

No. 23-0767

---

# In the Supreme Court of Texas

SHANA ELLIOTT AND LAWRENCE KALKE

Petitioners,

v.

CITY OF COLLEGE STATION, TEXAS; KARL MOONEY, IN HIS OFFICIAL  
CAPACITY AS MAYOR OF THE CITY OF COLLEGE STATION; AND  
BRYAN WOODS, IN HIS OFFICIAL CAPACITY AS THE CITY MANAGER  
OF THE CITY OF COLLEGE STATION, Respondents.

---

On Petition for Review  
from the Sixth Court of Appeals

---

BRIEF OF THE BEXAR COUNTY EMERGENCY SERVICES DISTRICT  
ASSOCIATION AND THE BEXAR COUNTY EMERGENCY SERVICES  
DISTRICT NO. 5  
*AS AMICUS CURIAE*

THE MARTINEZ DE VARA  
LAW FIRM, PLLC  
PO BOX 377  
Von Ormy, TX 78073  
(210) 622-0323  
(210) 622-4021 Fax

ART MARTINEZ DE VARA  
State Bar No. 24060230  
[martinezdevara@gmail.com](mailto:martinezdevara@gmail.com)  
ADRIAN A. SPEARS II  
State Bar No. 24049318  
[adrian@sierraspears.com](mailto:adrian@sierraspears.com)  
CHARLES H. SIERRA  
State Bar No. 18345300  
[charles@sierraspears.com](mailto:charles@sierraspears.com)

and

SANCHEZ & WILSON, PLLC  
6243 IH-10 West, #1025  
San Antonio, Texas 78201  
(210)222-8899

ROBERT “WOODY” WILSON  
State Bar No. 00794868  
[rww@sanchezwilson.com](mailto:rww@sanchezwilson.com)

**ATTORNEYS FOR THE BEXAR  
COUNTY EMERGENCY SERVICES  
DISTRICT ASSOCIATION AND THE  
BEXAR COUNTY EMERGENCY  
SERVICES DISTRICT NO. 5**

## **IDENTITY OF PARTIES, AMICUS CURIAE, AND COUNSEL**

### **Petitioner**

Shana Elliott and Lawrence Kalke

### **Petitioners' Trial & Appellate Counsel**

Robert Henneke

Chance Weldon

Christian Townsend

TEXAS PUBLIC POLICY

FOUNDATION

901 Congress Avenue

Austin, Tx 78701

### **Respondents**

City of College Station, Texas

Karl Mooney, in his official capacity  
as Mayor of the City of College

Station, Bryan Woods, in his official  
capacity as the City Manager of the  
City of College Station

### **Counsel for Respondent**

Allison S. Killian

John J. Hightower

Olson & Olson, LLP

2727 Allen Parkway, Suite 600

Houston, Tx 77019

Adam C. Falco

College Station City Attorney's Office

PO Box 9960

1101 Texas Avenue

College Station, Tx

**Amicus Curiae**

Bexar County ESD Association &  
Bexar County ESD #5

**Counsel for Amicus Curiae**

THE MARTINEZ DE VARA LAW FIRM,  
PLLC

PO Box 377

Von Ormy, Texas 78073

210-622-0323

210-622-4021 fax

Lead: Adrian A. Spears, II

State Bar No. 24049318

[adrian@sierraspears.com](mailto:adrian@sierraspears.com)

Art Martinez de Vara

State Bar No. 24060230

[martinezdevaralaw@gmail.com](mailto:martinezdevaralaw@gmail.com)

Charles H. Sierra

State Bar No. 18345300

[charles@sierraspears.com](mailto:charles@sierraspears.com)

AND

SANCHEZ & WILSON, PLLC

6243 IH-10 West, #1025

San Antonio, Texas 78201

(210)222-8899

Robert “Woody” Wilson

State Bar No. 00794868

[rww@sanchezwilson.com](mailto:rww@sanchezwilson.com)

