

CAUSE NO. 25-11423-467

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

**INTERVENOR ATTORNEY GENERAL KEN PAXTON'S RESPONSE TO
DEFENDANT CITY OF DALLAS'S FIRST AMENDED MOTION TO TRANSFER
VENUE, AND SUBJECT THERETO, FIRST AMENDED PLEA TO THE
JURISDICTION, FIRST AMENDED SPECIAL EXCEPTIONS, AND FIRST
AMENDED ORIGINAL ANSWER**

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TO THE HONORABLE JUDGE OF SAID COURT:

The Attorney General files this Response to the City of Dallas's First Amended Motion to Transfer Venue, and subject thereto, First Amended Plea to the Jurisdiction, First Amended Special Exceptions, and First Amended Original Answer. As a matter of law, the Texas Regulatory Consistency Act (TRCA), 88th Leg., R.S., ch. 899, 2023 Tex. Gen. Laws 2871, does not violate the Texas Constitution and is not void for vagueness. Therefore, the Attorney General respectfully requests that the Court dismiss Dallas's constitutional challenges.

INTRODUCTION AND BACKGROUND

The Texas Legislature passed the Texas Regulatory Consistency Act in 2023 to standardize regulations across Texas by preempting local ordinances in fields of regulation occupied by state law.

On October 29, 2025, Plaintiffs filed their lawsuit against the City of Dallas in Denton District Court, pursuant to the TRCA's venue provisions, now codified at Section 102A.006, Texas Civil Practice and Remedies Code. This provision allows a claimant to bring an action, if the defendant is a municipality, in "a county in which the municipality is located." Tex. Civ. Prac. & Rem. Code § 102A.006(a)(2). It is uncontroverted that the City of Dallas is partially located in Denton County. Notably, the TRCA's venue provisions also prohibit the transfer of venue without the written consent of all parties. *Id.* at § 102A.006(b) ("If the action is brought in a venue authorized by this section, the action may not be transferred to a different venue without the written consent of all parties."). There is no indication that Plaintiffs have consented to Dallas's First Amended Motion to Transfer Venue.

On March 16, 2026, the City of Dallas filed its First Amended Motion to Transfer Venue, and subject thereto, First Amended Plea to the Jurisdiction, First Amended Special Exceptions, and First Amended Answer (First Amended Motion to Transfer Venue). In its filing, Dallas first argues that the Court should transfer this action to Dallas County. Def's First Amended Motion to Transfer Venue at 3-4. Dallas notes that Plaintiffs utilize the venue provisions in the TRCA to

establish venue in Denton County. *Id.* Dallas then argues that because “the TRCA is unconstitutional . . . its venue provision cannot survive the 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.” *Id.* Dallas then argues that venue is appropriate in Dallas County under the general venue rules. *Id.*

Dallas provides four general arguments to support its assertion that the TRCA is unconstitutional. First, Dallas argues that the TRCA conflicts with the Texas Constitution’s home-rule provisions in art. XI, § 5. Def’s First Amended Motion to Transfer Venue at 2. Second, Dallas argues that the legislature has violated “article III, sections 56(a)(2), 56(a)(16), and 56(b) (prohibiting local and special laws) of the Texas Constitution.” *Id.* at 2. Third, Dallas argues that “the legislature has violated article XVII, section 1 (the amendment process) . . . of the Texas Constitution.” *Id.* And finally, Dallas argues that the TRCA is void for vagueness. *Id.* at 2 (the TRCA “fails to preempt municipal regulations with the ‘unmistakable clarity’ the Texas Supreme Court requires”).

