Oral Argument Requested

NO. 06-22-00078-CV

IN THE COURT OF APPEALS
FOR THE SIXTH JUDICIAL DISTRICT
TEXARKANA, TEXAS

Shana Elliott and Lawrence Kalke,
Plaintiffs/Appellants,

v.

City of College Station, Texas; Karl Mooney, in his Official Capacity as Mayor of the City of College Station; and Bryan Woods, in his Official Capacity as the City Manager of the City of College Station
Defendants/Appellees.

On Appeal from the
85th Judicial District Court, Brazos County

APPELLANTS' BRIEF

ROBERT HENNEKE
TX Bar No. 24046058
rhennek@texaspolicy.com
CHANCE WELDON
TX Bar No. 24076767
cweldon@texaspolicy.com
CHRISTIAN TOWNSEND
TX Bar No. 24127538
ctownsend@texaspolicy.com
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

IDENTITY OF PARTIES AND COUNSEL

Plaintiffs/Appellants:	Shana Elliott Lawrence Kalke
Appellate and Trial Counsel for Plaintiffs/Appellants:	Robert Henneke rhenneke@texaspolicy.com Chance Weldon cweldon@texaspolicy.com Christian Townsend ctownsend@texaspolicy.com Texas Public Policy Foundation 901 Congress Avenue Austin, Texas 78701 Telephone: (512) 472-2700 Facsimile: (512) 472-2728
Defendants/Appellees:	City of College Station, Texas Karl Mooney, in his Official Capacity as Mayor of the City of College Station Bryan Woods, in his Official Capacity as the City Manager of the City of College Station
Appellate and Trial Counsel for Defendants/Appellees:	John J. Hightower jhightower@olsonllp.com Allison S. Killian akillian@olsonllp.com Olson & Olson, LLP 2727 Allen Parkway, Suite 600 Houston, Texas 77019 Telephone: (713) 533-3800 Facsimile: (713) 533-3888 Adam C. Falco Deputy City Attorney afalco@cstx.gov

College Station City Attorney's Office
P.O. Box 9960
1101 Texas Avenue
College Station, Texas 77842
Telephone: (979) 764-3507
Facsimile: (979) 764-3481

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases:

Other Authorities:

Constitutional Provisions:

STATEMENT OF THE CASE

Nature of the Case: This suit involves a challenge to College Station's ability to regulate persons and properties outside of its city limits. Plaintiffs Shana Elliott and Lawrence Kalke own property outside of the city limits of College Station but within College Station's extraterritorial jurisdiction (ETJ). College Station has at least two ordinances which restrict what Plaintiffs can do on their property. Plaintiffs challenge these regulations as violating Article 1 Section 2 of the Texas Constitution.

Course of Proceedings: Appellants filed suit on May 23, 2022, against the City of College Station, Mayor Karl Mooney, and City Manager Bryan Woods.

On June 24, 2022, the City answered and filed a plea to the jurisdiction. After Plaintiffs filed a memorandum in opposition, Defendants filed an amended plea to the jurisdiction on August 9, 2022.

Trial Court: 85th District Court, Brazos County (Hon. Kyle Hawthorne)

Trial Court Disposition: On September 16, 2022, after a hearing, the trial court entered a final written order granting College Station's plea to the jurisdiction and dismissing Plaintiffs' case with prejudice.

On September 27, 2022, Appellants timely filed a notice of appeal of the order of dismissal.

STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument because this appeal involves important issues of standing and constitutional law, and its outcome will impact both property owners and municipal governments throughout the state of Texas. Oral argument is therefore likely to assist the Court.

ISSUES PRESENTED

1. Does the Political Question Doctrine preclude challenges brought under Article 1, Section 2 of the Texas Constitution?

2. Must Appellants wait for the City to bring an enforcement action against them before they can bring a facial constitutional challenge to an ordinance which regulates their property?

STATEMENT OF FACTS

This case involves a facial constitutional challenge to the City of College Station's ability to regulate private property outside of its territorial borders. Appellants in this case are two property owners who reside outside of the City in an area known as College Station's extraterritorial jurisdiction (ETJ). CR: 4–5. As residents of the ETJ, Appellants are subject to a host of regulations and fees but receive no services from the City and have no right to vote in City Elections. CR: 8.