## TABLE OF CONTENTS

Identity of Parties, Amicus Curiae, and Counsel .....	iii
Index of Authorities .....	vi
Interest of Amicus Curiae.....	1
Statement of Facts.....	4
Argument .....	4
I. The Cities expansion of the ETJ hinders the ESD ability to provide fire and emergency services in the ETJ .....	5
II. The Sixth Court of Appeals failed to consider how the Texas Uniform Declaratory Judgment Act (UDJA) affects the applicability of the political question doctrine explored in the Opinion .....	11
Conclusion.....	17
Certificate of Compliance .....	19
Certificate of Service.....	19

## INDEX OF AUTHORITIES

### Cases

<i>Am. K-9 Detection Servs., LLC v. Freeman</i> , 556 S.W.3d 246, 253 (Tex. 2018) ...	12,
13, 15	
<i>Baker v. Carr</i> , 369, 217 U.S. 186 (1962). Op. at 27, 29.....	12, 13, 15, 16
citing <i>Nixon v. United States</i> , 506 U.S. 224, 228–29 (1993) .....	13
CITY OF COLL. STATION, TEX., UNIFIED DEV. CODE § 10.3(B) (2023 .....	16
<i>City of El Paso v. Heinrich</i> , 284 S.W.3d 366, 373 (Tex. 2009).....	15
City of Mo. City v. State ex rel. City of Alvin, 123 S.W.3d 606 .....	8
<i>Neeley v. W. Orange-Cove Consol. Ind. Sch. Dist.</i> , 176 S.W.3d 746, 778 (Tex. 2005) .....	12
<i>Tex. Educ. Agency v. Leeper</i> , 893 S.W.2d 432, 446 (Tex.1994).....	14
<i>Von Dolen v. City of San Antonio</i> , 643 S.W.3d 387, 393 (Tex.2022) .....	5, 18
<i>Wichita Falls State Hosp. v. Taylor</i> , 106 S.W.3d 692, 697–698 (Tex.2003) .....	14

### Statutes

Municipal Annexation Act, 58th Leg., R.S., ch. 160, 1963 Tex. Gen. Laws 447 .....	5
SENATE INTERIM COMM. ON ANNEXATION, INTERIM REPORT, 75th Leg. 35 (Sep. 3, 1998) (footnote omitted) .....	8
Tex. Civ. Prac. & Rem. Code § 37.002(b) .....	13

Tex. Civ. Prac. & Rem. Code § 37.004(a) (emphasis added) .....	14
Tex. Civ. Prac. & Rem. Code § 37.006(b) .....	14
Texas Local Government Code § 43.035 .....	6
Texas Local Government Code § 43.0545 .....	7, 8
Texas Local Government Code Chapters 42 and 43.....	5
Texas Local Government Code § 43.051 .....	6
TEX. LOC. GOV'T CODE ANN. §§ 212.002, 212.003(b), (c) .....	16
Tex. Local Gov Code § 775.002 .....	10
Tex. Local Gov't Code § 42.021 .....	6
Tex. Local Government Code §43.054 and §43.056 .....	6
Tex. R. App. P. 11 .....	4
Tex. S.B. 1794, 88 <sup>th</sup> Leg., (2024) .....	1
Texas Local Government Code § 42.022(a) .....	6
Uniform Declaratory Judgment Act § 37.004 & § 37.006(b) .....	passim

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

**INTEREST OF AMICUS CURIAE**

1. The Bexar County Emergency Services District Association (“Association”) is comprised of Emergency Service Districts covering over 615 square miles of Bexar County, Texas. Collectively its members service 470,000 people, protect 138,000 structures, employ over 460 firefighters and currently operate 28 fire stations with 25 planned in the near future. The Association was established in 2022, after several of its fire departments found themselves unable to construct fire stations within the ETJ of San Antonio. The City withheld approval for fire station construction to gain leverage in unrelated litigation. This dire situation led to legislative action (Tex. S.B. 1794, 88<sup>th</sup> Leg., (2024)) that removed this power from the City of San Antonio. The Association supports issues as they pertain to the Emergency Services Districts within Bexar County, Texas that provide fire protection and/or emergency medical services to the community within these districts; to encourage legislation in support of these objectives; to oppose or support the enactment of laws, regulations and ordinances for the best interest of the Emergency Services Districts in Bexar County, Texas; to collect and distribute information among the members of the Association; and, to take any and all action necessary for the advancement and attainment of the above-stated goals.



