IN THE SUPREME COURT OF TEXAS

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NO. 09-0794
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LTTS CHARTER SCHOOL, INC. D/B/A UNIVERSAL ACADEMY, PETITIONER,

v.

C2 CONSTRUCTION, INC., RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

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Argued December 7, 2010

JUSTICE GUZMAN, joined by CHIEF JUSTICE JEFFERSON and JUSTICE MEDINA, dissenting.

A party's ability to take an interlocutory appeal is a limited exception to the general rule that only final orders are appealable. As applicable here, the contours of that exception are found in sections 51.014(a)(8) and 101.001(3) of the Civil Practice and Remedies Code. Despite these limits, the Court embarks on a perilous expedition through the Education Code in an attempt to locate some indicia that the Legislature intended to allow privately run, open-enrollment charter schools to take this circumscribed form of appeal. In so doing, the Court ventures beyond the narrow procedural question presented in this case: whether a privately run, open-enrollment charter school is a "governmental unit" as defined by section 101.001(3) of the Civil Practice and Remedies Code. If it is, then an interlocutory appeal is proper from denial of a plea to the jurisdiction by the school, as

authorized by section 51.014(a)(8). But, because it is not, I would affirm the court of appeals. Privately run, open-enrollment charter schools do not meet the Legislature's definition as set out in section 101.001(3), and therefore no interlocutory appeal may be taken from an order granting or denying a plea to the jurisdiction by such a school.

Moreover, not only does the Court allow for an interlocutory appeal that is contrary to the expressed intent of the Legislature, the Court has also effectively answered an important substantive question that is not before us: what type of immunity does a privately run, open-enrollment charter school possess? Specifically, do such schools: (1) possess governmental immunity from suit, (2) merely have immunity from liability, or (3) lack immunity entirely? The Court's reasoning, while masquerading as an answer to the narrow procedural issue before us, portends to address the merits of this immunity question. By doing so, the Court provides courts below with a signal that such schools possess immunity from suit. As a result, a private, nonprofit corporation can take on the mantle of governmental immunity, leaving other litigants wrongfully deprived of their day in court and without an opportunity to have this issue addressed through the rigors of our adversarial system. Accordingly, I must respectfully dissent.

I. Interlocutory Appeal Under Section 51.014(a)(8)

LTTS Charter School, Inc. (LTTS), is a private, nonprofit corporation, operating an open-enrollment charter school. LTTS does so under authority of a charter issued by the State Board of Education, pursuant to the charter school regime established by Chapter 12 of the Education Code. It is being sued by C2 Construction for breach of contract relating to the construction of new facilities. LTTS filed a plea to the jurisdiction, asserting governmental immunity. The trial court

denied that plea, and when LTTS attempted an interlocutory appeal, the court of appeals dismissed its appeal for lack of jurisdiction, holding that LTTS is not a governmental unit under section 101.001(3). 288 S.W.3d 31, 38.

Civil Practice and Remedies Code section 51.014(a)(8) allows immediate appeal of an order denying or granting a plea to the jurisdiction by a governmental unit and, in doing so, incorporates by reference section 101.001(3)'s definition of what constitutes a governmental unit. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8). In construing section 51.014, it is "the Legislature's intent that section 51.014 be strictly construed as a narrow exception to the general rule that only final judgments and orders are appealable." *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 355 (Tex. 2001) (quotation marks omitted). LTTS asserts that it is a "governmental unit" for purposes of section 51.014(a)(8) under two provisions found in section 101.001(3). Specifically, LTTS argues that it is a governmental unit both as a "school district" under section 101.001(3)(B), and also as "any other institution, agency, or organ of government" as provided by section 101.001(3)(D).[1]

II. Privately Run, Open-Enrollment Charter Schools Are Not Governmental Units

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[1] As relevant here, section 101.001(3) defines a "governmental unit" as:

> (B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority;
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> . . . .
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> (D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B), (D).

