Motion to Dismiss Denied; Affirmed and Majority and Dissenting Opinions filed August 15, 2023.

In The

Fourteenth Court of Appeals

NO. 14-21-00519-CV

COMMUNITY HEALTH CHOICE, INC. AND COMMUNITY HEALTH CHOICE TEXAS, INC., Appellants

V.

ACS PRIMARY CARE PHYSICIANS SOUTHWEST, P.A., Appellee

On Appeal from the 190th District Court
Harris County, Texas
Trial Court Cause No. 2019-10294

D I S S E N T I N G O P I N I O N

I disagree with the majority's conclusion that the appellants do not have governmental immunity as to tort claims. The majority reaches this conclusion in a mere seven paragraphs. The issue, however, is not nearly so simple.

First, the majority merely notes that the Texas Supreme Court has not definitely answered the question of "whether the Legislature can confer immunity

by statute or merely waive it." *Ante* at 13. The converse is also correct: the Texas Supreme Court has not held that the Legislature cannot confer immunity. However, while the Supreme Court has not expressly stated that the Legislature can confer immunity, the high court has held that an entity created by a governmental unit was entitled to governmental immunity by virtue of a statute.

In *Gulf Coast Center v. Curry*, 658 S.W.3d 281 (Tex. 2022), the Supreme Court recently held that Gulf Coast had governmental immunity from suit for a claim seeking to recover in excess of $100,000 per person in personal injury damages when the plaintiff was struck by a bus driven by a Gulf Coast employee. *See id*. at 286–89. The *Gulf Coast Center* court stated that an independent basis for its holding was evidence conclusively proving that Gulf Coast was a community center under Chapter 534 of the Health and Safety Code and therefore a unit of local government ("Unit of Local Government") based on the application of section 534.001(c), under which the Legislature provides that a community center is "a unit of local government, as defined and specified by [the Texas Tort Claims Act]." Tex. Health & Safety Code Ann. § 534.001(c) (West, Westlaw through 2023 C.S.); *Gulf Coast Center*, 658 S.W.3d at 288–89. The *Gulf Coast* court did not require proof by the community center that it was a Unit of Local Government under the Texas Tort Claims Act (the "Tort Claims Act"). *See Id*. In addition, the Supreme Court stated that the community center did not need to prove that it was performing a government function at the time of the allegedly tortious conduct to be entitled to governmental immunity from suit because section 534.001(c) did not require such proof. *See id.* at 289, n.8. Relying on this statute the high court stated, "Thus, the only relevant inquiry is whether Gulf Coast is a community center; if so, it is a unit of local government under the Tort Claims Act." *Id.* Of course, as the majority notes, if a legislatively authorized entity that is not a political

subdivision claims governmental immunity from suit under the common law, then the entity must show that the allegedly actionable conduct was the performance of a governmental function. *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 325–26 (Tex. 2006). However, the Supreme Court held that such proof was unnecessary since Gulf Coast was a Unit of Local Government by virtue of a statute.

In *Klein v. Hernandez*, the Supreme Court of Texas concluded that a private, supported medical school is entitled to the same immunity as governmental entities, without any requirement that the school prove that it is a governmental entity or that it is entitled to sovereign immunity under the common law, because the Legislature provided in sections 312.006 and 312.007 of the Health and Safety Code that supported medical schools should be treated as if they were state agencies. *See Klein v. Hernandez*, 315 S.W.3d 1, 4–8 (Tex. 2010); *see also Ruggeri v. Baylor College of Medicine*, No. 01-13-00353-CV, 2014 WL 4345165, at *1–2 (Tex. App.—Houston [1st Dist.] Aug. 2014, no pet.) (following *Klein* and holding that a private, supported medical school had sovereign immunity from suit because the Legislature provided in sections 312.006 and 312.007 of the Health and Safety Code that supported medical schools should be treated as if they were state agencies, without any requirement that the school prove that it is a governmental entity or that it has sovereign immunity under the common law). In *Klein*, the court relied upon section 312.007(a):

