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SUPREME COURT OF TEXAS
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No. 21-1037

In the Supreme Court of Texas

BRUCE R. HOTZE,

Petitioner,

v.

SYLVESTER TURNER, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF HOUSTON, TEXAS, AND THE CITY OF HOUSTON, TEXAS,

Respondents.

On Appeal from the Fourteenth Court of Appeals,
Harris County, Texas, No.14-19-00959-CV; and
the 333rd Judicial District Court
Harris County, Texas, No. 2014-19507

HOUSTON RESPONDENTS' BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page

APPENDIX *(all admitted Defendants' trial exhibits may be found in volume three of the Reporter's Record which is not page-numbered)*

Exh. A -	Order dated May 2, 2016 [2016CR538]
Exh. B -	File-Stamped Letter, dated and filed June 1. 2021, from the City of Houston and Mayor Turner to the Court of Appeals containing additional authority (with two attachments)
Defs' Exh. 1 ('DX1") -	Election Ordinance - Ordinance No. 2004-887
Defs' Exh. 2 ('DX2") -	Houston City Charter, Article IX, Section 19
Defs' Exh. 4 ('DX4") -	Adoption Ordinance - Ordinance No. 2005-568

INDEX OF AUTHORITIES

Page

Cases

Constitutions and Statutes

Other Authorities

STATEMENT OF THE CASE/PROCEDURAL POSTURE OF THE CASE

Respondents, Houston Mayor Sylvester Turner and the City of Houston (collectively "Houston") are still dissatisfied with Petitioner Bruce Hotze's ("Hotze") purported Statement of the Case because it contains argument and material factual misstatements. *See* Tex.R.App.P. 53.3(b). In particular, Hotze misrepresents what issues he preserved below. *See* Petitioner Bruce R. Hotze's Brief on the Merits in Support of His Petition for Review ("Pet.Br,"), 13, n.12. Hotze's statement regarding the case posture here is substantially correct.

Houston respectfully requests that this Court utilize the following, which it also included in its Response to Petitioner Hotze's Petition for Review ("Pet.Resp."), ix-xii:

Nature of the case: This lawsuit was filed on April 8, 2014. 1CR6. It is one of a series of lawsuits, spanning 18 years, that have addressed the validity and alleged violation of two competing charter amendments, Propositions 1 and 2, both passed in 2004 and both purporting to cap all or part of Houston's annual revenue.[1]

Initial Trial Court Proceedings: Hotze and two other plaintiffs, one of whom is now deceased and the other who was never a Houston

[1] *See* 3RR(DX1 - City of Houston, Tex., *Code of Ordinances*, Ordinance No. 2004-887 (Aug. 26, 2004)) (these and other provisions will be cited as "Code of Ordinances"); *see also* City of Houston, Tex., *Charter*, art. IX, §13, *Pleading Ordinances* (these and other provisions shall be cited as "Charter"). See Pet.Resp., 6-8, for a detailed discussion of prior related litigation.

taxpayer,[2] filed this lawsuit against then-Mayor Annise Parker and the City of Houston, alleging that they had violated a revenue cap, Proposition 2, that was approved by voters in 2004 but that could never be enforced because it was superseded by Proposition 1, a competing, alternative revenue cap approved by a larger number of voters in the same election. In his Second Amended Original Petition and Request for Declaratory Judgment and Injunction Relief ("Second Amended Petition"), 1CR40, Hotze sought, among other things, declaratory and injunctive relief that 1) Houston had passed annual budgets since 2006 (through 2016) that exceeded the permissible revenue caps contained in both Proposition 1 and 2; and 2) compliance with the refund and audit provisions of Proposition 2. 1CR55-56.

More than six years ago, former trial judge Tad Halbach of the 333d Judicial District Court denied without explanation Houston's plea to the jurisdiction and motion for summary judgment on the merits. *See* 2016CR538 (Order, dated May 2, 2016), attached as Exhibit "A");[3] 2016CR28 (Defendants' Plea to the Jurisdiction and, Subject to the Plea, Motion for Summary Judgment with Exhibits, filed March 16, 2015). Houston filed an interlocutory appeal.

[2] Although he pursued claims against Houston for many years, former-plaintiff Carroll Robinson finally admitted at trial that he was not a Houston taxpayer who had standing to assert the claims raised here. The Court dismissed his claims. 1RR105.

[3] This order, the plea/motion for summary judgment, and some other documents relating to the 2016 motions and appeal were not included in the Clerk's Record. Houston, however, filed a motion to supplement the record with the 2016 record on appeal which was already numbered. Consequently, such supplemental items are referred to by that record's year and the page number. In addition, some items specifically referred to here are attached as exhibits.

***Prior Appellate Court Proceedings*:** On appeal to the Fourteenth Court of Appeals, Justices Donovan, Busby, and Brown, Houston argued that the trial court erred in denying its plea for two reasons: the plaintiffs lacked standing, and Houston's immunity had not been waived. *See Turner v. Robinson*, Brief of Appellants, 2016 WL 3799880, at *xii-xiii (Tex.App.—Houston [14th Dist.] July 5, 2016). The Court of Appeals affirmed the trial court's order in *Turner v. Robinson*, 534 S.W.3d 115, 127 (Tex.App.—Houston [14th Dist.] 2017, pet. denied). Although it decided the jurisdictional issues, the Court expressly declined to decide the merits of Hotze's claims. *Id.*,130, n.6 (Busby, J. concurring). After this Court denied review, the case was remanded to the trial court. *Id.,*127.

Subsequent Trial Court Proceedings: After remand, Houston filed a Supplemental, Traditional Motion for Summary Judgment, and Motion for Reconsideration of the Court's May 2, 2016, Order Denying Defendants' Plea to the Jurisdiction and Motion for Summary Judgment ("Supplemental Motion"). 1CR58. Hotze also filed a motion for summary judgment in which he sought a declaration that Propositions 1 and 2 are not inconsistent, or in the alternative, that Proposition 1 and Article IX, Section 19 of the City Charter are unconstitutional. 2CR917-18. In the further alternative, Hotze asked the trial court to reconcile the requirements of Propositions 1 and 2. 2CR917;960. He also sought a finding that Proposition 1's primacy provision was not included in the text of Proposition 1 submitted to the voters. 2CR960. *None of these purported declarations was sought in Hotze's last live petition.* Houston specifically pleaded that Propositions 1 and 2 were inconsistent and could *not* be reconciled; therefore, Proposition 2 was void and unenforceable. 3CR2027-28.

Although Judge Daryl Moore granted Houston's Plea as to Proposition 2's invalidity, he held only that Proposition 1 itself rendered Proposition 2 unenforceable. *See* 3CR2031/Pet.Appx.E (Order Denying Partial Summary Judgment and Granting Plea to Jurisdiction in Part, dated Sept. 16, 2019). The trial court declared, however, that Proposition 1's language, including its primacy provision, did not trigger Houston's Charter provision governing inconsistent charter amendments, art. IX, §19, and that Propositions 1 and 2 were not substantively inconsistent even though Hotze had never specially pleaded for such relief. *Id.* The Court denied Houston's motion as to Proposition 1 and required trial on the merits. *Id.*

After a bench trial, during which the trial court excluded all testimony and exhibits of Robert Lemer, on which Hotze nevertheless relies here, the trial court found that Houston had complied with Proposition 1 at all relevant times. It entered Final Judgment for Defendants/ Respondents on October 29, 2019. 3CR2032 (Pet.Appx.D). All parties appealed. 3CR2038;2040.

Appellate Court Proceedings:

The Court of Appeals, through Justices Hassan and Zimmerer, affirmed the judgment of the trial court; therefore, it did not reach the issues raised in Houston's cross-appeal which addressed the irreconcilable conflict between Propositions 1 and 2. *Hotze v. Turner*, 634 S.W.3d 508 (Tex.App.—Houston [14th Dist.] 2021, pet. filed) ("*Opin.*"). Justice Jewell dissented. *Id.,*518. Hotze filed a Petition for Review ("Pet.Rev.").

STATEMENT REGARDING JURISDICTION

Tellingly, Petitioner Hotze omitted from his Petition for Review any Statement of Jurisdiction and did not discuss jurisdiction in that Petition. *See* Tex.R.App.P. 53.2(e). Houston objected to its omission. Pet.Resp.xii Subject to Houston's objection to Hotze's adding a jurisdictional statement now, Houston states as follows:

1. This Court has no jurisdiction to hear claims that were required to be but were not brought in a timely-filed election contest or limited pre-election proceedings. Hotze's claims boil down to Houston's alleged failures to comply with Tex. Loc. Gov't Code §§9.004 and 9.005. Under Texas law, duties under these provisions are part of the election process and can only be brought in a timely-filed election contest or limited kinds of pre-election lawsuits. *Blum v. Lanier*, 997 S.W.2d 259, 262–63 (Tex.1999); *Dickson v. Strickland*, 114 Tex. 176, 265 S.W. 1012, 1018 (1924) ("[a]n election in this state is not a single event, but a process, and that the entire process is subject to contest"); *see also Grant v. Ammerman*, 437 S.W.2d 547, 548–49 (Tex.1969) ("canvassing of votes [after the election] is a part of the election procedure and is necessary to the determination of the result"). The same conclusion was reached in prior, related litigation. *See Hotze v. White*, No. 01-08-00016-CV, 2010 WL 1493115, at *5 (Tex.App.—Houston [1st Dist.] Apr. 15, 2010, pet. denied) ("these claims [§9.004] are

challenges to the election process itself…"); *In re Robinson*, 175 S.W.3d 824, 827–28 (Tex.App.—Houston [1st Dist.] 2005, no pet.). This lawsuit is not an election contest and no relevant pre-election challenges were filed here. Consequently, this Court has no jurisdiction to grant or hear Hotze's Petition.

2. This Court has no jurisdiction because there are no remaining reviewable issues that are important to the State's jurisprudence. While a dissent ordinarily suggests that there may be important issues warranting review, the dissenter here apparently did not realize that Hotze had neither pleaded nor argued at any stage of the proceedings the §9.005(b) issue, which is actually the issue on which the dissenter focused. Alternatively, the dissent apparently did not consider that Hotze had waived or was barred from raising §9.005(a) in this civil lawsuit. Apparently recognizing that the dissent's §9.005(b) issue had not been previously pleaded or argued in his lawsuit, Hotze appropriately omitted any mention of it in his Petition for Review and did not even include the provision in his Table of Authorities in that document. Even Hotze concedes, therefore, that the dissent's 9.005(b) issue cannot justify review here.

The only remaining, un-waived, preserved "issue" is the reading of Proposition 2, the contents of which Hotze simply misrepresents as a "spending" cap. Mere duplicity cannot create grounds for review. The provision's plain

language shows it to be a revenue cap clearly encompassed by the primacy clause. Its "interpretation" is unimportant to the State's jurisprudence.

RESTATEMENT OF THE ISSUES PRESENTED

Houston is *still* dissatisfied with Hotze's purported Issues Presented. *See* Tex.R.App.P. 53.3(c). It contains argument, misstatements, and misrepresentations of law and facts, and does not meet the conciseness requirements of Tex.R.App.P. 53.2(f). The Court should utilize the following:

1. Whether Hotze waived any challenge to the adoption and enforceability of Proposition 1's primacy clause, including his constitutional challenges under Texas Local Government Code Sections 9.004 and 9.005, through Article XI, Section 5, because he failed to raise such challenges in a timely-filed election contest?

2. Whether Proposition 2's plain language places it squarely within the primacy clause's ambit, if Hotze has not waived that argument too?

3. Whether Hotze and the dissent raise an otherwise barred election issue to find purported preemption of Proposition 1's primacy clause where Hotze never pleaded or argued that issue, does not include it in his Petition for Review, and where Texas courts have already addressed and resolved such issues in cases like *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex.1980), and *In re Roof*, 130 S.W.3d 414, 418 (Tex.App.—Houston [14th Dist.] 2004, no pet.)?

4. **[PREVIOUSLY LISTED AS AN UNBRIEFED ISSUE]** Whether Propositions 1 and 2 irreconcilably conflict and thus trigger conflict provisions in Houston's City Charter?[4]

5. **[PREVIOUSLY LISTED AS AN UNBRIEFED ISSUE]** Whether the relief Hotze still seeks or was awarded is legally available to him or was even sought in his pleadings?

6. **[PREVIOUSLY LISTED AS AN UNBRIEFED ISSUE]** Whether Hotze is entitled to any fees for work in *different* lawsuits, and for which did not satisfy UDJA requirements, when he did not try to establish that such fees were equitable and just and cannot establish that such fees were reasonable and necessary, and when he did not and cannot prevail on any pleaded issue?

[4] This issue was not reached by the Court of Appeals and, should this Court take review and rule against Houston on the issues the majority and dissent addressed, Houston asks that it be remanded to the Court of Appeals for resolution by that court. *See* Tex R.App.P. 53.4.

STATEMENT OF FACTS

Houston is *still* dissatisfied with Hotze's Statement of Facts. Tex.R.App.P. 53.3(b). It still contains improper argument, legal conclusions, inappropriate personal invective, and misstates and/or misrepresents facts. Worse, it contains purported summary judgment evidence that was specifically excluded by the trial court. *See infra* Section V.C.1; Pet.Br.22, n.3 (referencing Hotze's reliance upon the [excluded] Robert Lemer affidavit). The majority's factual description is also partially incorrect because it misstates that Hotze pleaded for relief that was not included in his Second Amended Petition. *Compare Opin*.511-12 *with* 1CR55-56. Instead, he received relief on summary judgment for which he never pleaded. 3CR2031 (Pet.Appx.E).

Houston previously asked this Court to utilize instead the substitute factual statement Houston included in its Petition Response at 1-8. Houston adopts that statement here and renews its request.

SUMMARY OF ARGUMENT

In 2004, Houston voters were presented with two competing charter amendments, Propositions 1 and 2, "[t]o provide the voters of the City with the opportunity to consider *alternative* [single] *unified plans* for limiting increases in the sources of City revenue…" 3RR(DX1,2) (emphasis supplied). More voters

chose Proposition 1. Proposition 1, however, contained a primacy clause that provided that, if both proposals passed, only the one receiving more votes would be enforced. Consequently, Houston has not enforced Proposition 2, despite its approval.

Petitioner Hotze has never accepted the people's choice and still seeks to enforce Proposition 2 without explaining how dual enforcement of competing revenue caps would even be practicable. Because his remaining claims were either waived long ago, are barred by Hotze's stances in other, related lawsuits, or are meritless, this Court should deny review, or. if review is granted, affirm the majority's decision enforcing the primacy clause.

Hotze's process attacks on Proposition 1's primacy clause and its adoption were waived because he failed to raise them in a timely-filed election contest. Hotze also successfully obtained *Election Code* jurisdiction over similar challenges in related litigation and is, therefore, also judicially estopped from arguing that he could raise such issues here. Yet, even if he could assert them, Hotze's primacy clause challenges lack merit because Hotze never demonstrated, as a matter of law, that the primacy clause was improperly adopted, that whether the primacy clause was inside or outside quotation marks in election documents determines its validity, or that implementation language

like the primacy clause need ever be included in a charter or code. Hotze's challenges thus present no issue for review.

Second, notwithstanding Hotze's misrepresentation of its provisions, and his failure to preserve the issue, Proposition 2's *plain language* demonstrates that it falls squarely within the primacy clause's ambit, obviating the need for review.

Third, review is also unwarranted because Hotze and the dissent raise only barred election claims that are not cognizable under the Texas Constitution. As discussed above, Hotze's challenges to the primacy clause under Chapter 9 are jurisdictionally barred and/or he is judicially estopped from asserting them. In particular, Hotze is barred from arguing that compliance with Texas Local Government Code Section 9.005 determines a charter provision's enforceability. Alternatively, the Texas Constitution Article XI, Section 5's conflict provision does not even apply to the processes Chapter 9 outlines. Finally, although Hotze attempts to raise the issue here, he never preserved any question concerning the constitutionality of Article IX, Section 19 of Houston's Charter.

Even if Hotze could assert the Chapter 9 arguments on which he and the dissent rely, Hotze never established *and could never establish* the claimed conflicts between the primacy clause and Sections 9.004(d) and (e), or 9.005(a). This is largely because Hotze and the dissent ignore Texas law in misinterpreting and

overstating the scope of §9.005(a) and the existence of any conflict with the primacy clause.

Fourth and alternatively, if this Court somehow rules against Houston on the primacy clause, then it should remand to the Court of Appeals or, alternatively, hold that Propositions 1 and 2 are irreconcilably inconsistent and, therefore, that Proposition 2 is unenforceable under Article IX, Section 19 because 1) Hotze did nor specially plead for a contrary declaration; 2) Proposition 2 has been partially repealed by subsequent charter amendments and cannot be enforced as written; therefore, the trial court's conclusion regarding its consistency with Proposition 1 was fatally flawed; 3) Propositions 1 and 2 *are* substantively inconsistent and cannot be reconciled; and 4) Hotze's contrary argument consists almost entirely of *excluded* evidence. In particular, Houston demonstrated, as a matter of law, that Proposition 1's explicit rejection of further limits on City Council's taxing authority and its voter override provisions irreconcilably directly conflict with Proposition 2's, and so do the propositions' compliance provisions, and very different revenue limitations. Moreover, Propositions 1 and 2 were expressly presented to voters as mutually exclusive. This includes through the primacy clause itself, as well as through ordinance language and widely-disseminated voter information.

