

HAYLEY KYLES, DANIEL RODRIQUEZ,	§	IN THE DISTRICT COURT
TAMARA BROWN, and ASSOCIATED	§	
BUILDERS AND CONCONTRACTORS	§	
OF TEXAS, INC.,	§	
<i>Plaintiffs,</i>	§	
v.	§	467th JUDICIAL DISTRICT
	§	
CITY OF DALLAS, TEXAS,	§	
<i>Defendant,</i>	§	
	§	
ATTORNEY GENERAL, KEN PAXTON,	§	
<i>Intervenor.</i>	§	DENTON COUNTY, TEXAS

**DEFENDANT’S FIRST AMENDED MOTION TO TRANSFER VENUE, AND
SUBJECT THERETO, FIRST AMENDED PLEA TO THE JURISDICTION,
FIRST AMENDED SPECIAL EXCEPTIONS, AND FIRST AMENDED ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant, the City of Dallas (the “City”), in response to the first amended petition filed by Hayley Kyles, Daniel Rodriquez, Tamara Brown, and Associated Builders and Contractors of Texas, Inc.’s (“Plaintiffs”)¹ and the intervention of Attorney General Ken Paxton, and files this first amended motion to transfer venue, and subject thereto, first amended special exceptions, first amended plea to the jurisdiction, and first amended answer in the above-styled and numbered cause, and in support thereof would respectfully show the Court:

I. INTRODUCTION

The basis for Plaintiffs’ lawsuit, the Texas Regulatory Consistency Act (“TRCA”), 88th Leg., R.S., ch. 899, 2023 Tex. Sess. Law Serv. 2873, *see* Ex. A, is unconstitutional on its face and as applied. The TRCA attempts to repeal Texas constitutional home rule, impermissibly expands

¹ The first amended petition refers to Hayley Kyles, Daniel Rodriquez, and Tamara as the “Resident Plaintiffs” and Associated Builders and Contractors of Texas as “ABC Texas.” 1st Am. Pet. ¶¶ 4, 9. The City uses the same defined terms herein.

the scope of state preemption of local law, and improperly shifts the burden of *dis*proving preemption to cities, in direct contravention of article XI, section 5 of the Texas Constitution and decades of the Texas Supreme Court’s preemption jurisprudence. The TRCA achieves these unconstitutional ends by using such vague language that it fails to provide the necessary notice to Texas cities of which of their laws are supposedly preempted. The TRCA certainly fails to preempt municipal regulations with the “unmistakable clarity” the Texas Supreme Court requires to preempt local law. Instead, the state legislature has unconstitutionally delegated *to the courts* its own responsibility to identify specific laws or purported fields allegedly preempted, *if they can*.

In addition to being unconstitutional on its face, the TRCA is unnecessary. The conflict provisions of the Texas Constitution already provide the State and Plaintiffs with a ready means to preempt local laws that actually conflict with state law. Moreover, if the legislature had truly wanted the state-wide regulatory “consistency” *between cities* then a repeal of constitutional home rule would be required. Repeal requires a proposed constitutional amendment, approved by a two-thirds’ vote in each chamber of the legislature, and submission of the question to Texas voters, just as the legislature did in 1911 when it passed the home-rule amendment. By attempting to circumvent this constitutional requirement by enacting an unconstitutional “special” statute, the legislature has violated article XVII, section 1 (the amendment process), article XI, section 5 (conflict provisions), and article III, sections 56(a)(2), 56(a)(16), and 56(b) (prohibiting local and special laws) of the Texas Constitution. Simply put, the TCRA is *antithetical* to constitutional home rule and the Texas Constitution and is beyond the authority of the state legislature to enact.

Additionally, the TRCA purports to grant standing for any person² to sue for injuries due to any local ordinances that run afoul of the TRCA’s “preemption” provisions in multiple codes. Here, even under the unconstitutionally vague language of the TRCA, Plaintiffs lack standing because they lack—and indeed have not even alleged—an injury distinguishable from any other resident of the City and lack a cause of action conferred by a constitutional statute.