2. Bexar County Emergency Services District NO. 5 (“ESD5”) was established in 2004 by a vote of the residents in Southwest Bexar County. The purpose of ESD5 is to plan and provide for the delivery of emergency response and fire protection services for the residents of ESD5. ESD5 is a taxing entity that plans, programs, budgets, and implements emergency services and fire protection services. ESD5 area covers the southwest portion of Bexar County with 131 square miles and a population of about 40,000.

3. The Bexar County Emergency Services District Association and Bexar County Emergency Services District No. 5 are collectively referred to throughout this brief as (“ESD”).

4. The issues addressed in this lawsuit are important to the ESD because nearly all of its service areas fall within the extra-territorial jurisdiction (“ETJ”) of San Antonio or one of the 20+ suburban cities in Bexar County. ESDs in Bexar County, and elsewhere throughout the state, are impacted by the regulatory authority granted to cities in their ETJ despite the lack of any direct or indirect representation for the residents within the ETJ. Cities annex aggressively, using development agreements (“non-annexation agreements”), public improvement districts (“PIDS”) and voluntary annexation, all of which expand a City’s extra-territorial jurisdiction casting a regulatory net as far as five miles away, often into neighboring counties,

and almost always unbeknownst to the distant residents who get newly entangled. The ETJ expansions have multiple effects on the ESDs, including a reluctance for ESDs to build needed infrastructure within or near PIDs or areas subject to non-annexation agreements, knowing that these areas will be removed in the future. It also causes financial instability and greatly frustrates long-term financial planning. No other special district in Texas is subject to having its territory unilaterally diminished. In some areas, such as Bexar County, long-term erosion of ESD territory in the ETJ is poised to leave the remaining residents of unincorporated Bexar County with a diminished tax base to properly fund emergency services in the ETJ.

5. In addition to the effects on the ESD, with each expansion more residents come under the regulatory authority of a city despite lacking the ability to vote for the City's governing body. As public entities serving primary areas within ETJs, the ESD hears constantly from the public that they are surprised to learn that they are subject to the regulatory authority of a city where they do not reside.

6. Texans are guaranteed a republican form of government, one where the people are the ultimate source of power, and in which that power is exercised through elected representatives to make laws and regulations to serve their interest. This is not the case for Texans residing within an ETJ in unincorporated areas of

Texas, instead they are subject to regulation without representation, and the ultimate source of that regulatory authority is solely the residents of the City to which they do not belong.

7. The ESD respectfully submits this brief pursuant to Tex. R. App. P. 11 and is responsible for any fee paid or to be paid for preparing this brief, if any.

### **STATEMENT OF FACTS**

8. The facts are properly stated in the Petitioners' Petition for Review.

### **ARGUMENT**

9. Cities continue to annex aggressively using development agreements (“non-annexation agreements”), public improvement districts (“PIDS”) and voluntary annexation, all of which expand a City’s extra-territorial jurisdiction (“ETJ”). With each expansion more residents come under the regulatory authority of a city despite lacking the ability to vote for the City’s governing body and eroding the ESD territory. This process has created issues statewide. In particular, a “Swiss cheese” effect for service areas, disparity in response times for residents who reside near one another, and the erosion of ESD tax bases. No other special district in Texas is subject to having its territory unilaterally diminished. In some areas, such as Bexar County, long-term erosion of ESD territory in the ETJ is poised to leave the remaining residents of unincorporated Bexar County with inadequate tax base to

fund emergency services to their detriment and harm.

