

CITY OF GRAND PRAIRIE, TEXAS,
Plaintiff

v.

THE STATE OF TEXAS,
Defendant.

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IN THE DISTRICT COURT

261st JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

CITY OF ANNA'S ORIGINAL PETITION IN INTERVENTION

Intervenor, the City of Anna, Texas, a home rule municipality ("Anna"), files this petition in intervention ("Petition") as a party-plaintiff asserting its claims against Defendant, the State of Texas ("Texas"), challenging Senate Bill 2038 ("SB 2038"), and in support of same and alleges as follows:

I. PARTIES

1. Intervenor is a municipal corporation and political subdivision of the State of Texas ("State"), located in Collin County, Texas, with an address of 120 W. 7th Street, Anna, TX, 75409. As a municipality, Anna does not hold a driver's license number and has not been issued a social security number.
2. Plaintiff-parties already appearing in the above-styled lawsuit are:
 - a. The original Plaintiff, City of Grand Prairie, Texas ("Grand Prairie"), is a home rule municipality, whose address is 300 W Main Street, Grand Prairie, Texas 75050. A copy of this petition will be forwarded to Wm. Andrew Messer, Timothy A. Dunn, and Bradford E. Bullock with Messer Fort, PLLC, attorneys of record for plaintiff. On January 9, 2024, Grand Prairie amended its petition to add additional parties-plaintiff, the cities of Aubrey, Bulverde, Clyde, Crandall, Denison, Denton, Hutto, Kaufman, Lockhart, McKinney, Navasota, and Van Alstyne, represented in this suit by the same counsel as Grand Prairie.

b. Plaintiff-in-Intervention City of Brownsville, Texas, is a home rule municipality located in Cameron County, Texas. A copy of this petition will be forwarded to its attorney of record listed in its live pleading.

3. Defendant, State of Texas (“State”), has appeared and answered. A copy of this petition will be forwarded to the Office of the Texas Attorney General, General Litigation Division, as the attorneys appearing on behalf of defendant, at P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548, and to the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

II. JURISDICTION & VENUE

4. This Court has jurisdiction over party-defendant the State of Texas because it is domiciled in, and does business in, Travis County, Texas and/or resides and has its principal place of business in Texas. The subject matter of this controversy, inclusive of the claims asserted by Anna in this proceeding, are within the jurisdictional limits of this Court, and the Court has jurisdiction over this action pursuant to Art. V, § 8, of the Texas Constitution (“TXCON”) and Section 24.007 of the Texas Government Code, as well as the Texas Uniform Declaratory Judgments Act (“UDJA”), Texas Civil Practice & Remedies Code (“CPRC”) § 37.001, *et seq.* While in some instances the party-defendant State of Texas may claim immunity from suit, this Court has jurisdiction over this action because the Texas Legislature clearly and unambiguously waived immunity from suit when it enacted Texas Civil Practice & Remedies Code § 37.006. *See Tex. Dep’t of Transp. V. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011).

5. Under Texas Rule of Civil Procedure (“TRCP”) 47(c)(5), Anna seeks non-monetary declaratory and injunctive relief.

6. Venue is proper in the District Court of Travis County, Texas, because the State of Texas is a party to this lawsuit that seeks to declare a state law unconstitutional, void, and unenforceable. *See* CPRC § 15.014. Further, all or a substantial part of the events or omissions

giving rise to the claims of Anna presented herein occurred in Travis County, Texas. See CPRC § 15.002(a)(1). The Texas Attorney General has been served with a copy of this petition in intervention contemporaneously with its filing. See CPRC § 37.006(b).

III. THE ORIGINAL LAWSUIT

7. On October 25, 2023, plaintiff City of Grand Prairie, Texas (“Grand Prairie”), filed suit against defendant State of Texas for declaratory judgment and injunctive relief in Travis County, Texas, and the case was assigned to the 261st District Court under Case No. D-1-GN-23-007785 (“Original Suit”). The State of Texas was served with the corresponding citation on November 7, 2023.
8. On December 4, 2023, Defendant State of Texas (“State”) filed its Answer and Affirmative Defenses (“State’s Answer”), presenting its general denial asserting affirmative defenses of sovereign immunity, Grand Prairie’s lack of standing, lack of subject matter jurisdiction in this Court, mootness, failure to state a claim or cause of action against the State of Texas for which relief can be granted, unclean hands and laches barring claims made by Grand Prairie, and a general assertion of “any and all applicable defenses” and other matters “under Texas law.”
9. As of the date of the filing of this Petition, no hearings have been held or judicial orders issued in the suit.

IV. CITY OF ANNA’S INTEREST IN LAWSUIT

10. Anna, like the supermajority of Texas cities, is in many respects similarly situated to the original party-plaintiff in this lawsuit. Anna seeks to intervene in its own name to better ensure the interests of its residents are fully considered in the course of adjudication of the validity of SB 2038. Anna and Grand Prairie’s claims arise out of the same actions by Defendant and involve common questions of law and/or fact. Since the statute’s effective date of September 1, 2023, Anna has received petitions seeking to remove parcels of land from within its established extraterritorial jurisdiction, and more may be expected if SB 2038 is allowed to continue in effect.

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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"