Nonetheless, Plaintiffs improperly seek to have the Court declare that approximately 133 duly-passed ordinances³ of the City be declared “void” because of the TRCA. Many of these ordinances are expressly authorized by state law, while others do not regulate in an area that the State occupies. Accordingly, the vast majority of the ordinances Plaintiffs challenge are not preempted by the TRCA even if it were constitutional. Yet, Plaintiffs seek a blanket order from the Court seeking to eliminate ordinances passed by the City’s chosen representatives that undoubtedly protect the health and safety of the City’s residents and visitors. Plaintiffs’ claims are unwieldy and a waste of the resources of the Court and City. The Court should transfer this lawsuit to Dallas County. Additionally, and in the alternative, this Court should dismiss this lawsuit for lack of jurisdiction.

II. MOTION TO TRANSFER VENUE

Although Plaintiffs rely on the venue provision from the TRCA to bring this action in Denton County,⁴ that provision is invalid for the simple reason that the TRCA is unconstitutional. Because the TRCA does not contain a severability clause, its venue provision cannot survive the

² A person is defined as “an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency or instrumentality, public corporation, any legal or commercial entity, or protected or registered series of a for-profit entity.” Tex. Civ. Prac. & Rem. Code § 102A.001.

³ Plaintiffs also seek to void several Dallas City Charter provisions which can only be amended through a formal review process led by the charter review commission, followed by city council approval, and then a public vote. Dallas, Tex., Charter ch. II, § 3.

⁴ The City will timely file its brief in support of the motion to transfer venue in advance of the April 23, 2026 hearing.

unconstitutionality of the rest of the statute. As such, the general venue rules set forth in Chapter 15 of the Civil Practice and Remedies Code apply. Those rules establish Dallas County as the appropriate venue for this case for the following reasons:

- The Resident Plaintiffs reside in Dallas County according to Dallas County Appraisal District records.⁵ Similarly, ABC Texas, as a trade organization, has no ties to Denton County as its principal office is located in Austin, Texas.⁶
- The City's principal office is located in Dallas County.
- All of the alleged transactions took place in Dallas, specifically the passage by the city council of the ordinances Plaintiffs seek to void.
- The judges most familiar with the ordinances Plaintiffs seek to void are located in Dallas County.

Plaintiffs' petition not only fails to state facts sufficient to establish that venue is proper in Denton County, but it instead establishes that this case should proceed in Dallas County.

A cause of action must be brought in the county where all or a substantial part of the cause arises. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). Here, Plaintiffs complain of and seek to void 133-duly-passed City ordinances and charter provisions. 1st Am. Pet. §§ VI (1)-(83). These measures were adopted at the City's principal office in Dallas City Hall, 1500 Marilla Street, Dallas, Texas 75201, in Dallas County. Plaintiffs are complaining of the city council's actions and their claimed impact on Plaintiffs, who all live in Dallas County.

Additionally, Civil Practice and Remedies Code section 15.002(a)(3) provides that, if the defendant is not a natural person, venue is proper in the county of the defendant's principal office. The City's principal place of business is in Dallas County. Here, Plaintiffs' only stated basis for

⁵ See the following records related to the Plaintiffs found on the Dallas County Appraisal District's website: <https://www.dallascad.org/AcctDetailRes.aspx?ID=0000023752600000> (last visited November 6, 2025) <https://www.dallascad.org/AcctDetailRes.aspx?ID=0000066706900000> (last visited November 6, 2025) Plaintiffs Tamara Brown and Daniel Rodriguez are married and live in Dallas County. Hayley Kyles lives in Dallas County. The City asks that the Court take judicial notice of these records.

⁶ See <https://www.abctexas.org/contact> (last visited March 11, 2025).

filing in Denton County is that it is one of five counties in which the City is located. 1st Am. Pet. ¶ 11. Therefore, the only basis for venue in Denton County is the TRCA's unconstitutional venue provision. The exclusive reliance on an unconstitutional statute for venue is insufficient to establish that the Plaintiffs' causes of action arose in Denton County. On the contrary, by Plaintiffs' own admission, all relevant events and circumstances occurred in Dallas County. Accordingly, venue is proper in Dallas County, and this litigation should be transferred to Dallas County.

