No. 23-5534

In the Supreme Court of the United States

Fred Michael Zelkowitz,
Petitioner,

vs.

Harris County District Court, 246th Judicial District,
Texas Attorney General, Child Support Division,
Harris County Domestic Relations Office,
Respondents

On Petition for a Writ of Certiorari to
the Supreme Court of Texas, Case Number 23-0394,
the First Court of Appeals of Texas, Case Number 01-22-00017-CV,
and the 334th Judicial District Court of Harris County, Texas,
Case Number 2021-43318

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

This case is a civil matter where governmental entities in the State of Texas violated the law and caused significant monetary and personal harm. These entities are using Sovereign Immunity to avoid any liability and the Texas Courts are refusing to accept Ultra Vires in any form as a valid argument to pierce that immunity. I am looking to the Supreme Court of the United States to address these questions:

1. How can the Judicial and Executive branches be held accountable and liable when they knowingly and willingly break the laws established by the Legislative branch, then hide behind a shield of Sovereign Immunity to avoid responsibility while the Courts won't recognize Ultra Vires exceptions for government entities?
2. Can the definition of Ultra Vires be expanded to include entities, not just individuals, to penetrate the shield of Sovereign Immunity to hold government entities liable that break the law routinely with impunity?
3. Can an entity be held liable for Ultra Vires actions when various and multiple individuals routinely perform "ministerial acts" on behalf of that entity that violate the law?
4. Can a citizen harmed by the illegal actions of government entities use Ultra Vires as a valid means of exposing, rectifying and seek damages for the harm caused?
5. Are illegal actions taken by government entities, in combination with Ultra Vires, valid reasons for the lifting of any tort limitations written into the law?
6. What redress is possible when a Judge accepts a questionable document as evidence despite the rules of evidence? Can this Court do anything with regards to a hearing where evidence was admitted without fully vetting its authenticity?

LIST OF PARTIES

Party	Counsel
Petitioner Fred Zelkowitz	Pro Se
Respondent Harris County District Court, 246th Judicial District 201 Caroline Street, 16th Floor Houston, Texas 77002 (713) 274-4500	Jose Valtzar P.O. Box 12548, Capitol Station Austin, Texas 78711-2548 (512) 475-3375 Jose.Valtzar@oag.texas.gov
Respondent Texas Attorney General, Child Support Division 6161 Savoy Drive, Suite 420 Houston, Texas 77036 (713) 243-7100	Jose Valtzar
Respondent Harris County Domestic Relations Office 1310 Prairie Street, Suite 700 Houston, Texas 77002 (713) 274-7300	Laura Beckman Hedge 1019 Congress Plaza, 15th Floor Houston, Texas 77002-1799 (713) 274-5137 Laura.Hedge@harriscountytx.gov

LIST OF RELATED CASES

Zelkowitz v. Zelkowitz, No. 200973713, Harris County District Court, 246th Judicial District (Family Court), State of Texas. Judgment entered February 1, 2010.

Zelkowitz v. Harris County District Court, 246th Judicial District (et al), No. 202143318, Harris County District Court, 334th Judicial District, State of Texas. Judgment entered December 13, 2021.

Zelkowitz v. Harris County District Court, 246th Judicial District (et al), No. 01-22-00017-CV, Court of Appeals for the First District of Texas. Judgment entered March 23, 2023.

Zelkowitz v. Harris County District Court, 246th Judicial District (et al), No. 23-0394, Supreme Court of Texas. Petition denied on August 18, 2023.

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

CASES

OPINIONS BELOW

I could not find the decisions in this case published anywhere except uploaded to the case image databases for the various Courts. These can be found at these web addresses:

Supreme Court, State of Texas, Case Number 23-0394:
https://search.txcourts.gov/Case.aspx?cn=23-0394&coa=cossup

First Court of Appeals, State of Texas, Case Number 01-22-00017-CV:
https://search.txcourts.gov/Case.aspx?cn=01-22-00017-CV&coa=coa01

Zelkowitz vs. Harris County District Court, 246th Judicial District (et al), in the Harris County District Court, 334th Judicial District, Case Number 2021-43318:
https://www.hcdistrictclerk.com/Edocs/Public/CaseDetails.aspx?Get=42PT43Z0PRZtiPGNMMU8ZjDOiGGyXbyzC8TziXqmqIU%2fdndMpr14+Gu2eNYzzs3XdVYAaOVkWN+cG4F6f7uIVQ74ElZw2X%2fqtlOLdXZKacY%3d

Zelkowitz vs. Zelkowitz, in the Harris County District Court, 246th Judicial District, Case Number 200973713:
https://www.hcdistrictclerk.com/eDocs/Public/CaseDetails.aspx?Get=nOwWVuXeSew4MBa6JjywcGdyLja2vJGCGNJt6N/n2Yi9wHkVdmtywheZ/wUlf07EKZP5W9h/ouo+RecgfJmv5mgtb8RX/23H39kIGjrYscM=