Note that while Dallas states the TRCA “is unconstitutional on its face and as applied,” Def’s First Amended Motion to Transfer Venue at 1, Dallas only brings a facial challenge to the TRCA. An “as-applied challenge asserts that a statute, while generally constitutional, operates unconstitutionally as to the claimant because of her particular circumstances.” *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 702 (Tex. 2014); accord *City of Corpus Christi v. Public Utility Comm’n*, 51 S.W.3d 231, 240-41 (Tex. 2001) (in an “as applied” challenge, “a party concedes that a statute is generally constitutional but contends that the statute is unconstitutional when applied to a particular person or set of facts”). In the present action, Dallas does not concede that the TRCA is “generally constitutional,” nor does Dallas claim that the TRCA operates unconstitutionally when applied to the City of Dallas “because of [its] particular circumstances.” On the contrary, Dallas’s four general arguments challenge the constitutionality of the statute, independent of Dallas’s particular circumstances. Dallas’s First Amended Motion to Transfer Venue also depends on Dallas’s argument that the TRCA is facially invalid. Dallas does not directly challenge

the constitutionality of the venue provision in the TRCA, but instead argues that because “the TRCA is unconstitutional” and “[b]ecause the TRCA does not contain a severability clause, its venue provision cannot survive the unconstitutionality of the rest of the statute.” Def’s First Amended Motion to Transfer Venue at 3-4. These arguments are quintessential facial challenges.

LEGAL STANDARD

“A party who seeks to transfer venue of the action to another specified county under Section 15.001 (General Rule) . . . has the burden to make proof, as provided by paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought.” Tex. R. Civ. P. 87.2(a) The venue provision in the TRCA prohibits the transfer of venue without the written consent of all the parties. Tex. Civ. Prac. & Rem. Code § 10A.006 (b). In response, Dallas brings a facial challenge to the constitutionality of the TRCA.

When reviewing “a facial challenge to a statute’s constitutionality, we consider the statute as written, rather than as it operates in practice.” *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000) (citations omitted). “To sustain a facial challenge, the challenging party must establish that the statute, by its terms, always operates unconstitutionally.” *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 627 (Tex. 1996) (citing *Texas Workers’ Compensation Com’n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995)); *see also Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 663 (Tex. 1996) (“every application” of the statute must violate the Constitution).

Finally, courts start with the “presum[ption] that a statute passed by the Legislature is constitutional.” *Nootsie*, 925 S.W.2d at 662. And courts, to the extent possible, “‘must construe statutes to avoid constitutional infirmities.’” *Paxton v. Annunciation House, Inc.*, 719 S.W.3d 555, 592 (Tex. 2025).

ARGUMENT

To support its conclusion that the TRCA is unconstitutional, Dallas argues: (1) the TRCA violates the Texas Constitution’s prohibition on local and special laws; (2) the TRCA violates the Texas Constitution’s home-rule provisions; (3) the Texas Legislature could not pass the TRCA

without a constitutional amendment; and (4) the TRCA is unconstitutionally vague. Dallas then argues that because the TRCA does not contain a severability clause, the TRCA's venue provisions must also be unconstitutional. We address each argument in turn.

I. The TRCA is a general law, not a local law or special law, and therefore does not conflict with the constitutional prohibition on local and special laws.

The current form of our state's prohibition on local and special laws has been a part of our constitutional history since the Texas Constitution of 1876. Tex. Const. of 1876, art. III, § 56. The purpose of this constitutional prohibition is well established: its purpose "is to 'prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.'" *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 947 (Tex. 1996) (quoting *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941)). By doing so, this prohibition would prevent "lawmakers from engaging in the 'reprehensible' practice of trading votes for the advancement of personal rather than public interests.'" *Id.* (quoting *Miller*, 150 S.W.2d at 1001).

For the purposes of the Texas Constitution's prohibition on local and special laws, a "local law" is defined as a law "limited to a specific geographic region of the State," while a "special law" is defined as a law "limited to a particular class of persons distinguished by some characteristic other than geography." *Maple Run*, 931 S.W.2d at 945 (citations omitted). "A law is not a prohibited local law merely because it applies only in a limited geographical area." *Id.* Instead, "where a law is limited to a particular class or affects only the inhabitants of a particular locality, 'the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation.'" *Id.* (quoting *Miller*, 150 S.W.2d at 1001-1002).