Finally and alternatively, Hotze is not entitled to fees or the declarations sought because he has not complied with the statutory requirements to obtain either and seeks to obtain fees generated *in different lawsuits.*

Because Hotze's claims are waived, barred, demonstrably baseless, or were never preserved, review should be denied.

ARGUMENT

I. HOTZE'S IMPROPER COLLATERAL ATTACKS ON PROPOSITION 1'S PRIMACY CLAUSE ARE WAIVED, BARRED, AND BASELESS [RESPONSE TO ISSUE I]

The primacy clause states that enforcement of any part of Proposition 2 is foreclosed because Proposition 1 received more votes. 3RR (DX1). It states:

> If another proposition for a Charter amendment relating to limitations on increases in City revenues is approved at the same election at which this proposition is also approved, and if this proposition received the higher number of favorable votes, then this proposition shall prevail and the other shall not become effective.

Id. The clause neither demands nor tolerates any attempt to harmonize the two charter amendments. One proposition simply cannot stand in the presence of the other. That is what the trial court properly found. 3CR2031 (Exh. A).

Nevertheless, Hotze attacks the primacy clause's validity by improperly asserting arguments that are jurisdictionally barred by Hotze's failure to pursue them in a timely-filed election contest, arguments Hotze is judicially estopped from making because he successfully pursued the *opposite* position in other,

related lawsuits, and/or arguments he never preserved. Even if Hotze could properly advance these arguments, *none* would have merit.

A. Hotze Waived His Factually Inaccurate, Collateral Attacks on the Primacy Clause by Failing to Raise Them in a Timely-Filed Election Contest

Hotze's principal attacks on the primacy clause are that Houstonians failed properly to adopt it. *See* Pet.Br.30-33; Pet.Rev.23-25; 1CR50-51. In particular, Hotze complains that the clause was not included in quotation marks in the various ordinances setting Proposition 1 for election and adopting the election's results and was not published in the newspaper prior to the election.[5]

It is well-established that challenges to the *process* by which charter amendments are adopted, like those Hotze asserts here, may be raised only *in a timely-filed election contest*. "[A]n election contest includes any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation." *Hotze v. White*, 2010 WL 1493115, *4 (quoting *Rossano v. Townsend*, 9 S.W.3d 357, 362 (Tex.App.—Houston [14th Dist.] 1999, no pet.)); *see Dickson*, 265 S.W. at 1018 ("[a]n election in this state is not a single

[5] Pet.Br.26, 32-33. Hotze cannot have it both ways. Hotze includes subject headings for these sections of his brief that assert that the primacy clause was *omitted* from every important election document and Proposition 1 itself. *See* Pet.Br.3 (Issue I). As demonstrated below, that assertion is contradicted by Hotze's more detailed arguments that assert that the primacy clause actually appeared in relevant election documents but was included only outside quotation marks.

event, but a process, and that the entire process is subject to contest"). This process includes the canvassing of votes. *See Grant*, 437 S.W.2d at 549 ("'It [canvassing] is an integral part of the election itself, without which the election is a vain proceeding …'") (quoting *City of Dallas v. Dall. Consol. Elec. St. Ry. Co.*, 105 Tex. 337, 342, 148 S.W. 292, 294 (1912)).

Three Houston courts have *already* reached the same conclusion *in this and prior, related litigation Hotze brought over Propositions 1 and 2*. One Houston court, *twelve years ago*, specifically held that an election contest is the "only statutory mechanism" to "challenge the process by which the City presented the propositions [amendments to Proposition 1] to the electorate." *White*, 2010 WL 1493115, *4 (quoted in *Opin.*516); *In re Robinson*, 175 S.W.3d at 827 ("[a]n election being the entire process by which amendments to the municipal code are voted on, enacted, and made effective"). Consequently, Hotze knew *more than a decade ago* that his current process challenges to the primacy clause could only have been raised in a timely election contest and were, therefore, barred by waiver. *See Blum*, 997 S.W.2d at 262-63.

Worse, Hotze has *still* never challenged Texas law that holds that publication challenges, like those Hotze makes here, must be raised in election contests. Texas Local Government Code §9.004(c) sets forth publication requirements. In *White*, 2010 WL 1493115, *4, the Houston Court held that

Hotze's challenges to amendments partially repealing Proposition 1 [and 2] should have been raised in an election contest. It explained: "In other words, these claims challenge the process by which the City presented the propositions to the electorate as illegal and invalid. As such, the only statutory mechanism to bring such challenges is a timely filed election contest." *Id*. (citing *Blum*, 997 S.W.2d at 262–63); *see State v. City Comm'n of San Angelo*, 101 S.W.2d 360, 362 (Tex.Civ.App.—Austin 1937, no writ) (publication issues "[c]onstitute mere irregularities, which could have been determined by a contest of the election, and cannot be raised in collateral proceedings"). Nothing in the Election Code ties publication to validity. Consequently, Hotze's publications arguments were not just waived; they are baseless too.

Texas Election Code §233.006 provides, in part, that contestants must file election contests *within thirty days* of the date the official election results are determined, here June 2005, at the latest. It is undisputed that Hotze failed to file timely any election contest challenging the primacy clause's adoption. Hotze thus waived *all* of his collateral attacks upon the process by which the primacy clause was adopted—including alleged failures to publish it or surround it with quotation marks. *See* Pet.Rev.24-25; Pet.Br.30-34.

In fact, Hotze has *still* never responded to arguments Houston first raised in its supplemental pleas in the trial court, 1CR446-48, that, because Hotze did

not file his challenges to the primacy clause within 30 days of the 2004 election results, under *Dacus*, 383 S.W.3d at 568, and *Bertrand v. Holland*, No. 01-16-00946-CV, 2018 WL 1720742, at *2 (Tex. App.—Houston [1st Dist.] Apr. 10, 2018, pet. denied), any objections that he had to the alleged omission of language referencing it on the November 2004 ballot or otherwise to the process of its enactment have also been waived. *See* Tex. Elec. Code §§221.002, 233.006(a)-(b).

When, as here, it is undisputed that no timely election contest was filed that addressed the election process issues Hotze attempts to raise here, *it is conclusively presumed that the election as held and the result as declared are valid and binding*. *See* Tex. Elec. Code §§221.005, 233.006; *Arredondo v. City of Dallas*, 79 S.W.3d 657 (Tex. App.—Dallas 2002, pet. denied). The primacy clause, should, therefore, be considered valid and binding as a matter of law. ***Houston, therefore, still objects to any consideration of Hotze's primacy clause challenges here and includes the following arguments only subject to that objection.***

B. Alternatively, Hotze is Judicially Estopped from Challenging the Primacy Clause Under Tex. Loc. Gov't Code §9.005 *Except in an Election Contest* Because of Contrary Arguments Hotze Successfully Made in Prior, Related Litigation

Hotze successfully argued in related litigation concerning Propositions 1 and 2 that any challenges based upon the primacy clause's alleged conflicts with

the election processes, outlined in the Texas Local Government Code, §§9.005(a) and (b), were part of the election process and, therefore, jurisdiction over such challenges is found *only in the Election Code*.

In *In re Robinson*, 175 S.W.3d at 828, Hotze successfully sought a writ of mandamus requiring Houston to place Proposition 2 in its charter, irrespective of whether it would be effective,[6] under Local Government Code §9.005, *based on jurisdiction under Texas Election Code §273.061,* which covers only matters involving the election process. *Id.*,830-31. Having successfully argued that Texas courts had jurisdiction over his §9.005 challenges under the Election Code, Hotze is judicially estopped from arguing that he may collaterally attack this aspect of the election process in this civil lawsuit. *See Ferguson v. Bldg. Materials Corp. of Am.,* 295 S.W.3d 642, 643 (Tex.2009); *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex.2008) ("the doctrine of judicial estoppel 'precludes a party from adopting a position inconsistent with one that it maintained successfully in an earlier proceeding'").

Consequently, if not otherwise barred from raising any §§9.004 and 9.005 challenges to the primacy clause here, *see supra* Section I.A & B, Hotze is also

[6] The Court expressly refused to decide the primacy clause's validity in that litigation. *See id.,*832 ("we express no opinion as to whether propositions 1 and 2 are inconsistent or whether the language of the proposition 1 and the City Charter requires that proposition 2 be declared invalid").

judicially estopped from challenging Proposition 1 as violative of §9.005 in anything but an election contest. ***Houston, therefore, still objects on this ground to any substantive consideration of such arguments in this appeal and includes the following arguments only alternatively and subject to this objection.***

C. Alternatively, Hotze Should Not Be Permitted to Invent New, Unsupported Legal Doctrines to Give His Primacy Clause Challenges the Legal Merit They Lack

A party challenging the validity or constitutionality of a statute has the burden of proof to establish its invalidity. *See, e.g.*, *Spring Branch Indep. Sch. Dist. v. Stamos*, 695 S.W.2d 556, 558 (Tex.1985). This is especially true when that party moves for summary judgment. Consequently, it was up to Hotze to show that the primacy clause is invalid as a matter of law. The trial court and majority properly found that he had not done so.

By contrast, Houston demonstrated that virtually every piece of proposed legislation that amends existing law includes enforceable instructional material, like the primacy clause here, concerning how the new legislation is to be incorporated and implemented in existing codes, like Houston's Charter. Consequently, even if this Court allows Hotze to *argue* that Houston improperly enacted the primacy clause [it should not do so], Hotze has never produced a shred of legal authority to support that argument.

For example, as discussed below, *see infra* Section I.C.2, Hotze has never provided any legal support for the notion that merely placing the primacy clause *outside quotation marks,* but in all relevant election records, somehow renders such language unenforceable. Not surprisingly, the majority found that Hotze is simply wrong about this aspect of Texas law. *See Opin*.513-14.

Similarly, under Texas law, Houston's alleged failure to publish the primacy clause along with the rest of Proposition 1's text would not be fatal to its validity *even if Hotze had properly asserted that alleged defect in an election contest*. Instead, laws requiring notice of general election are usually held to be directory only. *See Lasater v. Middleton*, 390 S.W.2d 8, 9 (Tex.Civ.App.—El Paso 1965, writ ref'd n.r.e.) (citing *Christy v. Williams*, 292 S.W.2d 348 (Tex.Civ.App.—Galveston 1956), *error dism'd*, 156 Tex. 555, 298 S.W.2d 565 (Tex.1957). Moreover, Texas Local Government Code §9.004(c) requires only that "a substantial copy of the proposed amendment" be published. It says nothing about instructional language or other language of implementation. Consequently, in addition to his lawsuit's fatal jurisdictional problems, Hotze's arguments simply have no merit.

1. Hotze Never Demonstrated, as a Matter of Law, that the Primacy Clause Was Improperly Adopted

Although he does his best to confuse the record, Hotze ultimately concedes that the primacy clause was included in full in the official language of Proposition 1 set forth in Houston's Election Ordinance, Ordinance No. 2004-887, dated August 26, 2004, which set Propositions 1, 2 and 3 for election. 3RR(DX1, 2-4,16); Tex. Loc. Gov't Code §9.004(b) (requiring election ordinance); Pet.Br.32. Hotze likewise concedes that the primacy clause was also included in full as part of Proposition 1 in the official Adoption Ordinance, Ordinance No. 2005-568, dated May 4, 2005, declaring the election results and adopting Proposition 1. 3RR(DX4); Tex. Loc. Gov't Code §9.005(b) (requiring adoption ordinance); Pet.Br.3. These are the only two ordinances required by the Local Government Code. Under Texas election law, the primacy clause was thus an integral part of the "proposed amendment," because it was included in *both* the Election and Adoption Ordinances required by Chapter 9 that presented the proposition to voters and adopted it as part of Houston's Charter.[7]

Because Houston thus complied with all relevant election statutes and its own Charter in setting for election, adoption, and enactment Proposition 1,

[7] 3RR(DX1,4; DX4,2,5). Hotze cannot rely on an earlier ordinance that merely tabulated votes cast at the election, Ordinance No. 2004-1168, dated November 9, 2004, as the ordinance this Court should consider as setting forth the definitive text of Proposition 1. Under the Local Government Code, §§9.004(b) and 9.005(b), it is not.

including its primacy clause, under well-settled Texas election law, *Houston voters are presumed to have been aware of the primacy provision and thus the fact that only one of the two alternative charter amendments would ever be implemented*. *See Brown v. Blum*, 9 S.W.3d 840, 847-48 (Tex.App.—Houston [14th Dist.] 1999, pet. dism'd w.o.j.), *disapproved of on other grounds by Dacus v. Parker*, 466 S.W.3d 820 (Tex.2015) ("a legal presumption arises that voters are familiar with the contents of the actual proposed measure summarized on the ballot"); *see also Dacus v. Parker*, 466 S.W.3d at 825) ("it is true that voters are presumed to be familiar with every measure on the ballot"). This is true even if the challenged language was not included elsewhere. *Opin*.513-14; 3CR2031 (Sept. 16, 2019 order; Pet.Appx.E).

Houstonians are further presumed *to have relied on the primacy provision when voting in the November 2004 election*. *See Black v. Strength*, 112 Tex. 188, 193, 246 S.W. 79, 80-81 (1922). This Court explained that such directives are part of the proposition voted upon and control more general language found in orders or ordinances calling the election.

Hotze has never produced contrary authority or otherwise challenged these long-standing presumptions. He cannot do so in a reply brief.

2. Alternatively, Hotze *Still* Has Never Demonstrated, as a Matter of Law, That Whether the Primacy Clause Was Inside or Outside Quotation Marks in Relevant Election Documents Determines Its Validity

Hotze tries to argue that, as enacted, the primacy clause *effectively* does not exist in Proposition 1 and cannot be enforced because it was not set in quotation marks in relevant election documents.

Hotze has never offered anything but *ipse dixit* to support his argument that whether the primacy clause is inside or outside quotations affects the clause's validity.

Hotze has never denied that virtually every written Texas law, *including Proposition 2*, *see* 3RR(DX1, 4), includes instructional or implementation language, *outside quotation marks*, indicating where new provisions are to be placed in codes, and what needs to be removed *and is thus rendered ineffective by the new enactment*. None of these implementing directives ever ends up in the codes themselves *because there is no need for the language to be there once the new or amended statute is implemented*. As Houston explained in its letter to the Court of Appeals, attaching additional authority,[8] the U.S. House of Representative's

[8] *See* Exhibit B. Attachment 1 to Exh. B is a true and correct copy of excerpts from the U.S House of Representatives Office of Legislative Counsel's Guide to Legislative Drafting. This Court is asked to take judicial notice of its relevant contents as those conventions it uses in drafting legislation. It is available at https://legcounsel.house.gov/holc-guide-legislative-drafting.

Office of Legislative Counsel's Guide contains brief descriptions of common drafting conventions used in drafting proposed laws. On pages 6 and 7, it describes in detail the convention of including materials inside and outside of quotation marks. It makes clear that this distinction *does not* reflect what does and does not become governing law, the principal argument Hotze makes for invalidating the primacy clause here. Instead, the distinction quotation marks make is only between what text will actually be added or substituted into existing statutes, and freestanding material, which includes amendatory instructions, that will not actually appear in the final codes. The Guide makes clear, however, that *both* are important parts of the proposed legislation and ultimately, the new law. In fact, the Guide indicates that this convention is so common that it is incorporated into the software the U.S. House uses. *Id.,*7.

Attachment 2 to Houston's letter [Exh. B] is a similar guide published by the Texas Legislative Counsel, jointly chaired by the Texas' Lieutenant Governor and Speaker of the House.[9] At page 7, the document refers to recitals that explain how text is to be incorporated into existing laws. It makes clear that instructional material, like the primacy clause, which is not included within

[9] *See supra* note 8. A true and correct copy of Attachment 2 to Exh. B is attached and available at http://www.tlc.texas.gov/lege_ref. This Court is asked to take judicial notice of its contents as those conventions it uses in drafting legislation.

quotation marks or in the ultimate text in law books, is, nevertheless, a critical, *enforceable* part of a new law. Hotze has never identified *any* Texas law that supports a contrary rule. It is too late for him to try to do so in a reply brief.

3. Alternatively, the Primacy Clause Constitutes Implementation Language Only

At best, the primacy clause addresses only *the effect of a voter's vote* and how, if at all, the 2004 charter amendments were to be implemented. Hotze does not dispute that language of *implementation*, such as the primacy clause, is not considered a chief feature of charter amendments that must be included on ballots.[10] Consequently, Houston had no obligation to include such language on the November 2004 *ballot* and its omission does nothing to undermine the primacy clause's validity. *See Dacus*, 466 S.W.3d at 823; *Bertrand,* 2018 WL 1720742, *2 (Tex.App.—Houston [1st Dist.] Apr. 10, 2018, pet. denied).

As discussed above, *see supra* Section I.C, the primacy clause, a one-time directive as to how the 2004 charter amendments were to be implemented, was never intended to be included in the Charter permanently and need not have been included to be enforceable under Texas law. As demonstrated, nothing in Texas law requires that the primacy clause's inclusion.