JURISDICTION

The Supreme Court of Texas denied the petition for review on August 18, 2023. The issues relevant to this Court include separation of powers, sovereign immunity and rules of evidence, all of which have been misused, abused and all but abandoned on the state level in Texas. The use of ultra vires exceptions against governmental entities was attempted but rejected

by the lower Courts and the Court of Appeals and is a primary issue requested of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the separation of powers between the judicial, executive and legislative branches of government in that they have been erased on the state level in Texas. The judicial and executive branches have cloaked themselves in a blanket of sovereign immunity in order to avoid penalties for continuously violating the legislative branch with impunity. The laws they are violating in my case are sections of the Texas Family Code, Chapter 154, Child Support. The lower Courts, in my case, have refused to consider ultra vires exceptions against these governmental entities, as a whole, as a viable claim against their sovereign immunity defense, and the record in the Supreme Court of Texas has consistently rejected similar ultra vires arguments against various governmental entities. The Courts in my case have also ignored Rule 901, Authenticating Evidence, by admitting into evidence a Waiver of Service that appeared 11 years after my divorce, a document that I claim is fraudulent because I never signed a Waiver of Service at the time of my divorce.

STATEMENT OF THE CASE

I filed my initial complaint in Minnesota on September 17, 2020, (answered by only the Harris County Domestic Relations Office (DRO)) and in Montgomery County, Texas, on March 29, 2021, where I argued that filing complaints in Texas and Harris County, Texas, (respectively) would present a conflict of interest. Both cases were dismissed on grounds of improper venue. I filed my complaint in Harris County, Texas, on July 19, 2021, which was identical to the one filed in Montgomery County, on the grounds of Extreme Negligence, Harassment, Fraud and Intentional Infliction of Extreme Emotional Stress and Financial Duress. I should mention that every Defendant was delinquent in filing their answer to every complaint in every jurisdiction (with the exception of the Court of Appeals), yet every Judge allowed these transgressions. My basic argument is that the Defendants violated sections of the Texas Family Code and, in doing so, caused financial and emotional harm. In particular, they violated Sections 154.001., 154.002. and 154.006. on failure of the termination of child support benefits when my older children "aged out", Section 154.125.(b) regarding the recalculation of benefits for the remaining children, and Sections 154.182.(a) and 154.182.(c)(1) regarding medical benefits. I provided arguments that ultra vires conditions should

apply to the entities involved, not individuals, in order to pierce the shield of sovereign immunity for these particular Defendants (government entities) given the circumstances presented. I gave a comprehensive timeline of the actions taken by the Defendants over the course of years and demonstrated a pattern of misconduct that showed misdeeds were not isolated and corrections could have been made at numerous points along the way that were deliberately ignored, not missed.

Sometime during this process (I calculated approximately May 2021), a Waiver of Service and Original Petition for Divorce appeared on my divorce website. Until my first complaint filing in Texas, the only divorce document listed was the final decree. Even though I claimed I never signed a Waiver of Service in my complaints, I never explicitly sought to invalidate my Final Decree of Divorce, I was merely using it as an additional example of Extreme Negligence and Fraud. Because of my history with these documents and their questionable appearance on the website, I doubted their legitimacy and filed a Petition to the Court on October 18, 2021, for the Court to request information about them from the Texas Attorney General's Department of Information Technology and Security Services. Nothing was done.

All Defendants submitted answers to the complaint on August 27, 2021, each included a Plea to the Jurisdiction, Motion to Dismiss and Motion to Sever. All the answers centered around sovereign immunity and cited numerous case examples in support, dismissing ultra vires outright as simply a tool against individuals and not entities, and never addressed the violations to the Family Code. They also asked for a dismissal of the damages sought as a violation of the Tort Laws which are severely limited in scope as to the amount and specifically cite (tangible personal or real) property damage, personal injury or death, and only when caused by a motor-driven vehicle or equipment.

I received notice on November 22, 2021, from Defendants' counsel, not from the Court, that an oral hearing was set for December 10, 2021, via Zoom video link on Defendants' Plea to the Jurisdiction. Also on November 22, 2021, Defendants Office of the Attorney General and the 224th District Court of Harris County, Texas, filed a brief in support of their Plea to the Jurisdiction, Motion to Dismiss and Motion to Sever, which included, as Exhibit B, a copy of the Waiver of Service I claimed I never signed. Their brief relied on sovereign immunity as a primary defense to all claims against them, and used the Waiver of Service as justification for a valid final decree. I filed my answer to their brief on

December 3, 2021, using the Family Code violations as examples of ultra vires exceptions that should pierce sovereign immunity, and, for the first time, argued that the final decree should be considered a "void" contract because I didn't sign a Waiver of Service and no waiver accompanied it, despite Defendant's claims.

As I was filing my answer, on December 2, 2021, I received a cryptic email from the 11th Administrative Judicial Region of Texas, with a notice stating that a new Judge, "The Honorable Todd Blomerth, Senior Judge, 421st District Court, has been assigned to..." this case. While the "Notice of Assignment" cover document was specific, the actual notice attached was very general and spoke of a "...primary purpose of hearing cases and disposing of any accumulated business requested by the court." On December 3rd, when I spoke to the clerk regarding the filing of my answer, she and everybody else in the Court had no knowledge of the assignment and I actually provided her a copy of the order. It turns out the only case heard by Judge Blomerth was mine and the assignment was not made by "the Court" but by Susan Brown, the presiding Judge of the 11th Administrative Judicial Region of Texas, despite the wording of the order.

