

22-001122-CV-85
CAUSE NO. _____

SHANA ELLIOTT and LAWRENCE KALKE <i>Plaintiffs,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	
	§	
CITY OF COLLEGE STATION, TEXAS KARL MOONEY, MAYOR OF THE CITY OF COLLEGE STATION, and BRYAN WOODS, CITY MANAGER OF THE CITY OF COLLEGE STATION <i>Defendants.</i>	§	BRAZOS COUNTY, TEXAS
	§	
	§	
	§	
	§	JUDICIAL DISTRICT

ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiffs Shana Elliott and Lawrence Kalke file this Original Petition and Request for Disclosure against Defendants the City of College Station (“City”), Karl Mooney in his official capacity as the Mayor of the City of College Station, and Bryan Woods in his official capacity as the City Manager of the City of College Station (collectively, the “Defendants”), and in support would show the Court as follows:

I. EXECUTIVE SUMMARY

Article 1, Section 2 of the Texas Constitution guarantees Texans a “republican form of government.” This clause mandates, at minimum, that Texans shall have the power to vote for those who regulate the area in which they reside.

In direct contradiction to this guarantee, the City of College Station enforces a number of regulations on persons and private property in its Extraterritorial Jurisdiction (ETJ)—a five-mile area beyond its city limits—but provides no voting rights to individuals in that area.

Because College Station denies residents of its ETJ any right to vote for the City Council members who approve these regulations, its ongoing exercise of authority over these persons and property is unconstitutional.

Plaintiffs, who each own property and reside in College Station’s ETJ, therefore petition this Court to stop this ongoing violation of their constitutional rights.

II. DISCOVERY CONTROL PLAN

Plaintiffs intend to conduct Level 2 discovery under Rule 190 of the Texas Rules of Civil Procedure.

III. PARTIES

A. PLAINTIFFS

Shana Elliott

1. Mrs. Shana Elliott is a financial planner and resident of College Station’s ETJ.
2. Mrs. Elliott and her husband first moved into College Station’s ETJ in June of 2017.

They purchased their current home in 2021. That property is also located in College Station’s ETJ.

3. Mrs. Elliott seeks to make use of her property by, among other things, putting a sign in her yard; firing air guns and a bow and arrow on her property; and extending her paved driveway to other parts of her property.

4. All of these activities are restricted by City ordinances. In particular, Mrs. Elliot is prohibited from placing an “off-premise” sign in her yard or from firing a bow and arrow on her property. Additionally, Mrs. Elliott must receive a permit and pay fees to the City if she seeks to make any repairs or changes to her driveway.

5. Despite residing at her address and being subject to these regulations, Mrs. Elliot has no ability to vote to remove any of the government officials who enacted them.

6. But for these regulations, Mrs. Elliot would be free to partake in the full use of her property rights, including firing a bow and arrow, placing a sign in her yard, and improving her driveway, without College Station interference.

Lawrence Kalke

7. Dr. Lawrence Kalke is a pediatric dentist in College Station and a resident of College Station's ETJ.

8. Dr. Kalke and his wife purchased their current home in 2017. Their property is located in College Station's ETJ.

9. Dr. Kalke seeks to exercise his right to make use of his property by, among other things, putting an "off-premise" sign in his yard, firing a bow and arrow on his property, and extending his paved driveway to other parts of his property in coordination with planned property improvements.

10. Under existing ordinances, Mr. Kalke is prohibited from placing an "off-premise" sign in his yard and is prohibited from firing a bow and arrow on his property. Additionally, Mr. Kalke must receive a permit and pay fees to the City if he seeks to make any repairs or changes to his driveway.

11. Despite residing at his address and being subject to this regulation of his property rights, Mr. Kalke has no ability to vote to remove any government officials who enact the regulations he is subject to.

12. But for these regulations, he would be free to partake in the full use of his property rights, including firing a bow and arrow, placing a sign in his yard, and improving his driveway, without College Station interference.

B. DEFENDANTS

13. Defendants are the City of College Station; the Mayor of College Station, Karl Mooney, in his official capacity; and College Station's City Manager, Bryan Woods, in his official capacity.

14. The City of College Station is a home rule municipality headquartered in Brazos County, Texas. Under Texas Civil Practice and Remedies Code Section 37.006(b), the City must be joined as a defendant for claims challenging the constitutional validity of its ordinances. Defendant College Station may be served by serving its Mayor, Karl Mooney, at College Station City Hall, 1101 Texas Ave., College Station, TX 77840.

15. Defendant Mooney is the duly elected Mayor of the City of College Station. Under Section 20 of the College Station City Charter, the Mayor presides over the City Council, the body vested with all powers and authority under Section 22 of the College Station City Charter including all ordinances governing persons and property within the ETJ. On information and belief, Defendant Karl Mooney may be served at College Station City Hall, 1101 Texas Ave., College Station TX, 77840.

16. Defendant Woods is the city manager of College Station, appointed by the city council for College Station. Article IV, Section 41 of the City of College Station Charter places the City Manager as the head of the administrative branch of the city. Defendant Woods therefore oversees and directs those responsible for enforcing the College Station Code of Ordinances against Plaintiffs in the ETJ. On information and belief, Defendant Bryan Woods may be served at College Station City Hall, 1101 Texas Ave., College Station, TX 77840.

17. Pursuant to Texas Civil Practice and Remedies Code Section 17.024(b), The City of College Station may be served by serving the mayor, clerk, secretary, or treasurer. Furthermore, Section 122 of the City of College Station Charter requires legal process against the city to be served upon the Mayor. Plaintiffs request that the Clerk issue citations and service of process on all Defendants.

