FILED
24-0678
8/30/2024 12:51 PM
tex-91522209
SUPREME COURT OF TEXAS
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August 30, 2024

Via E-filing

Mr. Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 24-0678, *In re Dallas HERO & Cathy Cortina Arvizo*

Dear Mr. Hawthorne:

The State of Texas, by and through Attorney General Ken Paxton, submits this letter brief as amicus curiae in the above matter.[1] Texas does not take a position on a number of the arguments raised in the petition, including whether pre-election relief is appropriate in this instance.[2] Texas agrees, however, that due to the City Council's eleventh-hour additions, the slate of charter amendments presented to Dallas's voters—taken as a whole—runs afoul of this Court's precedent in *In re Durnin*, 619 S.W.3d 250 (Tex. 2021) (orig. proceeding), and *Dacus v. Parker*, 466 S.W.3d 820 (Tex. 2015).

As a home-rule city, Dallas "possess[es] the full power of self government and look[s] to the Legislature not for grants of power, but only for limitations on [its] power," *Dall. Merch.'s & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993)—but only so long as it acts consistent with state law and its charter, *see, e.g.*, *id.*; *Jones v. Turner*, 646 S.W.3d 319, 326 (Tex. 2022). One such state law is that a home-rule city must enforce a charter amendment "if it is approved by a majority of the qualified voters of the municipality who vote at an election held

[1] No fee has been or will be paid for the preparation of this brief.

[2] In particular, the State takes no position regarding whether in the unusual (and disturbing) facts of this case, remedies available post-election would be deemed adequate to address Relators' harm. *See In re Morris*,663 S.W.3d 589, 591-92 (Tex. 2023) (orig. proceeding) (holding that the availability of adequate post-election relief precludes "pre-election judicial meddling").

for that purpose." Tex. Loc. Gov't Code § 9.005(a). Once an amendment receives such a majority, it is binding on the municipality until repealed *even if* it stands in significant tension with other provisions of the charter, and even if those provisions received a larger majority of the vote. *See Hotze v. Turner*, 672 S.W.3d 380, 390 (Tex. 2023). As a result, it is vitally important that any proposed charter amendment be put to the voters in a manner consistent with the Election Code and with this Court's precedent.

As this Court has held for nearly a century, "[t]he ballot-initiative process is 'the exercise by the people of a power reserved to them'" to participate directly in the democratic process—"'not the exercise of a right granted.'" *Id.* at 385 (quoting *Taxpayers' Ass'n of Harris Cnty. v. City of Houston*, 105 S.W.2d 655, 657 (Tex. 1937)). "The system has its historical roots in the people's dissatisfaction with officialdom's refusal to enact laws." *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980) (citing 1 Bryce, *The American Commonwealth* (1st ed. 1888)). In this instance, however, it is being invoked because said officialdom has systematically refused to *enforce* those laws—either directly through non-enforcement policies or indirectly through refusing to provide adequate resources those who risk their lives to protect law and order. Pet.1-2, 9.

To ensure that this process performs its intended function, this Court has developed a standard requiring that ballot language "substantially submit[] the question" the electorate is called to answer "with such definiteness and certainty that the voters are not misled." *Dacus*, 466 S.W.3d at 826 (quoting *Reynolds Land & Cattle Co. v. McCabe*, 12 S.W. 165, 165 (Tex. 1888) (alteration in original). Because "voters are presumed to be familiar with every measure on the ballot," the Amendment need not be printed in full. *Id.* at 825 (citing *R.R. Comm'n v. Sterling Oil & Ref. Co.*, 218 S.W.2d 415, 418 (Tex. 1949)). Nevertheless, to withstand a challenge, a description must not (1) "affirmatively misrepresent the measure's character and purpose or its chief features," or (2) "mislead the voters by omitting certain chief features that reflect its character and purpose." *Id.* at 826.

