

No. 22-0008

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## In the Supreme Court of Texas

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GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE  
STATE OF TEXAS; JOHN SCOTT, IN HIS OFFICIAL CAPACITY AS  
SECRETARY OF STATE OF TEXAS; THE STATE OF TEXAS,  
*Appellants,*

v.

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF  
REPRESENTATIVES; ROLAND GUTIERREZ; SARAH ECKHARDT;  
RUBEN CORTEZ, JR.; TEJANO DEMOCRATS,  
*Appellees.*

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On Direct Appeal  
from the Special Three-Judge District Court for the 126th  
and 250th Judicial District Courts, Travis County

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### STATEMENT OF JURISDICTION

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John Scott, in his official capacity as Secretary of State of Texas

The State of Texas

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Tejano Democrats

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## TABLE OF CONTENTS

	Page
Identity of Parties and Counsel .....	i
Index of Authorities .....	iii
Statement of the Case .....	v
Introduction .....	1
Statement of Jurisdiction .....	1
Prayer .....	3
Certificate of Service.....	4
Certificate of Compliance .....	4

## INDEX OF AUTHORITIES

	Page(s)
<b>Cases:</b>	
<i>Perry v. Del Rio</i> , 53 S.W.3d 818 (Tex. App.—Austin 2001), <i>appeal dismissed by</i> 66 S.W.3d 239 (Tex. 2001) .....	1-2
<i>Sabre Travel Int’l, Ltd. v. Deutsche Lufthansa AG</i> , 567 S.W.3d 725 (Tex. 2019) .....	2
<b>Statutes and Rules:</b>	
Tex. Civ.Prac. & Rem. Code:	
§ 51.014(a) .....	2
§ 51.014(a)(8) .....	1
§ 101.001(3) .....	1
§ 101.001(3)(D) .....	1
Tex. Gov’t Code:	
§§ 22A.001-.003 .....	v
§ 22A.001(a)(2) .....	2
§ 22A.006(a) .....	1, 2

Tex. R. App. P.:

57.3 .....	1
57.4 .....	3
57.6(a).....	3

## STATEMENT OF THE CASE

*Nature of the Case:* In Case No. D-1-GN-21-006515, the Mexican American Legislative Caucus purported to sue Governor Greg Abbott, Secretary of State John Scott, and the State of Texas, challenging the constitutionality of H.B. 1, which reapportioned the Texas House of Representatives based on the 2020 decennial census.

In Case No. D-1-GN-21-006898, Roland Gutierrez, Sarah Eckhardt, Ruben Cortez, Jr., and the Tejano Democrats sued the State of Texas, challenging the constitutionality of both H.B. 1 and S.B. 4. S.B. 4 reapportioned the Texas Senate based on the 2020 decennial census.

These related cases were transferred to and consolidated before a special three-judge district court. Tex. Gov't Code §§ 22A.001-.003.

Defendants filed pleas to the jurisdiction, which argued Plaintiffs lacked standing, and their claims were barred by sovereign immunity.<sup>1</sup>

*Trial Court:* Special Three-Judge District Court for the 126th and 250th Judicial District Courts, Travis County  
The Honorable Karin Crump, The Honorable Ken Wise, and  
The Honorable Emily Miskel

*Disposition in the Trial Court:* The trial court granted in part and denied in part Defendants' pleas to the jurisdiction. App. A. The court granted the State of Texas's plea to the jurisdiction as to the Gutierrez Plaintiffs' claims for injunctive relief. App. A. The trial court otherwise denied Defendants' remaining pleas to the jurisdiction. App. A.

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<sup>1</sup> As of the time of filing, the clerk record has not been filed.

## **TO THE HONORABLE SUPREME COURT OF TEXAS:**

Defendants have filed a direct appeal to this Court from the trial court's interlocutory order, which denied in part Defendants' pleas to the jurisdiction raising issues of sovereign immunity and standing. Pursuant to Texas Rule of Appellate Procedure 57.3, Defendants request that the Court note probable jurisdiction over this appeal and order the parties to file appellate briefs.

### **STATEMENT OF JURISDICTION**

Under Texas Civil Practice and Remedies Code section 51.014(a)(8), a party may appeal a district court's interlocutory order granting or denying a plea to the jurisdiction if the plea was filed by a governmental unit. When a party appeals an order of a special three-judge district court, that appeal is taken to this Court directly. Tex. Gov't Code § 22A.006(a). Defendants' direct appeal to this Court satisfies both statutes.