III. FIRST AMENDED SPECIAL EXCEPTIONS

Subject to and without waiving the City's motion to transfer venue and plea to the jurisdiction, the City asserts the below-described special exceptions to Plaintiffs' first amended petition. The City requests that the Court enter an order sustaining its special exceptions and ordering Plaintiffs to replead within a reasonable time in conformity with the Court's ruling on these special exceptions. The City further requests that, should Plaintiffs fail to replead in compliance with the Court's order, Plaintiffs' claims be dismissed with prejudice.

Special Exception 1: No waiver of governmental immunity is alleged. Because the TRCA is unconstitutional, Plaintiffs have failed to state a cause of action against the City over which the Court has jurisdiction. The City specially excepts to Plaintiffs' failure to allege any legislative waiver of the City's governmental immunity applicable to the claims or causes of action in the petition.

In Texas, governmental immunity deprives a trial court of subject-matter jurisdiction for lawsuits against the State or other governmental units unless the State has consented to suit. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004); *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999) (per curiam). To establish subject-matter jurisdiction against a governmental unit, Plaintiffs' pleading must establish the legislature's consent to its lawsuit, or

immunity from suit will deprive the trial court of subject-matter jurisdiction. *Jones*, 8 S.W.3d at 638. Mere reference to a legislative waiver, however, does not establish a governmental entity's consent to be sued or confer jurisdiction. *See Tex. Dep't of Criminal Justice v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001) (holding that merely alleging the Tort Claims Act is not sufficient to establish jurisdiction). For the waiver to be effective, a plaintiff must plead a constitutional or legislative waiver with facts that make the waiver applicable. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 599 (Tex. 2001) (holding that the plaintiff had failed to allege facts to demonstrate a valid takings claim to invoke a waiver of immunity from suit); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (holding that the plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the cause).

In addition, to establish a waiver of governmental immunity, Plaintiffs must plead a valid claim. *See Kaufman County v. Combs*, 393 S.W.3d 336, 345 (Tex. App.—Dallas 2012, pet. denied). Here, Plaintiffs have also failed to allege a cause of action with a valid waiver of the City's governmental immunity in that Plaintiffs' reliance on the TRCA is defective because the State purported to amend the Texas Constitution by enacting an unconstitutional "special" statute. Instead, it violated article XVII, section 1 (the amendment process), article XI, section 5, and article III, sections 56(a)(2), 56(a)(16), and 56(b) (prohibiting local and special laws) of the Texas Constitution. Further, Plaintiffs have failed to plead facts to establish a waiver of the City's governmental immunity. The City requests that the Court enter an order sustaining this special exception and that the Plaintiffs be ordered to replead within a reasonable time so as to specify the waiver of immunity from suit for each of their claims, causes of action, and requests for relief.

Special Exception 2: No waiver of immunity is provided for the ABC Texas causes of action because the complained-of ordinances are authorized by either state or federal law.

Among the TRCA's various carve-outs for municipalities to maintain their ordinances are the provisions for ordinances "expressly authorized by another statute." Ex. A, § 4(1); *see also* §§ 5-6, 8-15. Another carve-out allows municipalities to "adopt policy related to its employees." Ex. A, § 4(5)(B). As such, Plaintiffs cannot maintain valid causes of action to void the following five ordinances:

