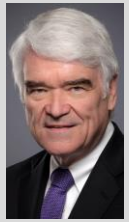
2021 SCOTX Update

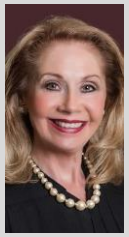
Justice Rebeca A. Huddle
Mark Trachtenberg

SCOTX 2020-2021



C.J. Nathan Hecht (‘89)

Eva Guzman (‘09)

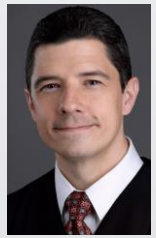


Debra Lehrmann (‘10)

Jeff Boyd (‘12)

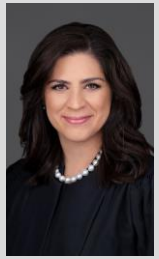
John Devine (‘13)

Jimmy Blacklock (‘18)



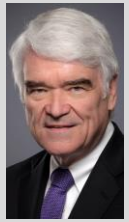
Brett Busby (‘19)

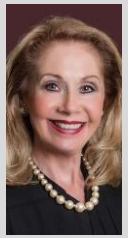
Jane Bland (‘19)



Rebeca Huddle (‘20)

SCOTX 2021-2022

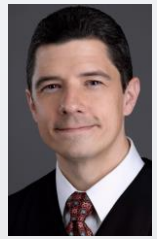

C.J. Nathan Hecht (‘89)


Debra Lehrmann (‘10)

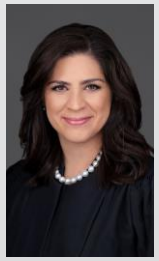

Jeff Boyd (‘12)


John Devine (‘13)


Jimmy Blacklock (‘18)


Brett Busby (‘19)


Jane Bland (‘19)


Rebeca Huddle (‘20)


Evan Young (‘21)

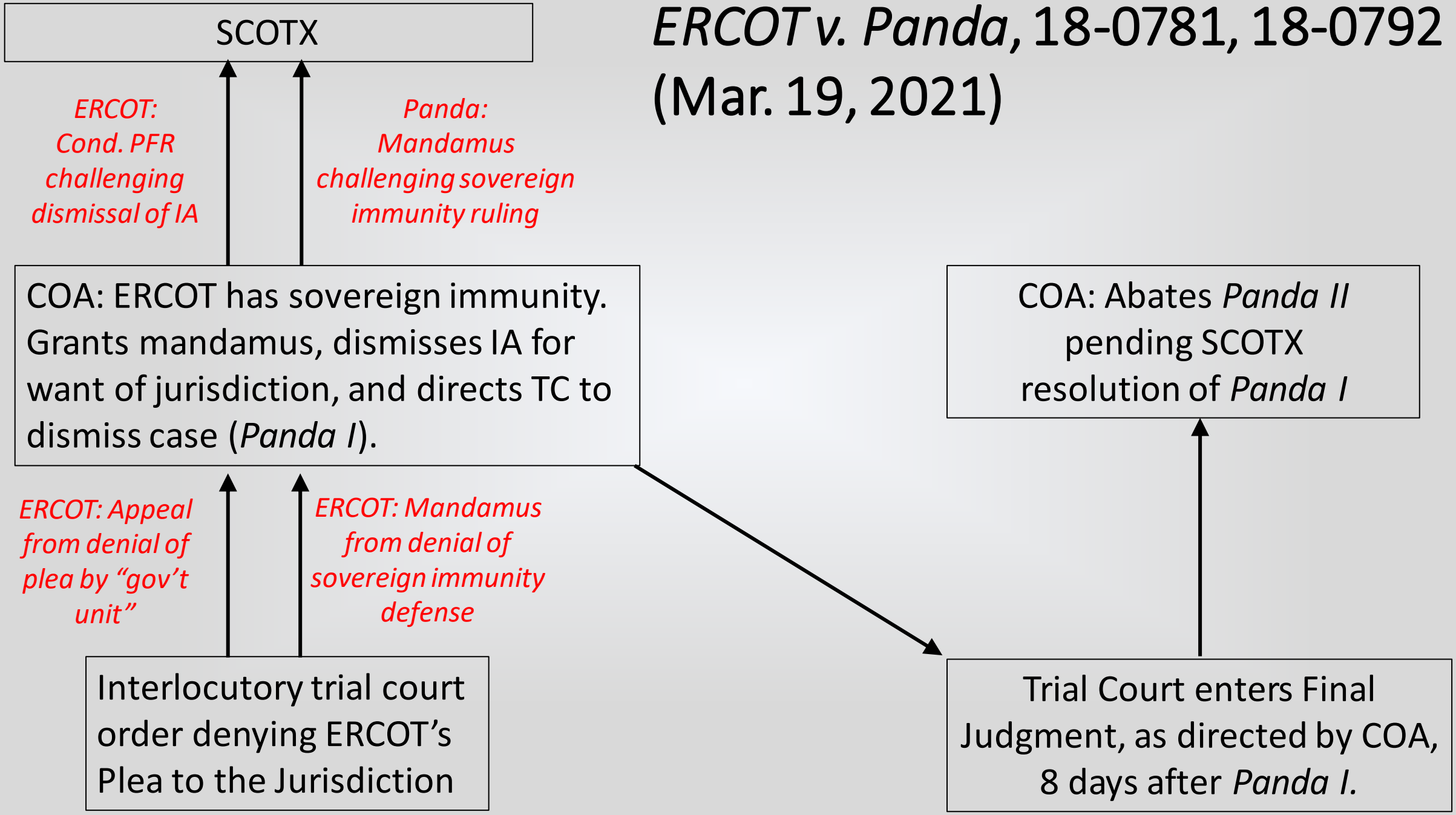
Kenneth D. Eichner, P.C. v. Dominguez, 20-0263 (May 14, 2021) (per curiam)