> **A** medical and dental unit, **supported medical** or dental **school,** or coordinating entity **is a state agency, and a** director, trustee, officer, intern, **resident,** fellow, faculty member, or other associated health care professional or employee **of a** medical and dental unit, **supported medical** or dental **school,** or coordinating entity **is an employee of a state agency for purposes of Chapter 104, Civil Practice and Remedies Code, and for purposes of determining the liability, if any, of the person for the person's acts or omissions**

> **while engaged in the coordinated or cooperative activities of the** unit, **school,** or entity.

Tex. Health & Safety Code § 312.007(a) (emphasis added as in *Klein*); *Klein*, 315 S.W.3d at 4–5. This statute was sufficient for the court to conclude that Baylor College of Medicine "is a state agency" for the purposes of determining its liability, if any, for its acts or omissions while engaged in the coordinated or cooperative activities of the school. *Klein*, 315 S.W.3d at 5.

Thus, although the Texas Supreme Court may not have explicitly stated that the Legislature has the power to enact a statute granting governmental immunity to an entity that would not otherwise be entitled to governmental immunity under the common law, the high court has interpreted other statutes to do precisely that. *See Gulf Coast Center*, 658 S.W.3d at 286–89; *Klein*, 315 S.W.3d at 4–8.

The majority's second reason to conclude that Community Health does not have governmental immunity pursuant section 281.0565(c) relies exclusively on *Rosenberg*. *See Rosenberg Development Corporation v. Imperial Performing Arts, Inc*., 571 S.W.3d 738 (Tex. 2019). Again, the issue is much more complex than the majority's simple adherence to *Rosenberg*.

In *Rosenberg*, the Supreme Court held that economic development corporations created by municipalities under the Texas Development Corporation Act "are not governmental entities in their own right and therefore are not entitled to governmental immunity." *Id*. at 741; *see* Tex. Loc. Gov't Code Ann. §§ 501.001–507.202 (West, Westlaw through 2023 C.S.). Part of that Act, section 505.106(b) provides that "[f]or purposes of Chapter 101, Civil Practice and Remedies Code, a Type B [economic development] corporation is a governmental unit and the corporation's actions are governmental functions." Tex. Loc. Gov't Code Ann. § 505.106(b). In the opinion, the high court said that it did not consider whether the corporation had statutory immunity from suit because section 505.106

does not purport to grant immunity. *See Rosenberg Dev. Corp.*, 571 S.W.3d at 747. The *Rosenberg* court asserted, without conducting a statutory analysis, that section 505.106(b) "merely imports the Texas Tort Claims Act's limitations on liability and damages." *Rosenberg Dev. Corp.*, 571 S.W.3d at 747. The *Rosenberg* court stated that, "[b]ecause section 505.106 merely purports to limit the remedies available when economic development corporations perform governmental functions, we need not consider whether the Legislature can confer immunity by statute or only waive it." *Id*.

In *Rosenberg* the issue before the court was whether, under the doctrine of governmental immunity, the economic development corporation had immunity from suit as to the plaintiff's breach-of-contract claim and declaratory-judgment claim regarding a contract. *See id*. at 742. At most section 505.106(b) would have conferred immunity from suit only as to tort claims, not as to these breach-of-contract and declaratory-judgment claims. Tex. Loc. Gov't Code Ann. § 505.106(b). Thus, addressing whether section 505.106(b) confers immunity from suit was not necessary to the *Rosenberg* court's judgment. *See Rosenberg Dev. Corp.*, 571 S.W.3d at 742–43. "Considering the Development Corporation Act as a whole," the *Rosenberg* court concluded "that the Legislature did not authorize municipalities to create economic development corporations as distinct governmental entities entitled to assert immunity in their own right." *Rosenberg Dev. Corp.*, 571 S.W.3d at 751. The high court stated, "[w]e hold only that [the economic development corporation] does not independently possess governmental immunity as an arm of the state." *Id*. at 752.