On December 10, 2021, the oral hearing was held via Zoom video link with all parties present and Judge Todd Blomerth presiding. Judge

Blomerth began by allowing Defendant's counsel, Mr. Jose Valtzar, to begin. Mr. Valtzar started to lay out a foundation when the Judge interrupted him by saying that he was familiar with the case and he could move on. Mr. Valtzar then went on to state his case for child support guidelines and "the decree is ordering $1670 for the three children" (a point I never disputed) and stated I had "knowingly complied" with the terms of the divorce decree for years. It's easy to comply "knowingly" (not willingly) when wages are garnished and children are added to employer-provided medical benefits via Court order, points I made in my reply brief. As Mr. Valtzar went into the issue of sovereign immunity and began to cite case history, Judge Blomerth interrupted him again and went on to Mr. Michael Lee, counsel for the Harris County DRO. Mr. Lee argued that I was suing the wrong entities, that my claims were unfounded, and began to cite sovereign immunity as a defense. That's when Judge Blomerth interrupted him and directed his attention to me. Instead of allowing me to speak, he presented me with a question that wasn't relevant. "Mr. Zelkowitz, have you filed a motion to modify or clarify with the court as it relates to your case, as it relates to the divorce issues of the child's custody, support, and all of those matters, sir?" My answer was "no", it was a matter that the original Court and the Attorney General's office failed in

their duties and didn't follow the Family Code, plus I couldn't financially or physically afford to return to Texas to appear in Court. When I pointed out the error in the divorce decree, Judge Blomerth stated the dispute needed to be resolved in Family Court because I'm modifying "a document that was entered essentially with your consent well over 10 years ago..." and proceeded to take offense for me "attacking the court". When I pointed out that the original decree was filed without my consent, the Judge said, "You signed a waiver, did you not?" I replied, "I did not." I later emphasized what I stated in my answer and previous request to the Court, that I never signed a waiver, I don't know where it came from, it was never filed with the original divorce decree, that it just appeared on the divorce documents website in my estimation May 2021. He then, in a patronizing manner stated, "Okay. All right. What else would you like to bring to the Court's attention?" I then presented my argument regarding how I did try to argue the issues as far back as December 2010 through the DRO, the issue of medical benefits and the issue of sovereign immunity and how the violations of the Family Code should be considered acts of ultra vires in my complaints against these government agencies. He then took responses from opposing counsels, to which Mr. Valtzar merely stated the waiver of service is on file with the cause number of my divorce, never

addressing the issue of when it was filed, to which the Judge questioned, "There was a waiver filed, was there not?", and Mr. Valtzar responded, "Yes, Judge." And that was it. The Judge ruled against me, dismissing with prejudice on all counts. The Judge went on to admonish me further, stating, "With all due respect, sir, if you have issues as it relates to a divorce issue that was entered years ago as to the amount of child support or other issues, those are issues that need to be handled in an appropriate way. Suing the court is not the way to do it." And when I asked him about accepting a "...waiver of service [that] was filed in May of 2021 that may be a falsified document", his response was, "Then you can address that, but that's not going to be addressed this morning by way of the pleadings that you have." But I did address that in my written answer to the Defendants' plea, which the Judge supposedly read. In the end, I received the most back-handed compliment from the Judge. "Mr. Zelkowitz, I appreciate you, your efforts, and I certainly respect them. Obviously, I disagree with them, but I appreciate your efforts and we are -- this case is adjourned."

Over the holidays, it was difficult, but I determined what procedures to follow and filed my Notice to Appeal to the District Court of Appeals of Texas on January 18, 2022, followed by my Appellant Brief on February

28, 2022, to the First Court of Appeals of Texas. I requested oral arguments, but the request was later denied. My brief centered on the oral hearing and Judge Blomerth's lack of attention to the issues presented regarding the Defendant's Family Code violations, the issue of ultra vires, his blind acceptance of the waiver of service as evidence without further scrutiny, and his basic "theme" of "this should have been resolved in Family Court" when I couldn't afford to fly back to Texas from Georgia and California to resolve the issues because the Defendants' illegal actions were garnishing excessive funds limiting me from doing so. I also stressed my contention was not with the terms with the child support as the final decree originally determined. That is, $1670 per month for three children. My calls to the DRO were intended to reduce my child support obligation in order to correct errors made by the Defendants, what the reduced amount should be for less than three children. All this information was the basis of my appeal. The Defendants' briefs centered on their basic claim of sovereign immunity and cited numerous case examples in support, none of which were relevant because in none of those cases did the entities involved expressly and repeatedly violate the law in their actions. In my answers to the Defendants' briefs, I pointed this issue out to the Appeals Court and again argued in favor of ultra vires as a means to pierce

sovereign immunity in this case. I again took the Court through the history of the Defendants' illegal actions and my attempts to resolve them through the DRO, to continually get the response, "That's what the Court ordered" with no resolution, or even get an acknowledgement that there was a problem.

