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May 30, 2025

Hon. Blake Hawthorne, Clerk
Supreme Court of Texas
Austin, Texas

NO FAULT - NO LEGAL CONTROVERSY - NO VALID DIVORCE

Re: Cause No. 23-0192
Style: TDFP et al v. Grassroots Leadership Inc et al

Dear Mr. Hawthorne:

I hope that I am not the only loyal consumer of this Court's regular stream of Friday morning quality output who instantly realized that to-day's grand pronouncements are reality-remote. That reaction, if validated by further reflection, would make the derogatory references to academic discourse all the more ironic. As a de-institutionalized academic of yesteryear, however, I don't take offense.

Here is the problem: If every court case requires an actual controversy, how can Texas courts grant no-fault divorces? And not only that, how is the entry of a divorce decree (independent from property allocation and divvying up of parenting time and specific caretaker rights and responsibilities) not non-adversarial when both spouses have filed for divorce and have live pleadings on file at the time of disposition?

The typical divorce scenario is a quintessential case of both parties wanting the same: A judicial pronouncement that it's over between them. That the holy bonds are severed and that they may start afresh. Or forever remain solo by choice or necessity. What they fight over often are the spoils. And the kids, if any.

There may be much injury and harm and the property division issues may be highly contested, but the dissolution of marriage involves a change in one's civil status regardless of whether there is or is not a genuine dispute about who gets the kids, the dog, the house, and the retirement funds, or what respective portions of various animate or inanimate assets.

When wife and husband have ended up hating each other, they don't want to remain married. So no matter how much they may argue and fight, there is no real controversy as to getting it- the divorce - and no judge can deny it (except in extraordinary circumstances. I have previously furnished the legal cite for the man who unsuccessfully argued that common law divorce was unconstitutional. Not so, thanks to the wisdom and policy preferences of two separated branches.

If the unyielding adversity sine-qua-non principle promulgated today is valid, a huge number of divorces have just been rendered void by judicial fiat, and many Texas will find themselves married to two and perhaps even more spouses. How can a divorce be not void if it was pronounced by court that didn't have a case: A case in which the parties were truly adverse as to the adjustment of civil status and incident rights at issue?

Thanks to this Court, and what with the high incidence of divorce and much remarriage, we are now a society with a sizeable community of bigamists and polygamists.

And it doesn't stop there: What about voluntary acknowledgement of parentage (paternity for men, parentage for non-designators)[1] and subsequent voluntary proceedings to establish the parent-child relationship legally? Void too, in the absence of a genuine dispute as to a mutual desire to have a dad in the child's life?

If the birth mother doesn't object, there is no genuine or actual controversy, and if there is doubt as to the true provenance of the winning sperm cell (the paternal DNA), it is nowadays resolved scientifically through genetic testing.

[1] Maternity will rarely be an issue, except perhaps in refugee and internment camps for ID and paperless humans.