A. "Any Other Institution, Agency, or Organ of Government" Under Section 101.001(3)(D) and "School District" Under Section 101.001(3)(B)

The Court holds that LTTS is a governmental unit under section 101.001(3)(D), concluding it qualifies as "any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D). The first part of that definition, "any other institution, agency, or organ of government," appears quite broad. But that apparent breadth is circumscribed by the language that follows: "status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." The linchpin of section 101.001(3)(D) is the word "derive." "Derive" means "to receive or obtain from a source or origin." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 536 (2d ed. 1987). The plain language of section 101.001(3)(D) thus covers only two classes of governmental entities: those whose status and authority comes directly from our Constitution, and those whose status and authority is received or obtained by a legislative enactment. *See* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

Unquestionably, LTTS does not derive its status from the Constitution. We therefore examine whether it falls within the other class of entities covered by section 101.001(3)(D)—those whose status and authority is conferred by a legislative enactment. LTTS does not fall within that class either, because it does not obtain or receive status or authority from any statute or other enactment. Rather, its status is derived from a charter granted by the State Board of Education. *See* TEX. EDUC. CODE §§ 12.101, .113. If LTTS's charter is revoked, or if the commissioner of

education denies its renewal, *see id.* §§ 12.115, .116, LTTS will cease to have any kind of governmental status and will simply be a private, nonprofit corporation. *See id.* § 12.1161(a) ("[I]f the commissioner revokes or denies the renewal of a charter of an open-enrollment charter school . . . the school may not: (1) continue to operate under this subchapter; or (2) receive state funds under this subchapter."). In point of fact, although the Education Code authorizes the State Board of Education to grant charters, it does not itself grant them to any particular entities. Therefore, LTTS does not derive its status or authority from any legislative enactment.

LTTS also asserts that it is a governmental unit under section 101.001(3)(B) as a "political subdivision, specifically, a school district." The Court does not reach that question. I would hold that the plain meaning of "school district" does not cover a privately operated, open-enrollment charter school. A school district is a "political subdivision," TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B), exercising "jurisdiction over a portion of the State," *Guar. Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980). Rather than exercising jurisdiction, an open-enrollment charter school "provide[s] instruction to students at one or more" locations, and "does not have authority to impose taxes." TEX. EDUC. CODE § 12.102(1), (4). Furthermore, the Legislature, far from defining charter schools as school districts, generally goes to great lengths in the Education Code to list each separately, a clear indication that a charter school is not equivalent to a school district. *See, e.g.*, *id.* § 7.009.

Rather than employing this strict textual analysis to determine whether the requirements of section 101.001(3) are met, the Court largely ignores the statutory text and instead meanders through a wide-ranging consideration of Chapter 12 of the Education Code. Seeking to buttress its

conclusion, the Court cites sections of the Education Code that generally describe how open-enrollment charter schools operate, but are irrelevant to the narrow procedural issue before us. The Court thus mistakenly focuses only on the inclusive, general part of the definition "institution, agency, or organ of government," while disregarding the limiting language "status and authority of which are derived . . . from laws passed by the legislature under the constitution." TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D), thereby rendering meaningless the limiting language in that section and thwarting the Legislature's intent. The Court is also oblivious to the rule that interlocutory appeals are disfavored, and that section 51.014 is to be strictly construed accordingly. *See Bally Total Fitness*, 53 S.W.3d at 355.

The Court makes a bold but brief effort to identify legislative enactments that confer status and authority on LTTS under section 101.001(3)(D). It particularly cites sections 12.104 and 12.105 of the Education Code, asserting that charter schools derive authority and status respectively from those enactments. But section 12.104 does not confer authority on LTTS, or on any other charter school. *See* TEX. EDUC. CODE § 12.104. It merely provides that charter schools have the same powers as public schools under Title 2 of the Education Code. *See id.* Whether a particular entity like LTTS *is* an open-enrollment charter school, and is thus able to avail itself of those powers, is entirely dependent on the grant of a charter from the State Board of Education. *See id.* §§ 12.101, .113. Section 12.105 likewise does not confer status on LTTS, or any other charter school, but instead provides that open-enrollment charter schools are part of the public school system. *See id.* § 12.105. As with section 12.104, whether any particular entity is an open-enrollment charter

school—and hence part of the public school system—depends on the grant of a charter from the State Board of Education.