General law is often defined in contrast to local and special laws. "A statute that relates to persons or things *as a class* is a general law, while a statute that relates to *particular* persons or things as a class is special." *Scurlock Permian Corp. v. Brazos Cnty.*, 869 S.W.2d 478, 485 (Tex. App.—Hous. 1993, writ denied) (emphasis added) (citing *Pub. Util. Comm'n of Texas v. Sw. Water Servs.*,

Inc., 636 S.W.2d 262, 265 (Tex. App. 1982—Austin, writ refused, no rev. error). A class created by general law “must bear a reasonable relation to the general purpose of the legislation and concern a matter of general statewide effect or interest.” *Pub. Util. Comm’n of Texas*, 636 S.W.2d at 265. “‘The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class.’” *Maple Run*, 931 S.W.2d at 947 (quoting *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950)).

A law that applies equally to all municipalities and counties within the state is a general law. This is because the law is not limited to a specific geographic area (and thus not “local”) and does not single out a particular subset of municipalities or counties based on arbitrary or unreasonable criteria (and thus not “special”). The Texas Supreme Court’s analysis in *Maple Run* makes it abundantly clear what kind of laws are prohibited by this constitutional requirement.

In *Maple Run*, the Texas Supreme Court noted that a law providing for the development of public parks that “applied only in counties ‘border[ing] on the Gulf of Mexico within whose boundaries is located any island, part of an island, or islands, suitable for park purposes’” was not prohibited because the Court found that “[t]he coastal geography of Texas affords a reasonable distinction between the island park on the one hand and the mainland park on the other.” *Maple Run*, 931 S.W.2d at 945-46 (quoting *County of Cameron v. Wilson*, 326 S.W.2d 162, 165-66 (1959)). Similarly, the Court had also upheld a law imposing special bail bond regulations in counties with a population of 150,000 or more, and another law that imposed special taxes for hospital districts in counties with a population greater than 650,000 and operating a teaching hospital. *Id.* at 946 (first citing *Robinson v. Hill*, 507 S.W.2d 521 (Tex. 1974); then citing *Smith v. Davis*, 426 S.W.2d 827, 830-32 (Tex. 1968)).

On the other hand, the *Maple Run* Court concluded that laws have been struck down “under Section 56 where no reasonable basis supported the classification.” *Maple Run*, 931 S.W.2d at 946. The Court observed that a law authorizing an economic development tax that applied only in counties having a population of not less than 125,000 nor more than 175,000 inhabitants, and

containing a city having a population of not less than 90,000 inhabitants—which included only El Paso County—was unlawful because the “population brackets . . . bore no substantial relation to the objects sought to be accomplished by the act.” *Id.* (citing *Miller v. El Paso County*, 150 S.W.2d 1000 (Tex. 1941)). A public works law that applied only in cities with a population between 106,000 and 110,000 was also struck down because the Court had found the population bracket “advanced no legitimate purpose but rather was a means of singling out one city for special treatment.” *Id.* (citing *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 471-72 (1931)). Similarly, an act reducing the compensation of certain officers in counties with a population between 290,000 and 310,000, which only included one county, was found unconstitutional because the Court previously found “beyond doubt that the purpose of the Legislature was to single out one county and to attempt to legislate upon the question of the compensation of its officers, and not upon the subject generally.” *Id.* (quoting *Bexar County v. Tynan*, 97 S.W.2d 467, 470 (1936)).

The TRCA could not be more different. The act is not a local or specific law. Eight of its nine preemption provisions apply to all municipalities and all counties across the entire state. TRCA §§ 5-6, 8-10, 13-15 (now codified at Tex. Agric. Code § 1.004 (“a municipality or county may not adopt . . .”); Tex. Bus. & Com. Code § 1.109 (same); Tex. Fin. Code § 1.004 (same); Tex. Ins. Code § 30.005 (same); Tex. Lab. Code § 1.005 (same); Tex. Nat. Res. Code § 1.003 (same); Tex. Occ. Code § 1.004 (same); Tex. Prop. Code § 1.004 (same)). One preemption provision, in the Texas Local Government Code, applies to all municipalities across the state. TRCA §§ 11-12 (now codified at Tex. Loc. Gov’t § 51.002 (“the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state”); *id.* at § 229.901 (“a municipality may not adopt . . .”)).¹ And the purpose of the TRCA is to “secure uniformity of law throughout the State.” *Compare Maple Run*, 931 S.W.2d at