Rosenberg did not involve section 281.0565 of the Health and Safety Code, and the *Rosenberg* court emphasized that under the Development Corporation Act, which was at issue in *Rosenberg*, "an economic development corporation 'is not a political subdivision or a political corporation for purposes of the laws of this

state,'" and "the Legislature has forbidden authorizing municipalities from bestowing on the corporation any 'attributes of sovereignty.'" *Id*. at 745 (citing respectively, Tex. Loc. Gov't Code Ann. §§501.055(b), 501.010 (West, Westlaw through 2023 C.S.)); *see Rosenberg Dev. Corp.*, 571 S.W.3d at 741, 748–49. The *Rosenberg* court stated that the Development Corporation Act was "notably unique" in the "directness" with which the Legislature stated that economic development corporations are not political subdivisions or political corporations and should not be given attributes of sovereignty. *See Rosenberg Dev. Corp.*, 571 S.W.3d at 750. Section 281.0565 of the Health and Safety Code, at issue in this case, does not contain any provision that is the same or similar to either of these parts of the Development Corporation Act. *See* Tex. Health & Safety Code Ann. §281.0565. The Supreme Court's opinion in *Rosenberg* is not on point and does not require a holding in this case that section 281.0565 does not confer any governmental immunity on a charitable organization created by a hospital district under section 281.0565 ("Charitable Organization"). *See CPS Energy v. Electric Reliability Council of Texas*, Nos. 22-0056, No. 22-0196, —S.W.3d—,—, 2023 WL 4140460, at *10, 15 (Tex. Jun. 23, 2023) (holding that ERCOT is entitled to sovereign immunity and distinguishing *Rosenberg* based on the language in the Development Corporation Act providing that an economic development corporation "is not a political subdivision or a political corporation for purposes of the laws of this state" and barring municipalities from delegating to the corporation any "attributes of sovereignty"); *Rosenberg Dev. Corp.*, 571 S.W.3d at 744–52.

The majority's two stated reasons that section 281.0565(c) does not confer statutory immunity fail.[1] So how should this Court interpret section 218.0565(c)?

[1] Though I disagree with the majority on the merits, I agree with the majority's conclusion that this appeal has not become moot and the majority's denial of ACS's motion to dismiss.

1. Statutory Text

Section 281.0565 of the Health and Safety Code reads in its entirety as follows:

> (a) In this section, "charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code.
>
> (b) A district may create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district.
>
> (c) **A charitable organization created by a district under this section is a unit of local government only for purposes of Chapter 101, Civil Practice and Remedies Code.**
>
> (d) A district may make a capital or other financial contribution to a charitable organization created by the district to provide regional administration and delivery of health care services to or for the district.
>
> (e) A charitable organization created by a district under this section may contract, collaborate, or enter into a joint venture or other agreement with a public or private entity, without regard to that entity's for-profit or nonprofit status, and may hold an ownership interest in such an entity.
>
> (f) A charitable organization created by a district under this section remains subject to the laws of this state and the United States that govern charitable organizations. Nothing in this section may be construed as abrogating or modifying any other provision of law governing charitable organizations.

Tex. Health & Safety Code Ann. § 281.0565 (West, Westlaw through 2023 C.S.) (emphasis added).[2]

[2] This is the current version of section 281.0565 of the Health and Safety Code. The Legislature enacted this version effective June 9, 2015, which appears to be after some of the allegedly actionable conduct but before other allegedly actionable conduct and before ACS filed suit. *See* Act of May 20, 2015, 84th Leg., R.S., ch. 363, §§ 2,4 2015 Tex. Sess. Law Serv. 1552,