10. As such, the ESD are in support of the Petitioners' contention that the republican-form-of-government challenge in this case raises an absolutely *justiciable* question, whether political in nature or not, contrary to the holding of the Sixth Court of Appeals. The ESD further urge the Court to affirm the lower courts' subject matter jurisdiction as immunity from suit was clearly waived by the legislature when it required the City of College Station be made a party to the suit under the Uniform Declaratory Judgment Act § 37.006(b). Finally, the Petitioners should have been allowed an opportunity to replead to cure any jurisdictional defect prior to the Trial Court's dismissal of their suit with prejudice. See *Von Dolen v. City of San Antonio*, 643 S.W.3d 387, 393 (Tex.2022)

**I. The Cities expansion of the ETJ hinders the ESD ability to provide fire and emergency services in the ETJ.**

***a. History of ETJ***

11. In 1963, the legislature enacted the Municipal Annexation Act (Act).<sup>1</sup> The Act provided procedures for annexation and created the concept of extraterritorial jurisdiction (ETJ). The Act is now codified in Chapters 42 and 43 of the Texas Local Government Code. The Municipal Annexation Act created the concept of

---

<sup>1</sup> See Act of April 29, 1963, Municipal Annexation Act, 58th Leg., R.S., ch. 160, 1963 Tex. Gen. Laws 447.

extraterritorial jurisdiction (ETJ). An area to be annexed must be within the City's ETJ under Local Government Code § 43.051. The purpose of creating ETJ was to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities. ETJ is defined as "the unincorporated area that is contiguous to the corporate boundaries of the municipality." Tex. Local Gov't Code § 42.021. The geographical extent of any city's ETJ is contingent upon the number of inhabitants of the city.

12. The only way to extend the City's ETJ is for the City's boundaries to change, i.e., the City must annex land within its ETJ. Texas Local Government Code § 42.022(a) states that when a city annexes an area, the ETJ of the City expands with the annexation consistent with the area around the new municipal boundaries. Put simply, when the City annexes an area, the ETJ extends with the boundary change of the city limits automatically. A city can only extend its ETJ by annexation.

13. However, annexation powers have been abused by municipalities over the years and have resulted in several areas of reform including Tex. Local Government Code §43.054 and §43.056 that prohibited strip annexations of less than 1,000 feet. The most abused was § 43.035 of the Texas Local Government Code which was enacted in 2007 to prohibit cities from annexing areas appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management, unless the

city offers a development agreement to the landowner that would: (1) guarantee the continuation of the extraterritorial status of the area; and (2) authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber. A landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. These agreements are known as Non-Annexation agreements (The terms Non annexation agreements and development agreements are used interchangeably throughout this brief).

14. However, cities quickly started abusing the use of the required development agreements and were actually using the development agreements to accomplish two things: 1) to “leap frog” over and extend the ETJ past “non-desirable” areas and annex the desirable areas; 2) to wrongfully extend the ETJ without having to go through the annexation process and to use development agreements to expand roads to thwart the 1000 foot limitation found in § 43.0545. Such use of the development agreements to accomplish these goals were contrary to the legislative intent to 1) protect rural landowners, and 2) to protect lower income areas that the City considered undesirable.<sup>2</sup>

---

<sup>2</sup>The legislative history for § 43.0545 is as follows: “At the hearing before the Senate Committee on Intergovernmental Relations, Senator Jon Lindsay, co-author of Senate Bill 89, commented “the point that really brings me rather whole-heartedly into this fray” was a

***b. S.B. 6 allows a vote to approve annexation.***

15. Tex. S.B. 6, 85<sup>th</sup> Leg., 1<sup>st</sup> C.S. (2017) (S.B. 6) passed and became effective on December 1, 2017, which was in response to the cities' aggressive approach to annexation and ETJ expansion. The bill categorized cities into a Tier system. "Tier 2" annexations are annexations which require landowner or voter approval of annexations in the State's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process. "Tier 1" annexations are those in the remaining counties and those essentially follow the law before S.B. 6.

***c. City "work around" of S.B. 6 and continued expansion of ETJ.***

16. S.B. 6 was monumental in allowing citizens a voice and to vote whether they want to be annexed into a city. However, the cities have found a "work around" to avoid S.B. 6. Specifically, cities use old non-annexation agreements and public

