrence points out, it seems unlikely that Dr. Ludlow's executor or heirs could transfer or assign these rights given the statute's prohibition on intervention. See TEX. HUM. RES. CODE § 36.106; post at 6 (Bland, J., concurring). 4 Nursing Ctr., 171 S.W.3d at 851. 4 In addition, the State as real party in interest (and putative principal) has expressed its view that the executor should continue to "take point in prosecuting" the action "on the State's behalf." Doing so is fully consistent with the statute: it neither alters the State's continuing position as a nominal plaintiff and owner of the claims—albeit one that has not taken over the right to proceed with the action or sought to participate—nor diminishes the control the State had over the action before Dr. Ludlow's death. E.g., TEX. HUM. RES. CODE §§ 36.101(a), 36.102(e), 36.104(b-1). J. Brett Busby Justice OPINION FILED: June 19, 2026 4 Because the parties do not address the capacity question raised by the concurrence, we have received no argument regarding whether and to what extent the probate court might have a role to play in deciding any of the matters relating to that question. 5

BLAND, concurring.

Supreme Court of Texas ===== No. 24-1062 ===== In re Dr. Robert Tafel,
et al., Relators ===== On Petition
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JUSTICE BLAND, joined by Chief Justice Blacklock and Justice Young, concurring. The Court holds that qui tam claims survive a relator's death because the State owns and ultimately directs these claims, and I agree. The statute authorizing such claims makes no provision, however, for a qui tam relator to transfer, devise, or assign the State's claims to another. The relator instead acts on the State's behalf in exchange for a share of the proceeds the State recovers to redress the State's injury. The statute bars third-party intervention into the suit. Given our Court's wariness of delegations of public authority to private actors, we should interpret the statute as granting only those powers expressed within it. The parties did not argue capacity before the trial court, and thus the Court properly declines to address the executor's capacity to prosecute this suit. I accordingly join its opinion. I write separately to observe the differences between the survival of the State's claim and an executor's capacity to pursue it. I Dr. Scott Ludlow brought a qui tam suit as a statutory relator against Dr. Robert Tafel and his dental practices. Ludlow alleges that Tafel sought reimbursement from the Texas Medicaid program for unnecessary dental treatment in violation of the Texas Health Care Program Fraud Prevention Act. Ludlow died while suit was pending. The trial court then permitted the executor of Ludlow's estate to take his place as the qui tam relator. Tafel moved for summary judgment, arguing that relator status does not survive the relator's death or transfer by inheritance and thus the suit must be dismissed. The State filed a "Statement of Interest" asserting it had the right to object to Tafel's summary judgment motion because: (1) it

retains the right to intervene; (2) it may settle with the defendant over the relator's objection; (3) it is entitled to any recovery obtained; (4) the relator has no right to dismiss the action without the State's consent; and (5) it "retains the broad authority . . . to dismiss the action 'notwithstanding the objections' of the relator." 1 The trial court denied the motion, the court of appeals denied mandamus relief, and this proceeding followed. II As the State told the trial court: "A [qui tam] claim belongs to the State." For the reasons stated in the Court's opinion, I agree. Whether 1 See Tex. Hum. Res. Code §§ 36.104(b-1), .107, .110. 2 the Act authorizes some other private individual to pursue the State's claim in the name of the relator is a different question. Every textual indication at this preliminary review supports the conclusion that it does not. The statute does not grant the relator the right to assign the claim to another or pass it through inheritance. If such a right exists, it must be implied from the powers expressly delegated. Two rules of construction guide the analysis. First, in delegating state authority, the Legislature confers only those powers identified by express statutory language and those necessary to fulfill an identified function or duty. 2 Second, "courts should subject private delegations [of state authority] to a more searching scrutiny than their public counterparts." 3 2 See *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002) (noting administrative agencies "may exercise only those powers the law, in clear and express statutory language, confers upon them"); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003) ("[A] commissioners court may exercise only those powers expressly given by either the Texas Constitution or the Legislature."); *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016) ("[G]eneral-law municipalities . . . 'are political subdivisions created by the State and, as such, possess [only] those powers and privileges that the State expressly confers upon them.'" (second alteration in original) (quoting *Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 645 (Tex. 2004))). 3 *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 469 (Tex. 1997); see also *Empire Gas & Fuel Co. v. State*, 47 S.W.2d 265, 272 (Tex. 1932) ("The rule is also well settled that legislative grants of property, rights, or privileges must be construed strictly in favor of the state on grounds of public policy, and whatever is not unequivocally granted in clear and explicit terms is withheld."). 3 The statute authorizes the relator to share in any recovery for the State's injury. 4 Ultimately, however, the relator's authority derives from and yields to the State's authority. The Act provides that the relator's "right to continue as a party to the action" is subject to the State's control through the State's right to dismiss or settle the action or to pursue an alternate remedy. 5 Further, on the State's or the defendant's motion, the trial court may curtail the relator's right to participate. 6 The trial court may reduce the relator's share of the proceeds if it finds the relator planned or initiated the fraud and it must dismiss the relator from the action if the relator is convicted of criminal conduct arising out of the relator's participation in the fraud. 7 The combination of authority to act plus control by another is the hallmark of agency. 8 An agent consents to act on behalf of a principal, subject to the principal's control. 9 When an agent acts within its authority, the agent does so "with the same force and effect as if the 4 Tex. Hum. Res.