¹ Counties in Texas do not have home-rule authority, “represent no sovereignty distinct from the state,” and “possess only such powers and privileges as have been expressly or impliedly conferred upon them.” *State v. Hollins*, 620 S.W.3d 400, 404-405 (Tex. 2020) (quoting *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016)). “Before a county official can take ‘any action,’ that action’s ‘legal basis . . . must be grounded ultimately in the constitution or statutes.’” *Id.* (quoting *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993)).

947. This purpose is evinced by the text of the statute: “The legislature finds that . . . local regulations have led to a patchwork of regulations that apply inconsistently across this state” and therefore the “purpose of this Act is to provide statewide consistency by returning sovereign regulatory powers to the state where those powers belong in accordance with Section 5, Article XI, Texas Constitution.” TRCA §§ 2-3, 2023 Tex. Gen. Laws 2871, 2871.

In its motion, Dallas did not provide any specific evidence or citations to caselaw showing that the TRCA is an unconstitutional local or special law. Def’s First Amended Motion to Transfer Venue at 1-5. Dallas, which must show that its First Amended Motion to Transfer Venue is appropriate, has not met its burden. The TRCA is the prototypical general law, and Dallas has failed to show otherwise.

II. The TRCA does not violate art. XI, § 5 or any other home-rule provision in the Texas Constitution.

Dallas’s argument that the TRCA is prohibited because of the home-rule provision in Tex. Const., art. XI, § 5 is also misinformed. Def’s Mot. to Transfer Venue at 1-2. Dallas’s argument is belied by the plain text of the Constitution. In relevant part, Tex. Const., art. XI, § 5 states:

Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters. . . . The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.

Each municipality’s home-rule authority has always been “subject to such limitations as may be prescribed by the Legislature” and other limitations present in the Constitution itself. It is well established that while “home-rule cities have all power not denied by the Constitution or state law, and thus need not look to the Legislature for grants of authority, the Legislature can limit or withdraw that power by general law.” *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 594 (Tex. 2018) (reviewing roughly one hundred years of caselaw). After all, “[d]eciding whether uniform statewide regulation or nonregulation is preferable to a patchwork of local regulations is

the Legislature’s prerogative.” *Id.* at 594-95. Put succinctly, the “question is not whether the Legislature *can* preempt a local regulation . . . but whether it *has*.” *Id.* at 595 (emphasis in original).

III. The Texas Legislature has the power to pass general laws like the TRCA to limit municipal home-rule powers.

To the extent that Dallas argues that the Texas Legislature cannot pass a general law like the TRCA to limit municipal home-rule powers, Dallas is mistaken.

Dallas argues that “the TRCA is unnecessary” because 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.” Def’s First Amended Motion to Transfer Venue at 2 (“the legislature has violated . . . article XI, section 5 (conflict provisions)”). However, Dallas does not cite or describe what provisions it is referencing, nor is it apparent to the Attorney General that there are any “conflict provisions” in that section, or how any provisions in that section would prohibit the Legislature from enacting a general law to preempt conflicting local ordinances. Moreover, Dallas does not provide any citations to authority, nor is the Attorney General aware of any precedent, that supports this claim.