---

city's abuse of the privilege of developing the ETJ by using strips that extended the ETJ twenty or more miles from the "real city." Hearings on Tex. S.B. 89 Before the Senate Comm. on Intergovernmental Relations, 76th Leg., R.S. (Mar. 10, 1999) (during testimony of James Bertram). Testifying for the bill, Alan Rendl, President of the Spirit of North Harris County Coalition, expressed concern about municipalities "leapfrogging" non-revenue producing areas to get to higher-valued suburbs, with the resulting creation of pockets of low-income, poor infrastructure communities. *Id.* (testimony of Alan Rendl). See *City of Mo. City v. State ex rel. City of Alvin*, 123 S.W.3d 606 (discussing legislative intent of Texas Local Government Code § 43.0545(a)) citing SENATE INTERIM COMM. ON ANNEXATION, INTERIM REPORT, 75th Leg. 35 (Sep. 3, 1998) (footnote omitted) (available from the Legislative Reference Library of Texas: [www.lrl.state.tx.us](http://www.lrl.state.tx.us)).

improvement district (PID) agreements to avoid the voting requirements of S.B. 6. As a result, cities still add thousands of acres of land expanding the ETJ without actually annexing the land until a date long into the future leaving thousands of ETJ residents paying city taxes with no voice or the power to vote in all matters relating to the city that control all aspects of their land.

17. The other method cities use to avoid S. B. 6 and to expand the ETJ and thwart the will of the people living in these areas is by getting consent for voluntary annexation by a prior landowner when a public improvement district (“PID”) is created. The ESD has to provide these residents that live in the PID with fire and emergency services until the PID is dissolved. However, as soon as the PID is dissolved, the City involuntarily annexes the development forcing the residents to be swept into a city that they had no voice, choice and no ability to vote.

18. The abuse of the cities by skirting the requirements of proper annexation and ETJ expansion is nothing more than taxation without representation.

***d. Negative effects on the ESD***

19. The cities by entering into these development agreements to skirt proper ETJ expansion results in thousands of residents in need of public safety, which the cities do not provide. This forces the Counties and the ESDs to step in and step up to provide these essential services to the residents.



20. The main problem these tactics of expanding the ETJ, as it relates to the ESD, is that the ESD have to expand resources, provide infrastructure and obtain funding, including capital improvements, to keep up with the demand for public safety while the City waits in the wings. Specifically, Tex. Local Gov Code § 775.002 allows municipalities to unilaterally take territory from an Emergency Service District upon annexation of the area. This process has created issues statewide, in particular, a “Swiss cheese” effect for service areas, disparity in response times for residents who reside near one another, and the erosion of ESD tax bases. Cities tend to annex areas that are dense and yield high property values. As stated above, the cities are using PIDs and development agreements to annex land involuntarily. After such annexations, ESDs are left with a diminished ability to service their existing obligations.

21. This has multiple effects, including a reluctance for ESDs to build needed infrastructure within or near PIDs or areas subject to non-annexation agreements, knowing that these areas will be removed in the future. It also causes financial instability and greatly frustrates long-term financial planning. This undermines the ESDs bonding capacity and erodes the collateral that bondholders factored in when lending to ESDs. No other special district in Texas is subject to having its territory unilaterally diminished. In some areas, such as Bexar County, long-term erosion of

ESD territory is poised to leave the remaining residents of unincorporated Bexar County with little tax base to fund emergency services.

22. Therefore, the ESD urge the Court to grant the Petition for review.

**II. The Sixth Court of Appeals failed to consider how the Texas Uniform Declaratory Judgment Act (UDJA) affects the applicability of the political question doctrine explored in the Opinion.**

23. The Sixth Court of Appeals failed to consider how the Texas Uniform Declaratory Judgment Act (UDJA) affects the applicability of the political question doctrine explored in the Opinion. Importantly, this doctrine is the sole jurisdictional impediment explored by the lower court to defeat the trial court's subject matter jurisdiction. Op. at 6, n. 3. As argued below, the UDJA was created by the Texas Legislature to allow Texas courts to conduct judicial review of the very question posed in the trial court - being the constitutional validity of several ordinances passed by the City of College Station (City) and the enforceability of same in the City's extraterritorial jurisdiction (ETJ).