- TRAP 26.1 extends NOA deadline to 90 days if "any party" timely files a MNT.
- Does the phrase "any party" encompass an intervenor whose petition for intervention was stricken before judgment?
- SCOTX: Yes, a person who intervenes *before* entry of final judgment becomes a party to that judgment. Intervenor's timely MNT extended the NOA deadline until 90 days after judgment.

In re Hotze, 20-0739 (Oct. 7, 2020)

- On July 27, 2020, Governor Abbott invoked emergency powers to expand early voting.
- On September 23, 2020, relators filed mandamus petition, seeking order directing Secretary of State to disregard Governor's order.
- SCOTX: Relators' ten-week delay was too long. Waived right to relief. Election was already underway.

ERCOT v. Panda, 18-0781, 18-0792 (Mar. 19, 2021)



ERCOT (cont'd)

- SCOTX dismissed both petitions, holding entry of final judgment rendered these causes arising from an interlocutory order moot.
- Appeal can be "procedurally moot" even if substantive controversy remains live; only remedy was appeal from final judgment.
- SCOTX could not
  - order COA to vacate *Panda I* because TC already complied;
  - order TC to vacate (1) interlocutory order because of merger with final judgment, or (2) final judgment because it was on appeal;
  - tell COA how to resolve *Panda II* because that would be advisory opinion.

Medical expenses/CPRC 18.001 Procedures

- *In re K & L Auto Crushers, LLC*, 19-1022 (May 28, 2021):
  - Defendants entitled to discovery about billing practices and rates of plaintiff's healthcare providers to defend against claimed past medical damages.
  - Appeal was not adequate b/c reviewing court could not evaluate effect of denial.
- *In re Allstate Indem. Co.*, 20-0071 (May 7, 2021)
  - Insurer was entitled to mandamus relief from order (1) striking counteraffidavit disputing reasonableness of medical expenses and (2) precluding insurer from arguing expenses were not reasonable.
  - Counteraffidavit provided reasonable notice of why insurer controverted bills, and lack of counteraffidavit would not preclude defendant from challenging reasonableness or necessity of expenses at trial.
  - Counteraffidavit need not meet *Daubert* requirements for expert testimony.

Aerotek, Inc. v. Boyd, 20-0290 (May 28, 2021)

- SCOTX: Employer conclusively established that the plaintiff employees had entered into an electronic contract containing an arbitration clause by showing the efficacy of the security procedures used in generating the contract during the hiring process.

- Declarations from the employees denying that they had ever seen or signed the arbitration provision did not create fact issue.

Amazon.com, Inc. v. McMillan, No. 20-0979 (June 25, 2021)

- Amazon not liable for injuries caused by third-party seller's product that it shipped from its warehouse.
- Texas Products Liability Act's definition of "seller" does not extend to Amazon in the context of third-party products.
- Law defines seller as "a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof."
- SCOTX: Seller must be a party that has "relinquished title to the allegedly defective product at some point."

In re Texas Education Agency, 20-0404 (Mar. 19, 2021)

- Houston ISD sued the TEA, alleging that commissioner's decisions would result in ultra vires actions.
- The trial court granted a temporary injunction, and the agency filed an interlocutory appeal.
- Even though Tex. Gov't Code § 22.004(i) instructs that certain state actors' right to supersede a judgment or order by filing a notice of appeal "is not subject to being counter-superseded," the trial court allowed counter-supersedeas.
- The Austin COA vacated the counter-supersedeas order but issued a temporary order continuing the injunction under TRAP 29.3.

In re Texas Education Agency (cont'd)

- TEA sought mandamus relief in SCOTX, arguing that the COA's TRAP 29.3 order violated section 22.004(i) because it was, in effect, a counter-supersedeas.
- SCOTX denied the writ, holding that "[t]he court of appeals' temporary order may have the same practical effect as denying supersedeas of the trial court's injunction, but it is not counter-supersedeas relief within the meaning of the statute."
- Section 22.004(i) targets the specific procedure of counter-supersedeas, which occurs only in the trial court.
- If parties are worried about delay, they can ask appellate court for an expedited briefing schedule and ruling.