2. Statutory Interpretation Rules

We review the trial court's interpretation of applicable statutes de novo. *Texas Health Presbyterian Hosp. of Denton v. D.A.*, 569 S.W.3d 126, 131 (Tex. 2018). In interpreting a statute, the objective is to determine and give effect to the Legislature's intent. *See Pape Partners, Ltd. v. DRR Family Properties LP*, 645 S.W.3d 267, 272 (Tex. 2022). We discover that intent within the language the Legislature enacted. *Texas Health Presbyterian Hosp.*, 569 S.W.3d at 136. When interpreting statutes, we look to the plain meaning of the enacted text. *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019). A statute's unambiguous language is the surest guide to the Legislature's intent because the Legislature expresses its intent through the words it enacts and declares to be the law. *Texas Health Presbyterian Hosp.*, 569 S.W.3d at 136. Courts must enforce a statute as written and refrain from rewriting text that the Legislature chose. *Id*. We do not use extrinsic aids, such as legislative history, to interpret unambiguous statutory language because the statute's plain language most reliably reveals the Legislature's intent. *Id*. Rather, we limit our analysis to the words of the statute and apply the plain meaning of those words "'unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results.'" *KMS Retail Rowlett*, 593 S.W.3d at 183 (quoting *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011)). In doing so, we use definitions the Legislature has prescribed and take into account any technical or particular meaning the words have acquired. *KMS Retail Rowlett, LP*, 593 S.W.3d at 183. While we must consider the specific statutory language at issue, we must do so while looking to the statute as a whole, rather than as "'isolated provisions.'" *Id*. (quoting *TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)). If the

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1552–53. I presume that the current version of the statute applies in this case.

statutory language is susceptible to two or more reasonable interpretations, and we cannot discern legislative intent in the language of the statute itself, then the language is ambiguous. *Texas Health Presbyterian Hosp.*, 569 S.W.3d at 130, n.6.

3. Statutory Interpretation

In the trial court appellee ACS Primary Care Physicians Southwest, P.A. ("ACS") alleges various claims against the Community Health Parties, including a claim under section 541.151 of the Insurance Code for actual damages caused by the Community Health Parties allegedly engaging in one of the unfair settlement practices listed in section 541.060 of the Insurance Code (collectively the "Unfair Settlement Claims"). The Harris County Hospital District d/b/a Harris Health System (the "Hospital District") created appellants Community Health Choice, Inc. and Community Health Choice Texas, Inc. (collectively the "Community Health Parties") as non-profit, tax-exempt, charitable organizations under section 281.0565 of the Health and Safety Code. Under the unambiguous language of section 281.0565, each of the Community Health Parties is a Charitable Organization, and thus each of them is "a unit of local government only for purposes of [the Tort Claims Act]." Tex. Health & Safety Code Ann. §281.0565(c). *See Hall v. Dixon*, No. H-09-2611, 2010 WL 3909515, at *31 (S.D. Tex. Sep. 30, 2010), *aff'd sub nom. Hall v. Smith*, 497 Fed. Appx. 366 (5th Cir 2012).

This raises the key question in this case: under section 281.0565 what does it mean to be "a unit of local government only for purposes of [the Tort Claims Act]"?

This phrase refers to the entire Tort Claims Act, not to one section or part of the Tort Claims Act, and the phrase uses the plural "purposes." Under the plain text of section 281.0565(c), a Charitable Organization is a Unit of Local

Government for all of the purposes of the Tort Claims Act. *See* Tex. Health & Safety Code Ann. § 281.0565.