*First*, the interlocutory order in question denied pleas to the jurisdiction filed by governmental units. Under the statute, the term "[g]overnmental unit" includes "this state" and "any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution." Tex. Civ. Prac. & Rem. Code § 101.001(3). The State of Texas is listed as a defendant in both consolidated cases. The Governor and Secretary of State in their official capacities are additional defendants in No. D-1-GN-21-006515. Those officials also qualify as governmental units for purposes of section 101.001(3) because they are organs of government deriving their authority from the Constitution of Texas. *Id.* § 101.001(3)(D); *see also Perry v. Del*

*Rio*, 53 S.W.3d 818, 820-23 (Tex. App.—Austin 2001), *appeal dismissed by* 66 S.W.3d 239 (Tex. 2001).

*Second*, this appeal is taken from a special three-judge district court. Because these cases involve the apportionment of districts for the state house of representatives and senate, the Chief Justice convened a special three-judge district court pursuant to Texas Government Code § 22A.001(a)(2). By statute, “[a]n appeal from an appealable interlocutory order . . . of a special three-judge district court is to the supreme court.” Tex. Gov’t Code § 22A.006(a).

Where, as here, a party appeals an interlocutory order pursuant to Texas Civil Practice and Remedies Code section 51.014(a), appellate jurisdiction is mandatory. As this Court has recognized, section 51.014(a) establishes “an appeal as of right,” stating that “litigants have a right to have certain questions answered before final judgment.” *Sabre Travel Int’l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725, 735 (Tex. 2019). Accordingly, this Court has jurisdiction over the appeal.



## PRAYER

The Court should note probable jurisdiction over this appeal under Texas Rule of Appellate Procedure 57.4 and order the parties to file appellate briefs under Rule 57.6(a).

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

On January 6, 2022, this document was served on Sean J. McCaffity, lead counsel for the Mexican American Legislative Caucus, via smccaffity@texttrial.com, and Wallace B. Jefferson, lead counsel for Roland Gutierrez, Sarah Eckhardt, Ruben Cortez, Jr., and Tejano Democrats, via wjefferson@adjtlaw.com.

/s/ Judd E. Stone II  
JUDD E. STONE II

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 453 words, excluding exempted text.

/s/ Judd E. Stone II  
JUDD E. STONE II

No. 22-0008

**In the Supreme Court of Texas**

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS; JOHN SCOTT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF TEXAS; THE STATE OF TEXAS,  
*Appellants,*

v.

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES; ROLAND GUTIERREZ; SARAH ECKHARDT; RUBEN CORTEZ, JR.; TEJANO DEMOCRATS,  
*Appellees.*

On Direct Appeal  
from the Special Three-Judge District Court for the 126th  
and 250th Judicial District Courts, Travis County

**STATEMENT OF JURISDICTION APPENDIX**

	Tab
1. Order on Pleas to the Jurisdiction and Application for Temporary Injunction .....	A
2. Tex. Civ. Prac. & Rem. Code § 51.014 .....	B
3. Tex. Civ. Prac. & Rem. Code § 101.001 .....	C
4. Tex. Gov't Code § 22A.006 .....	D
5. Tex. R. App. P. 57 .....	E

**TAB A: ORDER ON PLEAS TO THE JURISDICTION AND  
APPLICATION FOR TEMPORARY INJUNCTION**

**NO.D-1-GN-21-006515**

**MEXICAN AMERICAN LEGISLATIVE  
CAUCUS,**

*Plaintiff,*

v.

**GREG ABBOTT, in his official capacity as  
Governor of the State of Texas, and  
JOHN SCOTT, in his official capacity as  
Secretary of State of Texas, and  
THE STATE OF TEXAS  
*Defendants.***

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**In the District Court**

**of Travis County**

**250<sup>th</sup> Judicial District**

**[Lead Case]**

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**ROLAND GUTIERREZ, Texas State  
Senator for SD 19; SARAH ECKHARDT,  
Texas State Senator for SD 14; RUBEN  
CORTEZ JR.; and the TEJANO  
DEMOCRATS,**

*Plaintiffs,*

v.