The Court also cites Education Code section 12.1053 as conferring governmental status on open-enrollment charter schools. But, in addition to the fact that it does not confer status for the reasons discussed above, an examination of section 12.1053 demonstrates a clear intent to only apply very specific definitions and provisions from the Government and Local Government Codes to charter schools. It defines open-enrollment charter schools as (1) "governmental entit[ies]" under subchapter D, Government Code Chapter 2252 (providing that real property is held in trust); (2) "governmental entit[ies]" under subchapter B, Local Government Code Chapter 271 (addressing competitive bidding on certain public works contracts); (3) "political subdivision[s]" under subchapter A, Government Code Chapter 2254 (governing professional services contracts); and (4) "local government" under Government Code sections 2256.009 to 2256.016 (regulating authorized investments). TEX. EDUC. CODE § 12.1053. None of those four definitions is the same as "'governmental unit' under Civil Practice and Remedies Code section 101.001(3)," which is, after all, the inquiry here.

Finally, the Court notes that "[s]everal statutes discuss the authority that open-enrollment charter schools may exercise *under* their charters." __ S.W.3d __ (emphasis added). But this merely underscores the flaw in the Court's reasoning: open-enrollment charter schools derive status and authority *under* the charters granted to them by the State Board of Education, not from any legislative enactment.

This is not to say that the Legislature could never allow a privately run, open-enrollment charter school like LTTS to take an interlocutory appeal. And, contrary to the Court's understanding, I am not suggesting that only a legislative enactment specifically naming each charter school would suffice, or that the Legislature must approve each charter application. __ S.W.3d __. Rather, had the Legislature chosen to do so, it could readily have provided for interlocutory appeals by open-enrollment charter schools *as a class*. For example, it could have amended the interlocutory appeal statute. *Cf.* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(6) (authorizing interlocutory appeal from an order denying a motion for summary judgment "based in whole or in part upon a claim against or defense by a member of the electronic or print media"). But, the Legislature did not so choose. *Cf. Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 463 (Tex. 2009) (Willett, J., concurring) (citation omitted) ("[T]he 'surest guide' to what lawmakers intended is what lawmakers enacted."). Nor is this to say that an interlocutory appeal would always be improper for a *publicly* run, open-enrollment charter school—such a school would likely be a governmental unit independent of its charter.[2] But LTTS is not a publicly run school, and the Legislature simply has not granted privately run, open-enrollment charter schools a right to interlocutory appeal. The Court errs in granting them that right today.

B. Comparison to Public Universities and Junior College Districts

The Legislature's treatment of public universities and junior colleges under section 101.001(3) illustrates the actual manner in which the Legislature designates entities as governmental

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[2] Chapter 12 of the Education Code provides that charters can be granted not only to private entities, but also to public institutions of higher learning, and other governmental entities. TEX. EDUC. CODE § 12.101(a)(1), (4).

units under that section, and further highlights the flaw in the Court's reasoning. Specifically, junior college districts are governmental units under section 101.001(3)(B) because they are listed in that subsection, whereas public universities are governmental units under section 101.001(3)(D) because their authority and status is conferred by legislative enactments.

Civil Practice and Remedies Code section 101.001(3)(B) includes "junior college district[s]," as well as school districts, in its enumeration of entities that are governmental units. TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B). By contrast, public universities are treated differently from both junior colleges and charter schools. Although, like charter schools, they are not listed anywhere in section 101.001(3), public universities nevertheless satisfy the precise standards articulated by section 101.001(3)(D), which requires that an entity's governmental status be "derived from . . . laws passed *by the legislature*." *Id.* § 101.001(3)(D) (emphasis added). The extensive provisions of Title III of the Education Code, entitled "Higher Education," confer status and authority on the various public universities of this state. *See, e.g.*, TEX. EDUC. CODE § 67.02 ("The University of Texas at Austin is a coeducational institution of higher education within The University of Texas System."); *id.* §§ 109.001, .01 (establishing the Texas Tech University System and providing that Texas Tech University "is a coeducational institution of higher education located in the city of Lubbock").

