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***Ultra Vires Update***

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It has long been understood that an exception to the state’s sovereign immunity from suit exists for actions of state officials that are *ultra vires*—beyond their authority. In administrative law, if an *ultra vires* claim is possible, then a plaintiff may be able to challenge an agency decision with which she disagrees without having to file a suit for judicial review of the agency decision.

In *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009), the Texas Supreme Court defined an *ultra vires* claim as “an action to determine or protect a private party’s rights against a state official who has acted without legal or statutory authority . . . .” *Id.* at 368.<sup>1</sup> The court purported to exclude from this definition claims concerning matters within government officials’ discretionary powers, stating that an *ultra vires* suit “must not complain of a governmental 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.” *Id.* at 372.

In *Heinrich*, however, the Supreme Court did not expressly limit the definition of *ultra vires* acts to those clearly and plainly beyond a government official’s authority. On the contrary, in *Heinrich*, the plaintiff sought declaratory and injunctive relief against a pension fund board and its members for allegedly unlawfully changing the amount of her benefits. *Id.* at 378-79. It was undisputed that the defendants were acting with the course and scope of their official duties—the suit did not concern some act wholly beyond the jurisdiction of the pension board. Instead, the plaintiff complained that the board erred in reducing her benefits. In other words, the members of the board “exceeded their authority” by “getting it wrong”—by misinterpreting and misapplying the governing statutes and rules.

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<sup>1</sup> In most cases, although there are a few exceptions, the plaintiff’s remedy is limited to prospective injunctive and/or declaratory relief. Normally a plaintiff cannot recover money damages from the state for the past *ultra vires* act of a state official. *See id.* at 375-76.

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