



CITY OF DALLAS

August 3, 2023

VIA E-FILING

The Honorable Jan Soifer
354th Civil District Court, Travis County, Texas
1700 Guadalupe, 10th Floor
Austin, Texas 78701

Re: ***City of Houston v. State*, No. D-1-GN-23-003474
Amicus Curiae Letter in Support of Motion for Summary Judgment**

To the Honorable Judge of Said Court:

The City of Dallas supports Plaintiff City of Houston's motion for summary judgment, filed on or about July 19, 2023. H.B. 2127, the Texas Regulatory Consistency Act (the TRCA), is unconstitutional for the reasons set forth in Houston's motion and should be declared void and unenforceable. I write separately to emphasize the TRCA's infringement on home-rule cities' constitutional obligation to self-govern. No fee has been paid for the preparation of this letter, and I certify that a copy of this letter has been served on all parties.

Home-rule cities, including Dallas, have the full power of self-government insofar as their charters and ordinances are consistent with the constitution and general laws of the State. Tex. Const. art. XI, § 11; Tex. Loc. Gov't Code § 5.004. Home-rule cities' enactments are presumptively valid, e.g., *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982) (citing *Hunt v. City of San Antonio*, 462 S.W.2d 536, 539 (Tex. 1971)), and when "the Legislature decides to preempt a subject matter normally within a home-rule city's broad powers, it must do so with 'unmistakable clarity[.]'" *In re Sanchez*, 81 S.W.3d 794, 796 (Tex. 2002) (orig. proceeding) (citing *Dall. Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993)).

The TRCA abrogates the constitutional structure of government by bypassing the constitution's home-rule amendment process. The preemption provisions that the TRCA would add to the State's Agriculture, Business and Commerce, Finance, Insurance, Labor, and Property Codes provide: "Unless authorized by statute, a municipality . . . 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." H.B. 2127 sections 5 [proposed Tex. Agric. Code § 1.004], 6 [proposed Tex. Bus. & Com. Code § 1.109], 9 [proposed Tex. Ins. Code § 30.005], 10 [proposed Tex. Lab. Code § 1.005], 13 [proposed Tex. Nat. Res. Code § 1.003], and 15 [proposed Tex. Prop. Code § 1.004]. The scope of the vague phrase "regulating conduct in a field of regulation that is occupied by a provision" will prevent home rule cities from locally legislating in any area that the amended codes touch absent express statutory authorization. Stated differently, cities cannot act before scouring the statutes for an express grant of authority to do so from the legislature. This turns the form of home-rule governing enshrined in our constitution on its head. Home-rule cities look to state law for *restrictions* on their powers to act, unlike general law cities who look to state law for the *power* to act. The TRCA states this is not the case anymore. The citizens of Texas adopted the home-rule

amendment to the constitution in 1912 so that qualifying local governments that chose to adopt home-rule charters could promptly address the needs of their local residents to the extent any such actions were not contrary to state law. Home-rule cities cannot be effectively stripped of their authority pursuant to the home-rule amendment absent a constitutional amendment. *See* Tex. Const. art. XVII.

Additionally, the TRCA impedes home-rule cities' ability to effectively govern. Under the TRCA, home-rule cities will be hindered not only by the new requirement that they look for express authorization to act outlined above, but also by the shift away from the presumed validity of home-rule cities' enactments, and the endless litigation the TRCA invites. Section 11 of the TRCA amends section 51.002 of the Texas Local Government Code to provide that "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." Though vague, this provision arguably alters the long-standing rule that home-rule cities' enactments are presumptively valid absent an "extraordinary" showing to overcome this presumptive validity, *Comeau*, 633 S.W.2d at 792-93 (quoting *Thompson v. City of Palestine*, 510 S.W.2d 579 (1974)), to one that municipalities' enactments are presumptively invalid absent an affirmative showing on the city's part that its laws are "consistent" with those of the State. This added burden placed upon home-rule cities is further exacerbated by the private cause of action the TRCA creates. Section 7 provides that "any person who has sustained an injury in fact, actual or threatened, from a municipal or county ordinance, order, or rule adopted or enforced by a municipality or county . . . may bring an action against the municipality or county." The creation of this cause of action will likely result in extensive litigation brought by constituents who disagree with a city's lawful enactments, putting cities in the position of having to routinely prove their ordinances or other regulations are "consistent with" state law. Such litigation will unnecessarily divert resources cities could otherwise put toward affirmatively addressing the needs and desires of their residents.

As demonstrated in Houston's traditional motion for summary judgment, the TRCA is constitutionally infirm. For this reason, as well as those set forth above, the Court should grant Houston's motion and declare the TRCA void and unenforceable.

Respectfully submitted,

/s/ Tammy L. Palomino

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c. ***Via E-Service***

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