Section 101.021 of the Tort Claims Act creates liability for a Unit of Local Government for (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if: (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and (B) the employee would be personally liable to the claimant according to Texas law; and (2) personal injury and death so caused by a condition or use of tangible personal or real property if the Unit of Local Government would, were it a private person, be liable to the claimant according to Texas law. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.021 (West, Westlaw through 2023 C.S.); *Osman v. City of Fort Worth*, No. 02-21-00117-CV, 2022 WL 187984, at *8 (Tex. App.—Fort Worth Feb. 17, 2022, pet. denied) (mem. op.). Thus, the Tort Claims Act provides a waiver of a Unit of Local Government's immunity from liability to the extent of the liability created as to these claims against a Unit of Local Government under the Tort Claims Act. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.021; *Gulf Coast Center*, 658 S.W.3d at 284; *Osman*, 2022 WL 187984, at *8. The Tort Claims Act limits the liability created for these claims against a Unit of Local Government to money damages in a maximum amount of $100,000 for each person and $300,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.023 (West, Westlaw through 2023 C.S.). The immunity from suit of a Unit of Local Government under the doctrine of governmental immunity is waived to the extent of liability created by the Tort Claims Act. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.025 (West, Westlaw through 2023 C.S.); *Gulf Coast Center,* 658 S.W.3d at 284; *Tex. Dep't Parks &*

Wildlife v. Miranda, 133 S.W.3d 217, 224 (Tex. 2004); *Osman*, 2022 WL 187984, at *8. The Tort Claims Act contains other provisions delineating the scope of the liability created by the statute. *See, e.g.*, Tex. Civ. Prac. & Rem. Code Ann. §101.0211 (West, Westlaw through 2023 C.S.) (providing that the common law doctrine of vicarious liability because of participation in a joint enterprise does not impose liability for a claim brought under this chapter on certain entities that are political subdivisions of this state); Tex. Civ. Prac. & Rem. Code Ann. § 101.022 (West, Westlaw through 2023 C.S.) (limiting the duty owed by the governmental unit to the claimant in certain situations as to the premises liability created in section 101.023); Tex. Civ. Prac. & Rem. Code Ann. § 101.024 (West, Westlaw through 2023 C.S.) (stating that the Tort Claims Act does not authorize exemplary damages). If a plaintiff asserts one of the claims listed in section 101.021 of the Tort Claims Act against a Unit of Local Government but seeks to recover an amount on that claim in excess of the limits provided in section 101.025, the Unit of Local Government retains immunity from suit as to this claim, and the trial court lacks jurisdiction over the claim.[3] *See* Tex. Civ. Prac. & Rem. Code Ann. §101.025 (West, Westlaw through 2023 C.S.); *Gulf Coast Center*, 658 S.W.3d at 286–87. Considering the Tort Claims Act as a whole and under its unambiguous language, one of the purposes of the Tort Claims Act is to waive the governmental immunity from suit and liability in tort of Units of Local Government by creating liability against Units of Local Government for several tort claims and by waiving these

[3] Section 101.106 of Tort Claims Act is a comprehensive election-of-remedies provision that confers immunity on employees of governmental units under certain circumstances. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.106 (West, Westlaw through 2023 C.S.); *Franka v. Velasquez*, 332 S.W.3d 367, 371 n. 9, 381 (Tex. 2011). Section 101.101 of the Tort Claims Act imposes certain notice requirements on parties asserting claims for which immunity is waived by the statute, and these notice requirements are a condition of the Tort Claims Act's waiver of immunity from suit. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.101 (West, Westlaw through 2023 C.S.); *Colquitt v. Brazoria County*, 324 S.W.3d 539, 542–43 (Tex. 2010).

units' immunity from suit to the extent of this created liability. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et seq*.; *Gulf Coast Center*, 658 S.W.3d at 284-87; *Miranda*, 133 S.W.3d at 224; *State Dep't of Highways & Public Transp. v. Gonzalez*, 82 S.W.3d 322, 326 (Tex. 2001); *Osman*, 2022 WL 187984, at *8.