My appeal was denied. Appellate Justice Amparo Guerra filed her opinion on March 23, 2023. Justice Guerra looked unfavorably on my lack of legal precedence in my argument. Much of my argument centered around the oral hearing where Judge Blomerth took little notice to the issues regarding the Defendants' (Appellees') legal violations and my argument of ultra vires, where no legal precedence exists for government entities, and I stressed the Judge's acceptance of evidence despite my objection and argument that further authentication was necessary, which definitely brought into question the Judge's interpretation of the rules of evidence. It was very troubling when Justice Guerra made no mention of the evidentiary issue in her opinion. Instead, after chastising me about my lengthy argument against the oral hearing without citing legal precedence, she parrots the Defendants' (Appellees') arguments about sovereign immunity and lack of ultra vires against government entities by citing numerous cases, none of which I found relevant to this case, and

completely ignores their violations to the Family Code as factors for consideration. Justice Guerra then proceeds to go through my initial complaint and, without referring to any supporting documentation or arguments, take apart my case and, in some parts, misquoting and misinterpreting what I originally filed.

Instead, Justice Guerra makes one citation that was most troubling[1]: "[M]erely asserting legal conclusions or labeling a Defendant's actions as 'ultra vires,' 'illegal,' or 'unconstitutional' does not suffice to plead an ultra vires claim—what matters is whether the facts alleged constitute actions beyond the governmental actor's statutory authority, properly construed."[2] I provided numerous specific examples of Family Code violations. "The court ***shall*** consider the cost, accessibility, and quality of health insurance coverage available ..."[3] where " "Accessibility" means the extent to which health insurance coverage for a child provides for the availability of medical care within a reasonable traveling distance and time from the child's primary residence..."[4], which the Court violated with the medical

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[1] Appendix B, page 16
[2] *Brown v. Daniels,* No. 05-20-00579-CV, Fifth Court of Appeals, State of Texas, 2021, page 18
[3] Texas Family Code, Chapter 154, Child Support, Section 154.182.(a)
[4] Texas Family Code, Chapter 154, Child Support, Section 154.182.(c)(1)

benefits wording in the final decree.[5] The Texas Attorney General's Office continued to maintain all three children on the child support rolls and collect the full amount of child support, despite the older children "aging out" of the system, in violation of the rules identified in both the final decree[6] and the Family Code[7], and then failed to recalculate the support for the reduced number of covered children.[8] I provided proof in the form of Writs of Withholding sent to employers that included all three children and dates of birth to every employer. The lone exception was the writ sent to the Social Security Administration (SSA) with only my youngest daughter listed, which, to me, strongly suggested a consciousness of guilt since it was the only "employer" that would raise a red flag if a dependent over 18 was receiving child support. These were just two of the specific examples provided to the Court of Appeals and weren't "merely assertions". I assert these actions go beyond "the governmental actor's statutory authority" and can be "properly construed" as ultra vires in that they clearly violate the law.

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[5] Appendix E, pages 24-32
[6] Appendix E, page 22
[7] Texas Family Code, Chapter 154, Child Support, Sections 154.001., 154.002., 154.006.
[8] Texas Family Code, Chapter 154, Child Support, Section 154.125.(b)

I apologize to the Court for not being concise, but the history and peripheral issues presented are extremely relevant to the case. Many factors in the history of this case deviated from normal procedure (the Defendants' delinquent filings accepted by the Court, a substitute Judge less than two weeks before the oral hearing, etc.) and seemed to all favor the Defendants, so I felt they needed to be presented in the context of the Statement of the Case.

REASONS FOR GRANTING THE PETITION

In late 2009, my ex-wife and I came to an amicable agreement on a divorce. She printed up an online original petition that included terms, division of property, child support and had lines for both of us to sign and date, which we both did. That was the last I heard about it until February 1, 2010, when she told me she finalized it. I never received a copy of the final decree from neither my ex-wife nor the Court, only notices from the Texas Attorney General's Office (OAG) of child support requirements of $1670 per month, which was much higher than we agreed. In December 2010, I took a job out of state with the Department of Defense at Fort Gordon, Georgia, and was garnished for child support (standard procedure for all in Texas) for $1670 even though my oldest daughter was eighteen and graduated high school, which meant she was no longer eligible for child support. The OAG also required my employer to add all children to my employer-provided medical benefits even though, in Georgia, it provided no coverage for my children residing in Texas. For this job, this was a major expense because my medical was included with my job (basically free, working at the Eisenhower Medical Center) and anything extra was supplemental. I called the Harris County Domestic Relations Office (DRO), the public facing department of the child support system and

the phone number listed on all billing statements for "questions" and "disputes", and told them of the situation. They simply replied, "That's what the Court ordered." As a result of the excessive funds garnished, I couldn't afford to keep up with my house payments in Texas. I lost it, most of my belongings, my severe and debilitating migraines returned due to the stress, lost my job after 3 months due to my migraines, lost my apartment a month later, packed what I could in my van and lived in it for a month or so, friends helped me move back to California where I lived in a homeless shelter for a few months, finally got a job and started to get my feet back on the ground.