Los Compadres Pescadores, L.L.C. v. Valdez, 19-0643 (Mar. 26, 2021)

- Issue: Scope of CPRC Ch. 95, which limits a property owner's liability for a subcontractor's personal injuries incurred when performing work on the property.
- Plaintiffs hired by contractor to construct defendant's concrete pilings were injured when piece of rebar touched overhead powerline.
- Plaintiffs sued defendants for premises liability and negligence, and the jury found defendant exercised control over work and failed to warn plaintiff of harm.
- COA held that CPRC chapter 95 did not apply because powerline was not an improvement and, assuming it was, it was not the same improvement on which plaintiffs were working.

Los Compadres (cont'd)

- SCOTX affirmed, concluding that chapter 95 applied, but holding that employees nevertheless established their claim.
- If a dangerous condition, by reason of its proximity to an improvement, creates a probability of harm to one who works on the improvement in an ordinary manner, it constitutes a condition of the improvement itself.
- Dangerousness of powerline was not "open and obvious" because Texas law requires powerlines to be de-energized.

Emerson Elec. Co. v. Johnson, 18-1181 (Apr. 16, 2021)

- Affirmed $14M+ products liability judgment arising from HVAC compressor explosion that injured technician.
- Evidence of the cost, feasibility and availability of safer alternative design relative to the claimed danger also could support finding that product was unreasonably dangerous.
- Rejected D's argument that jury charge was required to refer to all 5 *Grinnell* factors relevant to showing unreasonable dangerousness. While not error to include them, no harmful error in excluding them here b/c challenged element was subsumed within instruction asking jury to consider "utility of the product and the risk involved in its use."

In re Academy, Ltd., 19-0497 (June 25, 2021)

- Academy claimed immunity from suit by victims of mass shooting based on federal Protection of Lawful Commerce in Arms Act.
- Issue: Was mandamus relief available from trial court's denial of MSJ invoking statutory immunity defense?
- SCOTX: Yes. Academy had immunity under the PLCAA because no statutory exceptions applied.
- Academy lacked remedy on appeal because even proceeding to trial would deprive Academy of its substantive right.

Contours of exclusive agency jurisdiction (PUC)

- *In re Oncor Electric LLC*, 19-0662 (June 25, 2021): No PUC jurisdiction over personal injury claims arising from customer's contact with powerline while trimming trees.
- *In re Tex.-N.M. Power Co.*, 19-0656 (June 25, 2021): No PUC jurisdiction over negligence claims arising from failure to secure equipment at utility facility.
- *In re CenterPoint Energy Hous. Elec., LLC.*, 19-0777 (June 30, 2021): No PUC jurisdiction over common-law claims arising from good Samaritan's contact with downed powerline, even though claims involved design of electrical distribution systems.

In re Facebook, Inc., 20-0434 (June 25, 2021)

- Three plaintiffs sued Facebook for common-law and statutory claims, alleging that their abusers groomed and recruited them on Facebook and Instagram.
- Facebook moved to dismiss under rule 91a, invoking section 230 of the federal Communications Decency Act:
  - "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."
- After the trial court denied the motion, Facebook sought mandamus relief.

In re Facebook (cont'd)

- SCOTX partially granted mandamus relief.
- Federal precedent features broad interpretation of section 230 that bars common-law claims like those at issue.
- But section 230 did not bar statutory claims arising under Texas Civil Practice and Remedies Code section 98.002(a) because they require allegations of active participation in human trafficking, not mere passive acquiescence.

SCOTX '21-'22: Interesting, already-argued cases

- **Exceptions to eight-corners rule**
  - *Pharr-San Juan-Alamo ISD v. Texas Political Subdivisions Property/Casualty Joint Self-Insurance Fund* (20-0033) & *Bitco General Insurance Corp. v. Monroe Guaranty Insurance Co.* (21-0232)
- **Political question doctrine**
  - *Nicole Van Dorn Preston et al. v. M1 Support Services L.P.* (20-0270)
- **Implied revocation doctrine**
  - *Virginia Angel, Trustee v. Kyle Tauch* (19-0793)
- **Deadline to appeal**
  - *Courtney N. Phillips, et al. v. John McNeill Jr and Nichols Southside Pharmacy* (19-0831)
- **Texas antitrust law**
  - *Regal Entertainment Group et al. v. iPic-Gold Class Entertainment LLC and iPic Texas LLC* (20-0014)
- **Consequential damages**
  - *Signature Industrial Services LLC v. International Paper Co*. (20-0396)
- **Governmental immunity**
  - *City of San Antonio v. Jimmy Maspero and Regina Maspero* (19-1144) & *City of San Antonio v. Armando D. Riojas* (20-0293)
- **Jurisdictional discovery**
  - *In re Christianson Air Conditioning & Plumbing LLC and Continental Homes of Texas LP* (20-0384)