**THE STATE OF TEXAS,  
  
*Defendant.***

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**In the District Court**

**of Travis County**

**126<sup>th</sup> Judicial District**

**[Consolidated Case]**

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**ORDER ON PLEAS TO THE JURISDICTION AND  
APPLICATIONS FOR TEMPORARY INJUNCTION**

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On this day, the Three Judge District Court considered the Pleas to the Jurisdiction by Defendants Greg Abbott, in his official capacity as Governor of the State of Texas, and John Scott, in his official capacity as Secretary of State of Texas (collectively, “Defendants”), and Defendant

the State of Texas (the “State”), as well as Plaintiff Mexican American Legislative Caucus’ (“MALC”) Expedited Motion for Temporary Injunction, and Plaintiffs Roland Gutierrez, Sarah Eckhardt, Ruben Cortez Jr., and the Tejano Democrats’ (collectively, the “Gutierrez Plaintiffs”) Application for Temporary Injunction. The Court, having considered the pleas, the applications, and the supporting and opposing briefing, as well as the applicable law cited therein, evidence presented, arguments of counsel, and the pleadings on file in this case, is of the opinion:

- 1) Defendants’ Plea to the Jurisdiction should be DENIED;
- 2) The State’s Plea to the Jurisdiction should be GRANTED IN PART as to the Gutierrez Plaintiffs’ claims for injunctive relief and DENIED IN PART as to the Gutierrez Plaintiffs’ claims for declaratory relief; and
- 3) MALC’s Expedited Motion for Temporary Injunction should be DENIED.

IT IS THEREFORE ORDERED that Defendants’ Plea to the Jurisdiction is DENIED.

IT IS FURTHER ORDERED that the State’s Plea to the Jurisdiction is GRANTED IN PART as to the Gutierrez Plaintiffs’ claims for injunctive relief only and that such claims for injunctive relief against the State are DISMISSED. IT IS FURTHER ORDERED that the State’s Plea to the Jurisdiction is DENIED IN PART as to the Gutierrez Plaintiffs’ claims for declaratory relief.

IT IS FURTHER ORDERED that MALC’s Expedited Motion for Temporary Injunction is DENIED.

The Court ORDERS a final trial in this matter to begin January 10, 2022 at 9:00 A.M. at a location to be determined by the Court.

SIGNED on the 22nd day of December, 2021.



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The Honorable Karin Crump, Judge Presiding



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The Honorable Ken Wise, Judge Presiding



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The Honorable Emily Miskel, Judge Presiding

**TAB B: TEX. CIV. PRAC. & REM. CODE § 51.014**





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Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Civil Practice and Remedies Code (Refs & Annos)

Title 2. Trial, Judgment, and Appeal

Subtitle D. Appeals

Chapter 51. Appeals

Subchapter B. Appeals from County or District Court (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 51.014

§ 51.014. Appeal from Interlocutory Order

Effective: September 1, 2021

[Currentness](#)

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under [Rule 42 of the Texas Rules of Civil Procedure](#);

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or [Article I, Section 8, of the Texas Constitution](#), or Chapter 73;

(7) grants or denies the special appearance of a defendant under [Rule 120a, Texas Rules of Civil Procedure](#), except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in [Section 101.001](#);

(9) denies all or part of the relief sought by a motion under [Section 74.351\(b\)](#), except that an appeal may not be taken from an order granting an extension under [Section 74.351](#);

(10) grants relief sought by a motion under [Section 74.351\(l\)](#);

(11) denies a motion to dismiss filed under [Section 90.007](#);

(12) denies a motion to dismiss filed under [Section 27.003](#);

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to [Section 75.0022](#);

(14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under [Section 54.012\(6\)](#) or [214.0012, Local Government Code](#); or

<Text of (a)(15), as added by [Acts 2021, 87th Leg., ch. 167 \(S.B. 232\)](#), § 1>

(15) makes a preliminary determination on a claim under [Section 74.353](#).

<Text of (a)(15), as added by [Acts 2021, 87th Leg., ch. 528 \(S.B. 6\)](#), § 1>

(15) overrules an objection filed under [Section 148.003\(d\)](#) or denies all or part of the relief sought by a motion under [Section 148.003\(f\)](#).

<Text of (a)(15), as added by [Acts 2021, 87th Leg., ch. 813 \(H.B. 2086\)](#), § 1>

(15) grants or denies a motion for summary judgment filed by a contractor based on [Section 97.002](#).