These restrictions place an immediate, and ongoing encumbrance on Appellants' properties and their plans to use them. For example, both Appellants would like to place portable off-premise signs on their properties. CR: 4–5. Yet they are flatly prohibited from doing so under City Ordinances. Section 7.5 of the City's Unified Development Ordinance provides that "*All* off-premise and portable signs shall be prohibited within the Extraterritorial Jurisdiction of the City of College Station." CR: 156 (emphasis added). *See also*, CR: 74 (Deposition of City Manager Bryan Woods confirming application of sign ordinance to appellants' property.).

Similarly, both Appellants have plans to build or modify driveways on their properties. CR: 4–5. Yet College Station's ordinances are clear: "Any property owner desiring a new driveway approach or an improvement to an existing driveway at an existing residential or other property shall make application for a driveway permit." CR: 119. This

restriction applies to "all streets, sidewalks, and driveways within the corporate limits of the City . . . and within the extraterritorial jurisdiction of the City." CR: 116. *See also*, CR: 75 (Deposition of City Manager Bryan Woods confirming application of driveway ordinance to appellants' property.).

If Appellants fail to comply with any of these restrictions, the City has authority to file "a civil suit for injunctive relief" and force compliance. CR: 129 (City Defendants' Reply to Plaintiffs' Memorandum in Opposition). The City may also order the removal of any unlawfully constructed structures. *Id*.

To remove these encumbrances on their properties, Appellants filed this lawsuit seeking a declaration that the City's decision to regulate their properties without providing the right to vote violates Article 1, Section 2 of the Texas Constitution. CR: 3–12 (Original Petition and Request for Disclosure). That provision requires, at a minimum, that Texans have the right to vote to remove those who regulate the property where they reside. *Ex parte Lewis*, 45 Tex. Crim. 1 (Tex. Crim. App. 1903).

The City responded to Appellants' petition with a plea to the jurisdiction raising two arguments. First the City argued that the court lacked jurisdiction because the application of Article 1, Section 2 of the Texas Constitution presents a nonjusticiable political question. CR: 26. Second, the City argued that Appellants' claims were not ripe because

the City had not yet taken enforcement action against their properties. *Id.*

Appellants responded that: (1) the Texas Supreme Court has never held that a claim brought under any provision of the Texas Constitution presents a non-justiciable political question; (2) the Texas Supreme Court itself has heard claims under Article 1, Section 2; and (3) it is well established that a property owner need not await enforcement to bring a facial challenge to a local ordinance restricting his property. CR: 59–65.

After a hearing, the district court granted the City's Plea to the Jurisdiction and dismissed Appellants' claims with prejudice. CR: 162.

SUMMARY OF THE ARGUMENT

Article 1, Section 2 of the Texas Constitution requires, at a minimum, that individuals be able to vote to remove those that regulate the property where they live. There is no dispute that the City violates this principle with regard to property in its ETJ. Citizens of the ETJ are subject to City regulations and fees but receive no services and cannot vote in City elections. The sole question in this appeal is whether Appellants, or anyone else for that matter, may challenge this straightforward violation of their constitutional rights.

In granting the City's plea to the jurisdiction below, the district court adopted at least one of two arguments—both of which are contrary to precedent and would render Article 1, Section 2 largely a dead letter. That judgment should be reversed.

First, the City argued below (without citation to any Texas caselaw) that Article 1, Section 2 is nonjusticiable because it presents a "political question." But the Texas Supreme Court has *never* applied the political question doctrine to *any* provision of the Texas Constitution, much less a provision of the Texas Bill of Rights. Moreover, multiple Texas Courts, including the Texas Supreme Court, have decided cases under Article 1 Section 2. The City's argument that Article 1, Section 2 is nonjusticiable is therefore flatly precluded by binding precedent.

Second, the City argued that Appellants' claims were not ripe because the City had yet to enforce its ordinances against them. But it is well established that a property owner need not await enforcement before challenging the constitutionality of a land-use ordinance. Indeed, Texas Courts have found standing even when the government has not enforced the challenged ordinance, cannot enforce the ordinance for several more years, or promises that it will never enforce its ordinance. To hold otherwise would leave property rights subject to the *noblesse oblige* of local officials.

This Court should therefore reverse the trial court's judgment granting the City's plea to the jurisdiction.