24. Based on the lower court's incomplete analysis alone, the Petition for Review should be granted. As argued by the Petitioners, if allowed to stand, the lower court's opinion establishes erroneous precedent that a Texas citizen's challenge to the Texas Constitution presents a non-justiciable "political question" that can only be determined by the legislature. As urged by Petitioners, the lower court ignored

guidance from this Court, requiring that constitutional provisions be given their plain meaning and created a conflict with other Texas Courts. As urged by Petitioners, the lower court's decision will have substantial negative impacts on the citizens and jurisprudence of this state.

25. The precedential value of this case affects the interests of the ESD. The petition for review should be granted.

### **The Lower Court's Analysis**

26. As determined by the Court of Appeals, this Court has never explicitly adopted the entirety of the test announced in *Baker v. Carr*, 369 U.S. 186 (1962). Op. at 27. Instead, this Court "assumed" that the *Baker* factors "serve equally well in defining the separation of powers in the state government under the Texas Constitution." Id. Citing *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 253 (Tex. 2018) (quoting *Neeley v. W. Orange-Cove Consol. Ind. Sch. Dist.*, 176 S.W.3d 746, 778 (Tex. 2005)). As in the instant case, *American K-9* concerned a legal challenge guided by the Texas Constitution. However, unlike in *American K-9* (or any other precedent relied on by the lower court) the case at bar challenges the constitutionality of a Texas city ordinance brought under the Texas Constitution via a judicial determination made under the Texas UDJA.

27. This Court's analysis in *American K-9* concerned only the first two *Baker*

factors: 1) whether there was “a textually demonstrable constitutional commitment of the issue to a coordinate political department” or 2) “a lack of judicially discoverable and manageable standards for resolving it.” *Am. K-9*, 556 S.W.3d at 252 (quoting *Baker*, 369 U.S. at 217). As pointed out by the court of appeals, these factors are interdependent. *Op.* at 29. (citing *Nixon v. United States*, 506 U.S. 224, 228–29 (1993) (“[T]he concept of a textual commitment to a coordinate political department is not completely separate from the concept of a lack of judicially discoverable and manageable standards for resolving it; the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch.”)). It is against this backdrop that the trial court’s jurisdiction should have been explored and analyzed under the UDJA.

### **The Texas Uniform Declaratory Judgment Act**

28. By express mandate of the Texas Legislature, the UDJA is remedial; its purpose is to allow Texas courts to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered. *Tex. Civ. Prac. & Rem. Code* § 37.002(b)

29. In relevant part, § 37.004 of the UDJA confirms, “SUBJECT MATTER OF RELIEF. (a) A person interested under a deed, will, written contract, or other

writings constituting a contract or whose rights, status, or other legal relations are affected by *a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.*” Tex. Civ. Prac. & Rem. Code § 37.004(a) (emphasis added).

30. For claims challenging the validity of ordinances or statutes, the UDJA requires that the relevant governmental entities be made parties, and thereby waives immunity. Tex. Civ. Prac. & Rem. Code § 37.006(b) (“In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.”). This joinder requirement waives governmental immunity. *See Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697–698 (Tex.2003) (“[I]f the Legislature requires that the State be joined in a lawsuit for which immunity would otherwise attach, the Legislature has intentionally waived the State’s sovereign immunity.”); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex.1994) (“The DJA expressly provides that persons may challenge ordinances or statutes, and that governmental entities

must be joined or notified. Governmental entities joined as parties may be bound by a court's declaration on their ordinances or statutes. The Act thus contemplates that governmental entities may be—indeed, must be—joined in suits to construe their legislative pronouncements.”); also see *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009). Sovereign immunity did not deprive the trial court of jurisdiction to hear this case.

31. The question of whether there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department” was answered in the affirmative by the Texas Legislature itself when enacting the UDJA . The Texas Legislature committed the power to determine the validity of ordinances and statutes under the Texas Constitution to the jurisdiction of Texas courts. The first *Baker* factor is satisfied.

32. At the same time, the UDJA and its legislatively defined terms and sections along with over 40 year of guiding case law concerning its implementation eliminate “a lack of judicially discoverable and manageable standards for resolving it.”<sup>3</sup> The second *Baker* factor is also satisfied.