Texas takes no position on whether election authorities in Dallas County were required to submit to voters the propositions as originally drafted by Dallas HERO given their stated concerns about whether those propositions met the *Dacus*

standard. *See* Pet.9-11. As Texas has explained elsewhere,[3] though City officials typically cannot be enjoined from conducting a ballot election, *Morris*, 663 S.W.3d at 596-97, they also cannot be compelled to place on the ballot an initiative that violates state law, *Glass v. Smith*, 244 S.W.2d 645, 648, 653-54 (Tex. 1951). This Court "presume[s] that public officials act in good faith and without invidious bias in formulating policy," that reconciles those commands. *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 923 (Tex. 2020) (per curiam). Notwithstanding some of the Dallas City Council's later conduct, Texas is unaware of anything regarding the Dallas City Attorney's initial steps that could "overcome that presumption." *Id.* That is particularly true given Dallas HERO's concession (at 3) that the new language to which it "reluctantly agreed" is "more accurate" if "unnecessarily technical and lengthy."

Texas agrees with Dallas HERO, however, that the City Council crossed the *Dacus* line by proposing *additional* charter amendments without explaining that their "character and purpose" was effectively to undo the charter amendments proposed by Dallas HERO. *Dacus*, 466 S.W.3d at 826. As this Court recently emphasized, Texas Local Government Code "[s]ection 9.005 requires a City Council to adopt and give effect to a citizen-initiated amendment that the voters approve by a majority vote." *Hotze*, 672 S.W.3d at 389-90. Even for courts, this creates "a dilemma … when two approved amendments conflict." *Id.* at 390. Courts will harmonize those amendments when they can, and apply the later when they cannot. *Id.* (citing *Gordon v. Lake*, 356 S.W.2d 138, 139 (Tex. 1962) (orig. proceeding); *Conley v. Daughters of the Republic*, 156 S.W. 197, 201 (Tex. 1913)). But general rules of interpretation "offer[] no guidance when the voters approve conflicting amendments simultaneously." *Id.*

Rather than explain any of this to voters, the City's plan appears to be to provide a series of contradictory mandates to be placed on the City Council that even a trained lawyer might have trouble deciphering. For example, Dallas HERO proposed to amend the Charter to compel the City to conduct a resident survey regarding the performance of the City Manager and to make the City Manager's compensation depend in part on the results. Pet.23-24. The City Council added a proposed

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[3] The State of Texas's Objections and Response to Defendants' Plea to the Jurisdiction 19-22, *State of Texas v. City of San Marcos*, No. 24-0267 (207th Dist. Ct., Hays County,Tex. June 26, 2024).

amendment to reserve for itself the question of how to spend City funds—rendering any contrary instructions merely recommendations. *Id.*

The evident intent of these proposals is to render Dallas HERO's proposal nugatory. For example, the petition recites that "after being publicly advised by the City Attorney of her ministerial duty to put the citizen-led charter amendment propositions on the ballot," one councilwoman publicly discussed options to "counteract" the propositions, including "us[ing] City funds" or finding the "partnership to help us with a campaign." *See* Pet.10 (quoting Dallas City Council Briefing (2024, August 7) [3:50:23]). A week later, the Council proposed their own counter-amendments without any public discussion on the record. Pet.12-14.

It is, however, unclear if that will be the effect. After all, "a specific statutory provision prevails over a general one." *TracFone Wireless, Inc. v. Comm'n on State Emergency Comm'cns*, 397 S.W.3d 173, 181 (Tex. 2013). Returning to the example of the City Manager's pay: Under ordinary rules of statutory construction, a specific command regarding the City Manager might prevail over a general command that the City Council retains power over expenditures. *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission."). Or it might not. *E.g.*, *Passamaquoddy Tribe v. Maine*, 75 F.3d 784, 791 (1st Cir. 1996) (reflecting the difficulty in applying this canon when there are multiple axes of comparison).

Either way, it is hard to reconcile the ultimate result with this Court's longstanding rule that ballot language should be written in a way to "identify the amendment and to show its character and purposes, so that the voters will be familiar with the amendment and its purposes when they cast their ballots." *Sterling Oil & Ref. Co.*, 218 S.W.2d at 418. Texas is aware of nothing in the proposed ballot language to inform voters that by voting for the city-proposed amendments, they necessarily render ineffective Dallas HERO's propositions. That result is particularly concerning given that these amendments only arose out of citizens' frustration with the same City Council's refusal to enforce its own laws.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On August 30, 2024, this document was served on Adrien A. Spears, II, lead counsel for Petitioner, via adrien@sierraspears.com, and Tammy L. Palomino, lead counsel for Respondent, via frontdesk@dallas.gov.

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CERTIFICATE OF COMPLIANCE

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/s/ Lanora C. Pettit
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