THE UNINJURED UNDER THE TEXAS CONSTITUTION

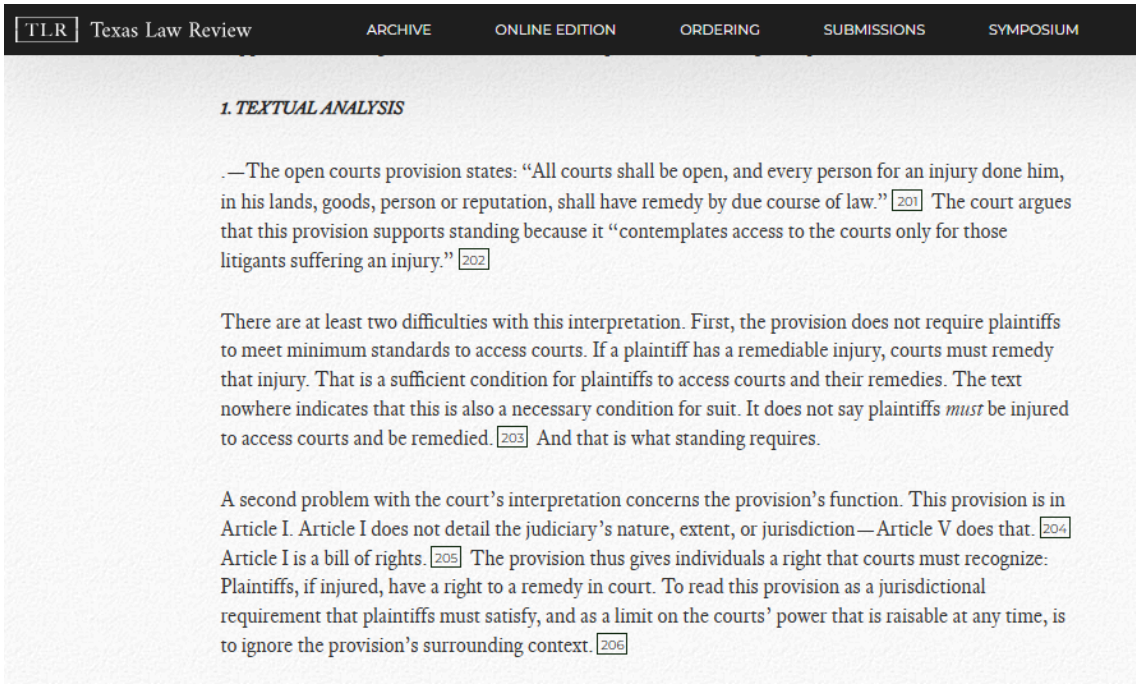
Before many of us were turned into bigamists (even if not previously married in a Catholic ceremony and then secularly sundered by judicial decree), we became textualists. At least those of us in or around laws and courts.

So, textually speaking, there is a fundamental flaw here also: The Texas constitution does not literally restrict court users to injured persons. It merely says that the category of injured person shall have guaranteed access to the courts.

Where does the *Open Courts* provision state that it is *closed* to all others? If taken *ad absurdum*, attorneys and mere spectators would also be excluded from appearing in courts. Neither category would typically be injured. Contrariwise, attorneys make a living, if not a killing, for the open-court activities. And how about venire persons, jurors, and non-party witnesses? Hopefully mostly uninjured, too, so they can make it into the courtroom and do their citizen duty.

But back to 1976 and Section 13 of the Bill of Rights, textually examined: “All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.”

It doesn’t say it shall be open ONLY to every person for an injury. That’s been pointed out recently in a commendable law review article by an author that appears to have been a student of one of the sitting members of this Court. See David Hutchison, Standing in Texas: Exploring Standing Under the Original Meaning of the Texas Constitution, 103 Tex. L. Rev. 103 (2024).



The textual fail: Injury is not a restricting or necessary condition

Focusing on the "injury done *him*," that's no longer so restrictive either. That's so thanks to the judicial construction of *him* as generic (i.e. *he* as a unisex human rather than just the member of the male half of the herd), or thanks to the people of Texas having ratified the Equal Rights Amendment some time ago. That's an amendment that commands equality under the law as to sex as a classification. See Tex. Const. art. I, § 3a. Deserving of strict scrutiny even in the eyes of blind Lady Justice. I think that was the *McLean* case. I probably wrote an article about it back in the day.

GOOD FOR ME?

That observed, and having duly invoked academic prowess not my own, I am actually a potential beneficiary of the doctrine re-pronounced as exceptionless gospel today with great flourish:

That's because I have literally argued for years that the test case brought by Felipe Gomez against Texas feticide practitioner Alan Brad, MD, did *not* present a justiciable controversy. As the Court is aware, I have even been sued twice for calling Felipe Nery Gomez a collusive litigant. See fact recitation in Tex. App. No. 12-22-00218-CV.