The garnishing of $1670 per month child support and mandated employer-provided medical benefits continued, even though I tried to get through to the DRO numerous times. "That's what the Court ordered" was the consistent reply. This lasted over 3 more employers across 2 more different states before I finally retired. When my ex-wife wanted to set up a consistent monthly amount of child support since I was no longer working and being garnished by the Texas Attorney General's Office, she arranged a mediation session with a DRO Officer for March 19, 2020. On that date, my ex-wife and I came to an easy agreement on $500 per month child support for our remaining minor child. The DRO Officer then asked

about contributing to arrears. I explained there shouldn't be any arrears, that it was an accounting issue by the Texas Attorney General's Office by maintaining the $1670 monthly requirement for 10 years when two of my children had "aged out" causing the arrears, not by delinquencies on my part. Even though, over that 10-year period, I had lost my house, most of my belongings, lost my passport privileges, lost job opportunities, had tax refunds and COVID benefits garnished, had my credit rating ruined, all as a direct result of the Defendants, I was willing to let all that go for the sake of my ex-wife and expedience for the elimination of the arrears and a clean start. The DRO Officer went offline a few times, but kept coming back on the call and asking about the arrears. When I wouldn't acquiesce, she terminated the session with no resolution. I realized at that point my only recourse was legal. The law and the Courts are where justice is supposed to reside. Shortly thereafter is when I filed my first complaint in Minnesota.

I share this historical background information to stress I didn't bring this complaint frivolously, lightly or with malicious intent. It was the only way to set the record straight and clear my name, and since they were forcing me to litigation, I would seek compensation for the damages caused by the years of harm caused by the willful illegal actions on the part of the

Defendants. Bringing this case to the Supreme Court of the United States is a final effort to seek the justice I believe I deserve and the only place where the primary issues of Sovereign Immunity and ultra vires exceptions of government entities, not just individuals, can be resolved.

Sovereign Immunity is important, even critical, on the Federal and international levels for diplomatic purposes, but on the state and local levels it's generally used as a liability and financial shield. When operating in good faith, state and local governments use Sovereign Immunity as protection against frivolous and costly lawsuits for just doing their jobs when bad things happen. When individuals working for these entities act outside their assigned responsibilities, ultra vires can be cited as a means of holding the individuals liable. But what happens when a governmental entity, as a whole, engages in systematic, consistent and unimpeded violations of the law as a matter of normal operating procedure? There is no method of holding this entity accountable when it can hold up a shield of Sovereign Immunity. It's an abuse of the rule in order to bypass any responsibility or accountability to anyone and act with autonomy with whatever guidelines they set for themselves. They are, for all intents and purposes, unchecked and untouchable.

In my case, all the entities involved are shielding themselves with this Sovereign Immunity and the Courts have upheld their arguments, failing to accept any of my arguments that ultra vires be used to breach their immunity. This Court can change that without altering Sovereign Immunity, just expand the ultra vires rules so they may apply to the entities, as a whole, and not just individuals. I have developed a few of these rules that would apply to my case, but could be applied to different circumstances, as well. They are specific enough so they cannot be overly applied, but general enough that they don't apply to any one specific entity or any specific individuals within the entity. I am, of course, not a lawyer and "legalese" would probably be needed and proper wordsmithing necessary, but the basic framework is there. The ultra vires rules for entities I have developed are as follows:

1. The (negative) action requires two or more persons within an Entity for completion and one or more of those individuals may be interchangeable and/or unidentifiable. That is, certain actions required for completion may be accomplished by many individuals but this action included this individual (these individuals) by "assignment" or "luck of the draw" and/or an individual may have performed a part of this action that was never identified by record or documented or an individual has not been "credited".

   [This is aimed at the Court regarding the Final Decree of Divorce. The document has boiler-plate wording and missing information, was signed by the Judge and requires filing and uploading by the Clerk, data entry by the Clerk and/or Deputy Clerks and is missing

associated documentation. The responsibilities fall on a number of individuals and not one single individual.]

2. A consistent flaw, error, negative product or action is produced by all (or a consistent number of) the individuals from an Entity. That is, an individual performs a negative "ministerial act" on behalf of the Entity and different individuals perform the same negative "ministerial act". This indicates it's a procedural aspect of the Entity and not restricted to any one individual.

   [I used the term "ministerial act" because it has special meaning in this context and to my case, as a whole. This is aimed at the Attorney General's Office for the Writs of Withholding and, to a lesser extent, letters to employers regarding medical benefits. It can also be applied to the DRO for the numerous calls made regarding these issues when the response was "That's what the Court ordered". The "luck of the draw" identification of an individual who performs the "ministerial act", as mentioned in #1, can also be applied here since it's unclear who was required to send out each writ at the OAG and who is assigned to take which calls at the DRO.]

3. There are consequences to an individual or inability on the part of an individual within the Entity to change the negative action. This varies slightly from #2 in that an individual performs a negative "ministerial act" on behalf of the Entity, but does so reluctantly because the Entity either encourages, forces or engages in on a routine and/or regular basis but it's not readily apparent. This may be a secondary ultra vires complaint after the initial one against the individual turns up mitigating information.

   [This applies to the DRO Officer during the mediation session when she kept going offline and coming back, only to continue asking about arrears. She may have been trying to see about wiping out the arrears, only to be overruled. It can also be applied to any new hire or other individual who may not want to comply with the negative procedures imposed by the Entity.]