[10] *See Dacus v. Parker*, 383 S.W.3d at 568 (quoting *White*, 2010 WL 1493115, at *5). This reaffirmation of Texas law was not addressed or overturned by this Court in *Dacus*.

This is important because Hotze again misrepresents the record in arguing that Houston's former counsel, Scott Atlas, somehow admitted that the primacy clause was not any part of Proposition 1. He did not. Pet.Br.27, n.8; Pet.Rev.20, n.8; 1CR646-47; 2CR1598-99. Instead, Atlas merely made the immaterial point that such implementing language was *not included in the text* that was ultimately included in the Charter.

Review of Hotze's barred and/or unsupported challenges to the primacy clause are not important to the State's jurisprudence and should be denied.

II. EVEN IF THE ARGUMENT HAD MERIT, HOTZE WAIVED ANY ARGUMENT THAT PROPOSITION 2 IS NOT ENCOMPASSED BY THE PRIMACY CLAUSE BY FAILING TO PRESERVE IT [RESPONSE TO ISSUE II]

A. Hotze Waived Any Argument that Proposition 1 Does Not Apply to Proposition 2

In the trial court, Hotze did not dispute that Proposition 2 falls squarely within the primacy clause that expressly encompasses "charter amendment[s] relating to limitations of City revenues." 1CR435; *see* Tex. Gov't Code §311.011(a) (in interpreting statutes, "words and phrases shall be read in context and construed according to the rules of grammar and common usage"). Hotze did not include this argument in his own motion for summary judgment. When *Houston* argued that Proposition 2 was governed by the primacy clause in its motion, Hotze never challenged that argument. Indeed, Houston pointed out in

its reply that Hotze had not challenged the fact that Proposition 2 fell within the primacy clause. 1CR435. Although Houston also raised waiver of this issue in the Court of Appeals, *see* Response Brief of Appellees ("Appellee's Br."), 25, Hotze has *still* never demonstrated that he ever preserved this issue. Consequently, he has waived his ability to raise the argument now and Houston objects to its consideration here. Subject to that objection, Houston states as follows:

B. Alternatively, Hotze's Argument, That Proposition 1 Does Not Apply to Proposition 2, Fundamentally Misrepresents the Plain Language of Proposition 2, Which Clearly Falls Under the Primacy Clause

Even a cursory examination of Proposition 2 reveals that it overwhelmingly supports the trial court's ruling that the primacy clause applies to bar its enforcement.[11]

The primacy clause applies to charter amendments "relating to limitations on increases in City revenues." 3RR (DX1,4). Proposition 2's was entitled "Relating to Limits on All Combined City Revenues." *Id.*; *see* Tex. Gov't Code §311.023(7) (courts may consider titles and captions in construing a statute).

[11] *See Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015) ("we seek that intent first and foremost in the plain meaning of the text") (citing *City of Lorena v. BMTP Holdings, L.P.*, 409 S.W.3d 634, 641 (Tex.2013)); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex.2010).

Section 7 is similarly entitled "Limits on All City Revenues." Section 7, Subsection 1 is also entitled "Limitation on Growth in Revenues" and states that "City Council shall not… increase the City's 'Combined Revenues'… for any fiscal year in an amount great than the City's Combined Revenues for the immediately preceding fiscal year" subject to a permissible growth formula. 3RR (DX1,5) (emphasis supplied). Proposition 2 continues: "if the actual Combined Revenues in anyone [sic] year result in any amount less than the amount allowed under this Subsection One, then such reduced amount shall become that year's Combined Revenues based amount for the following year's computation." *Id.* The operative language of Proposition 2 thus expressly limits the amount of combined *revenue* Houston can *collect* annually without voter approval.

Proposition 2 also includes language allowing "emergency revenue increases" in the event of national disaster declarations. *Id.* Proposition 2's Subsection Five also discusses how "the allowable Combined Revenues" for the first year of implementation will be determined. *Id.*,6.

By contrast, and despite Hotze's misrepresentation,[12] Proposition 2 has no operative provisions that limit *spending.*

[12] *See, e.g.*, Pet.Rev.21 ("[P]roposition 2 does not limit any increases in City revenues whatsoever"); Pet.Br.19 (same). This Court should also take judicial notice that, at oral argument in *Perez v. Turner,* No. 20-0382, on March 22, Hotze's counsel, Andy Taylor, assured this Court that Proposition 2 was a *revenue cap* since a *spending cap* would not qualify for the refunds sought in *Perez*.

Proposition 2's plain text, therefore, demonstrates as a matter of law that it is a "charter amendment relating to limitations of City revenues," encompassed by the primacy clause. 1CR435. The plain language of both propositions is, therefore, dispositive of the question of whether Proposition 2 falls under Proposition 1's primacy clause. Because a straight-forward reading of local charter provisions, correctly applied, has no importance to the State's jurisprudence, review is unwarranted.

III. REVIEW IS *STILL* UNWARRANTED BECAUSE HOTZE AND THE DISSENT RAISE ONLY *BARRED* ELECTION CLAIMS THAT ARE NOT COGNIZABLE UNDER THE TEXAS CONSTITUTION [RESPONSE TO ISSUE NO. III]

Hotze now argues that the primacy clause violates or is in conflict with Texas Local Government Code §§9.004(d), (e), and 9.005(a); therefore, the primacy clause is preempted by them under Article XI, Section 5 of the Texas Constitution. *See* Pet.Br.35-38; *Opin.*518 (Jewell, J., dissenting) ("*Diss.Opin.*") (claiming preemption by §9.005(a) only). These arguments would be baseless if Hotze were not barred from asserting them. Consequently, they raise no issue warranting review.

A. Hotze's Challenges to the Primacy Clause Under Chapter 9 Are Jurisdictionally Barred and/or He is Judicially Estopped from Asserting Them

Hotze now alleges that Proposition 1 violates §9.004(d) allegedly because it contained more than one subject. Pet.Br.35. His claim under §9.004(e) is that the *ballot language* for Proposition 1 allegedly was not prepared so that voters could approve one amendment without having to vote against the other. *Id.*,37-38. Finally, his claim under §9.005(a) addresses the process by which Proposition 2 was allegedly adopted. This Court does not have jurisdiction to hear any of these arguments.

1. Sections 9.004(d) and (e)

As discussed in Section I.A, *supra*, if Hotze had any problem with the process by which the primacy clause was approved, or, in particular, its compliance with Chapter 9, his sole remedy was to raise such challenges in a timely-filed election contest or *pre*-election challenge. He failed to do either. Consequently, Hotze cannot collaterally attack such matters now. *See, e.g.*, *City Comm'n of San Angelo*, 101 S.W.2d at 362.

In particular, §§9.004(d) and (e) address how referendum issues are presented to voters. As discussed above, Hotze waived any challenges to ballot language or proposition structure, such as allegations that a charter amendment addresses more than one subject or requires contingent voting, because they

could be addressed only in a timely election contest.[13] Indeed, as also discussed above, Hotze already tried to litigate §9.004(d) issues in related civil litigation but his claims were held barred. In *Hotze v. White*, 2010 WL 1493115, at *4, the Houston Court held that Hotze's challenges under §9.004(d) were challenges to the election process and, therefore, could only be raised under the Election Code. *Id.* (citing *Blum v. Lanier*, 997 S.W.2d at 262-63); *Dacus*, 383 S.W.3d at 569 (9.004(d) challenge brought in election contest); *City of Galena Park v. Ponder*, 503 S.W.3d 625, 634 (Tex.App.—Houston [14th Dist.] 2016, no pet.) (a pre-election challenge to proposition structure under §9.004(d)).

For the same reasons, the majority here properly ruled that Hotze's §9.004(e) claims concerning ballot language and structure amounted to little more than "[a] *ballot-preparation* challenge; as such, it was required to be raised in an election contest." *Opin*.516 (emphasis supplied). Consequently, Hotze's §§9.004(d) and 9.004(e) claims are barred by waiver and provide no ground for review.

[13] Although he filed no election contest here, Hotze now improperly tries to collaterally attack Proposition 1 under Chapter 9 [of the Texas Local Government Code] *using election contest cases or those brought under the Election Code. See Ladd v. Yett*, 273 S.W. 1006, 1011-12. (Tex. Civ.App.—Austin 1925, writ dism'd w.o.j.); *In re Robinson*, 175 S.W.3d at 828 (mandamus brought under Tex. Elec. Code §273.061) (cited at Pet.Br.36). These cases, therefore, support only *Houston's* argument that Hotze's election-related arguments were waived.

2. Section 9.005(a)

Hotze *successfully* argued in related litigation that issues concerning §9.005 were part of the election process. Consequently, not only is his purported §9.005(a) claim barred by waiver for Hotze's failure to pursue it under the Election Code, Hotze is also judicially estopped from even arguing that it is not waived here. As discussed above, in *In re Robinson*, 175 S.W.3d at 828, Hotze successfully sought mandamus requiring Houston to place Proposition 2 in its charter, under Local Government Code §9.005(a), *based on jurisdiction under Texas Election Code §273.061,* which authorizes appellate courts to issue writs of mandamus to compel the performance of any duty imposed by law in connection *with holding an election or a political party convention*. *Id.,*827, 830-31. Having based jurisdiction in that case on the Election Code, Hotze is judicially estopped from arguing that he may collaterally attack Proposition 1 under §9.005(a) in this civil lawsuit. *See Ferguson*, 295 S.W.3d at 643 (outlining judicial estoppel elements). Indeed, *Hotze has yet to produce any case law that holds that he may bring his Chapter 9 challenges in a civil lawsuit*.

Worse, Hotze successfully argued in *In re Robinson* that Houston could comply with *both* §§9.005(a) and (b), irrespective of whether the primacy clause is enforceable or not. Indeed, the Court ordered Houston to comply with §9.005 without ruling on whether the primacy clause barred enforcement of Proposition

2. *Id.*,830-32. Instead, it explained: "the task of determining whether an amendment that has been adopted by majority vote violates the city charter or other existing law belongs, as it must in a three-branch government, to the courts (the judiciary)—not the City Council (the legislative branch) or the Mayor (the executive branch)." *Id.*,831–32; *see Coalson*, 610 S.W.2d at 747; *In re Roof*, 130 S.W.3d at 418 ("such questions concerning the validity of proposed charter amendments *are properly litigated later*") (emphasis supplied). Having successfully argued in that case that Houston could comply with §9.005 whether the primacy clause is valid or not, Hotze is *now judicially estopped from arguing that Houston cannot comply with one in the face of the other. Ferguson,* 295 S.W.3d at 643.

For these reasons, Hotze's claims under Chapter 9 are barred. ***Consequently, Houston still objects to any consideration of Hotze's challenges under Chapter 9 or Article XI, Section 5 here. Subject to Houston's objection to this Court's hearing any of Hotze's claims brought under Chapter 9 or the Texas Constitution here, Houston states as follows***:

B. Alternatively, Texas Constitution Article XI, Section 5's Conflict Provision *Does Not* Apply to the *Process* By Which Local Laws are Adopted

By its plain language, Texas Constitution, Article XI, Section 5 applies only to conflicts between state statutes and the language of charter amendments

and ordinances themselves, not to the *process* by which they were enacted. It provides, in relevant part: "*no charter or any ordinance* passed under said charter *shall contain any provision* inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, §5 (emphasis supplied). To the extent Hotze's challenges to the primacy clause involve only alleged violations of that *process* and not the plain language of the charter amendment itself,[14] the Texas Constitution's home-rule provision, art. XI, §5, does not apply to them.[15]

Consequently, Hotze's purported preemption claim are baseless without any inquiry into their alleged substance. Review is, therefore, unwarranted. Yet, there are other, equally formidable barriers to Hotze's Chapter 9 claims that preclude review here.

[14] Hotze cannot have it both ways. He cannot claim that the primacy clause is not part of Proposition 1, as codified, but assert conflicts with its language under Article XI, Section 5, which applies only to text.

[15] Hotze's pleadings do not challenge the Election Ordinance that placed Proposition 1 on the ballot. *See* 3RR (DX1). In addition, Hotze never pleaded any conflicts with §9.004. *Compare* Pet.Rev.27-28 *with* 1CR50-51. Houston has objected to Hotze's raising this unpleaded argument. *See, e.g.*, Appellee's Resp., 24; Resp.Pet.Rev.17. *Houston renews that objection here*.

C. Alternatively, Hotze and the Dissent's Chapter 9 Arguments Lack Merit

1. Hotze Never Established, as a Matter of Law, a Conflict Between the Primacy Clause and Sections 9.004(d) or (e)

Hotze still claims that "Section 9.004 has been violated" without explaining how Proposition 1 or the primacy clause alone somehow contained more than one *subject*, allegedly in violation of §9.004(d). Pet.Br.35. Instead, he complains only about what was allegedly *omitted* from Proposition 1. *Id.* Because Hotze has never even adequately articulated an alleged violation of §9.004(d), let alone established one as a matter of law, Hotze's purported §9.004(d) claim, if any, presents no ground for review here.

Hotze's claims under §9.004(e), which Hotze never pleaded, are equally specious and were never established as a matter of law. Nothing in the text of §9.004 expressly prohibits an election petition from proposing more than one amendment or alternative amendments. *See, e.g.*, *Ponder*, 503 S.W.3d at 634. Nothing in the language of either proposition requires a vote against another provision.

Moreover, the premise of Hotze's argument—that the structure of Propositions 1 and 2 forced voters to vote against Proposition 1 and for Proposition 2 or vice versa—is fatally flawed. As the canvassing ordinance makes clear, while 280,598 people [out of 567,331 who voted] voted in favor of

Proposition 1, only 187,169 voted against Proposition 2. 2CR1004-05. Similarly, while 242,697 people voted for Proposition 2, only 158,152 voted against Proposition 1. *Id.* Instead, it appears that the vote simply split between the propositions as contemplated by the presentation of the two propositions as self-contained and in reliance upon the primacy clause that made clear only one proposition would be enforced.

2. Hotze Never Established, as a Matter of Law, Any Conflict Between the Primacy Clause and Section 9.005(a)

a. Hotze Is Barred From Arguing that Compliance With Section 9.005 Determines a Charter Provision's Enforceability

This Court cannot even address any alleged conflict between §9.005(a) and the primacy clause because Hotze is barred from asserting such claims.

Proposition 2 appears in Houston's Charter for one reason: because Hotze himself successfully went to court to obtain a conditional writ of mandamus to force Houston to place it in its Charter, despite the primacy clause. *See In re Robinson*, 175 S.W.3d at 832. Despite the Court's ordering Houston to comply with Chapters 9.005 and 9.007, *the Court made no decision and issued no order as to whether Proposition 2 was valid or would ever actually be enforced*. *See id.; supra* note 6. The Houston Court, like this Court in *Coalson*, 610 S.W.2d at 747, and the court in *In re Roof*, 130 S.W.3d at 418, clearly understood that merely adopting

a charter provision under §9.005(a) *did not* mean that the provision would be enforceable thereafter despite any constitutional or other legal impediment. Instead, ultimate enforceability is the province of the judiciary. *In re Robinson*, 175 S.W.3d at 831–32,

Having successfully argued in *In re Robinson* that Houston could comply with §9.005 whether Proposition 2 or the primacy clause were valid or not, Hotze is *now judicially estopped from arguing that Houston cannot comply with one in the face of the other. Ferguson,* 295 S.W.3d at 643.

Second, the dissent and Hotze improperly conflate Sections 9.005(a) and (b), arguing that the former renders a charter provision *effective*. As demonstrated below, by its plain language, §9.005(a), the only provision in the section Hotze or the dissent invoked, only addresses Proposition 2's *adoption*. Section 9.005(b) addresses when charter amendment become effective. While the dissent acknowledges the substantive difference between §§9.005(a) and (b) and that §9.005(a) does not address effectiveness, *Diss.Opin.*,525, n.12, it nevertheless inaccurately concludes: "I would therefore hold that the poison pill provision violates §*9.005(a) because it purports to deny effectiveness* to a charter amendment…" *Id.*,526 (emphasis supplied). The dissent would so hold even though it concedes *that there is no actual conflict between the primacy clause and Texas Local Government Code §9.005(a).* As the whole panel below agreed, that provision does not address

when or if a provision actually becomes effective, let alone enforceable. *Opin*.517-18; *Diss.Opin*.525, n.12.