33. To the extent adopted by this Court in *American K-9*, § 37.004 and § 37.006

---

<sup>3</sup> For the same reasons, the balance of the *Baker* factors, if adopted by this Court, would also be satisfied.

of the UDJA satisfy the two *Baker* factors in favor of Petitioners.

### **Practical Effect**

34. Ironically, the same legislature the lower court sought to protect via the political question doctrine had itself already conferred upon the Texas judiciary (through the UDJA) the power to decide the legal questions asked by the Petitioners: whether the challenged City ordinances are constitutionally valid.

35. If not overturned, the lower court's ruling creates an additional absurd result. As explained in the Opinion, the Texas Legislature has limited the City's relevant enforcement mechanism to a suit for injunction. See TEX. LOC. GOV'T CODE ANN. §§ 212.002, 212.003(b), (c) ("A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction." "The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction."). The city too has made a suit for injunctive relief the sole enforcement mechanism for any ordinance violation in the ETJ. See CITY OF COLL. STATION, TEX., UNIFIED DEV. CODE § 10.3(B) (2023) ("Any person violating any provision of this UDO, outside the corporate limits of the City, but within the City's extraterritorial jurisdiction, shall not be considered as committing a misdemeanor, nor shall any fine provided in Section A above be applicable;

however, the City shall have the right to institute an action in a court of competent jurisdiction to enjoin the violation of any provision of this UDO.”).

36. In practical terms, the Petitioners (and anyone residing in the City’s ETJ who is alleged to have offended the subject ordinances) may be sued for injunctive relief by the City in the very trial courts now held to lack jurisdiction to determine the validity of the same ordinances.

37. Moreover, this odd and constitutionally offensive result stems from an opinion issued by the Sixth Court of Appeals. Neither the Petitioners nor Respondent reside within the geographic district of the Sixth Court of Appeals. While the matter was transferred to the Sixth Court of Appeals due to docket equalization efforts, the fact remains the Opinion was rendered by appellate justices who, like the City officials complained of in College Station, Petitioners did not and cannot elect. These developments alone compel this Court to grant the petition for review.

### **CONCLUSION**

38. The Bexar County Emergency Services District Association and the Bexar County Emergency Services District No. 5 join the Petitioners in urging the Court to grant the petition for review. The ESD support Petitioners’ contention that the republican-form-of-government challenge in this case raises an absolutely



*justiciable* question, whether political in nature or not, contrary to the holding of the Sixth Court of Appeals. The ESD further urge the Court to affirm the lower courts' subject matter jurisdiction as immunity from suit was clearly waived by the legislature when it required the City of College Station be made a party to the suit under the UDJA Section 37.006(b). Finally, the Petitioners should have been allowed an opportunity to replead to cure any jurisdictional defect prior to the lower court's dismissal of their suit with prejudice. See *Von Dolen v. City of San Antonio*, 643 S.W.3d 387, 393 (Tex.2022).

Respectfully submitted,

THE MARTINEZ DE VARA  
LAW FIRM, PLLC  
PO BOX 377  
Von Ormy, TX 78073  
(210) 622-0323  
(210) 622-4021 Fax

/s/: Adrian A. Spears, II  
ADRIAN A. SPEARS II  
State Bar No. 24049318  
[adrian@sierraspears.com](mailto:adrian@sierraspears.com)  
ART MARTINEZ DE VARA  
State Bar No. 24060230  
[martinezdevara@gmail.com](mailto:martinezdevara@gmail.com)  
CHARLES H. SIERRA  
State Bar No. 18345300  
[charles@sierraspears.com](mailto:charles@sierraspears.com)

and

SANCHEZ & WILSON, PLLC

6243 IH-10 West, #1025  
San Antonio, Texas 78201  
(210)222-8899

ROBERT “WOODY” WILSON  
State Bar No. 00794868  
[rww@sanchezwilson.com](mailto:rww@sanchezwilson.com)

**ATTORNEYS FOR THE BEXAR  
COUNTY EMERGENCY SERVICES  
DISTRICT ASSOCIATION AND THE  
BEXAR COUNTY EMERGENCY  
SERVICES DISTRICT NO. 5**

### **CERTIFICATE OF COMPLIANCE**

This brief complies with Tex. R. App. P. 9.4(i)(2)-(3) and 11 because this brief consists of 4,034 words, excluding the exempted parts of the brief.

