Supreme Court of the United States
TEXAS, Appellant,
v.
UNITED STATES et al.

No. 97-29.
Argued Jan. 14, 1998.
Decided March 31, 1998.

State of Texas brought action seeking declaratory judgment that preclearance provisions of Voting Rights Act did not apply to sections of Texas Education Code permitting Texas to appoint master or management team as sanction for failure of a local school district to meet state-mandated educational achievement levels. A three-judge panel of the United States District Court for the District of Columbia concluded that Texas' claim was not ripe, and Texas appealed. The Supreme Court, Justice Scalia, held that controversy was not ripe for adjudication.

Affirmed.

West Headnotes

[1] Federal Courts 170B 12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases

Claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or may not occur at all.

[2] Federal Courts 170B 13.30

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk13.30 k. Schools and Colleges. Most Cited Cases

Issue of whether Voting Rights Act's preclearance provisions applied to implementation of sections of Texas Education Code permitting Texas to appoint master or management team as sanction for failure of a local school district to meet state-mandated educational achievement levels was not ripe for adjudication; whether Texas would impose such sanctions was contingent on a number of factors, Texas had not pointed to any particular district in which application of such sanctions was foreseen or likely, statutory provisions had yet to be interpreted by Texas courts, and Texas was not required to engage in, or to refrain from, any conduct, unless and until it chose to implement one of sanctions. Voting Rights Act of 1965, § 5, 42 U.S.C.A. § 1973c; V.T.C.A., Education Code § 39.131(a)(7, 8).

[3] Federal Courts 170B 12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases

Ripeness requires court to evaluate both fitness of issues for judicial decision and hardship to parties of withholding court consideration.

[4] Federal Courts 170B 12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases

Hardship of “threat to federalism” is an abstraction which is no graver, for purposes of determining ripeness, than “threat to personal freedom” that exists whenever agency regulation is promulgated, which is

inadequate to support suit unless person's primary conduct is affected.

*****1257 *296** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

In 1995, the Texas Legislature enacted a comprehensive scheme (Chapter 39) that holds local school boards accountable to the State for student achievement in the public schools. When a school district falls short of Chapter 39's accreditation criteria, the State Commissioner of Education may select from 10 possible sanctions, including appointment of a master to oversee the district's operations, Tex. Educ.Code Ann. § 39.131(a)(7), or appointment of a management team to direct operations in areas of unacceptable performance or to require contracting out of services, § 39.131(a)(8). Texas, a covered jurisdiction under § 5 of the Voting Rights Act of 1965, submitted Chapter 39 to the United States Attorney General for a determination ****1258** whether any of the sanctions affected voting and thus required preclearance. While the Assistant Attorney General for Civil Rights did not object to §§ 39.131(a)(7) and (8), he cautioned that under certain circumstances their implementation might result in a § 5 violation. Texas subsequently filed a complaint in the District Court, seeking a declaration that § 5 does not apply to the §§ 39.131(a)(7) and (8) sanctions. The court did not reach the merits of the case because it concluded that Texas's claim was not ripe.

Held: Texas's claim is not ripe for adjudication. A claim resting upon " 'contingent future events that may not occur as anticipated, or indeed may not occur at all,' " is not fit for adjudication. *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-581, 105 S.Ct. 3325, 3333, 87 L.Ed.2d 409. Whether the problem Texas presents will ever need solving is too speculative. Texas will appoint a master or management team only after a school district falls below state standards and the Commissioner has tried other, less intrusive sanctions. Texas has not pointed to any school district in which the application of § 39.131(a)(7) or (8) is currently foreseen or even likely. Even if there were greater certainty regarding implementation, the claim would not be ripe because the legal issues Texas raises are not yet fit for judicial decision and because the hardship to Texas of withholding court consideration until the State chooses to implement one of the sanctions is insubstantial. See *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149, 87 S.Ct. 1507, 1515-1516, 18 L.Ed.2d 681. Pp. 1259-1261.

Affirmed.

***297** SCALIA, J., delivered the opinion for a unanimous Court.
Javier Aguilar, Austin, TX, for appellant.

Paul R.Q. Wolfson, Washington, DC, for appellees.

For U.S. Supreme Court briefs, see:1998 WL 2361 (Reply.Brief)1997 WL 739271 (Appellant.Brief)1997 WL 770580 (Appellee.Brief)

Justice SCALIA delivered the opinion of the Court.

Appellant, the State of Texas, appeals from the judgment of a three-judge District Court for the District of Columbia. The State had sought a declaratory judgment that the preclearance provisions of § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. § 1973c, do not apply to implementation of certain sections of the Texas Education Code that permit the State to sanction local school districts for failure to meet state-mandated educational achievement levels. This appeal presents the question whether the controversy is ripe.