Unlike public universities, specific charter schools are not mentioned in the Education Code, nor any other statute, and they therefore do not derive status as governmental units from legislation, as section 101.001(3)(D) requires. Rather, like junior colleges, the Legislature has provided administrative procedures for their creation, but has not actually conferred status on them itself. *See id.* §§ 130.011–.013 (providing for establishment of junior college districts by joint action of the

coordinating board, commissioner of higher education, and the independent school district or city that wishes to establish a junior college district); *id.* §§ 12.101, .113 (authorizing the State Board of Education to grant charters).[3] But, unlike junior colleges, charter schools are *not* among the entities enumerated in Civil Practice and Remedies Code section 101.001(3). The Court largely ignores the rest of section 101.001(3) in its analysis, focusing almost entirely on subsection (D). But, in construing a statute, "[w]e determine legislative intent from the entire act and not just isolated portions." *20801, Inc. v. Parker*, 249 S.W.3d 392, 396 (Tex. 2008).

Accordingly, I would conclude that privately run, open-enrollment charter schools such as LTTS do not fall within the plain language of section 101.001(3)(D), because they gain and lose their status and authority through agency actions, not by legislative enactments. I would also conclude that they are not "school districts," and therefore are not governmental units under section 101.001(3)(B). Thus, I would hold that LTTS is not entitled to an interlocutory appeal under section 51.014(a)(8).

III. The Court Effectively Answers a Substantive Question Not Before Us

The Court's reasoning further effectively answers a question not before us today—that is, whether privately run, open-enrollment charter schools like LTTS possess governmental immunity from suit. Although the Court professes to reserve judgment on this issue, the reasoning of the

[3] Junior college districts are by no means unique in this respect. Similarly, for example, water improvement districts derive their authority from local governments, not the Legislature, and, like junior colleges—but unlike charter schools—they are listed in section 101.001(3). *See* TEX. WATER CODE §§ 55.021–.053 (establishing rules and procedures by which local governments may create water improvement districts); TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B) (defining governmental unit as "a political subdivision of this state, including any . . . water improvement district").

Court's opinion appears to be animated by a concern raised by the Solicitor General. *See* __ S.W.3d __ n.44. The Solicitor General asserts that it would be "illogical" to hold that open-enrollment charter schools are not governmental units under section 101.001(3)(D), because if they are not, the waiver in the Tort Claims Act allegedly would not apply. In other words, charter schools would be governmental entities that enjoy immunity from suit in the first instance, but they would not be "governmental units" under section 101.001(3), for which certain immunity is waived by the Tort Claims Act. The Solicitor General further reasons that such a result would leave charter schools entirely immune from tort claims, whereas school districts' immunity is waived by the Act.

The Court endorses this reasoning. __ S.W.3d __ n.44. ("[A]ssuming arguendo the Legislature can grant immunity from liability, it would seem odd for lawmakers to imbue open-enrollment charter schools with greater tort immunity than cities, counties, school districts, and other purely governmental entities."). But the Solicitor General's argument fails for a multitude of reasons. First, public school districts themselves possess near complete immunity under the Tort Claims Act,[4] thus proving the argument that the Legislature could not have intended to treat public schools and privately run, open-enrollment charter schools disparately to be a non-sequitur. There is no parade of horribles that would result from holding that private charter schools are not governmental units under section 101.001(3), even if this meant they possessed complete immunity. Only a narrow group of tort actions would be affected.

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[4] School districts as a practical matter are almost entirely immune—the Tort Claims Act *excludes* them from its waiver "[e]xcept as to motor vehicles." TEX. CIV. PRAC. & REM. CODE § 101.051; *see also Hopkins v. Spring Indep. Sch. Dist.*, 736 S.W.2d 617, 619 (Tex. 1987) (holding school district immune from suit for injuries suffered by a student aboard a school bus, because the injuries did not result from the "operation" or "use" of the bus).