Code § 36.110. 5 Id. §§ 36.107, .109(a). Even when the State declines to participate, the relator “may proceed” subject to the State’s right to later intervene. Id. § 36.104(b), (b-1). 6 Id. § 36.107(d)–(e). 7 Id. § 36.111. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 589 (Tex. 2017) 8 (“Authority to act on the principal’s behalf and control are the two essential elements of agency.”). 9 *Finley Res., Inc. v. Headington Royalty, Inc.*, 672 S.W.3d 332, 343 (Tex. 2023). 4 principal had performed the act himself.” 10 As the State’s agent, the qui tam relator has no right to exceed the authority the State has legislatively delegated. 11 A concurring opinion suggests that the relator in this case possessed his own claim, to which his executor succeeds “automatically.” 12 There is no textual basis for this assumption. The statutory permission to “bring a civil action for a violation of Section 36.002 for the person and for the state” that “shall be brought in the name of the person and of the state” does not grant an independent claim. 13 Federal precedent interpreting a federal statute is not sufficiently analogous to the Texas statute to apply. As members of our Court have observed, the Federal Claims Act employs a damages model distinct from Texas’s penalty scheme, suggesting that federal jurisprudence may have limited value in interpreting the Texas statute. 14 Assignment relationships rely on an agreement to determine 10 *Cnty. Health Sys. Pro. Servs. Corp. v. Hansen*, 525 S.W.3d 671, 697 (Tex. 2017). 11 See *Parke v. Wynne*, 34 S.W. 907, 909 (Tex. 1896) (“When an agent derives his authority from a written instrument, that authority will be limited to a plain import of the language by which it is conferred.”).

12 Ante at 4 (Busby, J., concurring).

13 Tex. Hum. Res. Code § 36.101(a); cf. *PPG Indus., Inc. v. JMB/Hou. Ctrs. Partners Ltd. P’ship*, 146 S.W.3d 79, 84 (Tex. 2004) (“But we must at least begin our analysis by noting that the Legislature clearly knew how to indicate that warranty claims were assignable, but did not do so in the DTPA.”). 14 *In re Novartis Pharm. Corp.*, 722 S.W.3d 720, 721–22 (Tex. 2025) (Young & Sullivan, JJ., statement respecting the denial of the petition for writ of mandamus). 5 the scope and nature of the assignment. 15 A qui tam relator therefore has no “status and right” beyond what the statute confers. 16 With this understanding, it is evident that the relator has no right to devise, transfer, or otherwise assign its authority in the absence of the statute’s delegation of such a power. The relator’s authority to act is not a “claim” independent of the State’s claim. A common-law survivability analysis simply does not apply as it presupposes the relator possesses an independent claim rather than merely the authority to pursue the State’s claim. 17 The Act—from which the relator’s authority is derived—is silent on the relator’s power to transfer this statutory authority to another or self-appoint a replacement. On the contrary, the Act bars intervention by persons other than the State. 18 The State’s brief suggests that the executor has “an interest in the survival and resolution of Dr. Ludlow’s claims.” She does not. To the extent the State argues that declining to permit qui tam relators to pass their authority on to others will “jeopardize the public interest in health 15 See *Signature Indus. Servs. LLC v. Int’l Paper Co.*, 638 S.W.3d 179, 196 (Tex. 2022) (rejecting assignment theory in the absence of words or actions indicating an intent to assign); see also *Assignee*, Black’s Law Dictionary (12th ed. 2024) (“Use of the term is so widespread that it is