18. Because this suit raises a constitutional challenge to the power of College Station to regulate outside of its municipal borders, the Attorney General of Texas is required, under Texas Civil Practice and Remedies Code Section 37.006(b), to be served with process at 300 W. 15th Street, Austin, Texas 78701. Plaintiffs request that the Clerk issue citation and service of process upon the Texas Attorney General.

IV. JURISDICTION AND VENUE

19. Jurisdiction is proper in this Court pursuant to Article V, Section 1 of the Texas Constitution and Section 24.008 of the Texas Government Code. This Court has subject matter jurisdiction pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001 *et seq.*, because Plaintiffs' rights, legal status, and other legal relations are affected by a law that is constitutionally invalid. This Court has jurisdiction over the requested injunctive relief pursuant to Tex. Civ. Prac. & Rem. Code Ann. §§ 37.011, 65.011.

20. Venue is appropriate in Brazos County, Texas pursuant to Sections 15.002(a)(3), 15.005, 15.011, and 65.023 of the Texas Civil Practice and Remedies Code.

V. STATEMENT OF FACTS

21. Article 1 Section 2 of the Texas Constitution provides that:

The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

22. This guarantee of a republican form of government ensures that individuals are governed *only* by individuals whom they can exert influence over at the ballot box whether that be at the state or local level.

23. However, like many cities, College Station exercises broad regulatory authority over persons and property falling up to five miles past its city boundaries (hereinafter referred to as the Extra Territorial Jurisdiction, or “ETJ”).

24. Among other things, College Station applies its sign regulations (College Station Code of Ordinances, §7.5 CC); sidewalk and driveway ordinances (College Station Code of Ordinances, §§ 34-29 – 34-36) and firearm ordinance (College Station Code of Ordinances, § 26-2(c)(5)) in its ETJ. Additionally, if a person seeks to divide their land in the ETJ, they are subject to a host of additional requirements found in College Station’s Unified Development Ordinance.

25. Violations of these ordinances “shall be punished . . . [b]y a fine of not less than \$25.00 and not more than \$500.00.” College Station Code of Ordinances § 1-7(c).

26. Despite being subject to this extensive regulation, residents of College Station’s ETJ may not vote for any member of the College Station municipal government.

VI. CAUSE OF ACTION

A. COUNT ONE: VIOLATION OF ARTICLE 1, SECTION 2 OF THE TEXAS CONSTITUTION

27. The preceding paragraphs are realleged and incorporated by reference.

28. Texas’s republican form of government clause guarantees “the preservation of a republican form of government.” TEX. CONST. Art. 1 § 2.

29. A city violates this clause if an individual who has established residence in an area is subject to the municipality’s regulatory authority but is denied the ability to vote to remove the holder of legislative power from office.

30. In direct contradiction to this mandate, Defendants regulate individuals residing in the ETJ, including Plaintiffs, but fail to provide those individuals with any voting rights.

31. But for these regulations, Plaintiffs would be able to make full use of their properties without interference from College Station.

32. Plaintiffs seek a declaration that College Station's ongoing application of its code of ordinances to Plaintiffs' properties beyond its city limits violates Article 1, Section 2 of the Texas Constitution.

VII. APPLICATION FOR PERMANENT INJUNCTION

33. The preceding paragraphs are realleged and incorporated by reference.

34. An injunction must issue where a party is acting contrary to law.

35. College Station's ongoing application of its code of ordinances to Plaintiffs' properties beyond its city limits violates Article 1, Section 2 of the Texas Constitution.

36. College Station's unconstitutional application of its code of ordinances to Plaintiffs' properties beyond its city limits causes imminent and irreparable harm to Plaintiffs.

37. Plaintiffs lack any other adequate remedy at law.

38. Therefore, pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.011 and 65.011, Plaintiffs respectfully request that this Court, following a decision on the merits, issue permanent injunctions against Defendants, as well as any and all agents, administrators, employees, and other persons acting on behalf of Defendants, enjoining the application of College Station's code of ordinances against Plaintiffs' properties located outside of College Station's city limits.

VIII. ATTORNEYS' FEES

39. Under the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.009, Plaintiffs are entitled to recover "costs and reasonable and necessary attorney's fees as are equitable and just."

40. Plaintiffs seek an award of their reasonable attorneys' fees for the preparation of this suit, prosecution of this suit, and all appeals.

IX. REQUEST FOR DISCLOSURE

41. Plaintiffs request that Defendants disclose the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure.

X. PRAYER AND CONCLUSION

THEREFORE, Plaintiffs request this Court issue the following relief:

- i. A declaration that College Station lacks constitutional authority to regulate persons and private property beyond its city limits;
- ii. A declaration that College Station's application of its Code of Ordinances within its extraterritorial jurisdiction violates Article 1, Section 2 of the Texas Constitution;
- iii. A declaration that Defendants' application of College Station's code of ordinances beyond its city limits violates Article 1, Section 2 of the Texas Constitution, and therefore that Defendants' ongoing application of Section 7.5 of the Unified Development Ordinance, Article 8 of the Unified Development Ordinance, Section 26-2 of the Code of Ordinances, and Chapter 34 of the Code of Ordinances to Plaintiffs is unconstitutional;
- iv. An injunction against Defendants, as well as any and all agents, administrators, employees, and other persons acting on behalf of Defendants, enjoining the application of College Station's code of ordinances against Plaintiffs' properties located outside of College Station's city limits;
- v. An award to Plaintiffs of their attorneys' fees and reasonable costs; and
- vi. All other and further relief that this Court may deem proper in law or equity.

Respectfully submitted,



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