Hotze has never pleaded or invoked §9.005(b) in this lawsuit. This Court cannot review a claim improperly added by a dissenter that Hotze never pleaded, included in his summary judgment motion, raised or argued in the court of appeals, *and did not include in his petition for review* simply because the dissenter chooses to misidentify the provision of the statute on which he relies. Consequently, review should be denied. ***Houston, therefore, objects to any consideration of Hotze's arguments under §9.005(a). Subject to that objection, Houston states as follows:***

b. Alternatively, Both Hotze and the Dissent Ignore Texas Law in Misinterpreting and Overstating the Scope of Section 9.005(a)

In cases like *Coalson*, 610 S.W.2d at 747, *In re Roof*, 130 S.W.3d at 418, and *In re Robinson*, 175 S.W.3d at 831–32, Texas appellate courts have repeatedly held that, while mayors and city councils must comply with statutory requirements in adding citizen-driven charter amendments in their charters, courts ultimately determine the validity and enforceability of such laws. These courts, therefore, correctly recognized that compliance with Chapter 9 and a ballot proposition's ultimate enforceability are *two different things*. For example,

a preempted local charter provision may well have been adopted in full compliance with Chapter 9 but is nevertheless unenforceable. Similarly, an ordinance that is unconstitutional may have been properly adopted under §9.005(a), but it also cannot be enforced. In fact, Houston itself is challenging *in this Court* a recently-adopted charter provision that it believes is preempted, unconstitutional, and thus unenforceable. *See City of Houston, et al., v. Houston Professional Fire Fighters Association, et al.*, No. 21-0755, in the Supreme Court of Texas.

The Court in *In re Robinson* never purported to decide Proposition 2's validity or enforceability because, whether either §§9.005(a) or (b) render an approved charter amendment *effective*, neither ensures its validity or *enforceability*. Were that not the case, no citizen-initiated charter amendment could ever be held preempted or unconstitutional, and Houston would have to enforce even diametrically conflicting charter provisions despite Article IX, Sections 18 and 19's conflict resolution provisions.

The ability to enact primacy provisions to resolve conflicts is essential because cities have no ability to challenge citizen-driven charter amendments prior to their passage. *See Coalson*, 610 S.W.2d at 747. So long as they gather the required signatures, proposed measures can reinstitute slavery or outlaw women's suffrage within city borders. Consequently, whether charter provisions

have been rendered effective and whether they are enforceable are necessarily two separate inquiries ultimately decided by different branches of government. *See id.*

The courts in *In re Robinson* and *White* recognized that critical distinction. The dissent and Hotze did not. By wrongly conflating Sections 9.005(a) and (b), and confusing effective dates with ultimate enforceability, the dissent and Hotze would essentially outlaw primacy provisions in Texas laws even though Texas law is rife with them, the U.S. and Texas Constitutions contain them, and other states use them routinely for initiatives because they provide voters with more choices. *See, e.g.*, Tex. Loc. Gov't Code §211.013(a); K.K. DuVivier, *By Going Wrong All Things Come Right: Using Alternate Initiatives to Improve Citizen Lawmaking*, 63 U. Cinn. L. Rev. 1185 (1995); *see supra* Section IV & note 20. Consequently, this Court would err in adopting Hotze's and the dissent's arguments here.

Worse, Hotze and the dissent would rewrite and vastly expand §9.005(a) to require automatic enforcement of anything voters passed, irrespective of its constitutionality or unenforceability, and, in the process, subject cities to constitutional or other lawsuits by *opponents* of the new law. In particular, it would subject Houston to lawsuits for thwarting the people's will by *failing to*

enforce the primacy clause. Chapter 9 was not intended to place cities in such an untenable position.

As the whole panel below agreed, §9.005(a) does *not* address when or if a provision actually *becomes effective,* let alone enforceable. *Opin*.517-18; *Diss.Opin*.525, n.12. Hotze, therefore, failed to demonstrate, as a matter of law, any actual conflict between §9.005(a), which determines when Proposition 2 was adopted, and the primacy clause, which determines whether Proposition 2 is enforceable. Because there is no conflict, the majority was correct in enforcing the primacy clause.

IV. THE CONSTITUTIONALITY OF ARTICLE IX, SECTION 19 OF HOUSTON'S CHARTER IS *NOT* PROPERLY BEFORE THIS COURT AND THUS PROVIDES NO GROUNDS FOR REVIEW [RESPONSE TO ISSUE V]

Under Texas Rule of Appellate Procedure 55.2, "the petitioner's brief on the merits must be confined to the issues or point stated in the petition for review …" Hotze's Petition for Review, however, *does not* include any reference to Article IX, Section 19 in either his Table of Authorities or text and, in particular, *does not* contain any issue or point concerning whether that charter provision is constitutional or whether Propositions 1 and 2 are sufficiently consistent so as not to have triggered its conflict provisions. On that basis alone, this Court should deny review.

Worse, Hotze abandoned the question of Article XI, Section 19's constitutionality in the trial court in response to *Houston's* motion for summary judgment, *see, e.g.*, 1CR450, and obviously did not appeal the trial court's ruling in Hotze's favor on the conflict issue in *Houston's* motion. *See* Bruce R. Hotze's Appellant's Brief ("Appellant's Br."), 15, n.2 (citing 3CR2031-2032). This constitutional issue, therefore, provides no ground for review ***and Houston objects to its consideration here***. Should this Court somehow decide to hear this issue, however, Houston would ask for an opportunity to submit supplemental briefing on this issue.

Subject to this objection, Houston would state only that Hotze has never identified any case law, *anywhere*, in which such a clause has been found unconstitutional or was otherwise held invalid.

By contrast, both the Texas and U.S. Constitutions contain primacy clauses. At least twelve states constitutions also have primacy clauses, virtually identical to those in Proposition 1 and the Houston Charter, that govern which of competing, alternative initiatives on the same subject prevails if both are approved.[16] Contrary to Hotze's misrepresentation, other Texas cities' charters

[16] *See, e.g.*, Ariz. Const. art. IV, pt. 1, §1(12); Ark. Const. art. V, §1 ("if conflicting measures initiated or referred to the people shall be approved by a majority of the votes severally cast for and against the same at the same election, the one receiving the highest number of affirmative votes shall become law"); Cal. Const. art. II, §10(b) ("if provisions of two or more measures approved at the same election conflict, the provisions of the measure receiving the

also contain primacy provisions similar to the one in Houston's charter. *See, e.g.*, City of San Antonio, Tex., *Charter*, art. IV, §43 ("if conflicting ordinances are approved by the electors at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict"). *None has been challenged or found unconstitutional on the grounds Hotze alleges here.*

V. ALTERNATIVELY, PROPOSITIONS 1 AND 2 ARE IRRECONCILABLY INCONSISTENT AND, THEREFORE, PROPOSITION 2 IS UNENFORCEABLE UNDER ARTICLE IX, SECTION 19 [PREVIOUSLY UNBRIEFED ISSUE 4; RESPONSE TO ISSUES IV AND VI]

Houston raised the question of whether Propositions 1 and 2 conflict in *its* supplemental plea/motion for summary judgment. 1CR117. Although Houston cross-appealed on this issue when the trial court denied this aspect of its motion, 3CR2041, the majority did not address this issue because of its decision to enforce the primacy clause. In its *Response* to Hotze's Petition for Review, Houston properly included the question of the conflicts between Propositions 1 and 2 and their triggering of Article XI, Section 19 as an unbriefed issue, pursuant to Texas Rule of Appellate Procedure 53.2(i). In addition, Houston

highest number of affirmative votes shall prevail"); Mass. Const. amend. art. XLVIII, init., pt. VI; Mich. Const. art. II, §9; Mo. Const. art. III, §51; Neb. Const. art. III, §2; Nev. Const. art. XIX, §2, para. 3; N.D. Const. art. III, §8; Wash. Const. art. II, §1(a); Idaho Code §34-1811 (1963); Utah Code Ann. §20A-7-211 (Supp. 1994). Twenty four states, like Texas, do not permit state initiatives; therefore, no such constitutional provision is necessary or warranted.

stated as follows: "this issue was not reached by the Court of Appeals and, should this Court take review and rule against Houston on the issues the majority and dissent addressed, Houston asks that it be remanded to the Court of Appeals for resolution by that court." Pet.Resp.xvi, n.4.

Because of its highly contingent nature, the interests of justice require that the parties be given the opportunity to fully flesh out this issue in the Court of Appeals if this Court decides against Houston on the primacy clause. ***Subject to Houston's request for remand and only if this Court finds against Houston on the validity of Proposition 1, Houston states as follows, in the alternative***:

A. The Trial Court Improperly Granted to Hotze Declaratory Relief for Which He Never Specially Pleaded [Previously Unbriefed Issue 4; Response to Issue IV]

Because the trial court found that the primacy clause barred enforcement of Proposition 2, there was no need for it also to find that the two propositions were *not* inconsistent and that Proposition 1's language *did not* trigger Houston's Charter's conflict resolution provision, Article XI, Section 19. *See* 3CR2031 (Exh. A). These findings were apparently made in response to Hotze's filing a motion for summary judgment in which he sought a declaration that Propositions 1 and 2 are not inconsistent, or in the alternative, that Proposition 1 did not trigger Article IX, Section 19 of the City Charter. I1CR917-18. *None of*

these purported declarations, however, was included in Hotze's last live petition's prayer for relief or any special prayer. 2CR1561-62 (Houston's challenge to the absence of special pleadings).

This omission is critical because both requests for injunctions and declarations require special prayers for such relief. *See Gause v. Gause*, 430 S.W.2d 409, 413 (Tex.Civ.App.—Austin 1968, no writ) (injunctions require special prayer); *Rembert v. Wood*, 16 Tex.Civ.App. 468, 471, 41 S.W. 525, 526 (1897, writ ref'd) (declaration of rights requires special prayer). Consequently, oblique references in the statement of facts or elsewhere are insufficient. That is, at best, all Hotze offers in his brief.

Moreover, Hotze's claim that Houston should have specially excepted to *pleadings* when Houston's objection was the fact that relief sought in Hotze's *motion for summary judgment* was not support by those pleadings is nonsensical. Flaws in motions for summary judgment are not flaws in pleadings.

Because there were no special prayers for the declaratory relief Hotze attempts to support here, and there were not even any references to these declarations in Hotze's pleading's prayer for relief (which listed other requested declarations), the trial court's summary judgment findings and declaration for Hotze on these issues were not supported by the pleadings and the declarations concerning Propositions 1's and 2's consistency were, therefore, improper. *See*

Tex R.Civ.P. 166a(c). This Court, therefore, can reject them without any need to address the substantive issue Houston raised or to grant review.

B. Alternatively, Proposition 2 Has Been Partially Repealed by Subsequent Charter Amendments and Cannot Be Enforced as Written; Therefore, the Trial Court's Conclusion Regarding Its Consistency with Proposition 1 Was Fatally Flawed

To evaluate whether the two propositions are inconsistent, the trial should first have been clear what remains of Proposition 2 and what it would still restrict.

Hotze has never disputed that, since 2004, Houston voters have passed numerous charter amendments that have removed from any applicable revenue cap significant sources of Houston's revenue, including enterprise funds (the source of funding for the airport, for example) and drainage fees (a significant source of revenue for drainage infrastructure projects), Propositions G (3RR - DX3) and A (3RR - DX5), respectively, and allowed Houston to raise additional revenues for police, fire, and emergency medical services in excess of any purported charter revenue limitations. *See* Proposition H (3RR-DX3). All of these provisions effectively repealed any inconsistent provision of Proposition 2

that purported to limit collection of such revenue.[17] Consequently, Houston *could not enforce* Proposition 2 as it was initially written. Instead, Proposition 2's primary limitation now, if any, would be on *ad valorem* tax revenue;[18] therefore, Propositions 1 and 2 can most properly be read *now* as two conflicting kinds of restrictions on *ad valorem* tax revenue. Consequently, even if Propositions 1 and 2 somehow did not conflict when they were approved, they certainly do *now*.

This is important because Hotze *still* argues that, because of Proposition 2's once wide coverage of revenue sources, the two propositions are directed at different things and could, therefore, be reconciled and enforced jointly. To the extent the trial court embraced that argument, it erred because Proposition 2's focus has been considerably narrowed since 2004.

C. Propositions 1 and 2 Are Materially Inconsistent and Cannot be Reconciled

1. Hotze Bases His Argument That Propositions 1 and 2 Are Consistent Almost Entirely Upon *Excluded* Evidence

In support of his consistency argument here, Hotze improperly recites as "record" fact, on pages 41-42 of his brief, a *paraphrased* affidavit by a purported

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[17] *See Charter*, art. IX, §19 ("any amendment to the Charter of the City of Houston which may be adopted which is inconsistent with any existing provision of the City Charter shall by such adoption repeal such inconsistent provision").

[18] This Court may take judicial notice of the fact that the portion of sales tax revenue Houston receives, a significant source of its revenue, is set by the *State.*

financial expert, Robert Lemer, *that the trial court excluded*, *twice. Id*. (citing 1CR708-709, Hotze's own pleading in which he describes the contents of Lemer's affidavit and charts); *see* Pet.Br.22,n.3 (Hotze's acknowledgement that he still relies on Lemer's affidavit here); 2CR1380-85 (Houston's objections to Lemer's opinions and conclusions based, in part, on the fact that identical materials had been previously excluded); 2CR906 (first order excluding Lemer's affidavit and testimony, dated June 28, 2019); 1RR40,41 (trial court's ruling excluding Lemer's affidavit, conclusions, and exhibits that Hotze attempted to reintroduce at trial); 1RR101-02 (Counsel Taylor's acknowledging at trial that Lemer's testimony and calculations had previously been excluded).

Worse, Hotze also recites, at length and almost verbatim, Lemer's opinion, without attribution, at pages 44, and 46-48 of his brief, as support for his argument the Propositions 1 and 2 are consistent and can be reconciled. He does so even though his lawyer admitted at trial that "I want to make it clear that the motion to exclude [which was granted] specifically took aim *at Bob Lemer's opinion on whether Prop 1 and 2 were consistent with each other*." 1RR102 (emphasis supplied).

Worse still, when Lemer's materials were excluded *in toto*, Hotze's counsel asked that they be included in the record *only as a bill of exceptions and they were included only for that purpose*. *See* 1RR100-02. Hotze, however, never

appealed Lemer's exclusion. Instead, he now misrepresents this material as admissible evidence or, worst of all, misleadingly presents this excluded material as if it were trial court findings or original argument. *See* Pet.Br.44,48.

Hotze's only other effort to show consistency here is to bold highlight irrelevant distinctions between the text of the two propositions, apparently to distract from the insurmountable substantive differences between them, described below.

This Court should not be fooled by Hotze's blatant efforts to mislead this Court and should give the excluded materials and arguments based upon them, in Section IV of Hotze's brief, *no consideration whatsoever.* Because Hotze's argument—that the Charter's conflict provision was not triggered by any conflict between Propositions 1 and 2—depends entirely on such excluded evidence, Hotze has presented no grounds for review here.

2. Houston Demonstrated, as a Matter of Law, That Proposition 1's Explicit Rejection of Other Limits on City Council's Taxing Authority and Its Voter Override Provisions Irreconcilably Conflict with Proposition 2

Hotze has never denied that Proposition 1 confers on Houston City Council "full authority to assess and collect any and all revenues of the city without limitation," except for express limitations for *ad valorem* taxes and water and sewer taxes. *See* 3RR (DX1,4). It thus *expressly rejects* any further limitations

on City Council's revenue-collecting authority. *Id.* These narrowly-targeted revenue limits, however, can be overridden by a *simple majority* of voters. *Id.,*2, 4.

By contrast, Proposition 2 severely limits City Council's general authority to assess and collect *virtually all* of its revenue. It expressly prohibits City Council from increasing the City's *combined* revenues from *any* non-grant sources, including *ad valorem* taxes, at a rate exceeding the combined rates of inflation and population growth. *Id.,*5. Equally important, the only way to override this limitation is to obtain the approval of *a sixty percent super-majority* of voters at a regular city election. *Id*.

Proposition 2, therefore, would bar City Council from increasing revenue from sources other than *ad valorem* taxes without a super-majority public vote while Proposition 1 expressly *empowers* City Council to assess and collect such revenue *without limitation*. Only a simple majority of voters, however, would be needed to override its decisions on *ad valorem* taxes under Proposition 1. These diametrically opposed provisions cannot be reconciled. Under Proposition 1, non-*ad valorem* sources of city income have no impact on *ad valorem* tax rates at all. Instead, City Council is free to raise other kinds of revenue when it finds such revenue needed. Under Proposition 2, however, *ad valorem* tax rates are entirely dependent upon the *combined* increases in the additional sources of

revenue still covered by Proposition 2. City Council would have no authority to increase revenue from non-*ad valorem* tax sources above the cap. Such a limitation was expressly rejected by Proposition 1 which reaffirms and grants to City Council just such authority.

Equally important, there is no way to reconcile the conflicting voter override provisions if a vote falls between 50 and 60 percent. Proposition 1 requires only a simple majority to raise *ad valorem* tax rates above the cap, while Proposition 2 requires a super-majority of sixty percent to do so.

Proposition 2 is, therefore, directly contrary to Proposition 1's limited revenue restraints and its voter override provisions and would impermissibly constrain the full authority Proposition 1 vests with Council to assess and collect non-*ad valorem* city revenues "without limitation." *Id.*,4. Moreover, Hotze has never explained how Houston could actually implement both. Under Article IX, Section 19 of the City Charter, the two propositions cannot coexist.

3. Houston Demonstrated, as a Matter of Law, That the Propositions' Compliance Provisions Irreconcilably Conflict

Under Proposition 1, compliance is assessed *prospectively*. Once Houston has made its conservative estimate of expected revenue (based upon the lower of two alternative calculation methods grounded in the actual tax proceeds for

the preceding fiscal year), Proposition 1's requirements are essentially complete. The City Controller will then certify in writing in the fall (when Houston actually levies its *ad valorem* taxes and after most property tax protests have been resolved) that the capped actual *ad valorem* tax levy for the upcoming fiscal year is expected to produce *ad valorem* property tax revenue proceeds within the cap. *See Code of Ordinances* §44-26.