Three years ago I presented this non-justiciability argument to this Court in appellate case No. 22-0517, which never was accorded the status of “a cause.” This Court denied review, and then there were two repeats of that litigation even though the San Antonio Court of Appeals had ruled in the first case (in which I was the appellant) that Felipe Gomez’s claim was “extinguished” by his nonsuit. There were actually two notices of nonsuit, the second one expressly *with* prejudice. In *Gomez v. Braid III*, there was then a detour into bankruptcy court in the Northern District of Illinois, followed by a remand to state district court in Bexar County. So, the initial case was mooted by Gomez’s nonsuit, and then there were several more, and no end yet in sight since all are not yet over.

Which makes me a little cynical about mootness (at least when brought about by a nonsuit) and the being sued once more, if not *seriatim*.

TODAY’S OPINION COLLATERALLY ENDS THE S.B.8 LITIGATION - OR DOES IT?

As for absence of controversy and collusion, U.S.D.C. Judge Jorge Alonso in Chicago has refused to acknowledge that Dr. Alan Braid and Felipe Nery Gomez, as well as Oscar Stilley, were all committed to the pro-abortion position and sought invalidation of a Texas abortion law from both sides of the docket. If this is not a textbook case of collusive litigation, what is? Not to mention litigation challenging the constitutionality of duly enacted state statute in a far-off forum (in which the Texas Attorney General couldn’t even be bothered to file an amicus brief expressing the views of the State via the then Solicitor General.

Alan Braid’s federal interpleader case in Illinois, which involves both of these collusive plaintiffs, has now been pending for three and a half years, only to be mulled over some more by the Seventh Circuit, which held oral argument on April 1, 2025.

The Seventh Circuit has previously acknowledged that Article III may thwart claims in federal court, but that such impediment — lack of a sufficiently concrete injury for purposes Article III standing—is not necessarily dispositive in state court, citing *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) ("the constraints of Article III do not apply to state courts"); *see also Lee v. Buth-Na-Bodhaige,*

Inc., 143 N.E.3d 645, 665 (Ill. App. Ct. 2019) (the plaintiff did not have to allege an actual injury sufficient for Article III standing to bring a FACTA claim in state court).

Dr. Braid's attorneys nevertheless argued in their appeal that S.B.8 would fail on standing grounds in state court, citing Gomez v. Braid II, an appellate precedent that was procured by Dr. Braid and Felipe Gomez collusively. *See Gomez v. Braid*, No. 04-22-00829-CV (Tex.App.- San Antonio Feb. 21, 2024, no pet.).

The Texas Supreme Court has now handed Abortionist Alan Braid a favorable advisory opinion on a silver platter, metaphorically speaking.

ON COLLATERAL CONSEQUENCES

Dr. Braid is not before this Court. Nor are Felipe Gomez or Oscar Stilley, the collusive S.B.8 challenge plaintiffs in Bexar County, then interpleader defendants in Chicago. One is mired in his still-pending Chapter 7 bankruptcy. The other one is back in federal prison (apparently outsourced to a privately-run one, perhaps run by the same company that ran the internment camps for the cross-border migrants in this case).

Nonetheless, the Court today - *in effect* - delivered an advisory opinion to the Seventh Circuit without having even been asked for it. How does that not violate the just-reaffirmed principle of judicial restraint?

But even on the assumption that it is a good thing for this Court to vindicate the litigation position of San Antonio (now Arizona) abortion doc Alan Braid in a non-obvious way and in an unrelated case, there is another irony here concerning the concomitant core concern over mootness:

How was Alan Braid's appeal in the Seventh Circuit not mooted as a result of Dr. Braid's interpleader "contest money" having been returned to him or his lawyer? *See Braid v. Stilley et al*, No. 21-CV-5283, 2022 WL 4291024 (N.D. Ill. Sept. 16, 2022)(dismissing federal statutory interpleader & declaratory judgment action on

federal abstention grounds and ordering return of $10,000 deposited into the registry by the Plaintiff).[2]

Nor does the decision in this case fully sort out the state-law issues concerning Alan Braid's challenge to S.B.8 in the Northern District of Illinois. Much rather, it sows more confusion over multiple court-fashioned justiciability doctrines.