I

In Texas, both the state government and local school districts are responsible for the public schools. There are more than 1,000 school districts, each run by an elected school board. In 1995, the Texas Legislature enacted a ***298** comprehensive scheme (Chapter 39) that holds local school boards accountable to the State for student achievement. Tex. Educ.Code Ann. §§ 39.021-39.131 (1996). Chapter 39 contains detailed prescriptions for assessment of student academic skills, development of academic performance indicators, determination of accreditation status for school districts, and imposition of accreditation sanctions. It seeks to measure the academic performance of Texas schoolchildren, to reward the schools and school districts that achieve the legislative goals, and

to sanction those that fall short.

When a district fails to satisfy the State's accreditation criteria, the State Commissioner of Education may select from 10 possible sanctions that are listed in ascending order of severity. §§ 39.131(a)(1)-(10). Those include, "to the extent the [C]ommissioner determines necessary," § 39.131(a), appointing a master to oversee the district's operations, § 39.131(a)(7), or appointing a management team to direct the district's operations in areas of unacceptable performance or to require****1259** the district to contract for services from another person, § 39.131(a)(8). When the Commissioner appoints masters or management teams, he "shall clearly define the[ir] powers and duties" and shall review the need for them every 90 days. § 39.131(e). A master or management team may approve or disapprove any action taken by a school principal, the district superintendent, or the district's board of trustees, and may also direct them to act. §§ 39.131(e)(1), (2). State law prohibits masters or management teams from taking any action concerning a district election, changing the number of members on or the method of selecting the board of trustees, setting a tax rate for the district, or adopting a budget which establishes a different level of spending for the district from that set by the board. §§ 39.131(e)(3)-(6).

Texas is a covered jurisdiction under § 5 of the Voting Rights Act of 1965, see 28 CFR pt. 51, App. (1997), and consequently, before it can implement changes affecting voting***299** it must obtain preclearance from the United States District Court for the District of Columbia or from the Attorney General of the United States. 42 U.S.C. § 1973c. Texas submitted Chapter 39 to the Attorney General for administrative preclearance. The Assistant Attorney General [FN*] requested further information, including the criteria used to select special masters and management teams, a detailed description of their powers and duties, and the difference between their duties and those of the elected boards. The State responded by pointing out the limits placed on masters and management teams in § 39.131(e), and by noting that the actual authority granted "is set by the Commissioner at the time of appointment depending on the needs of the district." App. to Juris. Statement 99a. After receiving this information, the Assistant Attorney General concluded that the first six sanctions do not affect voting and therefore do not require preclearance. He did not object to §§ 39.131(a)(7) and (8), insofar as the provisions are "enabling in nature," but he cautioned that "under certain foreseeable circumstances their implementation may result in a violation of Section 5" which would require preclearance. *Id.*, at 36a.

FN* The authority for determinations under § 5 has been delegated to the Assistant Attorney General for the Civil Rights Division. 28 CFR § 51.3 (1997).

On June 7, 1996, Texas filed a complaint in the United States District Court for the District of Columbia, seeking a declaration that § 5 does not apply to the sanctions authorized by §§ 39.131(a)(7) and (8), because (1) they are not changes with respect to voting, and (2) they are consistent with conditions attached to grants of federal financial assistance that authorize and require the imposition of sanctions to ensure accountability of local education authorities. The District Court did not reach the merits of these arguments because it concluded that Texas's claim was not ripe. We noted probable jurisdiction. 521 U.S. 1150, 118 S.Ct. 29, 138 L.Ed.2d 1059 (1997).

***300** II

[1][2] A claim is not ripe for adjudication if it rests upon " 'contingent future events that may not occur as anticipated, or indeed may not occur at all.' " *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-581, 105 S.Ct. 3325, 3333, 87 L.Ed.2d 409 (1985) (quoting 13A Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3532, p. 112 (1984)). Whether Texas will appoint a master or management team under §§ 39.131(a)(7) and (8) is contingent on a number of factors. First, a school district must fall below the state standards. Then, pursuant to state policy, the Commissioner must try first "the imposition of sanctions which do not include the appointment of a master or management team," App. 10 (Original Complaint ¶ 12). He may, for example, "order the preparation of a student achievement improvement plan ..., the submission of the plan to the [C]ommissioner for approval, and implementation of the plan," § 39.131(a)(3), or "appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent," § 39.131(a)(6). It is only if these less intrusive options fail that a Commissioner may appoint a master or management****1260** team, Tr. of Oral Arg.