In addition, under Proposition 1, Houston's *ad valorem* tax rate increase will never be less than zero—*i.e.*, Houston will never need to reduce revenues from one year to the next or to issue refunds. *See* 3RR (DX1,3). There are, therefore, no provisions in Proposition 1 requiring reductions in the cap's combined base amount based on the previous year's shortfall, refunds, or segregated accounts for amounts allegedly over the limits, special audits, or other financial adjustments at the end of the fiscal year as there are in Proposition 2. Instead, any slight overages or shortfalls simply balance themselves out over time.

By contrast, compliance with Proposition 2 is ultimately *retrospective.* Although it requires that the City Controller certify that Houston's annual budget complies with its *combined* revenue limitations *before* any budget is passed and *before* Houston actually determines its ultimate *ad valorem* tax levy for the upcoming fiscal year, compliance is ultimately verified by audits conducted

within four months *after* the end of Houston's fiscal year to determine and specify the amount of non-compliance, if any. *See* 2RR (PX1, art. VI-a, §7(1)). Proposition 2 further provides for refunds, through a Taxpayer Relief Fund that releases refunds only to "Houston citizens and business owners within 90 days in the manner deemed by City Council to be the most equitable and practicable," only after it has grown to $10,000,000. *Id.,* art. VI-a, §7(2).

Because compliance with Proposition 2 depends on the vagaries of Houston's *combined* collected revenues, which can be influenced by many variables, compliance cannot be determined until *after* the close of the fiscal year. For example, water and sewer revenues can vary depending on the weather. Greater-than-budgeted revenues from City-owned airports, hotel occupancy taxes, or rising interest rates could all result in combined revenues exceeding permissible levels under Proposition 2 when Houston's hosts a Superbowl or a Final Four. Conversely, combined revenues can decline precipitously in the event of a natural disaster or pandemic, despite provisions in both charter amendments governing emergencies. *See, e.g.*, *Charter*, art. VI-a, §7(1). Consequently, under Proposition 2, *ad valorem* revenue might still have to be refunded at the end of the fiscal year if other applicable City revenues under Proposition 2 ultimately increased.

Moreover, if actual combined revenues in any one year resulted in an amount less than the amount allowed under Proposition 2's cap, then that reduced amount would become the combined revenue base amount for the following year's computation. There is no such limitation in Proposition 1.

The compliance provisions in Propositions 1 and 2, therefore, cannot be reconciled. First, because Proposition 2 requires initial controller certification in the spring at the time budgets are passed, it does not allow Houston to adjust its tax rate based upon its receipt of certified property tax rolls from the relevant counties in late summer and, therefore, virtually dooms Houston to some non-compliance. By contrast, because compliance with Proposition 1 is certified in the fall based upon the tax levy itself, Houston has the best possible ability and information with which to comply. The two successive certifications from the same controller, however, could result in *different ad valorem* tax rates and revenue, ensuring a conflict, particularly when there is an anticipated event that will raise other city revenues. Thus, even if the City Controller certified compliance with Proposition 1, later audits required by Proposition 2 could still find non-compliance with Proposition 2 based upon increases in other City revenue. Consequently, *Proposition 2 would require refunds of monies that were properly collected under Proposition 1*.

This would be particularly problematic because Proposition 1 does not authorize refunds. Indeed, because it is limited to *ad valorem* taxes and uses Houston's actual tax levy as its touchstone, Proposition 1 is designed to be quite precise and minimize or eliminate the need for refunds. Consequently, there is no way to reconcile one proposition's requiring refunds, while the other does not. And if refunds are not authorized, there is also no need for audits to identify and quantify amounts of non-compliance.

Worse still, Proposition 2 does not explain how revenue that exceeds its limits would be refunded. It provides that monies should be refunded to Houston "citizens" and "business owners," but not to taxpayers, and does not specify on what basis such overages are to be distributed. 3RR (DX1, art. VI-a, §7(2)). Consequently, Proposition 2 would not necessarily provide relief to *property* taxpayers, the *raison d'etre* of Proposition 1. Indeed, because Proposition 2 addresses combined revenues, amounts over Proposition 2's caps, but not Proposition 1's cap, could be refunded to other non-property-owning citizens and business owners.

Finally, Proposition 2 explicitly contemplates Houston's decreasing its total, combined revenues based upon shortfalls in city revenue and requires downward adjustment to the next year's base amount in that event. *Id.,*5,9. Proposition 1 does not. Indeed, under Proposition 1 Houston's *ad valorem* tax

rate increase will never be less than zero and Houston would never need to reduce contemplated revenues from one year to the next. *See id.,*3. In the event of a revenue shortfall then, one proposition would require a reduction in the next fiscal year's revenue while the other would not. These conflicts are, therefore, also irreconcilable.

4. Houston Demonstrated, as a Matter of Law, That the Propositions' Different Revenue Limits Irreconcilably Conflict

Proposition 1, which was intended to limit increases in only *ad valorem* taxes, limits increases in revenues from *ad valorem* taxes to the *lesser* of 4.5% *or* the combined increase in population and inflation. 3RR (DX1,4). By contrast, Proposition 2, which was intended to limit increases in *all* non-grant sources of city revenue, limits increases in such *combined* remaining revenues to only the combined increase in population and inflation. *Id.*,5-6. This is a critical difference. Proposition 2 allows for greater growth in city revenues because it is pegged only to inflation and population growth without the 4.5% alternative limitation imposed by Proposition 1. Consequently, in the same fiscal year, even if Houston capped property tax rates under Proposition 2 at precisely its required level based upon inflation and population growth, Proposition 1 would mandate that Houston use the lower 4.5% growth rate.

These conflicting requirements cannot be reconciled. Even if City Council voluntarily utilized Proposition 1's alternative calculation formula in setting combined-revenue caps under Proposition 2, or a court attempted to require that Houston comply with both propositions, such an action would force City Council to increase revenue from Houston's few other revenue sources remaining under the Proposition 2 cap. Such an action would thus improperly distort Houston's budget and effectively eliminate the whole purpose of Proposition 2: to allow City Council to balance the city revenue sources to keep them all under an over-arching cap. Without *ad valorem* tax revenue to add to the few remaining sources in its revenue mix, Proposition 2, as undercut by subsequent charter amendments passed since 2004, and by the State's recently-enacted cap on property tax rates, would be rendered virtually meaningless because it would apply to so few important sources of city revenue.

Under Article IX, Section 19, Proposition 2 is, therefore, unenforceable and Proposition 1 prevails. If this Court somehow grants review, it should hold that Proposition 2 is void and unenforceable under Article IX, Section 19.

D. Propositions 1 and 2 Were Expressly Presented to Voters as Mutually Exclusive

Although, as demonstrated, Propositions 1 and 2 substantively conflict such that Houston's Charter bars enforcement of Proposition 2, the Charter's

conflict provisions were also triggered and satisfied here by the manner in which the two propositions were presented to voters. The two propositions are competing and thus conflicting under charter provisions such as Article IX, Section 19 when, as here, they are expressly presented as all-or-nothing propositions and/or when each creates a comprehensive regulatory scheme related to the same subject.[19] The latter notion does not mean that the two schemes must substantively conflict. Instead, it requires merely that they each be self-contained and comprehensive.

1. Houston Demonstrated, as a Matter of Law, That the Primacy Clause Itself Creates an Irreconcilable Conflict Under Article IX, Section 19

Where, as here, there is clear language in proposed measures showing that they are mutually exclusive, there is no way to reconcile the two and a court would disenfranchise voters who relied on this mutual exclusivity were it to attempt to enforce both. *See, e.g.*, *Taxpayers*, 799 P.2d at 1221.

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[19] Although Texas has no case law addressing this type of conflict, other states in which the law relating to referenda is better developed and having multiple, competing proposition on the ballot is more prevalent, recognize the need to resolve such conflicts by utilizing conflict provisions virtually identical to those in Houston's charter. *See, e.g.*, *Taxpayers to Limit Campaign Spending v. Fair Political Practices Comm'n*, 51 Cal. 3d 744, 747, 799 P.2d 1220, 1221 (1990) (analyzing the case under clauses virtually identical to those here, the California Supreme Court held that where, as here, two initiatives on the same ballot are clearly competing with each other, a court need not make any attempt to reconcile them to create a law no voter approved. Instead, the one that receives the greater number of votes prevails and the other is rendered unenforceable in its entirety).

The primacy clause says that enforcement of any part of one proposition is foreclosed if the other receives more votes. It makes clear that only one proposed amendment will be enforced even if both are approved. Because of the primacy clause's inclusion in both the Election and Adoption Ordinances, which constitute the official election records, Houston voters are presumed to have been both aware of the primacy clause and *to have relied upon it* in voting in the November 2004 election. *See Blum,* 9 S.W.3d at 847-48; *Black v. Strength*, 112 Tex. at 192, 246 S.W. at 80. Because the primacy clause clearly presented Proposition 1 and 2 as mutually exclusive, Proposition 2 falls within Article IX, Section 19's ambit and satisfies its conflict provision. The trial court, which did not need to reach the matter at all, therefore, erred in holding that the primacy clause itself did not also trigger or satisfy Article IX, Section 19's conflict provisions and render Proposition 2 unenforceable.

2. Hotze Agrees That Propositions 1 And 2 Were Expressly Offered to Houston Voters As "All-or-Nothing" Alternatives and/or Distinct, Comprehensive Regulatory Schemes Related to the Same Subject

Hotze does not dispute (and thus concedes) that Propositions 1 and 2 were expressly presented to voters as 'all-or-nothing' alternatives. In fact, Hotze repeatedly argued in his motion for summary judgment that the two

propositions presented distinct, comprehensive regulatory schemes. *See, e.g.,* 2CR941.

More important, in both the Election and Adoption ordinances, Houston City Council referred to the two propositions as *alternative* "unified plans." In both ordinances, Council stated that its intention in enacting the ordinance was to offer two alternative "single unified plans" to city revenues that most impacted the public. 3RR (DX1,1; DX4,1). In the Election Ordinance, Council stated that "the purpose of placing both Proposition 1 and Proposition 2 on the ballot for the Election was to provide the voters of the City with the *opportunity to consider alternative unified plans for limiting increases in the sources of City revenue*…" *See* 3RR (DX1,2) (emphasis supplied); *see also id.*,4 (noting that the primacy clause made the two propositions mutually exclusive). Consequently, Houston City Council presented to voters the clear view of Proposition 1 as a unified scheme, and not a companion, to Proposition 2, a second, alternative, unified scheme. *See id.*,1.

Because Proposition 1 presents a "single unified plan" (a cap on *ad valorem* taxes and water and sewer rates combined with an explicit rejection of any cap on the assessment or collection of other revenues) and Proposition 2 also presents a "single unified plan" (a cap on the assessment and collection of virtually all significant sources of revenue and a requirement to refund any

excess collections), each proposed charter amendment "create[d] a comprehensive regulatory scheme related to the same subject." *See Taxpayers*, 51 Cal.3d at 747; 799 P.2d at 1221. It is, however, the *fact* that each creates a comprehensive scheme and *not the particulars of what each scheme would entail* that creates a fundamental conflict under Article IX, Section 19. In *Taxpayers*, for example, the court explained:

> If the measures propose alternative regulatory schemes, a fundamental conflict exists. In those circumstances, section 10(b)[20] does not require or permit either the court or the agency charged with the responsibility of implementing the measure or measures to enforce any of the provisions of the measure which received the lesser affirmative vote.

51 Cal. 3d at 770-71, 799 P.2d at 1236-37 (emphasis supplied).

Hotze concedes that Proposition 2 creates a comprehensive scheme for limiting City revenue separate from the one created by Proposition 1. For this Court even to attempt to combine the two schemes into one "would disenfranchise all those [Houstonians] who voted for both propositions on the premise that only one would be enacted."[21] Indeed, under Texas law, voters are

[20] Like the Houston City Charter, the California Constitution provides: "if provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." Cal. Const. art. II, §10(b).

[21] See *Concerned Citizens v. City of Carlsbad*, 204 Cal. App. 3d 937, 943, 251 Cal. Rptr. 583, 586—87 (1988),), a case remarkably like this one in which municipal voters were given a choice of two competing propositions, one of which contained a primacy clause containing almost identical language to that in the primacy clause here. In holding that Carlsbad's City Council did not need to enforce the proposition that received fewer votes because of that

presumed to have *relied* upon the fact that only one of the proposed charter amendments would ultimately go into effect. Refusing to recognize a conflict here would, therefore, constitute a kind of judicially-imposed bait and switch.

Worse, as the *Taxpayers* court explained: "section 10(b) [the equivalent of art. IX, §19] does not permit the court to engraft onto one regulatory scheme provisions intended to be part of a different scheme." *Taxpayers*, 51 Cal. 3d at 747; 799 P.2d at 1221. Because Texas voters are presumed to have relied upon the primacy clause and the presentation of two propositions as mutually exclusive, and, therefore, assumed that only one "single unified plan" for capping revenue would actually be adopted, no voter ever approved the hybrid revenue limitation Hotze urges this Court to adopt. Any attempt to reconcile provisions presented as mutually exclusive would *frustrate*, if not thwart completely, voters' intentions expressed in the November 2004 election.

As the California Supreme Court explained, as in Texas,

> rules of statutory construction…require an attempt to reconcile statutory provisions relating to the same subject matter whenever possible in order to avoid conflict and give effect to every provision. The threshold question in this case is whether section 10(b) [California's nearly identical primacy clause] either permits application of these rules of construction to

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primacy clause, the court observed that provisions like the primacy provision here "give voters notice of a conflict, assist voters in making an intelligent and informed decision." *Id.,*586. It, therefore, warned: "were we to [strike] section D [the primacy clause], as Concerned Citizens seems to suggest, *we would disenfranchise all those Carlsbad residents who voted for both propositions on the premise that only one would be enacted*." *Id.*,586-87 (emphasis supplied). This is precisely the same idea this Court has upheld in cases like *Black v. Strength*.

> competing initiative measures, or contemplates that only the provisions of the measure receiving the highest affirmative vote shall become effective...
>
> We conclude that, unless a contrary intent is apparent in the ballot measures, when two or more measures are competing initiatives, either because they are expressly offered as 'all-or-nothing' alternatives or because each creates a comprehensive regulatory scheme related to the same subject, section 10(b) mandates that only the provisions of the measure receiving the highest number of affirmative votes be enforced. Neither an administrative or regulatory agency, nor the court, may enforce individual provisions of the measure receiving the lower number of affirmative votes. *Were the court to do so the result might be a regulatory scheme created without any basis for ascertaining whether the electorate understood or intended the result. In short, section 10(b) does not permit the court to engraft onto one regulatory scheme provisions intended to be part of a different scheme.*

799 P.2d 1220, 1221 (1990) (emphasis supplied). This Court would be wise to adopt the same reasoning here.

Finally, Hotze concedes that, prior to the election, there were at least 13 articles published in the *Houston Chronicle* that addressed Propositions 1 and 2 and confirmed that they were alternatives, not companions.[22] Over half made explicit reference to "competing" or "alternative" propositions or referenda.[23]

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[22] *See, e.g.*, "Revenue caps: Vote FOR Prop. No. 1, AGAINST Prop. No. 2," Houston Chronicle (Oct. 6, 2004), *available at* https://www.chron.com/opinion/editorials/article/Revenue-caps-Vote-FOR-Prop-No-1-AGAINST-Prop-1961490.php, which were attached as Defs' Exh. 10 (3RR). True and correct copies of these articles are not offered for the truth of the matters they convey but only for the fact that they notified voters that the two propositions were competing and alternative.

[23] *See, e.g.*, Ron Nissimov, *City's revenue fight going to the Nov. 2 ballot*, Houston Chronicle, (Aug. 26, 2004), *available at* https://www.chron.com/news/politics/article/City-s-revenue-fight-going-to-the-Nov-2-ballot-1969054.php ("The Houston City Council placed on the Nov. 2 ballot two competing referendums to limit city spending Wednesday..."); Ron Nissimov, *Survey weighs propositions; both limit revenues,* Houston Chronicle (Oct. 30, 2004), *available at* https://www.chron.com/news/politics/article/Survey-weighs-propositions-both-limit-

Practically every article highlighted and emphasized the distinct, alternative approaches each proposition offered to ensure fiscal restraint.

There can be no doubt, based upon the primacy clause's language, the language of the Election and Adoption Ordinance, and the undisputed information given to voters, that the two proposed charter amendments were presented as single unified plans that were mutually exclusive. That undisputed fact renders them sufficiently "inconsistent" under Article IX, Section 19 to void Proposition 2. The trial court erred in finding otherwise, particularly when there was no need for him to make such a finding and Hotze lacked pleadings seeking such a declaration.