STANDARD OF REVIEW

This Court reviews the granting of a plea to the jurisdiction *de novo*. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). The purpose of a plea to the jurisdiction is fundamentally about

ensuring the viability of the claims presented by Plaintiffs rather than determining their merits. *Patel v. Texas Dep't of Licensing & Reg.*, 469 S.W.3d 69, 77 (Tex. 2015). In reviewing a PTJ the court should "construe the pleadings liberally in the plaintiff's favor." *City of Houston v. Downstream Envtl., L.L.C.*, 444 S.W.3d 24, 31 (Tex. App.—Houston 2014, pet. denied). A plea to the jurisdiction should not be granted unless it can be determined that the claims are "facially invalid"—i.e., improperly pled. *City of Houston v. Johnson*, 353 S.W.3d 499, 504 (Tex. App.—Houston 2011, pet. denied).

ARGUMENT

I. THIS COURT HAS JURISDICTION TO HEAR CLAIMS BROUGHT UNDER ARTICLE 1, SECTION 2.

The City's primary argument for dismissal is that Article 1, Section 2 lacks "a judicially discoverable and manageable standard," and therefore, claims under that provision present a nonjusticiable "political question" that may not be resolved in Texas Courts. CR: 36. As explained below, this argument is flatly precluded by precedent.

A. The Texas Supreme Court has never held any provision of the Texas Constitution non-justiciable under the political question doctrine.

First, unlike its Federal counterpart, the Texas Supreme Court has *never* held that the application of a provision of the Texas Constitution

presents a nonjusticiable political question. *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 779–80 (Tex. 2005) (noting that "[t]his Court has never held an issue to be a nonjusticiable political question."). To the contrary, even when the Texas Constitution uses "imprecise language" the Texas Supreme Court has still determined challenges raised under that language to be justiciable. *Morath v. Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 846–47 (Tex. 2016).

Article 1, Section 2 is certainly no more ambiguous than a host of other provisions the Texas Supreme Court has found justiciable. *See, e.g., Texas Dep't of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648 (Tex. 2022) (Due course of law provision); *Neeley*, 176 S.W.3d 783 (Interpreting "efficient system of public free schools" in Art. 7 Sec. 1); *Johnson v. State*, 912 S.W.2d 227, 230–31 (Tex. Crim. App. 1995) (defining "unreasonable seizure" in Art. 1 Sec. 9). The City's argument therefore fails.

B. Multiple Texas Courts, Including the Texas Supreme Court, Have Decided Claims Brought Under Article 1, Section 2.

Second, and perhaps more importantly, the City's claim that Article 1, Section 2 lacks "a judicially discoverable and manageable standard" is contradicted by at least three Texas courts (including the Texas Supreme Court and the Texas Court of Criminal Appeals) which have adjudicated claims arising under Article 1, Section 2. See *Ex parte Lewis*, 45 Tex.

Crim. 1 (1903); *Brown v. Galveston*, 75 S.W. 488 (Tex. 1903); *Walling v. North Cent. Texas Municipal Water Authority*, 359 S.W.2d 546 (Tex. Civ. App. 1962).

While these courts came to different conclusions regarding whether the laws in their respective cases were constitutional, *none of these courts* had any difficulty discovering and applying a "judicially manageable standard for resolving" the claims. To the contrary, each court agreed with the straightforward test presented by Appellants here. Namely, that Article 1, Section 2 requires that individuals have some ability to vote for the municipal authorities that regulate them. *See Ex parte Lewis*, 45 Tex. Crim., at 27 (Article 1, Section 2 presumes "the power of the suffragans in cities to elect their own municipal officers..."); *Brown*, 75 S.W. at 496 (noting that under Article 1, Section 2, city charters must be "formulated by the people of the towns."); *Walling*, 359 S.W.2d at 549 (holding that Article 1, Section 2 was satisfied when, "the citizens of the District, by a majority vote, favored coming under the terms of the statute.").

The adoption of this baseline standard should not be surprising. Article 1, Section 2 is not particularly ambiguous. It places an explicit "limitation" on the authority of legislature to alter the form of government that will regulate Texans. Tex. Const., Art. 1, Sec. 2. In particular, it mandates that any form of government adopted must be "republican." *Id*. And while there have long been debates on the margins

about *how republican* any given form of government may be, (see *Thomas Jefferson to John Taylor*, May 28, 1816, Founders Online, National Archives, https://tinyurl.com/yc59ktkt) it is universally accepted that, at a minimum, a republican form of government requires some ability to vote for one's representatives. *Ex parte Lewis*, 45 Tex. Crim. at 27; *Black's Law Dictionary* 1026 (1st ed. 1891) available at https://tinyurl.com/25jtjfb6; The Federalist No. 39 (James Madison).