Dallas also argues “if the legislature had truly wanted the state-wide regulatory ‘consistency’ between cities then a repeal of constitutional home rule would be required” and that the Legislature needs to pass a constitutional amendment to limit the home-rule powers of municipalities. Def’s First Amended Motion to Transfer Venue at 2 (emphasis removed). Dallas is mistaken. The text of the Constitution clearly states that the scope of municipal home-rule authority can be limited by “general laws enacted by the Legislature,” Tex. Const., art. XI, § 5, and the whole purpose of the constitutional provision limiting local and specific laws was to encourage general laws “to secure uniformity of law throughout the State as far as possible,” *see Maple Run*, 931 S.W.2d at 945. Furthermore, Dallas’s argument is clearly inconsistent with *City of Laredo*, which held that the Texas Solid Waste Disposal Act preempted a local ordinance that made it unlawful for commercial establishments to provide single-use plastic or paper checkout bags to customers, as well as the roughly one hundred years of caselaw considered in that case. *City of*

Laredo, 550 S.W.3d at 590, 593 n.32; accord *Wilson v. Andrews*, 10 S.W.3d 663, 666 (Tex. 1999) (“the Legislature can limit or augment a city’s self-governance.”); *Tyra v. City of Houston*, 822 S.W.2d 626, 628 (Tex. 1991) (“The Texas Constitution prohibits a city from acting in a manner inconsistent with the general laws of the state. Thus, the legislature may, by general law, withdraw a particular subject from a home rule city’s domain.”) (citations omitted).

IV. The text of the TRCA is not void for vagueness.

Dallas also argues that the text of the TRCA is too vague, and thus the TRCA is unconstitutional. Dallas argues that the TRCA uses “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.” Def’s First Amended Motion to Dismiss at 2; *see also id.* at 3 (“under the unconstitutionally vague language of the TRCA”). Dallas’s argument fails for a variety of reasons.

A. Dallas fails to provide any statutes, caselaw, or authority to support its void for vagueness argument, and thus fails to meet its burden for its Motion to Transfer Venue.

Dallas cites no statutes, no caselaw, and no other authorities to support its void for vagueness argument. Dallas, as the movant, bears the burden of proof to support its argument that the Court should grant Dallas’s First Amended Motion to Transfer Venue, not under a mandatory venue provision, but under “the general venue rules set forth in Chapter 15 of the Civil Practice and Remedies Code” because “the TRCA is unconstitutional.” Def’s First Amended Motion to Transfer Venue at 3-4. By failing to include any authority to support its argument that the TRCA is unconstitutional because it is too vague, Dallas has failed to carry its burden of proof.

B. The Legislature’s intent to preempt local law is unmistakably clear.

Dallas misinterprets the clarity requirement for statutes limiting local laws pursuant to art. XI, § 5. While a “statutory limitation of local laws may be express or implied, . . . the Legislature’s intent to impose the limitation must appear with unmistakable clarity.” *City of Laredo*, 550 S.W.3d at 593 (internal quotations and citations omitted). Dallas errs, however, when arguing the TRCA

uses “such vague language” such that the TRCA fails the “unmistakable clarity” requirement. *See* Def’s First Amended Motion to Transfer Venue at 2.

For statutes to meet the clarity requirement, “the Legislature’s *intent to impose the limitation* must appear with unmistakable clarity.” *City of Laredo*, 550 S.W.3d at 593 (emphasis added, internal quotations and citations omitted). In that case, the Texas Supreme Court found that “legislative intent . . . to preempt local law is clear” because the statute in question “states that ‘[a] local government or other political subdivision may not adopt’ certain ordinances.” *Id.* (quoting Tex. Health & Safety Code § 361.0961(a)). In other words, the “clarity” requirement does not require the statute’s text to state with “unmistakable clarity” the exact scope of what the statute preempts. What exactly the statute preempts is a question of statutory interpretation, and it may be the case that the answer to that question is not plainly evident, so much so that the Texas Supreme Court may be required to settle the issue. *See, e.g., City of Laredo*, 550 S.W.3d at 589 (concerning whether the Texas Solid Waste Disposal Act preempts a local ordinance that prohibits merchants from providing single use plastic and paper bags); *Dallas Merchant’s and Concessionaire’s Ass’n v. City of Dallas*, 852 S.W.2d 489, 490 (Tex. 1993) (concerning whether the Texas Alcoholic Beverage Code preempted a local zoning ordinance).

