City of Dripping Springs

Re: Request for Extraterritorial Release – 12299 Trautwein Road, Austin, Texas 78737 ("Property")

To Aniz Alani, City Attorney:

## Request:

Section 42.101(2) of the Local Government Code (S.B. 2038) only applies to areas in Hays County that were voluntarily annexed into the Extraterritorial Jurisdiction ("ETJ"), specifically Dripping Springs, without any reasonable basis for doing so. It is a special law within the meaning of Section 56 of the Texas Constitution and, therefore, unconstitutional. The property must be released from the ETJ.

## Background:

In the early 1980s, the City of Austin was annexing areas east of the City of Dripping Springs ("City"). Many landowners responded by requesting annexation into the City ETJ. Every landowner took this action to prevent being regulated by the heavy-handed City of Austin. As a result, the City ETJ is four times the size of the City. Statutorily, a city the size of Dripping Springs would only have an ETJ that extends ½ a mile from the boundary. [1] The Property is approximately 3 miles from the City boundary!

Now the City of Dripping Springs has become that heavy-handed municipality these landowners sought to escape. The Dripping Springs development department is backlogged with development applications due to this disproportionate ETJ. Much of the city's time and budget is devoted to these ETJ areas, from which the City receives no tax revenue and which are not included in the city's constituency. Apparently, the City believes that without it, the areas at issue would be ravaged by reckless developers. Causing incompatibility in the area's development.[2] The ETJ extends 12 miles in some areas. *Id.*

It seems that SB 2038 would have granted the City much relief from this heavy burden of regulating such a large area. However, a Dripping Springs City Council member wrote the amendment, and the state representative for the area negotiated the special law, Section 42.101(2) of the Local Government Code, into SB 2038 to keep that from happening. Why?

## Analysis

The majority of the State of Texas, and even areas in the ETJ of Dripping Springs that were not voluntarily annexed, are afforded the benefit of this uniform law, allowing release from the ETJ as it is applied to all but the specific areas that voluntarily agreed to be annexed into the City ETJ. The fact that a city council member wrote the amendment clearly indicates that it was

[1] Dripping Springs Open House 2015 Thursday, October 22nd City Limits v. ETJ
[2] Dripping Springs planning director discusses ETJ release 1/31/24 Hays Free Press

intended to apply only to Dripping Springs. This is regulation without representation at its most extreme. The precise problem the general law sought to eliminate!

The text of the SB 2038 now codified as Section 42.101(2) of the Local Government Code at issue, is as follows:

> (2) in an area that was voluntarily annexed into the extraterritorial jurisdiction that is located in a county:
>
> (A) in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and
>
> (B) that has a population greater than 240,000;

Tex. Loc. Gov't Code § 42.101(2).

Hays County is the only county in Texas that satisfies the requirements of the closed bracket. Only one city in Hays County has a very large ETJ due to voluntary annexation—the City of Dripping Springs. It is evident that this amendment was drafted to benefit the City of Dripping Springs. The fact that a statute may apply to only one county at the time of its passage does not mean it is a special or local law if it is structured to apply to other counties in the future. Suburban Utility Corp. v. State (Civ.App. 1977) 553 S.W.2d 396, ref. n.r.e. However, if you examine Section 42.101(2)(A), you will see it states "the federal decennial census conducted in 2020." Tex. Loc. Gov't Code 42.101(2)(A). This language makes it impossible for any county to fall within this bracket in the future. There is, and always will be, only one 2020 census!

In most cases, a bracketing scheme based solely on current circumstances results in a closed bracket that is considered invalid. Texas Legislative Council Drafting Manual Appendix 7, p. 255. For example, a bill using population criteria tied to a specific census is likely to violate Section 56, Article III, of the Texas Constitution. *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 471-472 *(Tex. 1931)* (bracket, using the 1920 census, is drawn to include only one city "just as clearly" as if the city had been named).