16, and even then, only "to the extent the [C]ommissioner determines necessary," § 39.131(a). Texas has not pointed to any particular school district in which the application of § 39.131(a)(7) or (8) is currently foreseen or even likely. Indeed, Texas hopes that there will be no need to appoint a master or management team for any district. Tr. of Oral Arg. 16-17. Under these circumstances, where "we have no idea whether or when such [a sanction] will be ordered," the issue is not fit for adjudication. *Toilet Goods Assn., Inc. v. Gardner*, 387 U.S. 158, 163, 87 S.Ct. 1520, 1524, 18 L.Ed.2d 697 (1967); see also *Renne v. Geary*, 501 U.S. 312, 321-322, 111 S.Ct. 2331, 2338-2339, 115 L.Ed.2d 288 (1991).

[3] Even if there were greater certainty regarding ultimate implementation of paragraphs (a)(7) and (a)(8) of the statute, we do not think Texas's claim would be ripe. Ripeness "requir[es]***301** us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149, 87 S.Ct. 1507, 1515, 18 L.Ed.2d 681 (1967). As to fitness of the issues: Texas asks us to hold that under no circumstances can the imposition of these sanctions constitute a change affecting voting. We do not have sufficient confidence in our powers of imagination to affirm such a negative. The operation of the statute is better grasped when viewed in light of a particular application. Here, as is often true, "[d]etermination of the scope ... of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." *Longshoremen v. Boyd*, 347 U.S. 222, 224, 74 S.Ct. 447, 448, 98 L.Ed. 650 (1954). In the present case, the remoteness and abstraction are increased by the fact that Chapter 39 has yet to be interpreted by the Texas courts. Thus, "[p]ostponing consideration of the questions presented, until a more concrete controversy arises, also has the advantage of permitting the state courts further opportunity to construe" the provisions. *Renne, supra*, at 323, 111 S.Ct., at 2339-2340.

[4] And as for hardship to the parties: This is not a case like *Abbott Laboratories v. Gardner, supra*, at 152, 87 S.Ct., at 1517, where the regulation at issue had a "direct effect on the day-to-day business" of the plaintiffs, because they were compelled to affix required labeling to their products under threat of criminal sanction. Texas is not required to engage in, or to refrain from, any conduct, unless and until it chooses to implement one of the noncleared remedies. To be sure, if that contingency should arise compliance with the preclearance procedure could delay much needed action. (Prior to this litigation, Texas sought preclearance for the appointment of a master in a Dallas County school district, and despite a request for expedition the Attorney General took 90 days to give approval. See Brief for Petitioner 37, n. 28.) But even that inconvenience is avoidable. If Texas is confident that ***302** the imposition of a master or management team does not constitute a change affecting voting, it should simply go ahead with the appointment. Should the Attorney General or a private individual bring suit (and if the matter is as clear, even at this distance, as Texas thinks it is), we have no reason to doubt that a district court will deny a preliminary injunction. See *Presley v. Etowah County Comm'n*, 502 U.S. 491, 506, 112 S.Ct. 820, 830, 117 L.Ed.2d 51 (1992); *City of Lockhart v. United States*, 460 U.S. 125, 129, n. 3, 103 S.Ct. 998, 1001, n. 3, 74 L.Ed.2d 863 (1983). Texas claims that it suffers the immediate hardship of a "threat to federalism." But that is an abstraction-and an abstraction no graver than the "threat to personal freedom" that exists whenever an agency regulation is promulgated, which we hold inadequate to support suit unless the person's primary conduct is affected. Cf. *Toilet Goods Assn., supra*, at 164, 87 S.Ct., at 1524-1525.

In sum, we find it too speculative whether the problem Texas presents will ever need solving; we find the legal issues Texas raises not yet fit for our consideration, and the hardship to Texas of biding its time insubstantial. Accordingly, we agree with the District Court that this matter is not ripe for adjudication.

****1261** The judgment of the District Court is affirmed.

It is so ordered.

U.S.Dist.Col.,1998.
Texas v. U.S.
523 U.S. 296, 118 S.Ct. 1257, 140 L.Ed.2d 406, 124 Ed. Law Rep. 28, 98 Cal. Daily Op. Serv. 2328, 98 CJ C.A.R. 1540, 11 Fla. L. Weekly Fed. S 437

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523 U.S. 296, 118 S.Ct. 1257, 140 L.Ed.2d 406, 124 Ed. Law Rep. 28, 98 Cal. Daily Op. Serv. 2328, 98 CJ C.A.R. 1540, 11 Fla. L. Weekly Fed. S 437
(Cite as: 523 U.S. 296, 118 S.Ct. 1257)