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

V. T. C. A., Civil Practice & Remedies Code § 51.014, TX CIV PRAC & REM § 51.014  
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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**TAB C: TEX. CIV. PRAC. & REM. CODE § 101.001**

Vernon's Texas Statutes and Codes Annotated

Civil Practice and Remedies Code (Refs & Annos)

Title 5. Governmental Liability

Chapter 101. Tort Claims (Refs & Annos)

Subchapter A. General Provisions

V.T.C.A., Civil Practice & Remedies Code § 101.001

§ 101.001. Definitions

Effective: June 17, 2011

Currentness

In this chapter:

(1) “Emergency service organization” means:

(A) a volunteer fire department, rescue squad, or an emergency medical services provider that is:

(i) operated by its members; and

(ii) exempt from state taxes by being listed as an exempt organization under [Section 151.310](#) or [171.083, Tax Code](#);  
or

(B) a local emergency management or homeland security organization that is:

(i) formed and operated as a state resource in accordance with the statewide homeland security strategy developed by the governor under [Section 421.002, Government Code](#); and

(ii) responsive to the Texas Division of Emergency Management in carrying out an all-hazards emergency management program under [Section 418.112, Government Code](#).

(2) “Employee” means a person, including an officer or agent, who is in the paid service of a governmental unit by competent authority, but does not include an independent contractor, an agent or employee of an independent contractor, or

a person who performs tasks the details of which the governmental unit does not have the legal right to control.

(3) “Governmental unit” means:

(A) this state and all the several agencies of government that collectively constitute the government of this state, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority;

(C) an emergency service organization; and

(D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.

(4) “Motor-driven equipment” does not include:

(A) equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state; or

(B) medical equipment, such as iron lungs, located in hospitals.

(5) “Scope of employment” means the performance for a governmental unit of the duties of an employee’s office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority.

(6) “State government” means an agency, board, commission, department, or office, other than a district or authority created under [Article XVI, Section 59, of the Texas Constitution](#), that:

(A) was created by the constitution or a statute of this state; and

(B) has statewide jurisdiction.

V. T. C. A., Civil Practice & Remedies Code § 101.001, TX CIV PRAC & REM § 101.001  
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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**TAB D: TEX. GOV'T CODE § 22A.006**

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle A. Courts
Chapter 22A. Special Three-Judge District Court

V.T.C.A., Government Code § 22A.006

§ 22A.006. Appeal

Effective: September 1, 2015

Currentness

- (a) An appeal from an appealable interlocutory order or final judgment of a special three-judge district court is to the supreme court.
  
- (b) The supreme court may adopt rules for appeals from a special three-judge district court.

V. T. C. A., Government Code § 22A.006, TX GOVT § 22A.006  
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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**TAB E: TEX. R. APP. P. 57**

petition with the notation “Refused.” The court of appeals’ opinion in the case has the same precedential value as an opinion of the Supreme Court.

- (d) *Improvident Grant*. If the Court has granted review but later decides that review should not have been granted, the Court may, without opinion, set aside the order granting review and dismiss the petition or deny or refuse review as though review had never been granted.

## 56.2. Moot Cases

If a case is moot, the Supreme Court may, after notice to the parties, grant the petition and, without hearing argument, dismiss the case or the appealable portion of it without addressing the merits of the appeal.

## 56.3. Settled Cases

If a case is settled by agreement of the parties and the parties so move, the Supreme Court may grant the petition if it has not already been granted and, without hearing argument or considering the merits, render a judgment to effectuate the agreement. The Supreme Court’s action may include setting aside the judgment of the court of appeals or the trial court without regard to the merits and remanding the case to the trial court for rendition of a judgment in accordance with the agreement. The Supreme Court may abate the case until the lower court’s proceedings to effectuate the agreement are complete. A severable portion of the proceeding may be disposed of if it will not prejudice the remaining parties. In any event, the Supreme Court’s order does not vacate the court of appeals’ opinion unless the order specifically provides otherwise. An agreement or motion cannot be conditioned on vacating the court of appeals’ opinion.

## 56.4. Notice to Parties

When the Supreme Court grants, denies, refuses, or dismisses a petition for review, the Supreme Court clerk must send a written notice of the disposition to the court of appeals, the trial court, and all parties to the appeal.