4. The Entity condones the negative action of the individual and/or the individual cannot be isolated or identified from the Entity for the

> negative action for ultra vires litigation. If attempts to isolate an individual for ultra vires purposes is met with resistance, the shielding Entity can then be held liable as a whole. You would have to assume that if the Entity is shielding the identity of an individual who commits an action that causes damages that results in such a complaint, they are protecting the individual and, therefore, should be held liable for the individual's actions.
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> *[This can apply to the filing of Final Decree of Divorce itself in that no name is signed on the front stamp, just a checkmark. Also, the Waiver of Service and Original Petition for Divorce uploads 11 years after the final decree hearing.]*

Justice Guerra erroneously cherry picked her excerpt from *Brown v. Daniels* to stress I couldn't just "assert" ultra vires, I had to substantiate it, which I did repeatedly, to no avail. There are a number of citations in that same case that are more relevant and more favorable to my arguments (I'm citing the "original" case):

"We look to applicable rules, ordinances, and statutes to determine whether an alleged act or failure to act fits within the narrow ultra vires exception."[9] The Family Code, Chapter 154, Child Support, is extremely applicable in dealing with all the issues involved regarding the child support and medical benefits in this case. My references to the proper sections of the Family Code were clear and precise.

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[9] *Edinburg Consolidated Independent School District v. Smith,* No. 13-16-00253-CV, Thirteenth Court of Appeals, State of Texas, 2016, page 27

"Ultra vires claims depend on the scope of the state official's authority, not the quality of the official's decisions. Thus, it is not an ultra vires act for an official to make an erroneous decision within the authority granted."[10] "Erroneous" is an extremely subjective term to a third party. Only the official themselves knows if the decision is truly erroneous. In this case, context is everything.

Start with the final decree. I concede the wording for the medical benefits section is boiler plate wording[11] and the wording violates the Family Code.[12] But the Family Code puts the responsibility on the Court and the Court failed. Was it erroneous? Hundreds, if not thousands, of these boiler plate sections go through Texas Courts and I'm sure none get modified. This isn't erroneous, it's expedience for the sake of practicality. I concede most of these cases involve non-custodial parents who live and work within the vicinity of their children. But what should be done in the cases that fall out of the majority, like mine? And when you don't attend the final hearing and you're working out of state and you can't go to Court to correct the problem? And the problem, after all, is a problem created by

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[10] *Honors Academy, Inc. v. Texas Education Agency,* 555 S.W.3d (Tex. 2018), 54, 58
[11] Appendix E, pages 24-32
[12] Texas Family Code, Chapter 154, Child Support, Sections 154.182.(a), (c)(1)

the Court in violation of the Family Code, not by error but by expedience, because the main problem is the boiler plate wording to begin with. Then you have the incomplete child support page.[13] Is it erroneous or intentional (I'll share my theory later)? And whose responsibility was it? The Judge? The Clerk? During the hearing? After the hearing and before filing? Another reason for holding the "Court" liable is the finger pointing that could be involved here. Then there is the filing itself. The final decree for this divorce was filed almost three months after the hearing and as a stand-alone document, both highly irregular. Why the long delay? Was there a problem with the decree or the accompanying documentation? Maybe a missing Waiver of Service? I went through the documents listings of dozens of finalized divorces online over a span of years and I couldn't find any other divorce that had the final decree as the only uploaded document. At the very least, there were 4 or 5 additional documents, including the original petition for divorce. Was this erroneous or intentional? Considering the circumstances and procedures, erroneous seems highly unlikely. So most likely intentional. Why? In my research, I discovered that a waiver of service isn't necessary for an uncontested

[13] Appendix E, page 22

divorce to be legal since I signed the original petition for divorce, but the problem is there were changes in the terms between the original petition and the final decree, so without a waiver the final decree isn't valid. Remember I said the Judge changed the amount of child support? Also, my ex-wife was going to carry medical benefits (another item specified in the original petition) because she didn't trust that I would get benefits for our children. The missing waiver would be problematic, and now the original petition conflicts with the final decree, so omitting both documents from the upload would raise serious questions. The solution, while unique, of uploading the final decree as a stand-alone document could be explained away as expedience after a long delay in filing.

In looking at the Attorney General's Office, submitting writs of withholding to employers with all three children could not be considered erroneous. First, it was done with every employer I worked for (I don't consider the Social Security Administration (SSA) an employer). Second, except for the first writ issued, the form includes a space for each child's date of birth, which was completed properly on each submission. Third, and most telling, my older children were omitted on the last writ submitted to the SSA because, in my opinion, it indicates a consciousness of guilt. The SSA is very familiar with the child support laws in all 50 states and