Instead, when considering whether the clarity requirement has been met, the correct legal standard is that the “Legislature’s *intent to impose the limitation*” must be unmistakably clear. *City of Laredo*, 550 S.W.3d at 593 (emphasis added). This is because the “‘entry of the state into a field of legislation’” does not automatically mean there is field preemption and therefore local regulations are automatically preempted. *Id.* “*Absent an express limitation*, if the general law and local regulation can coexist peacefully without stepping on each other’s toes, both will be given effect or the latter will be invalid only to the extent of any inconsistency.” *Id.* (emphasis added). However, whenever “legislative intent . . . to preempt local law is clear,” the issue simply becomes “whether the Ordinance falls within the Act’s ambit.” *Id.*

In the present case, the Legislature’s intent to preempt conflicting municipal or county ordinances is unmistakably clear. Texas Natural Resources Code § 1.003 provides a representative example of the TRCA’s preemption provisions:

Unless *expressly authorized* by another statute, a municipality or county *may not adopt*, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and *inconsistent* with this code.

Tex. Nat. Res. Code § 1.003 (emphasis added). The preemption provisions in the TRCA are materially similar to other preemption provisions that clearly convey the Legislature’s intent to preempt local law.

In *City of Laredo*, the Texas Supreme Court found that the “legislative intent in the Act to preempt local law is clear” because the relevant statute “states that ‘[a] local government or other political subdivision *may not adopt*’ certain ordinances.” *City of Laredo*, 550 S.W.3d at 593 (emphasis added) (quoting Tex. Health & Safety Code § 361.0961(a)).

In *Dallas Merchant’s and Concessionaire’s Ass’n*, the Texas Supreme Court found that “[t]he Legislature’s intent is clearly expressed in section 109.57(b) of the TABC [(Texas Alcoholic Beverage Code)]—the regulation of alcoholic beverages is exclusively governed by the provisions of the TABC unless otherwise provided.” *Dallas Merchant’s and Concessionaire’s Ass’n*, 852 S.W.2d at 491-92; Tex. Alco. Bev. Code. § 109.57(b) (“It is the intent of the legislature that this code shall *exclusively govern* the regulation of alcoholic beverages in this state, and that *except as permitted* by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.”).

And in *BCCA*, the Texas Supreme Court found that the “language of section 382.113 of the Act unmistakably expresses the Legislature’s desire to preempt any ordinance ‘inconsistent’ with the Act or with a TECQ rule or order” because that “section provides that a ‘municipality has the powers and rights as are otherwise vested by law in the municipality to . . . enact and enforce an ordinance . . . *not inconsistent* with this chapter or the [TCEQ’s] rules or orders,’ and ‘[a]n ordinance enacted by a municipality must be *consistent* with [the Act] and the [TCEQ’s] rules and

orders.’” *BCCA Appeal Grp., Inc. v. City of Hous.*, 496 S.W.3d 1 (Tex. 2016) (alteration and emphasis in *BCCA*) (quoting Tex. Health & Safety Code § 382.113(a)(2), (b)). In light of these cases, there can be no genuine dispute that it is unmistakably clear the legislative intent of the TRCA is to preempt local law.

C. Reasonable interpretations of the TRCA are constitutional.

Furthermore, courts have a “duty to uphold the validity of [a] statute if it can be given a reasonable construction that will render it constitutional,” *Paxton v. Annunciation House, Inc.*, 719 S.W.3d at 592 (Tex. 2025) (internal quotations omitted), and there are reasonable interpretations of the TRCA that are clearly constitutional. For example, courts can interpret the TRCA as providing a positive law authority for courts to find field preemption.