difficult to ascribe positive meaning to it with any specificity. Courts recognize the protean nature of the term and are therefore often forced to look to the intent of the assignor and assignee in making the assignment — rather than to the formality of the use of the term assignee — in defining rights and responsibilities.”). 16 See Tex. Hum. Res. Code § 36.104(b-1). 17 Had the case proceeded to judgment or settlement, the relator’s estate would have an interest in collecting the proceeds to which the relator became entitled. 18 Id. § 36.106. 6 and safety and the public policy interests in the creation and enforcement of the [Act],” that purpose is achieved through the means the Legislature authorized, not judicial interlineation. “[I]t frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute’s primary objective must be the law.” 19 The Legislature may have other considerations in mind, such as whether assignability risks the creation of a secondary financial market for qui tam suits. 20 We should not judicially fill legislative silence in light of our narrow view of State-delegated authority to private actors. 21 Qui tam actions are brought in the name of the State. 22 The relator’s death suffices as “good cause” justifying the State’s late intervention, as the statute permits. 23 Such an event, however, does not justify a third party’s intervention as a relator, which the statute expressly forbids. 19 *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 570 (Tex. 2014) (plurality op.) (alteration in original) (quoting *Rodriguez v. United States*, 480 U.S. 522, 526 (1987)). Whether or not permitting executors to continue qui tam claims aids in maintaining the integrity of the Texas Medicaid program, see ante at 2 (Busby, J., concurring), our focus cannot drift from the plain text of the statute to the arguable salutary effects of expanding the powers of the qui tam relator. 20 See *In re Xerox Corp.*, 555 S.W.3d 518, 536 (Tex. 2018) (describing proceeds accruing to the qui tam relator as a “statutory bounty”). 21 See *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 432 (Tex. 2023) (“‘[L]egislative silence . . . does not give us the power’ to legislate from the bench.” (alteration in original) (quoting *Brown v. De La Cruz*, 156 S.W.3d 560, 566 (Tex. 2004))). 22 Tex. Hum. Res. Code § 36.101(a). 23 See id. § 36.104(b-1). 7 * * * A qui tam relator does not possess a “claim” to transfer to another but instead acts on the State’s behalf to recover for fraud perpetrated against the State. Proceeding with the suit in its present form may result in an irreversible waste of judicial and public resources. 24 The capacity issue remains on remand, 25 and the State is free to intervene to prosecute the suit. With these thoughts on the nature of the relationship between the State and a qui tam relator, I join the Court’s opinion and concur in the judgment. Jane N. Bland Justice OPINION FILED: June 19, 2026 24 See *In re UMTN Gen. Servs., L.P.*, 725 S.W.3d 424, 432–33 (Tex. 2025). 25 *Tafel* has not waived or conceded the capacity issue by asserting other issues in a petition for writ of mandamus. Contra ante at 1 (Busby, J., concurring). *Tafel*’s brief acknowledges the possibility that the claims belong to the State and further observes that whether common-law survivability rules apply in such a case is a question of first impression. *Tafel*’s brief stresses the importance of having this Court resolve the predominant question of whether the State’s claim remains at all. In context, *Tafel*’s acknowledgment that survivability rules may not apply to claims belonging to the State is not a

concession that the executor has the capacity to proceed with the State’s claim. 8

YOUNG, concurring.

Supreme Court of Texas ===== No. 24-1062 ===== In re Dr. Robert Tafel,
et al., Relators ===== On Petition
for Writ of Mandamus =====

JUSTICE YOUNG and JUSTICE SULLIVAN, concurring. The Court holds today that qui tam claims brought under the Texas Health Care Program Fraud Prevention Act survive the relator’s death because the claims belong to the State. Ante at 2, 8–10. According to the Court, the State “is the party allegedly injured” and is “still very much in existence.” Id. at 10. Justice Bland agrees that “qui tam claims survive a relator’s death because the State owns and ultimately directs these claims.” Ante at 1 (Bland, J., concurring). So do we. We write separately to acknowledge two issues that the parties have not raised in this proceeding but that the Court may need to address in the future. As the Court notes, “[t]his Court has long treated actions filed by qui tam relators as justiciable,” ante at 10 n.4, and no party has argued that we should change course in this case. We therefore join the Court’s opinion, which answers the narrow question presented without needing to address the relator’s standing. But although we agree with the Court that denying this mandamus petition does not require us to address standing head-on, that does not mean that our concerns about the Act have been allayed. See *In re Novartis Pharms. Corp.*, 722 S.W.3d 720 (Tex. 2025) (statement of Young and Sullivan, JJ., respecting the denial of the petition for writ of mandamus). Parties remain free to argue that differences between Texas law and federal law justify departing from the U.S. Supreme Court’s conclusion that a qui tam relator has standing as the partial assignee of the government’s claim. See id. at 721–22 (citing *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000)); compare *Stevens*, 529 U.S. at 772 (rejecting the theory that the qui tam relator acts merely as the government’s agent), with ante at 5 (Bland, J., concurring) (referring to the relator as “the State’s agent”). Parties may also argue that the Act violates the separation of powers by assigning to private relators authority that the Constitution assigns exclusively to the attorney general and district and county attorneys, see *Novartis*, 722 S.W.3d at 722—an issue that the parties to this proceeding did not raise. We hope that the Court will seize the opportunity to address these two difficult but important questions in an appropriate case. Perhaps the wait will not be long, now that Novartis has returned to this Court. See No. 26-0467, Pet. for Writ of Mandamus. Because this petition presents a different question that the Court correctly answers, we are pleased to concur and leave the thorny constitutional issues for another day. James P. Sullivan Evan A. Young Justice Justice OPINION FILED: June 19, 2026 2