for two children to be listed on a child support form in their 20's would raise serious questions and possibly even an investigation. So, if intentional, for what purpose? The OAG doesn't make anything off collecting more child support than necessary... or does it? Not monetarily but possibly politically. Another opinion (guess, actually) is that this has been going on for quite a while. Somewhere, it was decided to crack down on dead-beat dads "on paper". By continuing to collect child support on children past their 18th birthday and after they graduate high school, the ledger would read as though you're collecting more child support than there are eligible children if everybody was paying child support, but the numbers look like you're cracking down on dead-beat dads. This practice forces non-custodial parents to go back to Court to amend child support agreements to change (for multiple children) or end (for single or last child) child support garnishments and amounts. This ties into the incomplete child support page in the final decree. Somewhere, it was decided to leave this page blank to further this ambiguity of the reduced child support and create a hole for the law to drive through. Despite the Family Code, this seems, to me, to be their practice based on anecdotal information from other complaints I've read online as well as my own experience. As of this filing, all three of my children have graduated high school and reached 18

years of age, yet my SSA benefits are still being garnished. This also falls in line with Judge Blomerth's attitude of "This belongs in Family Court." My experience now includes continued garnishing of SSA benefits despite my youngest child graduating from high school at 18 years old three months ago.

"To fall within the ultra vires exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act."[14] **"An official acts without legal authority if she exceeds the bounds of her authority or if her acts conflict with the law itself."**[15] **" 'Ministerial acts' are those 'where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' "**[16] **"Conversely, 'discretionary acts' are those that 'require the**

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[14] *City of Houston v. Houston Municipal Employees' Pension System,* 549 S.W.3d (Tex. 2018), 576

[15] *Houston Belt & Terminal Railway Company v. City of Houston,* 487 S.W.3d (Tex. 2016), 154, 158

[16] *City of Houston v. Houston Municipal Employees' Pension System,* 549 S.W.3d (Tex. 2018), 576

exercise of judgment and personal deliberation.' "[17] All of these citations must be taken together in order to decipher some the many issues presented in my case.

First, for the Court and the final decree, signing off on boiler-plate wording for medical benefits[18] could be considered a "ministerial act" but, considering the wording, the act also conflicts with the law.[19] Then filing the final decree with false information regarding the waiver of service. Obviously, filing and uploading the final decree is a "ministerial act", but the manner in which it was filed and uploaded, as a stand-alone document, suggests "discretion" was involved because judgment and personal deliberation were used in deciding to file and upload the final decree in the manner it was. So does a "ministerial act" become a "discretionary act" at that point? I don't believe these issues belong in a Plea to the Jurisdiction hearing but instead before a Judge and/or jury in a full hearing about the case as a whole. And the actual identity of who filed and uploaded the document is in question.[20] The stamp obviously has the name of the District Court Clerk, but the space for the name for the person to be

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[17] *City of Houston v. Houston Municipal Employees' Pension System,* 549 S.W.3d (Tex. 2018), 576

[18] Appendix E, pages 24-32

[19] Texas Family Code, Chapter 154, Child Support, Sections 154.182.(a), (c)(1)

[20] Appendix E, page 1

written merely has a checkmark. The actual date is in question since the date on the stamp can be manipulated and no actual date and time are written in manually and I don't have access to the embedded data from the upload.

I could also add that the action of Judge Blomerth during the oral hearing was discretionary in allowing the fraudulent Waiver of Service into evidence. That discretion, however, was tainted by the fact that no consideration was given to that discretion. So little consideration, in fact, as to seem ministerial. Given the questionable pedigree of the document, it would seem more discretion would be involved. It seemed as if he didn't want to know about any controversy regarding the waiver and its history, like he just wanted to get the case over with, just rule in the Defendants' favor and end it. But a Judge wouldn't act that way, would he?

I used the term "fraudulent" for the Waiver of Service because I have decided to start using the correct term for the document. I don't know who fabricated it and I'm not making any specific accusations to any specific parties, but the one fact I do know is that I never signed a Waiver of Service, so any Waiver of Service that bears my "signature" must be a fraudulent document.

Turning to the Attorney General's Office, sending out a writ of withholding is definitely a "ministerial act". A number of different individuals have done this to several different employers and all writs have looked almost identical over the course of my employment history for over 10 years, including listing all three of my children and garnishing the full amount of $1670 per month that was authorized for all three children at the time of the final decree.[21] The problem is that this violates the terms of the final decree[22] and is a violation of the Family Code[23] and began with the very first writ of withholding issued in December 2010. As mentioned earlier, the only writ issued with the proper children (child) listed is the last one issued to the SSA. Again, what should be considered a "ministerial act" now becomes a "discretionary act" by omitting my older children because it deviates from the pattern set by all the previous writs. Once again, I believe this is done because the SSA is very cognizant of child support laws and would raise questions if dependents in their 20's were still listed on a writ of withholding for child support. So where did this "discretionary" action initiate? Was it with the individual that actually

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[21] Appendix E, page 22
[22] Appendix E, page 22
[23] Texas Family Code, Chapter 154, Child Support, Sections 154.001., 154.002., 154.006.

sent out the writ or someone else within the Attorney General's Office or is there actually a policy in sending out a writ to the SSA? The answer could determine where the ultra vires consideration would be focused. Then there's the medical benefits division of the office, sending out a notice to each employer to require them to add all three of my children to my employer-provided benefits package. This complies with the letter of the final decree but violates its spirit and, in fact, leaves my children without the actual benefit of medical coverage. Doesn't this violate the spirit and letter of the Family Code? Questions, I believe, for a jury to decide.