In *BCCA*, the Texas Supreme Court found that municipalities could not pass ordinances that allowed prosecutors to criminally enforce air-quality standards, even if the violations pursued by prosecutors were also violations of the Texas Clean Air Act. *BCCA*, 496 S.W.3d at 13; *see also* Texas Clean Air Act, 71st Leg., R.S., ch. 678, 1989 Tex. Gen. Laws 2230, 2715-2733 (now codified at Tex. Health & Safety Code §§ 382.001-382.655). In that case, the Legislature’s “intent to limit a home-rule city’s power” was expressed “in clear and unmistakable language” in the Texas Clean Air Act. *Id.* However, to determine the scope of the Texas Clean Air Act, the Court also “look[ed] at the statutory regime as a whole, including the Water Code’s enforcement provisions,” to conclude that “the Legislature clearly limited a city’s ability to enforce air-quality standards criminally, allowing such enforcement only when it is not inconsistent with the Water Code’s requirements.” *Id.*; *see also id.* at 30 (Boyd, J., dissenting in part) (disagreeing with the majority’s finding of field preemption).

By contrast, in *Dallas Merchant’s and Concessionaire’s Ass’n*, the Texas Supreme Court found field preemption not by considering the “statutory regime as a whole,” but by directly considering the text of the Texas Alcoholic Beverages Code (TABC). The Court explained: “Section 109.57 expressly states that the TABC will exclusively govern the regulation of alcoholic beverages except as otherwise provided by the TABC. Thus, the TABC allows ordinances of

home-rule cities to prohibit the sale of alcoholic beverages only under limited circumstances.” *Dallas Merchant’s and Concessionaire’s Ass’n*, 852 S.W.2d 489, 493 (Tex. 1993) (internal citation omitted). The Court then identified three ways the TABC allows cities and counties to regulate the sale of alcohol before concluding that the challenged zoning ordinance’s restrictions on the sale of alcohol were preempted because the ordinance’s restrictions were not one of the enumerated exceptions in the TABC. *Id.* at 493-94.

In this context, it is certainly reasonable for a legislature to pass a statute allowing courts to find field preemption directly from the plain text of a statute, instead of needing to “look at the statutory regime as a whole.” And it is certainly reasonable to interpret the preemption and enforcement provisions in the TRCA this way, especially because the Texas Supreme Court has consistently held that the Court begins interpreting statutes by considering the plain text of the statute before reaching for contextual canons of interpretation like the whole-text canon. *See, e.g., City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 (Tex. 2008) (“When a statute’s language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language.”); *Alex Sheshunoff Management Serv. v. Johnson*, 209 S.W.3d 644, 651-52 (Tex. 2006) (“enacted language is what constitutes the law, and when a statute’s words are unambiguous and yield a single inescapable interpretation, the judge’s inquiry is at an end”); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 167-170 (“Whole-Text Canon”). This construction of the TRCA is clearly constitutional, and therefore Dallas has failed to meet its burden in its challenge to the constitutionality of the statute.

D. Dallas’s facial challenge to the TRCA fails because Dallas has not shown that every application of the TRCA is unconstitutional.

Finally, Dallas’s facial challenge to the TRCA fails because Dallas has not shown that “every application” of the statute violates the Texas Constitution. *Nootsie, Ltd.*, 925 S.W.2d at 663. Dallas has not proven that “the statute, by its terms, always operates unconstitutionally.” *Barshop*, 925 S.W.2d at 623. Recall, for preemption statutes to meet their clarity requirement, the Legislature’s intent to impose the limitation must be clear, even if the scope of the preemption is

not plainly evident. *See supra* at IV.B. Therefore, to the extent Dallas argues that the TRCA is unconstitutional because the scope of what the TRCA may preempt is unclear, these arguments are insufficient as a matter of law. However, even if Dallas's arguments are accepted as true, they fail to meet Dallas's burden to show that "every application" of the TRCA violates the Texas Constitution.