To make matters worse, the Section includes another closed bracket. Its application is limited to "an area that was voluntarily annexed." There is only a set number of areas covered by this bracket, and the combination of using both brackets restricts the law's application solely to areas voluntarily annexed into the City of Dripping Springs ETJ. It would have been no different if the City of Dripping Springs had actually been named in the bill. This is improper. *Id.*

The law only applies to one specific group that falls within the areas voluntarily annexed into the City ETJ. Clearly, this is a special law.

Article III, Section 56 of the Texas Constitution provides in relevant part:

> LOCAL AND SPECIAL LAWS. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law ... [r]egulating the affairs of counties, cities, towns, wards or school districts....
>
> And in all other cases where a general law can be made applicable, no local or special law shall be enacted....(2) regulating the affairs of counties, cities, towns, wards or school districts.

Tex. Const. Art. 3 Sec. 56(2).

While the terms “local law” and “special law” have at times been used interchangeably, a local law is one limited to a specific geographic region of the State, while a special law is limited to a particular class of persons distinguished by some characteristic other than geography. See 1 George D. Braden, The Constitution of the State of Texas: An Annotated and Comparative Analysis 273–277 (1977). Texas Legislative Council Drafting Manual, 89th Legislature, 253-257 (2025).

The purpose of Section 56 of the Texas Constitution is to “prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.” *Miller v. El Paso County,* 136 Tex. 370, 150 S.W.2d 1000, 1001 (1941). In particular, it prevents lawmakers from engaging in the “reprehensible” practice of trading votes for the advancement of personal rather than public interests. *Id.*

A law is not a prohibited local law merely because it applies only in a limited geographical area. We recognize the Legislature's broad authority to make classifications for legislative purposes. *See Miller,* 150 S.W.2d at 1001. However, 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.” *Miller,* 150 S.W.2d at 1001–02. “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.” *Rodriguez v. Gonzales*, 148 Tex. 537, 227 S.W.2d 791, 793 (1950). *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996). Here, the statute includes areas that have agreed to be voluntarily annexed into the City ETJ. That statement is nonsensical as an area cannot voluntarily do anything!

The Texas Legislative Council Drafting Manual has a two-question test to determine if a proposed bill would be an unconstitutional local law:

> **Simplified Approach to Testing Validity**

> As a practical matter, two principal considerations will provide a reasonably accurate guide to determining whether a bracket bill's proposed law will meet the constitutional tests
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> > *(1) Are the classification criteria such that membership in the class may expand or contract over time?*
>
> If the answer is "no," the bracketing scheme is suspect. The greater the number of criteria in the classification scheme, the narrower the class becomes and the more difficult it is for a change in circumstances to bring an excluded entity or area into the class. Therefore, the greater the number of classification criteria, the more constitutionally suspect the bracketing scheme. If the answer is "yes," the bracket itself may be valid, but the second question must also be considered.
>
> > *(2) Are the classification criteria reasonably related to the purpose of the bill?*
>
> If the answer is "no," the bill employing the scheme is likely invalid. If the answer is "yes, “the bill is likely valid. The more difficult it is to identify a connection between the purpose of the bill and the classification criteria used to describe the class, the easier it is to conclude that the criteria are only for the purpose of narrowing the class.

Texas Legislative Council Drafting Manual, Pg 256-57, (2025)

The answer to question #1 is a resounding no! This Section includes not one, but two, closed brackets. The first one is “the increase of 50% in population based on the 2020 census.” The second one is “areas that have been voluntarily annexed into the ETJ.” The membership in either bracket cannot expand or contract over time. The law is unconstitutional, and there is no need to go to question #2. But I will do so anyway.