*/s/:Adrian A. Spears II* \_\_\_\_\_  
ADRIAN A. SPEARS, II

### **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document was served upon the below named according to the Texas Rules of Appellate Procedure on August 28, 2024, in the following manner.

#### **Petitioners’ Trial & Appellate Counsel**

Robert Henneke  
Chance Weldon  
Christian Townsend  
TEXAS PUBLIC POLICY FOUNDATION  
901 Congress Avenue  
Austin, Tx 78701

**Counsel for Respondent**

Allison S. Killian

John J. Hightower

Olson & Olson, LLP

2727 Allen Parkway, Suite 600

Houston, Tx 77019

Adam C. Falco

College Station City Attorney's Office

PO Box 9960

1101 Texas Avenue

College Station, Tx

/s/:Adrian A. Spears II

ADRIAN A. SPEARS, II

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below:

Arturo Martinez de Vara on behalf of Adrian Spears

Bar No. 24049318

martinezdevara@gmail.com

Envelope ID: 91421186

Filing Code Description: Amicus Brief

Filing Description: BRIEF OF THE BEXAR COUNTY EMERGENCY SERVICES DISTRICT ASSOCIATION AND THE BEXAR COUNTY EMERGENCY SERVICES DISTRICT NO. 5 AS AMICUS CURIAE

Status as of 8/28/2024 12:55 PM CST

Associated Case Party: Shana Elliott

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	8/28/2024 12:51:14 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	8/28/2024 12:51:14 PM	SENT
Christian Townsend		ctownsend@texaspolicy.com	8/28/2024 12:51:14 PM	SENT
Chance DWeldon		cweldon@texaspolicy.com	8/28/2024 12:51:14 PM	SENT

Associated Case Party: City of College Station, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
John Hightower	9614200	jhightower@olsonllp.com	8/28/2024 12:51:14 PM	SENT
Adam Falco	24055464	afalco@cstx.gov	8/28/2024 12:51:14 PM	SENT
Allison Killian	24099785	akillian@olsonllp.com	8/28/2024 12:51:14 PM	SENT

Associated Case Party: Texas Municipal League

Name	BarNumber	Email	TimestampSubmitted	Status
Jennifer Holloway		jholloway@viadastrayer.com	8/28/2024 12:51:14 PM	SENT
Ramon G.Viada		rayviada@viadastrayer.com	8/28/2024 12:51:14 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Katrina Eash		keash@winston.com	8/28/2024 12:51:14 PM	SENT
Andrea Sager		asager@winston.com	8/28/2024 12:51:14 PM	SENT
Houston Docketing		ecf_houston@winston.com	8/28/2024 12:51:14 PM	SENT

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below:

Arturo Martinez de Vara on behalf of Adrian Spears

Bar No. 24049318

martinezdevara@gmail.com

Envelope ID: 91421186

Filing Code Description: Amicus Brief

Filing Description: BRIEF OF THE BEXAR COUNTY EMERGENCY SERVICES DISTRICT ASSOCIATION AND THE BEXAR COUNTY EMERGENCY SERVICES DISTRICT NO. 5 AS AMICUS CURIAE

Status as of 8/28/2024 12:55 PM CST

#### Case Contacts

Houston Docketing		ecf_houston@winston.com	8/28/2024 12:51:14 PM	SENT
Courtney Rimann		CRimann@winston.com	8/28/2024 12:51:14 PM	SENT

Associated Case Party: Bexar County Emergency Services District Association and the Bexar County Emergency Services District No. 5

Name	BarNumber	Email	TimestampSubmitted	Status
Adrian A. Spears		adrian@aspearslaw.com	8/28/2024 12:51:14 PM	SENT
Charles Sierra		charles@sierraspears.com	8/28/2024 12:51:14 PM	SENT
Arturo IMartinez de Vara		martinezdevara@gmail.com	8/28/2024 12:51:14 PM	SENT
Robert W. Wilson		rww@sanchezwilson.com	8/28/2024 12:51:14 PM	SENT