In any event, for the purpose of this case, such debates are not necessary. It is enough that the Texas Supreme Court has found a judicially manageable standard for Article 1, Section 2 cases. The City's argument that Article 1, Section 2 presents a nonjusticiable political question is therefore flatly precluded by precedent.

C. Federal Precedent Involving the Federal Guarantee Clause Is Unpersuasive.

Rather than address this binding Texas precedent involving the actual constitutional provision at issue, the City below relied entirely on case law interpreting Article IV Section 4 of the U.S. Constitution—also known as the "Guarantee Clause." CR: 36–37. But Guarantee Clause precedent is simply inapplicable here.

First, this case involves the Texas Constitution. As such, Texas courts have the final say as to whether or not Article 1, Section 2 is justiciable. *Davenport v. Garcia*, 834 S.W.2d 4, 12–13 (Tex. 1992). *See also*, *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940) ("It is

fundamental that state courts be left free and unfettered by [The Supreme Court] in interpreting their state constitutions."). Indeed, the Texas Supreme Court has repeatedly held that Texas courts may not simply copy-and-paste federal precedent regarding federal constitutional provisions when interpreting similar provisions of the Texas Constitution. *Davenport*, 834 S.W.2d at 12 ("When a state court interprets the constitution of its state merely as a restatement of the Federal Constitution, it both insults the dignity of the state charter and denies citizens the fullest protection of their rights."). *See also*, *Patel v. Texas Dep't of Licensing & Reg.*, 469 S.W.3d 69, 86 (Tex. 2015); *City of Baytown v. Schrock*, 645 S.W.3d 174, 182 (Tex. 2022) (J. Young concurring). This is particularly true when (as in this case) the text and structure of the federal and state provision differ. *Republican Party v. Dietz*, 940 S.W.2d 86, 89 (Tex. 1997) ("When interpreting our state Constitution, we rely heavily on its literal text, and are to give effect to its plain language.") (internal citations omitted).

Second, the structure and placement the federal and state constitutional provisions at issue counsels against a cut-and-paste application of federal precedent to Article 1, Section 2. The federal Guarantee Clause occurs in Article IV Section 4 of the U.S. Constitution and places the burden on Congress to provide the benefits of a republican form of government. *Baker v. Carr*, 369 U.S. 186, 295 (1962). *See also*,

Ryan C. Williams, *The "Guarantee" Clause*, 132 Harv. L. Rev. 602, 679–687 (2018).

By contrast, Article 1, Section 2 is placed squarely in the Texas Constitution's Bill of Rights. Like other Bill of Rights provisions, Article 1, Section 2 explicitly acts as a limitation on the power of the legislature. Everything in the Texas Bill of Rights "is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void." Tex. Const. Art. 1, Sec. 26. And the judiciary, not solely the legislature, is the proper guardian of Bill of Rights provisions. *Neeley*¸ 176 S.W.3d at 776 (quoting *Morton v. Gordon & Alley*, Dallam 396, 397–398 (Tex. 1841).

Indeed, even federal courts—who have a much broader political question doctrine than Texas courts—have never held that the application of a Bill of Rights provision presents a nonjusticiable political question. *United States v. Munoz-Flores*, 495 U.S. 385, 406 (1990). *See also*, *Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (Describing the political question doctrine as a "narrow exception" to the Court's traditional jurisprudence.).

To the extent that the district court granted the City's plea to the jurisdiction based on the political question doctrine, it erred, and should be reversed.

II. APPELLANTS NEED NOT AWAIT ENFORCEMENT TO CHALLENGE THE CONSTITUTIONALITY OF COLLEGE STATION'S ORDINANCES.

The City next argues that even if claims under Article 1, Section 2 are justiciable, Appellants' particular claims are not ripe. CR: 30–34. But this argument is likewise precluded by precedent.

Under the ripeness doctrine, courts must "consider whether, at the time a lawsuit is filed, the facts are sufficiently developed 'so that an injury has occurred or is likely to occur, rather than being contingent or remote.'" *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 78 (Tex. 2015).

Here the injury has already occurred and is ongoing. There is no dispute that the City's regulations, on their face, apply to Appellants' properties. CR: 116; CR: 75; CR: 156; CR: 74. This is generally a sufficient injury to establish standing. *Zaatari v. City of Austin*, 615 S.W.3d 172, 184 (Tex. App.—Austin 2019, pet. denied); *Tex. Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425, 432 (Tex. App.—Austin 2018, pet. denied). *See also*, *Contender Farms, L.L.P. v. United States Dep't of Agric.*, 779 F.3d 258, 266 (5th Cir. 2015) ("Contender Farms and McGartland, as objects of the Regulation, may challenge it.").