Hall v. Dixon is the only reported decision addressing whether section 281.0565 imparts governmental immunity to a charitable organization created under that section, and, ironically, that decision involved Community Health Choice, Inc. ("Community Health"), one of the appellants in this case. *See Hall*, 2010 WL 3909515, at *30–32. In *Hall*, plaintiff sued multiple defendants following the death of her child. *See id*. at *1. With respect to Community Health, plaintiff alleged that Community Health refused to pay for a second opinion resulting in a delay of medical care. *See id*. Plaintiff asserted claims under common-law negligence and statutory negligence under Texas Civil Practice and Remedies Code section 88.002. *Id*. at *30. Community Health filed a motion to dismiss arguing that it is immune from suit from both the statutory and common-law claims under Health and Safety Code section 281.0565(c). *Id*. Judge Rosenthal held that under plain language of section 281.0565(c), Community Health should be treated as a Unit of Local Government and that Community Health had governmental immunity as to tort claims for which its immunity had not been waived. *Id*. at *30–32. In *Hall*, plaintiff moved for leave of court to add a claim that Community Health violated section 541.060 of the Insurance Code proscribing certain unfair insurance practices, again ironically, the same section that ACS claims that Community Health violated in this case. *Id*. at *31–32. Judge Rosenthal denied this motion as futile because there had been no waiver of the governmental immunity conferred on Community Health by section 281.0565. *Id*.

ACS argues that a Unit of Local Government for the purposes of the Tort Claims Act does not have any governmental immunity because the Tort Claims

Act does not create governmental immunity. While the Tort Claims Act does not create governmental immunity, which arises under the common law, this fact does not mean that a Unit of Local Government for the purposes of the Tort Claims Act does not have any governmental immunity. If a Unit of Local Government did not have governmental immunity as to tort claims, it would not be a Unit of Local Government for the purposes of the Tort Claims Act because (1) the Tort Claims Act would not be able to create tort liability for the Unit of Local Government, which would exist under the common law absent governmental immunity from tort liability, and (2) there would be no governmental immunity for the Tort Claims Act to waive under section 101.025. *See* Tex. Civ. Prac. & Rem. Code Ann. §101.025. Under the unambiguous language of the Tort Claims Act, imposing limitations on liability and damages as to existing tort claims against entities that do not have sovereign or governmental immunity is not a purpose of the Tort Claims Act. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et seq*.; *Gulf Coast Center*, 658 S.W.3d at 284–87. For example, section 101.023 is one of various sections of the Tort Claims Act that describe the tort claims as to which the statute waives the sovereign or governmental immunity of the various governmental units. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.023.; *Gulf Coast Center*, 658 S.W.3d at 284–87. The Tort Claims Act does not waive a Unit of Local Government's immunity from suit or from liability as to a claim listed in section 101.021 in which the claimant seeks to recover an amount in excess of the limits provided in section 101.025. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.023; *Gulf Coast Center*, 658 S.W.3d at 285.

Under section 281.0565(c), a Charitable Organization is a Unit of Local Government for all of the purposes of the Tort Claims Act. *See* Tex. Health & Safety Code Ann. § 281.0565. One of these purposes is to waive the governmental immunity from suit and liability in tort of Units of Local Government by creating

liability against such units for several tort claims and by waiving the units' immunity from suit to the extent of this created liability. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et seq*.; *Gulf Coast Center*, 658 S.W.3d 284–87. Because of this purpose and because Units of Local Government are generally entitled to governmental immunity, it would not be reasonable to interpret section 281.0565 as not granting a Charitable Organization governmental immunity as to tort claims for which a Unit of Local Government's governmental immunity has not been waived. *See* Tex. Health & Safety Code Ann. § 281.0565; *Hall*, 2010 WL 3909515, at *30–32. Under the unambiguous language of section 281.0565(c), each of the Community Health Parties is a Unit of Local Government only for purposes of the Tort Claims Act and thus has governmental immunity as to tort claims for which a Unit of Local Government's governmental immunity has not been waived. *See* Tex. Health & Safety Code Ann. § 281.0565; *Hall*, 2010 WL 3909515, at *30–32 (holding by Judge Rosenthal that under plain language of section 281.0565(c), Community Health Choice, Inc., one of the appellants in today's case, should be treated as a Unit of Local Government and that Community Health Choice, Inc. had governmental immunity as to tort claims for which its immunity had not been waived). Of course, under the plain meaning of the word "only," the Community Health Parties are not a Unit of Local Government for other purposes and thus do not have governmental immunity as to non-tort claims. *See* Tex. Health & Safety Code Ann. § 281.0565.