The answer to question #2 is also a resounding no! What is the rational basis that justifies signaling out areas voluntarily annexed into the ETJ of the City from the rest of the state of Texas that have areas voluntarily annexed into a municipal ETJ? There is none! Hays County abuts Travis, Blanco, Comal, Guadalupe, and Caldwell Counties. There is nothing special about Hays County that justifies this distinction. It isn’t the population; Travis County is larger; it isn’t the topography; both Travis and Blanco counties are very similar in that respect; it isn't the water-quality protection issues; Travis County has the same concerns. It is not the growth concerns; Comal County has been experiencing the same dramatic growth as Hays County.

Neither is there any detectable distinction between areas that have been voluntarily annexed into the City versus other areas annexed by other means. The City did not use a different procedure than any other municipality. The areas annexed into the City ETJ did not agree to any different terms than those of any other areas voluntarily annexed into other ETJs. Simply stated, there is no reasonable basis for the classification made by the law. *Id.* The example only drew upon the

counties adjacent to Hays County. If you compare it to the other 249 counties in Texas, this analysis would further justify the conclusion that there is simply no rational basis for the special law. The law is unconstitutional.

**Additional Considerations**

In the event that the above is not compelling, there are other arguments that will prevail. Including but not limited to, 1) The language used in the Section is nonsensical, thus void. 2) Judicial modification is required if the section is not void. 3) Despite the law, the denial of release of the Property violates the Constitutional guarantee of a republican form of government. 4) The alleged petition for annexation of the Property was void *ab initio*

1) **The language used is nonsensical**

Local Government Code § 42.101. Applicability (attached)

(2) in an **area** that was **voluntarily** annexed into the **extraterritorial jurisdiction** that is located in a county:

**Definitions**:

**Area** is the measure of a region's size on a surface, including the area of shapes or planar lamina; a geographic region.

**voluntarily**, adjective, proceeding from the will or from one's own choice or consent

**Extraterritorial jurisdiction** (ETJ) refers to a government's legal ability to exercise authority beyond its normal territorial boundaries, allowing it to enforce laws and regulations on individual s or entities outside its borders.

1. An **area** cannot do anything. An area cannot jump, run, talk, take action, not take action, volunteer not volunteer, etc! Therefore, an area could not have voluntarily annexed itself!!! It makes no sense. There is no area that can meet this criteria.

2. **Extraterritorial jurisdiction** standing alone does not mean anything. It must be used in reference to a governmental body. It's like saying the house in a county. The statement clearly refers to a house in a county but it does not describe whose house it is!! Everywhere else in the statute it refers to ETJ of a municipality. But this section does not include municipality! There is no area that can meet this criteria.

Therefore, the statute is constitutionally vague and hence unenforceable. As such, the general rule applies and the property at issue must be released from the City ETJ!

2) **Judicial modification is required if the Section is not found to be void.**

Sec. 42.102(a). AUTHORITY TO FILE PETITION FOR RELEASE. (a) **A resident of an** area in a municipality's extraterritorial jurisdiction may file a petition with the municipality in accordance with this subchapter for the area to be released from the extraterritorial jurisdiction. Tex. Loc. Gov't Code § 42.102(a).

Section 42.102 clearly references a person instead of an area. It states, a "resident of an area". If it would have said (a) "an area" [omitting a resident] it would have not made sense either. Therefore, the proper judicial modification of the statute at question should add 1."resident of an area" and 2. "that he or she had previously requested" (if you do not add "that he or she had previously requested" to the sentence then "voluntarily" would still be modifying **area**, which makes no sense) to Section 42.101 and also add 3. "of a municipality" for obvious reasons, so it would read as follows:

(2) *A resident* in an area that *he or she* had *previously requested to be* voluntarily annexed into the extraterritorial jurisdiction *of a municipality* that is located in a county:

The property at issue must be released from the ETJ because the current owner did not request to be voluntarily annexed. Probably the easiest way to handle this is to wait for the 45 days to pass under 42.105(d) so the property is released by operation of law. The current owner of the Property did not request to be voluntarily annexed.