- Dallas City Council Resolution 15-2141, the "Minimum Wage Ordinance", *see* 1st Am. Pet. ¶¶ 360-372 ("COA # 43") is authorized by section 62.0515 of the Texas Labor Code;
- Section 43-140 of the Dallas City Code, "Insurance Requirements for Construction Work Performed in the Right of Way", *see* 1st Am. Pet. ¶¶ 85-94 ("COA # 10") is authorized by multiple statutes, including but not limited to sections 311.001, and 316.004 of the Texas Transportation Code, and section 14.008 of the Texas Utilities Code;
- Section 15B-3 of the Dallas City Code, "Equal Opportunity Clause in City Contracts", *see* 1st Am. Pet. ¶¶ 373-385 ("COA # 44") is authorized by federal law, *see* 42 U.S.C. 2000e (Title VII of the Civil Rights Act of 1964); *see also*, *Bostock v. Clayton County*, 590 U.S. 644 (2020)(deciding that Title VII protections pursuant to § 2000e-2(a)(1) did extend to cover sexual orientation and gender identity);
- Chapter 46 of the Dallas City Code, "Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression", *see* 1st Am. Pet. ¶¶ 395-409 ("COA # 46") is authorized by federal law, *see* Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 3601 *et. seq.* (The Fair Housing Act), and state law, chapter 301 of the Texas Property Code; and section 214.903 of the Local Government Code.
- Chapter 34 of the Dallas City Code, "Personnel Rules," *see* 1st Am. Pet. ¶¶ 428-438 ("COA # 49") is authorized by the TRCA as those are the City's personnel rules that apply to City employees, *see* Ex. A, § 4 (5)(B).

Therefore, plaintiffs have failed to properly plead a valid claim as to these causes of action. *See Combs*, 393 S.W.3d at 345. The City requests that the Court enter an order sustaining this special exception and that the Plaintiffs be ordered to replead within a reasonable time so as to specify the waiver of immunity from suit for each of their claims, causes of action, and requests for relief.

Special Exception 3: No waiver of immunity is provided to support recovery of monetary relief. The City specially excepts to section VII of the first amended petition requesting an award of costs and reasonable attorney fees, as Plaintiffs have not pled a valid cause of action and facts supporting a waiver of immunity supporting the relief they seek. The City maintains that the defect cannot be cured by a pleading amendment and the Court must dismiss this request. To the extent the Court allows the Plaintiffs an opportunity to amend, the City requests that Plaintiffs be ordered to replead within a reasonable time, identifying the factual basis by which they seek such relief.

Special Exception 4: Plaintiffs lack standing because they have failed to state an injury that is concrete and particularized, actual or imminent, and not hypothetical. A party seeking relief under a statutory conferral of standing must allege and establish standing within the parameters of the language used in the statute and “judge-made” standing criteria do not apply. *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 851 (Tex.App.—Fort Worth 2005, no pet.) (citing *Scott v. Bd. of Adjustment*, 405 S.W.2d 55, 56 (Tex.1966)). Here, although Plaintiffs make numerous allegations styled as causes of action claiming that City ordinances are preempted by state law, Plaintiffs do not demonstrate their standing to make the allegations pursuant to the TRCA.

Even if the TRCA were constitutional (it is not), it requires Plaintiffs to show that they have sustained an “injury in fact.” Tex. Civ. Prac. & Rem. § 102A.002. In their amended petition, Plaintiffs tacitly admit they cannot satisfy this requirement. Instead, Plaintiffs attempt to rely on taxpayer standing, a standard not considered by the TRCA. *Id.* Tellingly, Plaintiffs neither allege that they suffered an injury in fact as a result of any challenged ordinance nor assert that a decision of this Court would provide a remedy. Plaintiffs simply want 133 ordinances and charter provisions

declared void with no facts pleaded to establish *their* standing based on the TRCA.

The City requests that the Court enter an order sustaining this special exception and requiring Plaintiffs to replead and demonstrate standing to bring the claims asserted. The City further requests that, should Plaintiffs fail to replead in compliance with the Court's order, Plaintiffs' claims be dismissed with prejudice.

IV. PLEA TO THE JURISDICTION

Subject to and without waiving the City's motion to transfer venue and special exceptions, the City asserts this plea to the jurisdiction. The City of Dallas, as a home-rule municipality, is a governmental unit protected by the doctrine of governmental immunity. *See MJR's Fare of Dall., Inc. v. City of Dallas*, 792 S.W.2d 569, 573 (Tex. App.—Dallas 1990, writ denied). As a threshold matter, a plaintiff suing a city must affirmatively demonstrate that the state legislature consented to the lawsuit, as “[governmental] immunity deprives a trial court of subject matter jurisdiction for lawsuits in which the state or certain governmental units have been sued unless the state consents to suit.” *Miranda*, 133 S.W.3d at 224. Accordingly, governmental immunity from suit is properly asserted in a plea to the jurisdiction and raises a question of law for the court to decide. *Id.* at 225-26.