Second, as discussed above, the Court avoids the question of whether an open-enrollment charter school is a "school district" today, but we will inevitably face this issue in the future. If open-enrollment charter schools do possess immunity from suit, as the Court's opinion suggests, it follows that the only way immunity would be waived for contract claims such as those brought here would be through the contract-claims waiver in Local Government Code section 271.152. And that waiver would most likely apply to privately run, open-enrollment charter schools only if such schools are "school districts," which, as previously explained, they are not. This is because the definition of "local governmental entity" to which that waiver applies contains no catch-all provision equivalent to section 101.001(3)(D). *See* TEX. LOC. GOV'T CODE § 271.151(3). Rather, it is limited to a list of entities nearly identical to those found in section 101.001(3)(B). Both definitions cover the following entities: (1) city or municipality, (2) school district or junior college district, and (3) "levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority." *Compare id.* § 271.151(3)(A)–(C), *with* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B). The only substantive difference between the two is that section 271.151(3) excludes counties, while section 101.001(3)(B) includes them. *Compare* TEX. LOC. GOV'T CODE § 271.151(3), *with* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(B). Section 271.152's waiver is therefore limited to the same governmental units that fall under section

101.001(3)(B), with the exception of counties. And because open-enrollment charter schools are not included in section 271.152's list of entities, they also would not fall within its waiver of immunity.[5]

Third, given that an open-enrollment charter school's very existence as a public school is dependent on an agency's grant of a charter, and is subject to revocation at the whim of an agency, it is unclear what the effect of a charter revocation mid-suit would have on the school's supposed immunity under the Court's reasoning. Would the school retain immunity, even though it was no longer a governmental unit? Or would the school immediately lose immunity, even though sued for events occurring while a charter school? And what if a private nonprofit corporation operating a charter school were sued on a basis removed from its provision of education services? Would that private corporation enjoy immunity simply because it operated a charter school? These sorts of difficult questions deserve the opportunity for consideration and debate in our adversarial system, and further illustrate the infirmity of the Court's implicit reaching of the substantive issue not before us.

Finally, such reasoning simply begs the question of whether privately run, open-enrollment charter schools are immune at all. It is far from clear that the Legislature can confer immunity upon private entities like LTTS. Sovereign immunity (and by extension, governmental immunity, which is derived from it) is a common-law doctrine of the courts. *See Tooke v. City of Mexia*, 197 S.W.3d 325, 331 (Tex. 2006). Generally, the Legislature's role is limited to waiving immunity, while

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[5] Notably, although Education Code section 12.1053 makes subchapter B (covering competitive bidding on certain public works contracts) of Local Government Code Chapter 271 applicable to open-enrollment charter schools, it does not apply subchapter I (which includes the waiver provisions found in sections 271.151 and 271.152) to them. *See* TEX. EDUC. CODE § 12.1053.

recognition of immunity's existence is left to the courts. *See id.* at 331–32 (noting that the Court has long upheld the rule of sovereign immunity, while deferring to the Legislature to waive it). Indeed, after a review of the doctrine's foundations, we concluded that "it remains the judiciary's responsibility to define the boundaries of the . . . doctrine and *to determine under what circumstances sovereign immunity exists in the first instance*." *Reata Constr. Co. v. City of Dallas*, 197 S.W.3d 371, 375 (Tex. 2006) (emphasis added); *see also City of Galveston v. State*, 217 S.W.3d 466, 475 (Tex. 2007) (Willett, J., dissenting) ("The Legislature's focus is critical but confined; its role is limited to waiving *pre-existing* common-law immunity."). We further noted that "[s]overeign immunity is a common-law doctrine that initially developed without any legislative or constitutional enactment." *Reata*, 197 S.W.3d at 374. In part for policy reasons, we defer to the Legislature to *waive* such immunity as has been recognized by the courts. *See id.* at 375 ("We have generally deferred to the Legislature to waive immunity because the Legislature is better suited to address the conflicting policy issues . . . ."). Our sovereign immunity jurisprudence therefore suggests, at least as a general matter, that courts create or recognize sovereign immunity, while the Legislature waives it.[6]

