

CAUSE NO. D-1-GN-23-007785

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| CITY OF GRAND PRAIRIE, et al., <i>Plaintiffs,</i> | § | IN THE DISTRICT COURT |
| | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| THE STATE OF TEXAS, <i>Defendants.</i> | § | 261 ST JUDICIAL DISTRICT |

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION FOR
DECLARATORY RELIEF**

Plaintiffs, the Cities of Grand Prairie, Aubrey, Bulverde, Clyde, Crandall, Denison, Denton, Hutto, Kaufman, Lockhart, McKinney, Navasota, and Van Alstyne (“Cities”), file this First Amended Original Petition for Declaratory Judgment against Defendant, the State of Texas (“Texas”), challenging Senate Bill 2038 (“SB 2038”). The Cities would show as follows:

I. INTRODUCTION

Effective September 1, 2023, SB 2038 allows individuals to “opt out” of a city’s extraterritorial jurisdiction (“ETJ”) with no notice to nearby property owners and no oversight by any branch of government. Almost immediately after the effective date, cities began receiving petitions for the removal of property from their ETJ. As of the filing of the original petition, Grand Prairie had already received four¹ and more have

¹ Two petitions were statutorily complete and have been rejected by the City Council pursuant to the express legislative authority provided to cities pursuant to section 42.023 of the Texas Local Government Code, discussed *infra*, which requires the consent of the governing body before its ETJ can be reduced. Tex. Loc. Gov’t Code § 42.023. Those two petitions are attached hereto as Exhibit 1. Two more petitions have been received as of the date of the filing of this Original Petition but were rejected because they were statutorily deficient. They are attached hereto as Exhibit 2. Grand Prairie fully anticipates that these two petitions will be refiled with the required information.

been received. The newly joined Cities have also either received ETJ release petitions and continue to receive such petitions periodically or have standing under the one-party standing rule because one or more Plaintiffs have received ETJ release petitions.

SB 2038's effects are already being felt by cities across the state as more petitions are received. By affording individuals the unilateral ability to forever "opt out" of a city's extraterritorial jurisdiction ("ETJ") without notice to other affected parties or meaningful review by the affected city, county or the State, SB 2038 represents an unconstitutional delegation of legislative authority to private parties in violation of the eight-part standard articulated by the Texas Supreme Court.² While delegations of legislative decision-making to private parties are not per se unconstitutional, they are subject to more stringent requirements and accorded less judicial deference.³ Delegations of legislative authority violate the separation of powers doctrine when they are open-ended, permanent, not subject to meaningful review by another branch of government, are made by individuals with a pecuniary interest in the outcome, and affect the rights of third-parties whose interests are not represented in the decision-making process.⁴ Accordingly, because SB 2038's petition process for automatic ETJ removal fails the Texas Supreme Court's test for permissible delegations of legislative authority on every applicable standard, Grand

² *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000); *Texas Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 466–67 (Tex.1997); *Housing Auth. of Dallas v. Higginbotham*, 135 Tex. 158, 143 S.W.2d 79, 87 (1940).

³ *FM Properties Operating Co.*, 22 S.W.3d at 874.

⁴ *Id.*

Prairie seeks a declaration that SB 2038 is facially unconstitutional and violates Article II, Section 1 of the Texas Constitution, rendering the entirety of Subchapter D of Chapter 42 of the Local Government Code void.

Additionally, and alternatively, if necessary, portions of SB 2038 are also unconstitutionally vague on their face. SB 2038 permits the owners of a “majority in value” of an area consisting of one or more parcels to file a petition for multiple parcels and purportedly trigger mandatory release of *all* parcels subject to the petition.⁵ However, SB 2038 provides no standard of conduct for a city to ascertain whether a petitioner actually possesses a “majority in value” of the parcels subject to automatic removal (and therefore the statutory right to invoke SB 2038).⁶ SB 2038 later says that a petition must be signed by “a majority in value” of owners “as indicated by the tax rolls,” but property values fluctuate from year to year and SB 2038 provides no standard to determine which property value must be used or considered.⁷ Perhaps the Legislature meant “from the most current tax year,” but SB 2038 does not mandate that the most current year be considered and courts cannot rewrite statutes under the guise of interpreting them.⁸ Moreover, when parcels are owned by more than one person or entity, only one of whom signs the petition for release, cities are forced to confront whether such a petition is statutorily sufficient and SB 2038 provides no guidance. Accordingly, the Cities seek a declaration that SB 2038’s use

⁵ Tex. Loc. Gov’t Code § 42.102(b).

⁶ *Id.*

⁷ Tex. Loc. Gov’t Code § 42.104(a)(2).

⁸ *See Colorado Cnty. v. Staff*, 510 S.W.3d 435, 444 (Tex. 2017) (courts may not rewrite statutes under guise of interpretation).

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First appeared as part of the conference materials for the
28th Annual Land Use Conference session

"Out of the ETJ and Into the Unknown? What the SB 2038 ETJ-Removal Law Does and Its
Impact on Cities and Counties"