## 56.5. Return of Documents to Court of Appeals

When the Supreme Court denies, refuses, or dismisses a petition for review, the clerk will retain the petition, together with the record and accompanying papers, for 30 days after the order is rendered. If no

motion for rehearing has been filed by the end of that period or when any motion for rehearing of the order has been overruled, the clerk must send a certified copy of its order to the court of appeals and return the record and all papers (except for documents filed in the Supreme Court) to the court of appeals clerk.

## Notes and Comments

Comment to 1997 change: The rule is from former Rule 133. Subdivision 56.3 regarding settled cases is added.

Comment to 2002 change: Subdivision 56.3 is clarified to provide for partial settlements.

## Rule 57. Direct Appeals to the Supreme Court

### 57.1. Application

Except when inconsistent with a statute, this rule governs direct appeals to the Supreme Court that are authorized by the Constitution and by statute.

### 57.2. Perfecting Direct Appeal

- (a) *Notice of Direct Appeal*. A direct appeal to the Supreme Court authorized by law is perfected when a written notice of direct appeal is filed with the trial court clerk. The notice of direct appeal must be filed within the time provided by Rule 26.1 or as extended by Rule 26.3. The trial court clerk must immediately send a copy of the notice of direct appeal to the clerk of the Supreme Court. If a notice of direct appeal is mistakenly filed with the Supreme Court or the court of appeals, the notice is deemed filed the same day with the trial court clerk, and the Supreme Court clerk or the court of appeals’ clerk must immediately send the trial court clerk a copy of the notice.
- (b) *Contents of Notice*. The notice of direct appeal must:
- (1) identify the trial court and state the case’s trial court number and style;
  - (2) state the date of the judgment or order appealed from;
  - (3) state that the party desires to take a direct appeal to the Supreme Court;

- (4) state the name of each party filing the notice;
  - (5) specify the law or laws under which the direct appeal is authorized;
  - (6) in an accelerated appeal, state that the appeal is accelerated; and
  - (7) state, if applicable, that the appellant is presumed indigent and may proceed without advance payment of costs as provided in Rule 20.1.
- (c) *Amending the Notice.* An amended notice of direct appeal correcting a defect or omission in an earlier filed notice may be filed with the Supreme Court at any time before the appellant's brief is filed. The amended notice is subject to being struck for cause on the motion of any party affected by the amended notice. After the appellant's brief is filed, the notice may be amended only on leave of the Supreme Court and on such terms as the Supreme Court may prescribe.
- (d) *Other Requirements.* Promptly upon filing the notice of direct appeal, appellant must file in the Supreme Court a docketing statement as provided in Rule 32.1 and pay all required fees authorized to be collected by the clerk of the Supreme Court.
- (e) *The Appellate Record.* Rules 34 and 35 governing the appellate record apply to direct appeals to the Supreme Court.

### 57.3. Jurisdiction of Supreme Court

- (a) *Statement of Jurisdiction.* The appellant must file with the Supreme Court a statement of jurisdiction within ten days after the notice of appeal is filed with the trial court clerk.
- (b) *Contents of Statement.* The statement of jurisdiction must plainly state the basis for the exercise of the Supreme Court's direct appeal jurisdiction; insofar as appropriate, follow the form and contents of a petition for review prescribed by Rule 53; and conform to the length requirements prescribed for a petition for review by Rule 9.4.
- (c) *Response to Statement.* An appellee may file a response to the appellant's statement of jurisdiction challenging the exercise of direct

appeal jurisdiction or a waiver of the response within ten days after the statement is filed with the Supreme Court. If filed, the response must, insofar as appropriate, follow the form and contents of a response to a petition for review prescribed by Rule 53 and conform to the length requirements prescribed for a response to a petition to review by Rule 9.4.

### 57.4. Preliminary Ruling on Probable Jurisdiction; Dismissal of Appeal

The Supreme Court may determine whether the Court has probable jurisdiction based on the statement of jurisdiction and any response. If the Supreme Court determines that it does not have or will not exercise jurisdiction over a direct appeal, the Court will dismiss the appeal.

### 57.5. Direct Appeal Exclusive While Pending

If a direct appeal to the Supreme Court is filed, the parties to the appeal must not, while that appeal is pending, pursue an appeal to the court of appeals. But if the direct appeal is dismissed, any party may pursue any other appeal available at the time when the direct appeal was filed. The other appeal must be perfected within 15 days after dismissal of the direct appeal or the date of the Supreme Court's ruling on a timely filed motion for rehearing.