### 3) The inclusion of the Property in the City ETJ violates republican form of government

Of course, if the court were to find that the proper language were to include "he or she or any prior owner of the property in the area" as I am sure the city would argue, then it becomes an issue of proper notice. The resident at issue had no notice that a previous owner had or had not voluntarily agreed to be annexed. It is not designated on any city map of what areas were voluntarily annexed versus annexed by some other manner. There is nothing recorded in the deed records which would indicate a voluntary annexation. The decision of a previous landowner would not act as a deed restriction binding future owners unless it touches and concerns the land and there is proper notice. That clearly has not occurred here.

Also, the whole argument of regulation without representation would come into play if we got this far. The general rule favors release. There is no legislative history would justify such a broad exception without any rational basis for doing so. In fact, the legislative history discusses the purpose of the general law.[3]

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[3] Residents and property owners who are subject to municipal regulatory authority in the extraterritorial jurisdiction of municipalities have no vote or voice in the municipalities that regulate them. Municipalities have too much control over areas outside of municipal corporate boundaries, which can cause property owners in those areas to be subject to regulations and restrictions that may not necessarily be in their best interests. S.B. 2038 seeks to address this issue by providing for the

### 4) The alleged petition for annexation of the Property was void *ab initio*

The petition for voluntary annexation of the Property is not dated. Without a date, there is no jurisdictional fact that can establish that the Property was adjacent to the City ETJ at the time the petition was signed. If the Property was not adjacent to the ETJ at the time the petition was signed, the petition is invalid.

In the 1980s, City officials, friends, family, and others were going door to door asking landowners to sign petitions like the one attached hereto as Exhibit A. After all the petitions were gathered, they were grouped into sections so that the ones closest to the city limits were enacted by ordinance, then the next group would be enacted and so on to create a wave of annexations moving out from the city limits. All the petitions were signed first before any ordinance was passed. That is why none of them are dated. The signed petition needed to be first put together in a jigsaw puzzle manner to create a chain moving outward. When an ordinance is claimed to be void, rather than merely voidable, a direct legal challenge is appropriate, as opposed to a quo warranto proceeding. An annexation ordinance is void *ab initio* if the city lacked the authority to annex the area in the first place. In such cases, a private party may challenge the annexation, but to establish standing, the party must demonstrate a unique burden specific to itself. The Texas Supreme Court has consistently held that annexation ordinances violating express statutory limits on a city's authority are void. A private party may specifically seek declaratory judgment, mandamus, or injunctive relief to challenge an annexation that is void *ab initio*. Muncipal Annexations in Texas, Texas Municipal league pg 44 (2024)

## Conclusion:

Section 42.101(2) of the Local Government Code (S.B. 2038) is an unconstitutional law and thus I respectfully request that the Property be released from the City ETJ.[4] The easiest way to handle this is to wait for the 45 days to pass under Section 42.105(d) of the Local Government Code so the property is released by operation of law.

Respectfully Submitted,

/s/ Robert Avera

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release of an area from a municipality's extraterritorial jurisdiction by petition or election. SB 2038 Legislative History Purpose of Bill

## Appendix

Here are some examples of laws that were struck down as unconstitutional local laws and some laws that were found to be legal so you can further understand the application of the law:

For example, in *County of Cameron v. Wilson,* 160 Tex. 25, 326 S.W.2d 162 (1959), we upheld 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." 326 S.W.2d at 165. We held that "[t]he coastal geography of Texas ***946** affords a reasonable distinction between the island park on the one hand and the mainland park on the other," noting that the "demand for the conveniences usually provided by county parks may be greater along the coast than in many inland areas." *Id.* at 166.