ACS asserts that the sections of the Tort Claims Act limiting liability, including section 101.023, are not part of the waiver of sovereign and governmental immunity and that these sections create limitations of liability and damages applicable to any entity covered by the Tort Claims Act, regardless of whether the entity has sovereign or governmental immunity. *Gulf Coast Center* answers this question too. There, the Supreme Court disagreed with this assertion

as to section 101.023, concluding that this section is part of the waiver of sovereign and governmental immunity under Tort Claims Act. *Gulf Coast Center*, 658 S.W.3d at 285. In addition, under the unambiguous language of the Tort Claims Act, section 101.023 limits the liability created under the statute as to various types of governmental units, all of which are generally entitled to sovereign or governmental immunity. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et seq*.; *Gulf Coast Center*, 658 S.W.3d at 284–87. Though ACS argues that section 101.023 limits the liability of any entity covered by the Tort Claims Act, even if the entity is not generally entitled to sovereign or governmental immunity, ACS cites no authority that supports this proposition. Under the unambiguous language of the Tort Claims Act, section 101.023 limits the liability only of entities generally entitled to sovereign or governmental immunity, as part of the statute's description of the liability created under the Tort Claims Act, as to which immunity from suit is waived under section 101.025. *See* Tex. Civ. Prac. & Rem. Code Ann. § 101.001, *et seq*.; *Gulf Coast Center*, 658 S.W.3d at 284–87.

The only reasonable interpretation of section 281.0565's text is that a Charitable Organization has governmental immunity as to tort claims for which a Unit of Local Government's governmental immunity has not been waived. *See* Tex. Health & Safety Code Ann. § 281.0565; *Hall*, 2010 WL 3909515, at *30–32; *Klein*, 315 S.W.3d at 4–8; *Ruggeri*, 2014 WL 4345165, at *1–2. Because section 281.0565 does not require any such showing, the Community Health Parties need not show that (1) they are a Unit of Local Government, (2) they are entitled to immunity under the common law, or (3) they were performing a governmental function when they engaged in the conduct made the basis of the Unfair Settlement Claims. *See* Tex. Health & Safety Code Ann. § 281.0565; *Gulf Coast Center*, 658 S.W.3d at 289 & n.8. The plain meaning of the statutory language does not lead to absurd or nonsensical results, and a meaning different from this plain meaning is

not apparent from the context. In this scenario, our function is not to question the wisdom of the statute or to seek to rewrite it based upon a different view of public policy; rather, absent a constitutional infirmity in section 281.0565, we must give effect to the statute's unambiguous language. *See KMS Retail Rowlett*, 593 S.W.3d at 183; *Jones v. Del Andersen & Assocs.*, 539 S.W.2d 348, 351 (Tex. 1976); *Patel v. Harris County Appraisal Dist.*, 434 S.W.3d 803, 811 (Tex. App.—Houston [14th Dist.] 2014, no pet.). No party has asserted that section 281.0565 is unconstitutional.

Under the unambiguous language of section 281.0565, the Community Health Parties have governmental immunity as to tort claims for which a Unit of Local Government's governmental immunity has not been waived. Because ACS did not carry its burden of affirmatively demonstrating the trial court's jurisdiction by alleging a valid waiver of the Community Health Parties' governmental immunity as to the Unfair Settlement Clams, the trial court erred in denying the Community Health Parties' plea to the jurisdiction. Therefore, this court should sustain the Community Health Parties' sole issue, reverse the trial court's order denying the plea to the jurisdiction, and render judgment sustaining the jurisdictional plea and dismissing the Unfair Settlement Claims with prejudice based on governmental immunity. Because this court instead affirms the trial court's order, I respectfully dissent.

/s/ Randy Wilson
Justice

Panel consists of Justices Bourliot, Hassan, and Wilson (Hassan, J., majority).