

SCOTx: Separation of Powers Bars Disciplinary Commission’s “Collateral” Review of Attorney Conduct by AG’s Office

January 03, 2025

Webster v. Commission for Lawyer Discipline

Supreme Court of Texas, No. 23-0694 (December 31, 2024)

Opinion by Justice Young (linked [here](#)); Dissent by Justice Boyd (linked [here](#))

[Ken Carroll](#)

Unwilling to abide the results of the 2020 presidential election, the State of Texas tried to invoke the original jurisdiction of the United States Supreme Court to challenge the election processes and results in Pennsylvania, Georgia, Michigan, and Wisconsin. The bill of complaint and other filings were signed by Ken Paxton as Texas Attorney General and also listed Brent Webster, his First Assistant, as counsel of record.

Four days after Texas filed, the Supreme Court dismissed for lack of standing. Soon thereafter, various individuals filed grievances against Paxton and Webster with the Commission for Lawyer Discipline, alleging they had violated Disciplinary Rule 8.04(a)(3)—which prohibits Texas lawyers from “engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation”—by making false statements in the Supreme Court filings. The Commission then filed a disciplinary petition against Webster in state district court in Williamson County. Webster responded with a plea to the jurisdiction, arguing the Commission’s petition was barred by the separation-of-powers doctrine and by sovereign immunity. The district court ruled that separation of powers deprived it of subject-matter jurisdiction, but the El Paso Court of Appeals (to which the case had been transferred for docket-equalization purposes) reversed.

The Supreme Court, however, agreed with the trial court and ordered the case dismissed for lack of jurisdiction. “The separation-of-powers problem in this case involves two specific powers, both of which are valid,” the Court said: “[1] the judiciary’s authority to regulate the practice of law and [2] the attorney general’s exclusive authority to determine the arguments and assess the evidence that warrant bringing suit on behalf of the State.” Seeking to reconcile these competing powers, the Court drew a distinction between review and sanctions by a court in which alleged misrepresentations are made—what the Court characterized as “direct scrutiny”—and a challenge by the Commission in a separate proceeding and a different court—which the Court labeled “purely collateral review.” The Court held that in “the narrow circumstances before [it],” attacks on allegations in initial pleadings, “*direct* scrutiny by a court to whom representations are made wholly accommodates the legitimate interests of all branches of

government,” while “*collateral* attacks like the Commission’s lawsuit ... would improperly invade the executive branch’s prerogatives and risk the politicization and thus the independence of the judiciary.”

Justice Boyd, joined by Justice Lehrmann, dissented. While the “disciplinary proceeding against ... Webster could easily fail for many reasons,” Justice Boyd said, “separation of powers is not one of them.” He argued the majority’s “freshly minted direct/collateral distinction is unheard of in separation-of-powers jurisprudence” and “lacks both legal support and logical sense.” “If the United States Supreme Court had decided to sanction Webster for filing the pleading at issue here (as the [majority] concedes it could have done without violating the separation of powers),” Justice Boyd explained, “its actions would have interfered with Webster’s attempt to discharge his duties at least as significantly as this ‘collateral’ disciplinary proceeding.”

On a related note, a parallel disciplinary proceeding against Paxton is pending review before the Texas Supreme Court on similar issues. *Paxton v. Commission for Lawyer Discipline*, No. 24-0452 (Tex.). It’s a fair bet that matter will soon be summarily disposed of in the same manner as the *Webster* case.