Similarly, in *Robinson v. Hill,* 507 S.W.2d 521 (Tex.1974), the Court upheld a law imposing special bail bond regulations in counties with a population of 150,000 or more. We held that there was a reasonable basis for this classification, concluding that [t]he Legislature in this instance may well have concluded that bail bondsmen in the more populous counties should be regulated and required to secure their obligations because of the high incidence of crime and the difficulties involved in enforcing bond forfeitures ..., but that the same safeguards and procedures were not necessary and would be unduly burdensome in more sparsely populated areas. *Id.* at 525. *See also Smith v. Davis,* 426 S.W.2d 827, 830–32 (Tex.1968) (upholding special ad valorem tax rules for hospital districts in counties with a population greater than 650,000 and operating a teaching hospital).

On the other hand, we have struck down several laws under Section 56 where no reasonable basis supported the classification. For example, in *Miller,* we invalidated 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, as shown by the last preceding Federal census. 150 S.W.2d at 1002. We held that these population brackets, which included only El Paso County, bore no substantial relation to the objects sought to be accomplished by the act. *Maple Run at Austin Mun. Utility Dist. v. Monaghan,* 931 S.W.2d 941, 946 (Tex. 1996).

Similarly, in *City of Fort Worth v. Bobbitt,* 121 Tex. 14, 36 S.W.2d 470, 471–72 (1931), the Court struck down a public works law that applied only in cities with a population between 106,000 and 110,000. The Court held that the bracket advanced no legitimate purpose, but rather was simply a means of singling out one city for special treatment.

Likewise, in *Bexar County v. Tynan,* 128 Tex. 223, 97 S.W.2d 467 (1936), the Court invalidated an act reducing the compensation of certain officers in counties with a population between 290,000 and 310,000, which included only Bexar County. The Court concluded that the attempted classification is unreasonable and arbitrary to such degree as to indicate 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.* at 470. *See also Smith v. Decker,* 158 Tex. 416, 312 S.W.2d 632, 636 (1958) (striking down act imposing special bail bond rules in counties with population between 73,000 and 100,000); *Rodriguez v. Gonzales,* 148 Tex. 537, 227 S.W.2d 791, 793–94 (1950) (invalidating act providing for special procedures for collecting ad valorem taxes applicable only in certain counties along the Mexican border); *Anderson v. Wood,* 137 Tex. 201, 152 S.W.2d 1084, 1087 (1941) (invalidating act authorizing the employment of special traffic officers which excluded counties with a population between 195,000 and 205,000, such exclusion covering only Tarrant County).

The significance of the subject matter and the number of persons affected by the legislation are merely factors, albeit important ones, in determining reasonableness:

Where the operation or enforcement of a statute is confined to a restricted area, the question of whether it deals with a matter of general rather than purely local interest is an important consideration in determining its constitutionality. When a statute grants powers to or imposes duties upon a class of counties, the primary and ultimate test is whether there is a reasonable basis for the classification and whether the law operates equally on all within the class.

*County of Cameron v. Wilson,* 160 Tex. 25, 326 S.W.2d 162, 165 (1959). For example, in ***948** *City of Irving v. Dallas/Fort Worth Int'l Airport Bd.,* 894 S.W.2d 456, 467 (Tex.App.—Fort Worth 1995, no writ), the court upheld legislation giving certain municipal airport authorities the exclusive power to make land-use decisions for property within the geographic boundaries of the airport. Because the statute applied only to airports operated jointly by two cities with population exceeding 400,000, only D/FW Airport qualified. The court upheld this classification as reasonable, however, noting the tremendous statewide importance of the facility and the special zoning conflicts that can arise for a jointly operated airport. It does not follow, however, that any legislation having some incidental effect on the environment must be upheld, regardless of whether there was any legitimate basis for the classification drawn by the Legislature. This would seriously undermine the purpose of Article III, Section 56.

Because section 42.101 a (2) only applies to areas in Hays County which were voluntarily annexed, without any reasonable basis for doing so, it is a special law within the meaning of Section 56.

Because section 43.082 singles out one specific municipal utility district for special treatment without any reasonable basis for doing so, we hold that it is a local law within the meaning of Section 56.