VI. ALTERNATIVELY, HOTZE IS NOT ENTITLED TO FEES OR THE DECLARATIONS HE IMPROPERLY RECEIVED [PREVIOUSLY UNBRIEFED ISSUES 5 AND 6; RESPONSE TO ISSUE VII]

As demonstrated, Hotze's claims are barred or baseless. Consequently, he should not even be considered for any award of fees. Moreover, the general rule in Texas is that attorney's fees are not recoverable unless specifically authorized

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revenues-1516633.php ("Houston residents will vote Tuesday on the two competing charter amendments that would limit city revenues by different means"); Kristen Mack & Ron Nissimov, *Debate on city revenue caps kicks off,* Houston Chronicle (Aug. 24, 2004), *available at* https://www.chron.com/news/houston-texas/article/Debate-on-city-revenue-caps-kicks-off-1493833.php ("White has offered an alternative measure…"). True and correct copies of these articles were not offered for the truth of the matters they convey but only for the fact that they notified voters that the two propositions were competing and alternative. *See* 1CR258-275.

by statute or by contract. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 310 (Tex.2006). Trial courts do not have inherent authority to require one party to pay another party's attorney's fees. *Id.,*311. Consequently, Hotze must show that a specific statute authorizes his fee request and comply with all the requirements of such statute. He has hardly tried to do so and could not succeed if he tried. Consequently, there is no need to remand for determination of fees.

A. Hotze Ignored Applicable Statutory Standards in Seeking Fees Under the UDJA

Tex. Civ. Prac. & Rem. Code §37.009 does *not* provide for the automatic recovery by a prevailing party of reasonable and necessary attorneys' fees as Hotze *still* argues here. *Compare* 2CR959 *with* Pet.Br.58. Instead, it states: "in any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just." Thus, the award of attorneys' fees under the UDJA is *not* dependent upon a finding that the party prevailed. *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 637 (Tex.1996). Under the UDJA, even parties that do *substantially* prevail are not legally entitled to receive any fees. The court may exercise even its discretion *not* to award fees even to the prevailing party. *Save Our Springs Alliance, Inc., v. Lazy Nine Mun. Util. Dist.*, 198 S.W. 3d 300, 319 (Tex.App.—Texarkana 2006, pet. denied).

Instead, the statute "imposes four limitations on the trial court's discretion: the fees awarded must be reasonable and necessary, which are matters of fact, and they must be equitable and just, which are matters of law." *City of The Colony v. N. Tex. Mun. Water Dist.*, 272 S.W.3d 699, 753–54 (Tex.App.—Fort Worth 2008, pet. dism'd) (citing *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex.1998); *Hunt v. Baldwin*, 68 S.W.3d 117, 135 (Tex.App.—Houston [14th Dist.] 2001, no pet.); *Hansen v. Academy Corp.*, 961 S.W.2d 329, 333 (Tex.App.—Houston [1st Dist.] 1997, writ. denied)). Because Hotze never mentioned, let alone proved as a matter of law, that his claim for fees under the UDJA is equitable and just, the trial court properly denied him fees.

B. Hotze Cannot Seek Fees Under the UDJA for Legal Services Performed *in a Different Lawsuit*

Even if he had attempted to do so, Hotze could never show that the requested award of fees here would be equitable and just. Incredibly, he seeks more than 300,000 dollars in attorney's fees that were incurred *in another lawsuit*.

It is well-settled that "attorney's fees incurred in defending a separate lawsuit cannot be recovered under §37.009 of the Act, notwithstanding that the separate lawsuit concerned the same issues as those in the declaratory judgment suit." *Dalisa, Inc. v. Bradford*, 81 S.W.3d 876, 880 n.2 (Tex.App.—Austin 2002, no pet.); *see In re Estate of Bean*, 206 S.W.3d 749, 765 (Tex.App.—Texarkana

2006, pet. denied); *see also Nat'l Union Fire Ins. Co. v. Care Flight Ambulance Serv. Inc.*, 18 F.3d 323, 330 (5th Cir. 1994).

Moreover, statutory provisions allowing recovery of attorneys' fees are penal in nature and in derogation of the common law. They must, therefore, be strictly construed against allowing recovery of fees in other cases. *Knebel v. Capital Bank in Austin*, 518 S.W. 3d 795, 803 (Tex.1974); *Gard v. Bandera Cty. Appraisal Dist.*, 293 S.W. 3d 613, 617 (Tex.App.—San Antonio, 2009, no pet.).

Finally, Hotze has not pleaded or demonstrated that the other lawsuits for which he seeks fees even qualify as a case brought "under this Chapter" and, therefore, ever qualified for fees under §37.009. There is no Texas law supporting the notion that fees under the UDJA are available where a lawyer asserts that several different lawsuits are inextricably intertwined.

At minimum, Hotze should have segregated fees incurred in this lawsuit from those incurred in other lawsuits. *See Estate of Bean*, 206 S.W.3d at 765. Because he seeks fees incurred in other lawsuits and has failed to segregate such claims, his motion seeking fees was properly denied.

C. Hotze's Claims Do Not Qualify for Fees or a Declaration Under the UDJA

Hotze purports to seek five declarations here:

i) both Propositions 1 and 2 are valid and enforceable;

ii) are not inconsistent with each other;

iii) the poison pill provision is not part of Proposition 1;

iv) the City budget ordinances for FY 2011 thru FY 2019 exceed the caps of Proposition 1 and 2 …. and

v) to the extent not yet spent, then all said amounts must be placed in a segregated taxpayer account pending an election, or alternatively, returned to taxpayers.

See 2CR960. These purported declarations have fatal problems. The first three purported declarations are effectively encompassed by the first requested declaration. As demonstrated above, the third declaration sought is legally incorrect and factually irrelevant and does not affect the validity of the primacy clause. Worse, none of these three declarations is available to a taxpayer utilizing the *ultra vires* exception under well-settled Texas Supreme Court cases because a claim that challenges the validity of a local law is not considered as falling under that exception as a matter of law. *See Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex.2015). Finally, the only relief available to such plaintiffs is an injunction or declaration addressing the allegedly *ultra vires* act. There is no such allegation here.

The fourth requested declaration is completely retrospective. Consequently, it is unavailable where, as here, Hotze asserts only taxpayer claims based on waiver under the *ultra vires* exception. Moreover, as discussed above, Hotze has only pleaded that budgets through fiscal year *2016* exceed any

revenue caps. He could not properly obtain a declaration by summary judgment where his pleadings do not support such a judgment.

As discussed above, the fifth purported declaration sought is not even encompassed by the UDJA but would require a mandatory injunction. Finally, taxpayers claiming under the *ultra vires* exception cannot seek any monetary relief as a matter of law.

Thus, Hotze is not entitled to *any* declaration as a matter of law. This is particularly true where, as here, his declaratory judgment claims merely repeat or are improperly asserted in lieu of injunctive claims. "Under the redundant remedies doctrine, courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels." *Patel*, 469 S.W.3d at 79; *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 253 S.W.3d 184, 200 (Tex.2007). Thus, if Hotze had a viable taxpayer claim for injunctive relief merely requiring that Houston refrain from collecting revenue that exceeds Proposition 2, then he could not also seek the redundant declaratory relief they request. His requested declaration regarding validity of Proposition 2, therefore, "add[s] nothing to what would be implicit or express in a final judgment for the enforceable remedy." *Kyle*, 522 S.W.3d at 467.

Moreover, in *Etan Industries, Inc. v. Lehmann*, 359 S.W.3d 620, 624 (Tex.2011), as here "the only apparent benefit to the [plaintiffs] from the

declaratory judgment was the award of attorney's fees under the UDJA." *See* Tex. Civ. Prac. & Rem. Code §37.009. In rejecting such an award, this Court explained: "we have held that simply repleading a claim as one for a declaratory judgment cannot serve as a basis for attorney's fees, since such a maneuver would abolish the American Rule and make fees 'available for all parties in all cases.'" *Etan,* 359 S.W.3d at 624 (quoting *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669 (Tex. 2009)). The Court continued: "When a claim for declaratory relief is merely 'tacked onto' statutory or common-law claims that do not permit fees, allowing the UDJA to serve as a basis for fees 'would violate the rule that specific provisions should prevail over general ones.'" *Id.*,624 (quoting *MBM Fin. Corp.*, 292 S.W.3d at 670). The declaratory judgment claim must do more "than merely duplicate the issues litigated" via the contract or tort claims. *Id.* Hotze's claims for declaratory relief here do nothing more than provide a mask for what are or should be claims for injunctive relief alone.

By these standards, the declaratory judgment and attorneys' fees Hotze seeks are not warranted. His motion seeking declaratory relief and fees under the UDJA was properly denied.

D. Alternatively, Hotze's Alleged Fees Were Neither Reasonable Nor Necessary

"A trial court abuses its discretion by awarding fees when there is insufficient evidence that the fees were reasonable and necessary, or when the award is inequitable or unjust." *Bailey v. Smith*, No. 03-17-00703-CV, 2019 WL 2707967, at *12 (Tex.App.—Austin June 28, 2019, pet. denied) (citing *Save Our Springs All.*, 304 S.W.3d at 891). To award fees, it is not enough for a lawyer to attach some bills and claim that they are reasonable and necessary. Yet that is precisely what counsel has done here, "[I]f no basis for the opinion is offered, or the basis offered provides no support, the opinion is merely a conclusory statement and *cannot be considered probative evidence*." *City of San Antonio v. Pollock*, 284 S.W.3d 809, 818 (Tex.2009) (emphasis supplied).

As discussed above, Hotze did not even segregate fees between different lawsuits or by whether fees were incurred in declaratory judgment claims. He has also made no adjustment for the fact that, by missing the court's dispositive motions deadline in the spring, the parties had to participate in and prepare for an unnecessary hearing and essentially re-brief issues already briefed in connection with Houston's plea/summary judgment. Ignoring a motions deadline for strategic purposes then forcing re-briefing or repleading is not a reasonable basis for fee purposes. Hotze has made no adjustment for non-viable claims and cases he lost on standing and ripeness grounds. While §37.009 does

not require that one receiving a fee award be a prevailing party, that is surely a factor the court can consider in assessing reasonableness and necessity. Finally, ignoring court orders and rules of procedures and forcing the parties to endlessly litigate objections to clearly inadmissible evidence is also not reasonable. *See* 3RR2020-23.

Hotze's alleged fees in this case, if recoverable at all, were neither reasonable nor necessary. The trial court correctly denied him any award.

CONCLUSION AND PRAYER FOR RELIEF

Houston respectfully requests that this Court deny Hotze's Petition and grant to Houston such other relief as to which this Court finds it entitled. Alternatively, if it grants review, Houston requests that this Court affirm the judgment of the trial court and Court of Appeals to the extent each holds that Proposition 1's primacy clause precludes enforcement of Proposition 2. Alternatively, if it grants review, and finds that Proposition 1 does not preclude Proposition 2's enforcement, then Houston asks this Court to remand the issue of whether Article IX, Section 19 of Houston's Charter bars enforcement of Proposition 2 because the two propositions are inconsistent to the Court of Appeals, which did not reach it preciously. Finally, and alternatively, if this Court, as Hotze requests, reviews and decides the conflict issue, Houston asks

that it find that Article IX, Section 19 of Houston's Charter bars enforcement of Proposition 2 because the two propositions are inconsistent.

Respectfully submitted,

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City Attorney
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Attorneys for Respondents, Sylvester Turner, and the City of Houston

CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared in M1CRosoft Word 2016 Version 14.0 in Calisto MT 14 point font; the word-count function shows that, excluding those sections exempted under TRAP 9.4(i)(1), the response contains 14,713 words.

/s/ Collyn A. Peddie
Collyn A. Peddie

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, a true and correct copy of the foregoing has been served on counsel below via e-service.

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Exh. A

CAUSE NO. 2014-19507

pl
PJURY
MFSJY

CARROLL G. ROBINSON, BRUCE R. HOTZE AND JEFFREY N. DAILY Plaintiffs	§	IN THE DISTRICT COURT
VS.	§	HARRIS COUNTY, TEXAS
ANNISE D. PARKER, MAYOR AND CITY OF HOUSTON, Defendants.	§	333RD JUDICIAL DISTRICT

ORDER

The Court has considered Defendants' Plea to the Jurisdiction and Motion for Summary Judgment and Plaintiffs' Response and all other things properly before it, and is of the opinion that the Motion should be DENIED.

Accordingly, it is ORDERED that Defendants' Plea to the Jurisdiction and Motion for Summary Judgment is DENIED.

SIGNED this 2ND day of May 2016, ~~2015~~.

Judge Presiding

Exh. B

CITY OF HOUSTON
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June 1, 2021

Via E-filing

Hon. Christopher A. Prine, Clerk
Fourteenth Court of Appeals
301 Fannin, Room 245
Houston, Texas 77002

Re: No. 14-19-00959-CV; *Bruce R. Hotze v. Sylvester Turner, Mayor and The City of Houston*; in the Court of Appeals for the Fourteenth District of Texas at Houston

Dear Mr. Prine:

This case is set for oral argument at 1:30 P.M. tomorrow, June 2, 2021 before Justices Jewell, Zimmerer, and Hassan. Pursuant to Tex. R. Civ. App. 38.7, Appellees Mayor Turner and the City of Houston (collectively "the City") wish to apprise the panel of additional authority relevant to the issues raised in this appeal. **The City respectfully requests that this authority and letter be circulated to the panel in advance of tomorrow's oral argument.**

Attachment 1 is a true and correct copy of the U.S House of Representatives Office of Legislative Counsel's Guide to Legislative Drafting. This Court is asked to take judicial notice of its contents. It is available at https://legcounsel.house.gov/holc-guide-legislative-drafting. The HOLC Guide contains brief descriptions of common drafting conventions used in drafting proposed laws. On pages 6 and 7, it describes in detail the convention of including materials inside quotes and outside quotes. It makes clear that this distinction ***does not*** reflect what does and does not become governing law, the principal argument Appellants make for ignoring Proposition 1's primacy clause here. Instead, the distinction is between what text will actually be added or

substituted in existing statutes and freestanding material, which includes amendatory instructions. It makes clear that both are important parts of the proposed legislation and ultimately, the new law. In fact, the document indicates that this convention is so common that it is incorporated into the software the U.S. House uses. *Id.* at 7.

Attachment 2 is a similar guide published by the Texas Legislative Counsel, jointly chaired by the Texas' Lieutenant Governor and Speaker of the House. It is available at http://www.tlc.texas.gov/lege_ref. At page 7, the document refers to recitals that explain how text is to be incorporated into existing laws. It makes clear that such instructional material, which is not included within quotation marks in proposed legislation, and is not included in the ultimate text that makes its way into law book, is, nevertheless, a critical part of a proposed law.

Appellants have yet to provide this Court with a single shred of authority for their wholly-unsupported notion that Proposition 1's primacy clause is somehow not an enforceable part of Proposition 1. By contrast, these standard drafting guides demonstrate that virtually every piece of proposed legislation that amends existing law includes instructional material as to how it is to be incorporated. The same rule holds true for including new provisions in the Houston City Charter.

Were Appellants correct in their argument that such materials "outside the quotation marks" did not govern or become part of a new law, amendatory or repealing language would simply have to be included in laws along with the old language because there would be no binding law requiring the old law's removal.

Please do not hesitate to contact counsel for the City should you or the Court have any questions. Thank you for your assistance and consideration.

Sincerely,

/s/ Collyn A. Peddie

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cc: *See Certificate of Service below*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been e-served through the electronic filing manager on June 1, 2021, to the following counsel of record:

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Attachment 1

DRAFTING LEGISLATION

Welcome to the House Office of the Legislative Counsel Guide to Legislative Drafting. The purpose of this online guide is to provide an overview of the drafting style and conventions used by the House Office of the Legislative Counsel in order to facilitate communication and collaboration between the attorneys of the Office and their clients.

Please feel free to browse the table of contents below to navigate to the relevant topics within the guide. Be sure to check back frequently, as we have many plans to continually update our guide to take increasing advantage of its online presence.

Finally, don't forget to print out a "Quick Guide" (/sites/legcounsel.house.gov/files/quick_guide.pdf)to keep at your desk.

Table of Contents

I. Forms of legislation

There are four different forms of legislation. Two of them (bills and joint resolutions) are used for making law, while the other two (simple resolutions and concurrent resolutions) are used for matters of congressional administration and to express nonbinding policy views. Joint resolutions are also used to propose constitutional amendments for ratification by the States.

For a bill or joint resolution to become law, section 7 of article I of the Constitution requires that it pass both houses of Congress and be presented to the President. It will become law if the President signs it, if the President vetoes it and Congress overrides the veto by a two-thirds vote, or if ten days pass without any action by the President (while Congress is in session). Simple resolutions and concurrent resolutions are not presented to the President because they do not become law. Joint resolutions proposing constitutional amendments are governed instead under article V of the Constitution, which does not require presentment to the President.

There is no legal difference between a law that originated as a bill and a law that originated as a joint resolution. Congress chooses between bills and joint resolutions using conventions that have developed over time for the subject matter involved. Bills are more common than joint resolutions, but a prominent example of a joint resolution is a resolution to make continuing appropriations beyond the end of a fiscal year when the regular appropriations bills for the next year have not been completed (a "continuing resolution" or "CR").