### 57.6. Determination of Direct Appeal

- (a) *Ruling on Merits.* If the Supreme Court determines that it has probable jurisdiction, the Court:
  - (1) may request full briefing under Rule 55;
  - (2) may set the case for submission under Rule 59; and
  - (3) may render judgment or make an appropriate order under Rule 60.
- (b) *Rehearing.* A motion for rehearing may be filed with the Supreme Court clerk within 15 days after the Court renders judgment or makes an order disposing of the direct appeal. The motion must clearly state the issues relied on for rehearing.

### Notes and Comments

Comment to 1997 change: This is former Rule 140. The rule is amended without substantive change

except subdivision 57.5 is amended to make clear that no party to the direct appeal may pursue the appeal in the court of appeals while the direct appeal is pending, but allowing 10 days to perfect a subsequent appeal.

## **Rule 58. Certification of Questions of Law by United State Courts**

### **58.1. Certification**

The Supreme Court of Texas may answer questions of law certified to it by any federal appellate court if the certifying court is presented with determinative questions of Texas law having no controlling Supreme Court precedent. The Supreme Court may decline to answer the questions certified to it.

### **58.2. Contents of the Certification Order**

An order from the certifying court must set forth:

- (a) the questions of law to be answered; and
- (b) a stipulated statement of all facts relevant to the questions certified, showing fully the nature of the controversy in which the questions arose.

### **58.3. Transmission of Certification Order**

The clerk of the certifying court must send to the clerk of the Supreme Court of Texas the following:

- (a) the certification order under the certifying court's official seal;
- (b) a list of the names of all parties to the pending case, giving the address and telephone number, if known, of any party not represented by counsel; and
- (c) a list of the names, addresses, and telephone numbers of counsel for each party.

### **58.4. Transmission of Record**

The certifying court should not send the Supreme Court of Texas the record in the pending case with the certification order. The Supreme Court may later require the original or copies of all or part of the record before the certifying court to be filed with the Supreme Court clerk.

### **58.5. Fees and Costs**

Unless the certifying court orders otherwise in its certification order, the parties must bear equally the fees under Rule 5.

### **58.6. Notice**

If the Supreme Court agrees to answer the questions certified to it, the Court will notify all parties and the certifying court. The Supreme Court clerk must also send a notice to the Attorney General of Texas if:

- (a) the constitutionality of a Texas statute is the subject of a certified question that the Supreme Court has agreed to answer; and
- (b) the State of Texas or an officer, agency, or employee of the state is not a party to the proceeding in the certifying court.

### **58.7. Briefs and Oral Argument**

- (a) *Briefs.* The appealing party in the certifying court must file a brief with the Supreme Court clerk within 30 days after the date of the notice. Opposing parties must file an answering brief within 20 days after receiving the opening brief. Briefs must comply with Rule 55 to the extent its provisions apply. On motion complying with Rule 10.5(b), either before or after the brief is due, the Supreme Court may extend the time to file a brief.
- (b) *Oral Argument.* Oral argument may be granted either on a party's request or on the Court's own initiative. Argument is governed by Rule 59.

### **58.8. Intervention by the State**

If the constitutionality of a Texas statute is the subject of a certified question that the Supreme Court has agreed to answer the State of Texas may intervene at any reasonable time for briefing and oral argument (if argument is allowed), on the question of constitutionality.

### **58.9. Opinion on Certified Questions**

If the Supreme Court has agreed to answer a certified question, it will hand down an opinion as in any other case.

### **58.10. Answering Certified Questions**

### Automated Certificate of eService

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Hollis Duncan on behalf of Judd Stone  
Bar No. 24076720  
hollis.duncan@oag.texas.gov  
Envelope ID: 60572147  
Status as of 1/6/2022 3:26 PM CST

Associated Case Party: Ruben Cortez

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Amy Warr	795708	awarr@adjtlaw.com	1/6/2022 3:22:59 PM	SENT
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Associated Case Party: The Tejano Democrats

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Associated Case Party: The State of Texas

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Associated Case Party: Greg Abbott

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Associated Case Party: John Scott

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Associated Case Party: Mexican American Legislative Caucus, Texas House of Representatives

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