To re-capitualate the litigation saga: Dr Braid recruited two pro-choice S.B.8 litigants for collusive litigation, then counter-sued him in a venue of his choice far away from Texas under the federal interpleader statute that requires minimal diversity only and $500 in controversy rather than $75,000. He deposited $10,000 into the registry of the court, and asked for it to be restored to him based on a judicial determination that S.B.8 claimants can't get it under *Roe*. How was there a genuine controversy in the collusive suit by pro-choice Felipe Gomez and equally pro-choice Oscar Stilley in Bexar County to begin with? And as for Braid's countersuit in Chicago, where is his injury? His $10,000 were refunded to him at the termination of the litigation, which was ostensibly dismissed on prudential, not jurisdictional grounds. But the Seventh Circuit took up Braid's appeal anyhow.

Today, the Texas Supreme Court gives the Seventh Circuit an advisory opinion without them even having to send a certified question their way. The brethren on the Seventh (the 1 lady justice was skeptical) can now rule that uninjured S.B. claimants **don't have standing in federal OR Texas state court.** *Braid v. Stilley*, No. 22-2815 (7th Cir. 2025)(forthcoming), *citing Texas Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc.*, No. 23-0192 (Tex. May 30, 2025).

So there. It's over. Thank you.

THE DIRE CONCLUSION

Justice Young's opinion issued today wreaks havoc upon the legal relations and personal civil statuses of individuals governed by the Texas Family Code: By judicial fiat, it purports to invalidate millions of divorce decrees of living Texans across the State in cases there both parties wanted and procured the divorce,

[2] Oscar Stilley's appeal under appellate case number 22-2881 was dismissed for failure to pay fees. 2022 WL 19561992 (7th Cir. Dec. 7, 2022)

and renders many of them who have since remarried putative spouses at best, and bigamists or polygamists at worst.

This case additionally purports to resolve the dicey question as to whether uninjured civil "enforcers" can sue & maintain suit under the Texas Heartbeat Act,[3] even though no implicated party - pro-abortion or against - has been before the Court to plead their case for or against statutory-only standing or a divergent take on the Texas open-courts provision.

Maybe it's good that the issue of S.B.8 is finally resolved, one way or the other. Maybe it's practical to abort the Heartbeat Act collaterally this way.

What it is not is principled.

Rethinking and rehearing is in order.

Respectfully submitted,

/s/ *Wolfgang P. Hirczy de Mino*

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A Particular Member of the Public
Sometime with demonstrable injury,
Sometimes not

TRAP 11 CERTIFICATION

No one would pay me to critique the Justice Evan Young's work in light of the certain futility of any such endeavors. I therefore happily certify that nobody

[3] The distinction is meaningful because anyone can sue anyone (as long as a court clerk accepts the filing), whereas continuation can be stopped through litigation tools such as a plea to the jurisdiction, a motion to dismiss under rule 91a, or a motion for summary judgment.

has done so, or will. Tex. R. App. P. 11 (requiring identification of amicus funding source, if any).

I further certify that all attorneys on this case are being e-served through the Texas efiling system, but also hope that the audience will hopefully be larger, given the Court's opinion addresses important justiciability doctrines with zero input from parties and attorneys who are nevertheless affected by them thanks to vertical stare decisis in their own respective cases.

This amicus production was done and rushed out in a matter of hours, so there will be typos and possibly substantive errors, for which I apologize in advance.

In the event of further consideration and brief, I am willing to spend additional remaining life time to be more profound and do better.

/s/ *Wolfgang P. Hirczy de Mino*

WOLFGANG P. HIRCZY DE MINO

Respectfully submitted,

Wolfgang P. Hirczy de Mino

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