One other difference between bills and joint resolutions is stylistic. When a bill passes one house of Congress, its designation changes from "A Bill" to "An Act", even though it has not yet become law. A "Joint Resolution" keeps the same designation even after passage by both houses and enactment.

Comparison of Forms of Legislation

Form of legislation	Passage required by	Presentment to President	Result	Example
Bill	Both houses	Yes	Law	H.R. 2568 (http://www.gpo.gov/fdsys/pkg/BILLS-111hr2568ih/pdf/BILLS-111hr2568ih.pdf) (111th Congress)
Joint resolution	Both houses	Yes (except proposal of constitutional amendment)	Law (except proposal of constitutional amendment)	H.J. Res. 52 (http://www.gpo.gov/fdsys/pkg/BILLS-110hjres52enr/pdf/BILLS-110hjres52enr.pdf) (a CR from the 110th Congress)

Concurrent resolution	Both houses	No	Not law (binding only as to certain matters of congressional administration)	S. Con. Res. 70 (http://www.gpo.gov/fdsys/pkg/BILLS-110sconres70enr/pdf/BILLS-110sconres70enr.pdf) (the concurrent resolution on the budget for fiscal year 2009; 110th Congress)
Simple resolution	One house	No	Not law (binding only as to certain matters of administration of the house that passed it)	H. Res. 88 (http://www.gpo.gov/fdsys/pkg/BILLS-111hres88eh/pdf/BILLS-111hres88eh.pdf) (a "special rule" governing House debate on a bill; 111th Congress)

II. How Federal statutes are organized

A. Public Laws, the Statutes at Large, and the United States Code

When a bill or joint resolution is enacted into law, it is given a public law [1] number in the form 000–0. The first number is the number of the Congress that passed the law, and the second number indicates the sequential order of enactment of the law within that Congress. For example, Public Law 111–161 was the 161st law enacted during the 111th Congress. The public laws passed by recent Congresses may be accessed at Congress.gov (http://www.Congress.gov).

Each new statute is printed as a separate document called a slip law. At the end of each session of Congress, the slip laws from that session are compiled, in sequential order, into the Statutes at Large. The top of each page of a slip law has a "Stat." page number, which is the number that page will have in the Statutes at Large. Neither the slip laws nor the Statutes at Large are updated to reflect amendment by later statute.

The Office of the Law Revision Counsel of the U.S. House of Representatives organizes most provisions of the public laws by subject matter in the United States Code so that particular provisions can be easily located. If a provision is of general applicability and is permanent, it will probably be assigned to a section in the Code; a provision that is temporary, narrow in scope, or obsolete or executed may be assigned to a note or appendix, or left out of the Code entirely. To search or browse the Code, you may visit the Office of the Law Revision Counsel's Search & Browse (http://uscode.house.gov/) page.

It is helpful to keep in mind several other points when using the U.S. Code. First, the Code has a different structure than the slip laws and is not a verbatim replication of them. Section numbers and cross-references will usually differ. There could even be some differences in language,

although no substantive changes are intended. Second, the process of classifying a slip law to the Code often involves splitting it up and placing different provisions of it in different parts of the Code. Finally, unlike the slip laws and Statutes at Large, the Code is updated to reflect amendment by later statute.

See the examples below to compare a statutory provision (section 102(a)(1) of the Family and Medical Leave Act of 1993) as it appears in the slip law with its U.S. Code counterpart:

Comparison of slip law and U.S. Code versions of a statutory provision▶

B. Positive versus non-positive law titles of the U.S. Code

The easiest way to understand this distinction is to look at the purpose and history of the U.S. Code. The only organizing principle behind the slip laws, and thus the Statutes at Large, is chronology. This makes it very difficult to find the law on a particular topic using those sources. Beginning in 1926, the U.S. Code was published to organize the laws by subject matter and make them more accessible. The first editions of the Code were simply restatements of the laws being organized; they did not actually take the place of those laws. If there was a conflict between a Code provision and the underlying statutory provision, the statute controlled.

In 1947, Congress began the process of enacting titles of the Code into law and repealing the underlying statutes, a process that continues today. The provisions of a title so enacted become "positive" law, and the underlying statutory provisions can no longer be used to rebut them. One can quickly see the status of a title by looking at the first page after the title page of any volume of the Code or at the Search & Browse (http://uscode.house.gov/) page on the Office of the Law Revision Counsel's website. Those titles marked with an asterisk have been enacted into positive law.

Here is the practical implication of this distinction for drafting purposes:

- If the provision of the Code you are citing or amending has been enacted into positive law, cite or amend the Code provision (e.g., "section 32901 of title 49, United States Code,").
- If it has not, cite or amend the underlying statute, typically by its short title (e.g., "section 325 of the Communications Act of 1934").

C. Working with provisions that are not part of positive law titles of the U.S. Code

As discussed above, when legislation cites a statutory provision that is not part of a positive law title of the U.S. Code, the citation must be to the underlying statute, not to the Code. This presents a logistical problem, because the original slip law and the Statutes at Large are not

updated to reflect any amendments since enactment. For this reason, access to a compilation of the statute that includes the amendments is an enormous drafting aid. Among the entities that maintain compilations are legal publishing companies, congressional committees, and the House Office of the Legislative Counsel. Compilations of selected statutes are available on the left menu bar under Selected Statutes (/HOLC/Resources/comps_alpha.html). See the example below to view section 102(a)(1) of the Family and Medical Leave Act of 1993 as it appears in the Office's compilation of the statute:

A statute as it appears in the Office's compilations ▶

When citing a statute that is not part of a positive law title of the Code, it is helpful to give the Code cite in parentheses as an aid to readers who do not have access to a compilation. For example: "section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612)". If a provision does not appear as part of a Code section but does appear in a note or appendix, the Code cite will look like this: "section 235 of the Water Resources Development Act of 1996 (33 U.S.C. 2201 note)"; "section 3 of the Federal Advisory Committee Act (5 U.S.C. App.)". If a provision does not appear in the Code at all, the parenthetical aid may include the public law number or Statutes at Large citation, or both. For example: "section 701 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80)"; "section 101 of the Water Resources Development Act of 1996 (110 Stat. 3662)".

With rare exceptions, it is unnecessary to specify that you are citing to a statute "as amended". Upon enactment, amendments are considered executed, even though nothing physically happens to the slip law or Statutes at Large, and any future reference is considered to be to the statute as amended.

III. Organization within a bill

The section is the basic unit of organization of a bill, and thus of an enacted statute. Section 104 of title 1, United States Code, provides that a section "shall contain, as nearly as may be, a single proposition of enactment". The terminology for referring to units within a section has become highly standardized and should be carefully followed to avoid confusion. The breakdown of a section is as follows:

SECTION 1. ("SECTION" for 1st section and " §" for subsequent sections, followed by Arabic numeral)

(a) (Subsection) (lower-case letter)

(1) (Paragraph) (Arabic numeral)

(A) (Subparagraph) (upper-case letter)

(i) (Clause) (lower-case Roman numeral)

(I) (Subclause) (upper-case Roman numeral)

In larger bills, sections may be organized into higher-level units. The terminology for such units varies from bill to bill, but the following terms are often used (from the highest level to the level immediately above a section): title I, subtitle A, chapter 1, subchapter A, part I, subpart 1.

IV. General template for structuring content

Our Office generally tries to organize the content of a bill, and provisions within a bill, according to the template below. We do not always follow this template, but it is often our starting point when we think about how to put together a draft.

- General rule: State the main message.
- Exceptions: Describe the persons or things to which the main message does not apply.
- Special rules: Describe the persons or things to which the main message applies in a different way or for which there is a different message.
- Transitional rules.
- Other provisions.
- Definitions.
- Effective date (if appropriate).
- "Authorization of appropriations" provisions (if appropriate).

V. Amending statutes

A. Deciding whether a bill should be freestanding or amendatory

Many considerations go into deciding whether a bill should be a "freestanding" statement of law that is not incorporated as part of another statute or should amend an existing statute. They include the following:

- Is there an existing statute pertaining to the agencies, persons, or subject matter involved?
- If there is such a statute, is the new policy temporary or permanent? It may be better to avoid cluttering up the existing statute with temporary provisions, despite the related content.
- Would it be helpful for the definitions, enforcement provisions, rules of construction, or other general provisions of any such statute to apply in the case of the new policy?

B. Distinguishing material "outside the quotes" from material "inside the quotes"

Material that is being added to an existing statute is shown in quotation marks. As a shorthand, drafters often speak of freestanding material (whether an entire bill or a freestanding portion of a bill that also amends existing law) as being "outside the quotes" and the material being added as being "inside the quotes". Even if all of the substantive provisions of a bill are inside the quotes, it will still have technical provisions that are freestanding, most notably amendatory instructions that indicate where in the existing statute the new material is to be placed.

When an amendatory provision becomes law, any new material being added will become part of the existing statute. Accordingly, it must be written as if it is in that statute. For example, references inside the quotes to "this Act" are to the statute being amended, not the new bill. Similarly, references inside the quotes to "section 5" are to section 5 of the statute being amended. Also, remember that all of the definitions, enforcement provisions, rules of construction, and other general provisions that apply to the portion of the statute where the new material is being placed will apply to that new material.

See the example below for a section of a bill that adds a new subsection to an existing statute:

A bill adding a new subsection to an existing statute ▶

VI. Use of particular legislative provisions

A. Purposes and findings provisions

Our Office discourages the use of a statement of purpose that merely summarizes the specific matters covered by a bill. At a minimum, such a statement is redundant if the operative text of the bill already states exactly what is required, permitted, or prohibited. More importantly, any differences between such a statement and the operative text may be construed in ways that are difficult to anticipate. There may be cases, however, where a statement of the objective of a particularly complex provision may be useful in clarifying Congress's intent behind the provision.

Findings provisions are also generally unnecessary. In some instances, though, they may be helpful in establishing Congress's power to regulate a certain activity (e.g., showing how an activity affects interstate commerce).

B. "Authorization of appropriations" provisions

In order to maintain the delineation between the jurisdiction of the authorizing committees and the Appropriations Committee, House Rule XXI creates a point of order against unauthorized appropriations in general appropriations bills. An appropriation in such a bill is out of order unless the expenditure is authorized by existing law. Note, however, that if the point of order is not raised or is waived and the bill is enacted, the appropriation will be valid.

Language requiring or permitting government action carries an implicit authorization for an unlimited amount of money to be appropriated for that purpose. The reason for including an "authorization of appropriations" provision is to limit the authorization to the amount or fiscal years stated. Accordingly, a provision that authorizes the appropriation of "such sums as may be necessary", without specifying the years for which appropriations are authorized, is superfluous and should not be used.

C. Effective date provisions

Unless otherwise provided, a bill takes effect on the date of its enactment. An effective date provision should only be included if another effective date is intended. In a bill making amendments, any effective date provision with respect to when the amendments take effect should be stated, outside the quotes, as applying to "the amendments made by this [provision]", not the provision itself.

VII. Three important conventions

A. The terms "means" and "includes"

The basic distinction between these two terms is that "means" is exclusive while "includes" is not. If a definition says that "the term 'X' means A, B, and C", then X means *only* A, B, and C and cannot also mean D or E. If a definition says that "the term 'X' includes A, B, and C", then X must include A, B, and C, but it may also include D or E, or both. Thus, the phrase "includes, but is not limited to" is redundant. In fact, using it in some places out of an abundance of caution could cause a limitation to be read into places where it is not used.

B. The terms "shall" and "may"

The term "shall" means that an action is required; the term "may" means that it is permitted but not required. While this might seem obvious, a common misconception concerns the phrase "may not", which is mandatory and is the preferred language for denying a right, power, or privilege (e.g., "The Secretary may not accept an application after April 1, 2011."). "Shall not" perhaps sounds stronger and is usually construed to have the same meaning, but it is subject to some (rather arcane) interpretations that are best avoided.

C. Use of the singular preferred

In general, provisions should be drafted in the singular to avoid the ambiguity that plural constructions can create. Take, for example, this provision: "Drivers may not run red lights.". It is ambiguous as to whether there is any violation unless *multiple* drivers run *multiple* red lights. This problem can be avoided by rewriting the provision as follows: "A driver may not run a red light.".

Section 1 of title 1, United States Code, provides that in determining the meaning of any statute, unless the context indicates otherwise, singular terms include the plural and plural terms include the singular. In the simple example above, this rule of construction would eliminate any ambiguity by instructing that the reader substitute "driver" for "drivers" and "red light" for "red lights". But it is preferable for a provision to be clear on its face, and the rule of construction also works in the other direction to foreclose any argument (however tenuous) that the redrafted provision applies to only one driver.

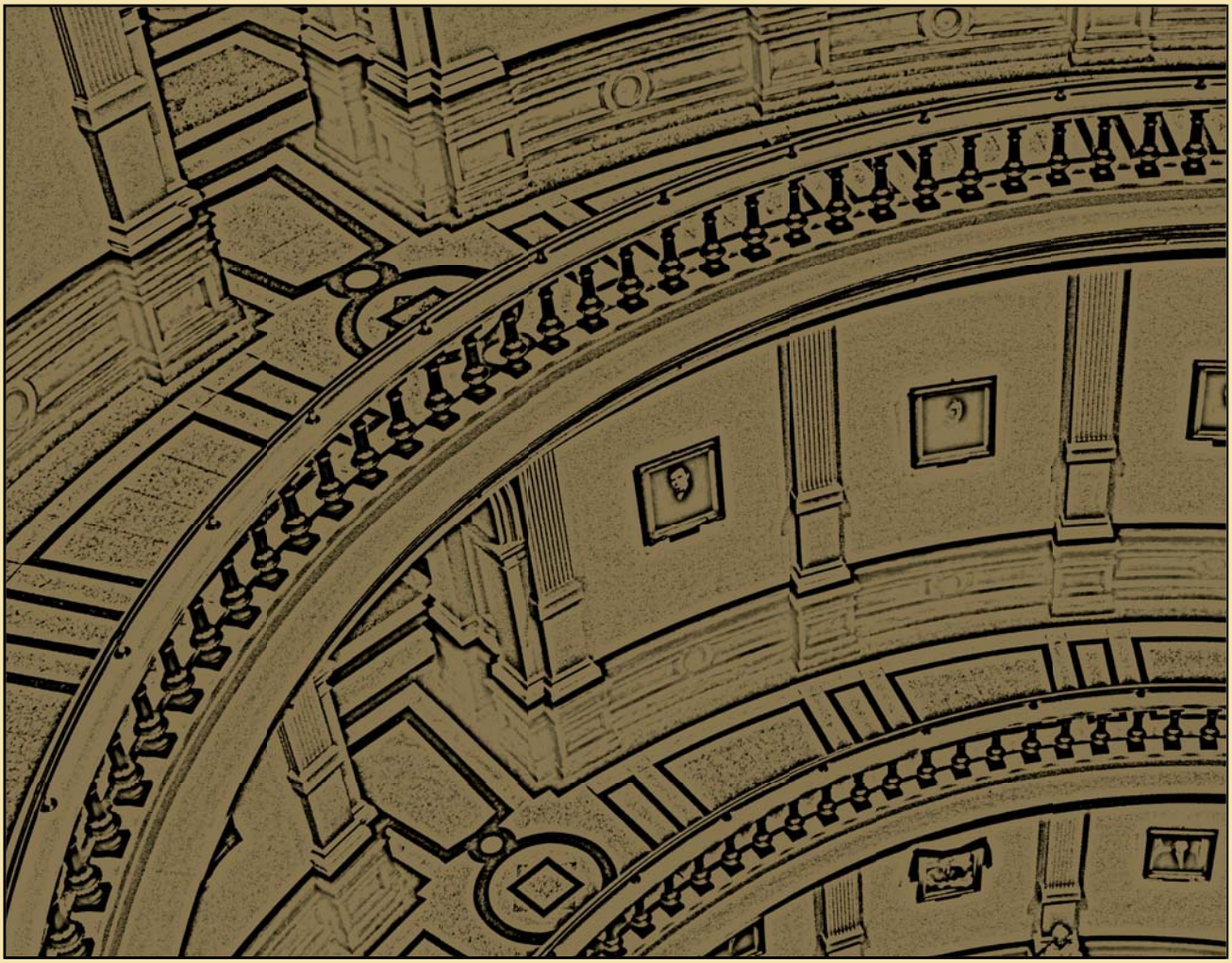
VIII. Sources and additional information

The following sources were used in the preparation of this guide and provide valuable additional information for anyone interested in legislative drafting or the organization of Federal law:

- *House Legislative Counsel's Manual on Drafting Style (/sites/legcounsel.house.gov/files/documents/draftstyle.pdf)* (originally prepared by Ward M. Hussey and revised by Ira B. Forstater).
- Lawrence E. Filson and Sandra L. Strokoff, *The Legislative Drafter's Desk Reference*, 2nd. ed. (Washington, D.C.: CQ Press, 2008).
- *Preface* and *Editor's Note* to the 2006 edition of the United States Code.
- Tobias A. Dorsey, *Legislative Drafter's Deskbook: A Practical Guide* (Alexandria, VA: TheCapitol.Net, 2006).
- *Introduction to Legislative Drafting (/sites/legcounsel.house.gov/files/documents/intro_to_drafting.pdf)* (prepared by our Office for the use of our clients).