This makes sense. A facially applicable land-use ordinance not only places a property owner under an implicit threat of enforcement, but also clouds their title and encumbers the property. Any reasonable property owner who sees the ordinance will assume that he cannot use his

property without running afoul of the city. Any potential purchaser of the property who does any research will reasonably presume that those uses prohibited by city ordinance cannot be conducted on the property, thus reducing its value.

The City objects that Appellants' claims are nonetheless not ripe because the City has yet to enforce its ordinances against their property. CR: 127. But it is well established that a property owner need not await enforcement before challenging the constitutionality of a land-use ordinance. *Zaatari*, 615 S.W.3d at 184; *Tex. Ass'n of Bus.*, 565 S.W.3d at, 432. *See also*, *Contender Farms,* 779 F.3d at 266.

In *Zaatari,* 615 S.W.3d, at 184, the Court held that several property owners' constitutional challenge to a local land use ordinance was ripe, despite the fact that the ordinance had never been enforced against them and technically could not be enforced at all for several more years. As the court explained, "[f]acial challenges to ordinances are 'ripe upon enactment because at that moment the 'permissible uses of the property [are] known to a reasonable degree of certainty.'" *Id*. In such circumstances, the property owner need not await enforcement because "the City's alleged constitutional overreach itself is an injury from which the Property Owners and the State [may] seek relief." *Id*. *See also*, *Tex. Ass'n of Bus.*, 565 S.W.3d at 432 (allowing pre-enforcement challenge to local ordinance); *Pearson v. Grand Blanc*, 961 F.2d 1211, 1215 (6th Cir. 1992) ("the very existence of an allegedly unlawful zoning action, without

more, makes a [facial constitutional challenge] ripe for federal adjudication.")

This makes sense. As the Texas Supreme Court recognized more than a century ago, the very existence of an ordinance restricting property use acts "in terrorem" effectively discouraging the use of the property, whether the ordinance is enforced or not. *Austin v. Austin City Cemetery Ass'n*, 28 S.W. 528, 530 (Tex. 1894). It would make little sense in such circumstances to force a regulated individual to violate a law (and thereby potentially trigger an enforcement action against him) as a prerequisite to challenge the constitutional authority of the government to regulate him in the first place. *State Nat'l Bank of Big Spring v. Lew*, 795 F.3d 48, 54 (D.C. Cir. 2015) (citing *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 U.S. 477, 490 (2010)).

Indeed, courts have found that constitutional challenges were ripe, even "where the government has never prosecuted—and *promises* it will *never* prosecute . . . ." *Seals v. McBee*, 898 F.3d 587, 598 (5th Cir. 2018) (emphasis added); *see also*, *Ex parte Mitcham,* 542 S.W.3d 561, 566 (Tex. Crim. App. 2018); *State v. Johnson*, 475 S.W.3d 860, 880 (Tex. Crim. App. 2015) (quoting *United States v. Stevens*, 559 U.S. 460, 481 (2010) (the "Supreme Court has clearly stated that it will not uphold a statute 'merely because the Government promised to use it responsibly.'")); *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 256 (2012) ("the Government's

assurance it will elect not to [enforce the law] is insufficient to remedy the constitutional violation.").

Here, Appellants do not even have promises. The City admits that (1) the ordinances apply to Appellants' properties on their face (CR: 74–75 (Pgs. 23–27)); (2) the city manager has an obligation to enforce ordinances as written unless instructed otherwise by City Council (CR: 73 (Pg. 15)); and (3) nothing prevents city officials from enforcing ordinances against Appellants' tomorrow (CR: 71 (Pg. 11)). Given these facts, Appellants' claims are ripe. To the extent that the district court held otherwise, its judgment should be reversed.

CONCLUSION

The men who drafted and ratified the Texas Constitution recognized that the right to vote for those who regulate you "is a natural and inherent right" that "is sovereign and inalienable" and "lies at the very base of republican government." W.G.T. Weaver, *Debates in the Texas Constitutional Convention of 1875 Texas Constitutional Convention*, 173-174 (1875). Indeed, they thought the right was so important that they placed it at the very top of our Bill of Rights.