Which brings me to the Domestic Relations Office (DRO). They haven't been mentioned much because they don't appear to actively commit any ultra vires exceptions, theirs appear to be reactive. As mentioned previously, whenever I called the DRO to discuss the excessive child support garnishment and the employer-provided medical benefits requirement that weren't providing any coverage for my children, I would always get the reply, "That's what the Court ordered." I suppose that would be a "ministerial act", to answer the phone, look at my account, and provide that response, considering a computer-generated recording could do the exact same thing. Despite the fact that my children were being deprived medical coverage, the DRO Officer on the phone refused to do

anything. It is my assumption (and assertion) that DRO Officers are meant to perform more "discretionary acts" when it comes to the protection of children's benefits, which is why "That's what the Court ordered" should be considered an ultra vires response when faced with the fact that the "Court-ordered" employer-provided medical benefits weren't providing coverage to my children. You might as well have a computer-generated recording. It also appeared, during the mediation session with my ex-wife, that "discretion" may have been suppressed when it came to my arrears when the DRO Officer kept going offline and coming back, only to continue with the arrears questioning. Shakespeare wrote that "Discretion is the better part of valor", which is true in many cases, but here it appears to lose out to apathy. It might as well be a computer-generated voice. Ultra vires again.

As for the damages requested in my complaint, Justice Guerra notes the TTCA (the tort laws in Texas) are very specifically written, basically (in my view) with damage caused by construction activity in mind:[24]

> "Section 101.021 of the TTCA provides that a governmental unit is liable for:

[24] Appendix B, page 10

(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 governmental unit would, were it a private person, be liable to the claimant according to Texas law."

There are also monetary limitations listed with these laws that are written with the intent to limit liability because of the inevitability of causing property damage when doing construction in residential areas. There's also the chance of doing personal injury when doing construction in business districts. The amounts associated with these laws, I'm sure, are designed to cover co-pays, deductibles and incidentals as insurance is designed to cover the rest. They don't take into consideration the deliberate actions of "white collar" ultra vires activities by governmental entities in violating the law and causing harm other than "property damage, personal injury or death", although in this day ruining your credit is severe personal injury, in my opinion, just not physical injury. This is an issue that would need to be addressed by a Judge and/or jury in a trial,

in the Texas legislature or possibly by this Court if no decision can be reached otherwise. This Court could pre-empt any issue of damages by merely including wording in your published opinion that there is no monetary limit placed on ultra vires cases involving governmental entities regardless of any existing legislation on the books. Just sayin'.

The Waiver of Service and the Original Petition of Divorce are documents of record, according to the State of Texas. I can't change that fact or the fact that the fraudulent waiver was accepted into evidence in a legal hearing. The issue is now, should this Court grant me another chance at stating my case, to challenge their authenticity. Because I'm unsure exactly what my ex-wife filed, the original petition may be more difficult, but the waiver is simple because I know I never signed such a document. I'm reluctant to state my strategy here since opposing counsel is receiving a copy of this document. Suffice to say that Photoshop has its limitations.

Summary

There is no oversight or check on governmental entities that abuse the shield of sovereign immunity when lower Courts refuse to accept ultra vires as a valid means of legal accountability. This Court can correct that injustice by providing the keys to unlocking sovereign immunity. You

might think it's dangerous to do so, but what is more dangerous than governmental entities that refuse to follow the law and use it with impunity with reckless disregard for the harm that it causes? I've given specific examples of ultra vires exceptions that would help me and could be used in other situations but are limited enough that can't be abused.

I believe that, in my case and similar examples of flagrant legal violations, when ultra vires is used against governmental entities in certain cases, the tort limits should not apply, or, at the very least, be allowed to be argued in Court.

As for the Waiver of Service and the rules of evidence, I probably have to wait for this Court's opinion on ultra vires exceptions and work that out when I get back to Court in Texas. Any advice this Court could give on this matter would be greatly appreciated.

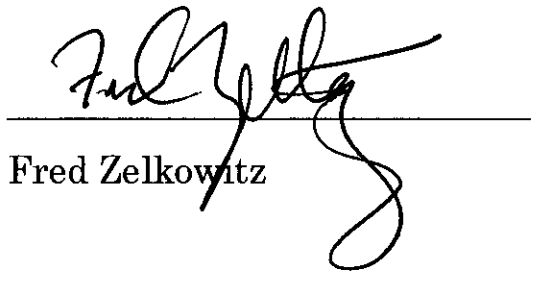
CONCLUSION

I believe this petition has comprehensively covered my case. I again apologize for not being as concise as I could have been but, while the case itself is simple, the accompanying circumstances are not. The issue of ultra vires exceptions to sovereign immunity for government entities, not just individuals, is necessary in this case and many other cases where government entities have acted in bad faith in their public dealings as well as broken the law with impunity. This requires this Court to set guidelines for implementing such exceptions because no lowers Courts have been willing to take on the responsibility to do so. I ask that you do so for me at this time and ask that this Petition for a Writ of Certiorari be granted.

I thank the Justices for your attention and look forward to hopefully submitting my brief and presenting my oral argument. Until then, thank you for your consideration.

Respectfully submitted,

this 30th day of August 2023



Fred Zelkowitz