When a plea to the jurisdiction challenges the pleadings, the court determines if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Id.* at 226 (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 446). Courts construe the pleadings liberally in favor of the plaintiff and look to the pleader's intent. *Id.* at 226. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction, but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiff should be afforded the opportunity to amend. *Id.* at 226-27 (citing *County of Cameron v.*

Brown, 80 S.W.3d 549, 555 (Tex. 2002)). If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend. *Id.* at 227.

As described above in the City's Special Exceptions, Plaintiffs lack standing and have failed to plead a valid statutory waiver of immunity. For purposes of this plea, the City adopts as if fully stated herein the arguments and authorities from the above-stated special exceptions. This failure deprives the Court of subject matter jurisdiction, and the City's plea should be granted.

V. ANSWER

Subject to and without waiving the City's motion to transfer venue, special exceptions, and plea to the jurisdiction and without waiving its immunity from suit or liability, the City answers as follows:

A. General Denial

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, the City denies each and every, all and singular, the material allegations contained in Plaintiffs' live petition and demands strict proof thereof by a preponderance of all the credible evidence.

B. Affirmative Defenses

1. Plaintiffs lack standing to bring these claims.
2. To the extent further answer is necessary, the City asserts the defense of waiver and/or estoppel.
3. In the alternative, the City asserts that the Plaintiffs' claims are barred by governmental immunity, including immunity from suit and immunity from liability.
4. In the alternative, Plaintiffs have no evidence of one or more elements on which they have the burden of proof on their request for a declaratory judgment action.
5. In the alternative, the City asserts that to the extent that Plaintiffs seek to recover damages, interest, and/or attorney's fees, such relief is not authorized by law, statute, or contract and is barred by immunity from liability.

6. In the alternative, the City asserts the Plaintiffs failed to satisfy all conditions precedent to pursuing their claims.

VI. PRAYER

WHEREFORE, the City requests that

- The Court transfer this case to Dallas County;
- Alternatively, the Court sustain the City's special exceptions and order Plaintiffs to cure their pleading defects by a date certain and, should Plaintiffs fail to do so, dismiss this case with prejudice;
- Alternatively, the Court grant the City's plea to the jurisdiction;
- The Court order that Plaintiffs take nothing by this suit; and
- The Court grant such other and further relief, general or special, at law or in equity, to which the City may be justly entitled.

Respectfully submitted,

CITY ATTORNEY OF THE CITY OF DALLAS

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ATTORNEYS FOR THE CITY OF DALLAS

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026 a true and correct copy of the above and foregoing was served via the Court's e-service manager to all counsel of record.

/s/ Justin H. Roy
Justin H. Roy

CERTIFICATION REGARDING USE OF ARTIFICIAL INTELLIGENCE

I, the undersigned attorney of record in the above-entitled and numbered cause pending in the District Courts of Denton County, Texas, hereby certify as follows:

1. I have reviewed and understand the Standing Order Regarding Use of Artificial Intelligence issued by the Denton County District Courts, and I will comply with that Order throughout this case.
2. Any information created or contributed to by generative artificial intelligence- including, but not limited to, language, quotations, sources, citations, arguments, and legal analysis- was, before submission to this Court, independently verified as accurate using traditional (non-AI) legal sources by a human being.
3. I understand that I remain personally responsible for all filings and submissions to this Court, and that I may be subject to sanctions under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Civil Procedure, the Texas Civil Practice and Remedies Code Chapter 10, the inherent power of the Court, or for contempt of court, for failing to comply with the Court's Standing Order or this certification.

SIGNED this 16th day of March, 2026.

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