In siding with the City below, the district court put this fundamental provision of the Texas Constitution wholly beyond judicial protection. In direct defiance of Texas precedent, it held for the first time in Texas history that a provision of the Texas Bill of Rights is nonjusticiable. Worse, it concluded that even if the provision were

justiciable, that property owners must await prosecution before bringing facial challenges to land use regulations that unconstitutionally encumber their properties—an argument that the Texas Supreme Court has wisely rejected for more than a century. In doing so, it endangered not only the ability to challenge these regulations, but local regulations more generally.

The district court's judgment granting the City's Plea to the Jurisdiction should be reversed.

Respectfully submitted,

/s/Chance Weldon
ROBERT HENNEKE
Texas Bar No. 24046058
rhenneke@texaspolicy.com
CHANCE WELDON
Texas Bar No. 24076767
cweldon@texaspolicy.com
CHRISTIAN TOWNSEND
Texas Bar No. 24127538
ctownsend@texaspolicy.com
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

Attorneys for Plaintiffs/Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this brief contains 3,347 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/Chance Weldon
CHANCE WELDON

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2022, a true and correct copy of the foregoing document was filed electronically and all counsel of record indicated below have been served via electronic service.

John J. Hightower
jhightower@olsonllp.com
Allison S. Killian
akillian@olsonllp.com
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019

Adam C. Falco
Deputy City Attorney
afalco@cstx.gov
College Station City Attorney's Office
P.O. Box 9960
1101 Texas Avenue
College Station, Texas 77842
Counsel for Appellees

/c/Chance Weldon
CHANCE WELDON

NO. 06-22-00078-CV

IN THE COURT OF APPEALS
FOR THE SIXTH JUDICIAL DISTRICT
TEXARKANA, TEXAS

Shana Elliott and Lawrence Kalke,
Plaintiffs/Appellants,

v.

City of College Station, Texas; Karl Mooney, in his Official Capacity as Mayor of the City of College Station; and Bryan Woods, in his Official Capacity as the City Manager of the City of College Station
Defendants/Appellees.

On Appeal from the
85th Judicial District Court, Brazos County

APPENDIX TO APPELLANTS' BRIEF

ROBERT HENNEKE
TX Bar No. 24046058
rhennek@texaspolicy.com
CHANCE WELDON
TX Bar No. 24076767
cweldon@texaspolicy.com
CHRISTIAN TOWNSEND
TX Bar No. 24127538
ctownsend@texaspolicy.com
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

1. Order of Dismissal signed on September 16, 2022.

TAB 1

Received & Filed 8/9/2022 2:35 PM
Gabriel Garcia, District Clerk
Brazos County, Texas
Denise Ray
Envelope# - 67107236

CAUSE NO. 22-001122-CV-85

SHANA ELLIOTT AND LAWRENCE KALKE,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
	§	
v.	§	
	§	
CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND BRYAN WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER OF THE CITY OF COLLEGE STATION,	§	**BRAZOS COUNTY, TEXAS**
Defendants.	§	**85TH JUDICIAL DISTRICT**

ORDER OF DISMISSAL

This Court, having considered the City Defendants' Amended Plea to Jurisdiction, the pleadings, responses, and replies on file, and the argument of counsel, finds that the Amended Plea to Jurisdiction should be in all things GRANTED.

It is hereby ordered that all of the claims of the Plaintiffs, Shana Elliott and Lawrence Kalke, against the Defendants, City of College Station; Karl Mooney, in his official capacity as Mayor of the City of College Station; and Bryan Woods, in his official capacity as City

Manager of the City of College Station, are hereby dismissed with prejudice.

Signed the _____ day of 9/16/2022, 2022.

JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Chance Weldon
Bar No. 24076767
cweldon@texaspolicy.com
Envelope ID: 70500934
Status as of 11/29/2022 8:44 AM CST

Associated Case Party: Shana Elliott

Name	BarNumber	Email	TimestampSubmitted	Status
Chance DWeldon		cweldon@texaspolicy.com	11/28/2022 5:55:29 PM	SENT
Christian Townsend		ctownsend@texaspolicy.com	11/28/2022 5:55:29 PM	SENT
Yvonne Simental		ysimental@texaspolicy.com	11/28/2022 5:55:29 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	11/28/2022 5:55:29 PM	SENT

Associated Case Party: City of College Station, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Adam C.Falco		afalco@cstx.gov	11/28/2022 5:55:29 PM	SENT
Allison Killian		akillian@olsonllp.com	11/28/2022 5:55:29 PM	SENT
John J.Hightower		jhightower@olsonllp.com	11/28/2022 5:55:29 PM	SENT