The constitutionality of a statute is a question of law which we review *de novo. State v. Hodges,* 92 S.W.3d 489, 494 (Tex.2002). The City complains that H.B. 585 on its face is a prohibited local law. *See Barshop,* 925 S.W.2d at 627 (to sustain facial challenge, party must establish that statute, by its terms, always operates unconstitutionally). Article III, section 56, of

the Texas Constitution prohibits the legislature from passing any local or special law, except as otherwise provided in the Constitution. Tex. Const. art. III, § 56. Although the terms are often used interchangeably, a "local law" is one limited to a specific geographic region of the State, while a "special law" is limited to a particular class of persons distinguished by a characteristic other than geography. ***89** *Maple Run at Austin Mun. Util. Dist. v. Monaghan,* 931 S.W.2d 941, 945 (Tex.1996). The purpose of Article III, section 56 is to "prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible." *Id.* (quoting *Miller v. El Paso County,* 136 Tex. 370, 150 S.W.2d 1000, 1001 (1941)). A law is not necessarily a prohibited "local law" merely because its scope is limited to a particular geographic area. *Id.* (listing examples of local laws upheld based on reasonable distinctions). The ultimate question under section 56 is whether there is a reasonable basis for the legislature's special classification provided in the law. *Id.* at 947; *see also Rodriguez v. Gonzales,* 148 Tex. 537, 227 S.W.2d 791, 793 (1950) (the ultimate test is whether there is a reasonable basis for the classification and whether the law operates equally on all within the class). After a court determines that a law is a local or special law, it must decide whether the law is otherwise permitted by the Constitution, or whether it is a prohibited local law. *Maple Run,* 931 S.W.2d at 948.

Here, the evidence presented at the hearing showed that the application of H.B. 585 is limited to a specific geographic region located within the City of San Antonio's ETJ. The plain language of the statute states that it applies only to an area north and east of I.H. 10 that falls within the ETJ of a municipality with a population of one million or more that has operated under a particular type of three-year annexation plan for at least 10 years. The main evidence presented at the hearing on this issue was Garza's testimony. Garza testified that San Antonio is the only municipality that meets the statute's criteria. He explained why Houston and El Paso, the cities suggested by the property owners as also falling within H.B. 585, do not qualify. In addition, excerpts from the legislative history were admitted which stated that the bill was "bracketed to San Antonio" only. Clearly, based on the language of the statute itself and the evidence presented at the hearing, H.B. 585 is a local law.

We must next determine whether there is a reasonable basis for the bill's special classification and whether the law is otherwise permitted by the Constitution; if not, it is a prohibited local law under article 56 of the Constitution. *Maple Run,* 931 S.W.2d at 947–48. The property owners argued at the hearing that there was a rational basis for the special classification of the covered areas because the bill gives those areas a right to vote on incorporation; however, no evidence was presented as to why it is reasonable to single out those areas, as opposed to other areas of San Antonio or the State, for special treatment. Finally, no evidence was presented that H.B. 585 is otherwise permitted by the Texas Constitution, and we find no such authorization. *See id.* at 948 (noting that section 59 of the Constitution authorizes the legislature to pass local legislation for conservation purposes).

Based on the record before us, we hold that H.B. 585 singles out a specific geographic area of the City of San Antonio's ETJ for special treatment without any reasonable basis, and without other authority in the Constitution, and is therefore a prohibited local law. *See id.* at 948–49 (holding statute was prohibited local law based on evidence that Maple Run was the only municipal utility district that met statute's criteria, legislature had intended the statute to apply only to that district, and there was no reasonable basis for the special treatment). Because H.B. 585 is an unconstitutional local law, the property owners do not have standing to assert a claim for relief under H.B. 585. *City of San Antonio v. Summerglen Prop. Owners Ass'n, Inc.* 185 S.W. 3d 75, 90 (Tex.App.—San Antonio 2005, pet. denied).