It is true that there are some forms of *statutory* immunity. *See, e.g.*, *Franka v. Velasquez*, 332 S.W.3d 367, 371 n.9 (Tex. 2011) (holding that section 101.106 of the Civil Practice and Remedies Code confers immunity in some instances to employees of governmental units); *Entergy Gulf States*,

[6] Significantly, we have also reserved the possibility that, having created sovereign immunity, the judiciary "may modify or abrogate such immunity by modifying the common law," *Reata*, 197 S.W.3d at 375, though we have cautioned that courts should not lightly set aside immunity, once recognized, as doing so "could become a ruse for avoiding the Legislature," *City of Galveston*, 217 S.W.3d at 471.

282 S.W.3d at 436 (noting that general contractors have limited immunity as "statutory employers" under Texas Labor Code section 408.001(a)). But the precise contours of the Legislature's power to grant immunity by statute remain unclear—it is no doubt limited by the Open Courts and Due Course of Law provisions of our Constitution. It may be constitutionally significant that both of the above examples involve special circumstances that limit the breadth of the immunity in question. In the first, the government is simply extending its own immunity to its employees (in a manner largely coterminous with governmental immunity for acts of government employees within their official capacity). *See Franka*, 332 S.W.3d at 371 n.9. In the second, a limited form of immunity is extended in conjunction with a comprehensive workers' compensation scheme, one designed to provide an alternative form of compensation to the traditional tort remedies in some cases. That immunity, unlike sovereign immunity, does not entirely preclude a plaintiff's recovery, it merely limits recovery to the statutory scheme. *See HCBeck, Ltd. v. Rice*, 284 S.W.3d 349, 350 (Tex. 2009). It is also an affirmative defense, not a bar to jurisdiction. *See id.* Furthermore, there is a question as to whether the Legislature can delegate to an agency the power to confer immunity upon separate private entities.

In sum, it is unsettled whether the Legislature has the power to confer immunity from suit on privately operated, open-enrollment charter schools via the statutory scheme in question. But, leaving aside that thorny issue, the only legislative act that addresses immunity for open-enrollment charter schools narrowly provides that they are "immune from *liability* to the same extent as a school district." TEX. EDUC. CODE § 12.1056 (emphasis added). Immunity from liability is not the same as immunity from suit. *Tooke*, 197 S.W.3d at 332. The former "bars enforcement of a judgment

against a governmental entity," *id.*, while only the latter is the basis for a plea to the jurisdiction, *see id.*; *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004). The plain meaning of section 12.1056 therefore gives no indication that LTTS is immune from suit, independent of whether it is immune from liability, and as such provides no basis for a plea to the jurisdiction. In other words, regardless of whether the Legislature has the power to confer immunity from suit in this case, section 12.1056 does not suffice to do so, making it anything but a foregone conclusion that privately operated, open-enrollment charter schools have immunity from suit.

Despite these unsettled questions, the Court's reasoning will strongly imply to our state's lower courts that we have already determined that privately run, open-enrollment charter schools are immune from suit. Indeed, nearly all of the Court's analysis would be more properly addressed to the merits of LTTS's assertion of immunity, rather than the narrow procedural question that is actually before us. I fear that the Court's approach will effectively deprive litigants of their day in court to properly contest whether privately run, open-enrollment charter schools in fact have immunity from suit. We should not predetermine this important decision now, but should wait until it is squarely presented to this Court, and we should decide it explicitly, not by implication.

IV. Conclusion

Because (1) the plain meaning of Civil Practice and Remedies Code section 101.001(3) does not cover a privately run, open-enrollment charter school like LTTS, and (2) the Court has effectively resolved the underlying substance of whether such schools enjoy immunity from suit, rather than the procedural issue properly before us, I respectfully dissent, and would affirm the court of appeals' holding that it lacked jurisdiction over this interlocutory appeal.

Eva M. Guzman
Justice

OPINION DELIVERED: June 17, 2011