IN THE SUPREME COURT OF TEXAS

NO. 05-0986

HARRIS COUNTY HOSPITAL DISTRICT, PETITIONER,

v.

TOMBALL REGIONAL HOSPITAL, RESPONDENT

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

Argued December 4, 2007

CHIEF JUSTICE JEFFERSON, joined by JUSTICE O'NEILL, JUSTICE BRISTER, and JUSTICE WILLETT, dissenting.

Despite a constitutional dictate requiring a legislatively authorized hospital district to "assume full responsibility for providing medical and hospital care to needy inhabitants of the county," the Court leaves Tomball Hospital Authority ("THA") no means to obtain payment from Harris County Hospital District ("HCHD") for services provided to indigent patients. The Court holds that HCHD is immune from suit and dismisses the case, precluding THA from seeking even injunctive relief for HCHD's alleged constitutional violations. Because our constitution compels a different result, I respectfully dissent.

Article IX, section 4 of the Texas Constitution provides that if a hospital district is created by statute, it "shall assume full responsibility for providing medical and hospital care to needy

inhabitants of the county, and thereafter such county and cities therein shall not levy any other tax for hospital purposes." TEX. CONST. art. IX, § 4. The Court holds that this constitutional language:

> bears on a hospital district's *liability* for providing care, but it does not address the method by which that liability may be enforced; that is, whether a hospital district is or is not immune from suit to establish and secure a judgment for the amount of whatever its liability may be. We need go no further than the plain language of the Constitution to conclude that it does not provide that suits for damages may be filed against a hospital district.

__ S.W.3d at __. I am not persuaded by the Court's approach. There are many constitutional mandates that do not spell out precisely the means of implementation, but this silence does not render them advisory.

The Court cites *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995), to support its holding today. In *Bouillion*, however, we explained that while there was no implied private right of action for damages arising under the free speech and free assembly section of the Texas Constitution, suits for injunctive relief were permissible:

> The framers of the Texas Constitution articulated what they intended to be the means of remedying a constitutional violation. The framers intended that a law contrary to a constitutional provision is void. There is a difference between voiding a law and seeking damages as a remedy for an act. A law that is declared void has no legal effect. Such a declaration is different from seeking compensation for damages, or compensation in money for a loss or injury. Thus, suits for equitable remedies for violation of constitutional rights are not prohibited.

Id. at 149 (citation omitted). In so holding, we distinguished article I, section 17, the takings clause, which "provides that no person's property shall be taken, damaged or destroyed or applied to public use without adequate compensation" and noted that this language created "a textual entitlement to compensation in its limited context" and was "'a waiver of governmental immunity'" for a takings

claim. *Id*. (quoting *Steele v. City of Houston*, 603 S.W.2d 786, 791 (Tex. 1980)). We cautioned, however, that "th[e] language [of the takings clause] cannot be interpreted beyond its context. The text of section 17 waives immunity only when one seeks adequate compensation for property lost to the State." *Id.*

The constitutional provision at issue in this case, article IX, section 4, may not be as clear a "textual entitlement to compensation" as article I, section 17. But this suit is also not a private action for damages like *Bouillion*, in which the plaintiffs sought money damages for violation of their constitutional rights. Here, Tomball seeks reimbursement for care that it provided to indigent patients within the hospital district under the assumption that it was constitutionally entitled to payment from HCHD. I would hold that the constitutional mandate that hospital districts "shall assume full responsibility for providing medical and hospital care to needy inhabitants of the county" is "itself . . . the authorization for compensation . . . and is a waiver of governmental immunity" for a suit alleging a violation of this requirement. *Steele*, 603 S.W.2d at 791.

Even if this mandate were not clear, however, because THA alleges that HCHD violated the constitutional mandate to "assume full responsibility" for indigent care, governmental immunity does not bar THA from seeking injunctive relief against HCHD.[1] *Bouillion*, 896 S.W.2d at 149 (noting that "suits for equitable remedies for violation of constitutional rights are not prohibited"). We

[1] This is consistent with federal cases addressing alleged violations of the United States Constitution; the United States Supreme Court has repeatedly held that federal courts may grant equitable relief for constitutional violations. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."); *Johnson v. Wells Fargo & Co.*, 239 U.S. 234, 244 (1915) ("Such continuing violation of constitutional rights might afford a ground for equitable relief."); *see also Carlson v. Green*, 446 U.S. 14, 42 (1980) (Rehnquist, J., dissenting) ("The broad power of federal courts to grant equitable relief for constitutional violations has long been established.").

recently held that under *Bouillion*, "'suits for injunctive relief' may be maintained against governmental entities to remedy violations of the Texas Constitution." *City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007) (per curiam) (quoting *Bouillion*, 896 S.W.2d at 149). In *City of Elsa*, police officers sought equitable and injunctive relief for alleged constitutional violations. *Id*. at 391. The court of appeals affirmed the trial court's denial of the City's plea to the jurisdiction and remanded the officers' claims for injunctive relief to the trial court. *Id*.

At this Court, the City asserted that the court of appeals should have dismissed the claims for injunctive relief rather than remanding because the officers sought relief against the City itself and not against the officials alleged to have committed the unauthorized acts. *Id*. We rejected this argument, finding it inconsistent with *Bouillion*'s holding that "although there is no 'implied private right of action for damages against governmental entities for violations of the Texas Constitution,' suits for 'equitable remedies for violation of constitutional rights are not prohibited.'" *Id*. at 392 (quoting *Bouillion*, 896 S.W.2d at 144, 149). We concluded that the court of appeals did not err by refusing to dismiss the officers' claims for injunctive relief because "'suits for injunctive relief' may be obtained against governmental entities to remedy violations of the Texas Constitution." *Id*. (quoting *Bouillion*, 896 S.W.2d at 149). Thus, immunity would not bar THA's claims for such relief here.

While THA's live pleading does not seek equitable relief, we have held that in considering a plea to the jurisdiction, "[i]f the pleadings are insufficient to establish jurisdiction but do not affirmatively demonstrate an incurable defect, the plaintiff should be afforded the opportunity to replead." *Westbrook v. Penley*, 231 S.W.3d 389, 395 (Tex. 2007); *Tex. Dep't of Parks and Wildlife*

v. Miranda, 133 S.W.3d 217, 226-27 (Tex. 2004). I would affirm the court of appeals' judgment remanding this case to the trial court. Because the Court instead dismisses the case, I respectfully dissent.

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Wallace B. Jefferson
Chief Justice

OPINION DELIVERED: May 1, 2009