There are many examples where the preemption provisions in the TRCA would clearly apply. Recall, the preemption provisions in the TRCA state that unless "expressly authorized by another statute," local jurisdictions may not regulate conduct in "a field of regulation that is occupied by a provision" of the relevant Code. And Texas statutes do occupy fields of regulation such that the preemption provisions in the TRCA would apply. For example, the Texas Natural Resources Code states that an "oil and gas operation is subject to the exclusive jurisdiction of this state" and that the "authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted," except for a narrow exception for aboveground, commercially reasonable measures that do not effectively prohibit operations. Tex. Nat. Res. Code § 81.0523(b)-(c). The Texas Agriculture Code occupies the field of seed regulations. Tex. Agric. Code. § 61.019(a)-(c) ("Notwithstanding any other law and except as provided by Subsection (c), a political subdivision may not adopt an order, ordinance, or other measure that regulates agricultural seed, vegetable seed, weed seed, or any other seed in any manner."). And the Texas Agriculture Code also occupies the field for agricultural operations located within cities. Tex. Agric. Code § 251.0055 ("A city may not impose a government requirement that applies to agricultural operations located in the corporate boundaries of the city," except under narrowly defined public health and safety circumstances.).

Therefore, to the extent that Dallas argues the TRCA is invalid because it is unclear where the statute would apply, Dallas has failed to meet its burden. Dallas fails to show that the TRCA is facially unconstitutional because Dallas cannot show that "every application" of the TRCA violates the Texas Constitution.

V. Dallas’s claim that the TRCA’s venue provision cannot be severed from the rest of the statute is erroneous.

Finally, Dallas argues that because “the TRCA is unconstitutional,” its venue provision “cannot survive the unconstitutionality of the rest of the statute” because the TRCA “does not contain a severability clause.” Def’s First Amended Motion to Transfer Venue at 3-4. Dallas’s conclusion is erroneous as a matter of law.

The default rule is that any unconstitutional parts of a statute should be severed if the remainder of the statute can operate independently. The Legislature has codified this rule into law: “In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.” Tex. Gov’t Code § 311.032; *accord id.* at § 312.013. And the Texas Supreme Court has explained that “the test for determining when a finding of unconstitutionality of one portion of a statute invalidates the whole statute” has been settled for over one-hundred years:

“When, therefore, a part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, dependent on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the legislature would have passed the one without the other. . . . If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must stand.”

Rose v. Drs. Hosp., 801 S.W.2d 841, 844 (Tex. 1990) (quoting *Western Union Telegraph Co. v. State*, 62 Tex. 630, 634 (1884)). In *Rose*, the Texas Supreme Court found that while the limitations on damages provisions in the Medical Liability and Insurance Improvement Act were unconstitutional in the context of common-law medical malpractice actions, they were not unconstitutional in the context of statutory wrongful death actions. *Id.* at 842, 844-45. Because the Court found that the application of the challenged provisions to the wrongful death claims “remains complete in itself,

capable of execution in accord with the legislature’s intent, and independent of any application to [the] common law claims,” the statute “can be severed.” *Id.* at 845.

In the present case, the TRCA’s preemption provisions and the TRCA’s venue provision are not so “connected in subject-matter, dependent on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the legislature would have passed the one without the other.” On the contrary, the primary vehicle through which the Legislature sought to accomplish the TRCA’s stated purpose to “provide statewide consistency” was through the TRCA’s preemption provisions. *See* TRCA §§ 1-15, 2023 Tex. Gen. Laws 2871, 2871-74. There is no evidence that the TRCA’s preemption provisions were “dependent on” the passage of the TRCA’s venue provision. And if the TRCA’s venue provision is “stricken out,” the rest of the TRCA is “complete in itself” and “capable of being executed in accordance with the apparent legislative intent.” Dallas even seems to acknowledge this fact: if the TRCA’s venue provisions are stricken out, “the general venue rules set forth in Chapter 15 of the Civil Practice and Remedies Code apply.” Def’s First Amended Motion to Transfer Venue at 4. The venue provisions of the TRCA are severable from the substantive provisions of the statute. Dallas’s argument to the contrary is unavailing.

CONCLUSION AND PRAYER

For the foregoing reasons, this Court should deny the City of Dallas’s constitutional challenges.

Date: March 20, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2026, a true and correct copy of the above and forgoing document has been served via electronic service and/or email to all counsel of record.

/s/ Brian B. Tung

BRIAN B. TUNG

CERTIFICATE 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 on March 20, 2026.

/s/ Brian B. Tung

BRIAN B. TUNG