Attachment 2

Reading Statutes and Bills



Texas Legislative Council
For the 85th Legislature

Reading Statutes and Bills

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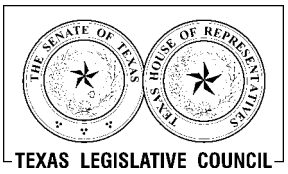

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For the 85th Legislature

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Contents

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Introduction

The purpose of this publication is to provide a basic overview of Texas statutes and bills and tips for reading and understanding them. The following sources provide additional information.

Statutes. The statutes are most easily accessed online via the Texas Constitution and Statutes website (http://www.statutes.legis.texas.gov/Index.aspx), which is maintained by the Texas Legislative Council and regularly updated and corrected.

Bills. Bills can be accessed via the Texas Legislative Information System (TLIS—a legislative resource available online at http://tlis/ or through Capweb, http://capweb/) and Texas Legislature Online (TLO—a public resource available online at http://www.legis.texas.gov/). Bills are distributed in either electronic format or hard copy, or both, to members of the legislature at certain stages of the legislative process.

Bill Drafting. For a comprehensive guide to understanding and analyzing the codes and legislative documents, you may refer to the Texas Legislative Council Drafting Manual, which is available online at http://www.tlc.texas.gov/docs/legref/draftingmanual.pdf or in hard copy form by calling the council at (512) 463-1144.

Reading Statutes and Bills

Section 1, Article III, Texas Constitution, vests the legislative power of Texas in a Senate and House of Representatives. Statutes are the laws of a state as enacted by the legislature and approved by, or allowed to take effect without the signature of, the governor. Bills, the legislative documents used to create or amend laws, are read in the context of existing statutes. Understanding existing law and how it is affected by a bill is fundamental to reading and understanding a bill. With a basic understanding of how to read the statutes, you will be better prepared to read and understand a bill.

Statutes

Each bill passed by the legislature and not vetoed by the governor becomes effective according to the terms outlined in the bill or general effective date provisions in the state constitution. Once effective, the text of the bill becomes law. Such law can be found in the session laws and in *Vernon's Texas Civil Statutes* or the 27 codes that are organized by topic.

How Codes and Statutes Are Organized

Texas Codes
Agriculture Code
Alcoholic Beverage Code
Business & Commerce Code
Business Organizations Code
Civil Practice and Remedies Code
Code of Criminal Procedure
Education Code
Election Code
Estates Code
Family Code
Finance Code
Government Code
Health and Safety Code
Human Resources Code
Insurance Code
Labor Code
Local Government Code
Natural Resources Code
Occupations Code
Parks and Wildlife Code
Penal Code
Property Code
Special District Local Laws Code
Tax Code
Transportation Code
Utilities Code
Water Code

External Organization

Codes. Most Texas statutes today are arranged into 27 topical codes (see box at left), which are the result of many decades of legislative enactment and revision of law. In 1963, the legislature charged the Texas Legislative Council with conducting an ongoing nonsubstantive revision of the 1925 statutes. Under the revision program, the statutes are arranged into topical codes and numbered using a system that accommodates future expansion of the law. In addition, the revision eliminates repealed, invalid, and duplicative provisions. The few 1925 statutes that have not been incorporated into a code may be found in *Vernon's Texas Civil Statutes*.

Vernon's Texas Civil Statutes. Before the codification, Texas revised its statutes four times: 1879, 1895, 1911, and 1925. The 1925 revision organized the statutes into a unified body of law. Each statute was titled and assigned a sequential article number that corresponded with its alphabetized title. This organization was published and bound in black volumes known as *Vernon's Texas Civil Statutes*.

Subsequent additions to the law were incorporated into the organization established in 1925. To maintain the integrity of the statutes' numerical and alphabetical organization, the publisher often added letters to the

end of article designations for new laws relating to the same subject matter. Eventually, the statutes became confusing in their numbering and organization.

Session Laws. The above two organizational schemes include the cumulative body of law up to a point in time. In contrast, session laws are the compilation of the laws enacted during a particular legislative session. Bills that are passed during each legislative session and not vetoed by the governor are assigned a session law chapter number by the secretary of state that corresponds with the order in which the enacted bill is filed with the secretary of state. This chapter designation is often used to identify a specific bill from a specific session, such as Chapter 981 (H.B. 1125), Acts of the 74th Legislature, Regular Session, 1995. Bills from each legislative session are compiled, organized by chapter number, published, and bound as the General and Special Laws, for that session.

Most bills amend the codes or civil statutes. Some bills, however, enact new law without reference to a *Vernon's Texas Civil Statutes* or code section, and these bills can be found in the session laws for that session and are usually incorporated into the civil statutes or a code, as appropriate, at a later time.

Internal Organization

Most codes are organized using the scheme shown below: title, subtitle, chapter, subchapter, section, etc. Sections are numbered decimally, and the number to the left of the decimal point denotes the chapter in which the section is contained. Gaps in chapter and section numbering usually exist for future expansion.

```
                        TITLE 1. HEADING
                     SUBTITLE A. HEADING
                      CHAPTER 1. HEADING
                   SUBCHAPTER A. HEADING

Sec. 1.01. HEADING. (section)
(a) (subsection)
    (1) (subdivision)
       (A) (paragraph)
          (i) (subparagraph)
             (a) (sub-subparagraph)
```

Some codes, such as the Code of Criminal Procedure, are organized by articles:

```
                        TITLE 1. HEADING
                      CHAPTER 1. HEADING

Art. 1.01. HEADING. (article)
(a) (subsection)
    (1) (subdivision)
```

The uncodified statutes found in the *Vernon's Texas Civil Statutes* volumes are less consistent but follow organizational schemes similar to those above.

Parts of a Statute

Statutory provisions vary in their internal structure and may include a short title, a statement of policy or purpose, definitions, principal operative provisions, and enforcement provisions. Some of these provisions will be discussed in the context of learning to read a statute, but some provisions merit further explanation here.

Short Title. A short title is neither required nor appropriate for most statutory provisions but sometimes is included to provide a convenient way of citing a major, cohesive body of law that deals comprehensively with a subject. The following is an example from the Agriculture Code:

> Sec. 58.001. SHORT TITLE. This chapter may be cited as the Texas Agricultural Finance Act.

Statement of Policy or Purpose. A statement of policy or purpose is neither required nor appropriate for most statutory provisions but may be included when a substantial body of new law is enacted. The following is an example from the Health and Safety Code:

> Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Definitions. A statute may include an entire section dedicated to definitions of terms that apply to a code, a title, a chapter, or a subchapter, or it may define terms in a statutory subsection that apply only to that statutory section.

Principal Operative Provisions. There are two categories of principal operative provisions. Administrative provisions relate to the creation, organization, powers, and procedures of the governmental units that enforce the law. Substantive provisions grant or impose on a class of persons rights, duties, powers, and privileges and may govern conduct by establishing either a mandate or a prohibition.

Enforcement Provisions. An enforcement provision prescribes a punishment for violating a mandate or a prohibition. Such a provision generally establishes a criminal penalty, a civil penalty, an administrative penalty, injunctive relief, or civil liability as a consequence of violating the mandate or prohibition.

Tips for Reading and Understanding a Statute

Many statutes are straightforward and easily understood, while others are more complicated. Cross-references, dependent subdivisions, and phrases that provide exceptions to an application of the statute can make the meaning difficult to follow.

Below are a few tips to help understand statutes.

- ***Read the complete heading.*** The heading (code/title/subtitle/chapter/subchapter/section) establishes how the section fits into the entire code's organization.

```
                    LOCAL GOVERNMENT CODE
        TITLE 8.  ACQUISITION, SALE, OR LEASE OF PROPERTY
     SUBTITLE B.  COUNTY ACQUISITION, SALE, OR LEASE OF PROPERTY
   CHAPTER 262.  PURCHASING AND CONTRACTING AUTHORITY OF COUNTIES
          SUBCHAPTER C.  COMPETITIVE BIDDING IN GENERAL
   Sec. 262.023.  COMPETITIVE REQUIREMENTS FOR CERTAIN PURCHASES
```

- ***Check for the context of the statute.*** Think of the statute as a unit of law that is part of a series of units of law and scan the table of contents to see what sections precede and follow the section you are reading. If there is a short title section (usually at the beginning of the chapter or subchapter), read it.

```
Sec.  262.021.  SHORT TITLE
Sec.  262.022.  DEFINITIONS
Sec.  262.0225. ADDITIONAL COMPETITIVE PROCEDURES
Sec.  262.023.  COMPETITIVE REQUIREMENTS FOR CERTAIN PURCHASES
Sec.  262.0235. PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS FOR
                ELECTRONIC BIDS OR PROPOSALS
Sec.  262.024.  DISCRETIONARY EXEMPTIONS
Sec.  262.0241. MANDATORY EXEMPTIONS: CERTAIN RECREATIONAL SERVICES
Sec.  262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY
                PURCHASING AGENTS OR COMMISSIONERS COURT
Sec.  262.025.  COMPETITIVE BIDDING NOTICE
Sec.  262.0255. ADDITIONAL NOTICE AND BOND PROVISIONS RELATING TO
                PURCHASE OF CERTAIN EQUIPMENT
Sec.  262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A DISTRICT
                GOVERNED BY THOSE COUNTIES
Sec.  262.026.  OPENING OF BIDS
```

- ***Look for a definitions section and read it.*** If present, it is usually found at the beginning of a chapter or subchapter. A definition may be used in the statutes to avoid repetition of a long term, for example, using the term "department" to refer to the Department of State Health Services. Make sure you understand references to general terms like "department," "agency," or "executive director."

Additional Sources for Definitions
• Code Construction Act (Chapter 311, Government Code) applies to all codes enacted as part of the statutory revision program. • Chapter 312, Government Code, applies to civil statutes generally.

- ***Pay close attention to the statute's format and organization.*** Look for breaks in the text. Assume everything in the statute has meaning, including punctuation and format.

- ***Look for key verbs.*** Legislative drafters use important "action" words such as "may," "shall," or "must" that establish whether a provision requires or authorizes some action or condition. "Shall" denotes a duty imposed on a person or entity. "Must" denotes a condition that must be met or an event that must occur as a prerequisite to full legitimacy. "May" denotes a privilege or discretionary power. "Is entitled to" denotes a right, as opposed to discretionary power. "May not" and "shall not" denote a prohibition.

Key Verbs	
Shall	***Must***
May	***Is entitled to***
May not	***Shall not***

- ***Look for exceptions to the application of the statute.*** Exceptions are signaled by keywords such as "certain," "only," "under," "over," "more than," "less than," "if," and "unless" or signaled by a series ending in "and" or "or" that indicates whether all the elements of the series are included or only one of the elements needs to be included to satisfy the series.

- ***Do not skip over words that you do not know or fully understand.*** Do not rely only on common understanding for the meaning of a word about which you are unsure, and do not assume a word (e.g., "person") has the same meaning that it has in everyday conversation. Use statutory context and definitions to determine the precise meaning of a word.

- ***Read through cross-referenced sections in their entirety.*** Legislative drafters avoid repetition of text by the use of cross-references to other statutory provisions. If a cross-reference is to an entire chapter or subchapter, read through the chapter's or subchapter's table of contents and definitions section to discern the context. In the following example, without reading the cross-referenced Section 93.011, the reader would not know that the circumstances under which the savings bank has closed are emergency circumstances.

> Sec. 93.012. EFFECT OF CLOSING. (a) A day on which a savings bank or one or more of its operations are closed under Section 93.011 during all or part of its normal business hours is considered to be a legal holiday to the extent the savings bank suspends operations.

> Sec. 93.011. EMERGENCY CLOSING. (a) If the officers of a savings bank determine that an emergency that affects or may affect the savings bank's offices or operations exists or is impending, the officers, as reasonable, may determine: . . . .

Bills

Section 30, Article III, Texas Constitution, provides that "[n]o law shall be passed, except by bill." As a result, the bill is the exclusive means by which the legislature may enact, amend, or repeal a statute. Among other requirements, Section 35 of that same article prescribes the one-subject rule: "No bill, (except general appropriation bills…) shall contain more than one subject." The policy behind the one-subject rule is that a legislative proposal should stand on its own merits and not be combined with unrelated proposals to generate broader support, to prevent unrelated provisions from being added to the bill without being fully vetted, and to keep individual bills from becoming overly complex or massive. A bill containing more than one subject is subject to a point of order. A law enacted in violation of the one-subject rule is also subject to attack in court. However, this rule does not prohibit "omnibus" bills if every provision relates to a single subject.

How Bills Are Organized

General Organization

Sections and Articles. Most bills are organized into *sections*. Bill sections are spelled out in full in all capital letters—"SECTION"—followed by the number of the bill section.

> SECTION 1. Section 134.014, Agriculture Code, is amended to read as follows:
> Sec. 134.014. LICENSE FEES; WAIVERS. (a) The department . . . .
> SECTION 2. Section 66.077, Parks and Wildlife Code, is amended by adding Subsection (c-1) to read as follows:
> (c-1) The commission . . . .

On the other hand, articles may be used to organize long bills to allow the grouping of related sections of a bill. Bill articles are spelled out in full in all capital letters —"ARTICLE"— followed by the number of the bill article.

> ARTICLE 1. DEPARTMENT OF BANKING
> SECTION 1.01. Section 12.101, Finance Code, is amended to read as follows:
> Sec. 12.101. BANKING COMMISSIONER. (a) The banking commissioner . . . .
> ARTICLE 2. COMPTROLLER OF PUBLIC ACCOUNTS
> SECTION 2.01. Sections 2151.002, 2151.003, and 2151.004, Government Code, are amended to read as follows:
> Sec. 2151.002. DEFINITION [~~DEFINITIONS~~]. . . .

The all-capital-letter format helps distinguish bill sections and articles from the sections and articles of the statutes being amended by the bill. Bills are typically organized so that bill sections that make substantive changes to statute sections are ordered alphabetically by code then numerically within a particular code. Bill sections containing procedural provisions follow the substantive provisions.

Amendable Unit. Section 36, Article III, Texas Constitution, prohibits the "blind amendment" of law — meaning a bill that amends law without fully revealing what is being changed. For example, a bill cannot read: *Section 42.004, Education Code, is amended by deleting "in accordance with the rules of the State Board of Education."* As a result of this prohibition, a bill must include an amendable unit, i.e., the text of a law being amended in sufficient length to indicate the purpose of the change and express a complete thought. In Texas, the threshold for an amendable unit is a complete sentence.

Additional Information

See Section 3.10 of the *Texas Legislative Council Drafting Manual* for a complete discussion of amendments to existing law.

Format Conventions. Bills can amend the codes and statutes by adding new language or changing or deleting existing language. Provisions that directly amend an existing statute must follow two format conventions. First, the language describing the statute being amended, also called the recital (see below), must refer to the official citation of that statute.

```
   SECTION 1. Section 1702.169, Occupations Code, is amended to read as
follows:
```

Second, rules of the senate and house of representatives have traditionally required new language to be underlined and deleted language to be stricken through and bracketed so the reader can compare the current version of the law with the proposed version. The use of brackets is similar to the use of quotations. If there is an opening bracket, there must be a closing bracket. If multiple paragraphs are bracketed, there should be an opening bracket at each indentation, but not at the end or beginning of each line.

```
   SECTION 1. Section 753.004, Health and Safety Code, is amended by
amending Subsection (d) and adding Subsection (d-1) to read as follows:
   (d) Except as provided by Subsection (d-1), gasoline [~~Gasoline~~], diesel
fuel, or kerosene may be stored in an aboveground storage tank [~~with a
capacity of not more than 4,000 gallons~~] at a retail service station
located in an unincorporated area or in a municipality with a population
of less than 5,000.
   (d-1) A commissioners court of a county with a population of 3.3
million or more may by order limit the maximum volume of an aboveground
storage tank in an unincorporated area of the county in accordance with
the county fire code.
```

Parts of a Bill

Each bill is composed of three basic parts: introductory language, substantive provisions, and procedural provisions.

Introductory Language

The standard features of a bill include the heading, the caption, and the enacting clause, which are referred to collectively as introductory language. Here is an example of a bill's introductory language:

```
By: Smithee                                                    H.B. No. 3538
                              A BILL TO BE ENTITLED
                                      AN ACT

relating to the adoption of the Uniform Interstate Family Support Act
of 2008.
   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
```

Heading. The first line at the top of the first page of every bill is the heading, sometimes referred to as the "byline." The heading indicates the author's name, the chamber in which the bill was introduced (H.B. for a house bill and S.B. for a senate bill), and the bill number.

```
By: Smithee                                                    H.B. No. 3538
```

Caption. Below the heading is the caption (also known as the title), which is required by Section 35, Article III, Texas Constitution, to be included in every bill. The caption is meant to give legislators and other persons a convenient way to determine the subject of the bill. For purposes of understanding the bill, the caption is the most important part of the introductory language because it serves as an immediate explanation of the bill's subject matter. The caption usually includes the phrase "relating to" as shown below.

```
relating to the adoption of the Uniform Interstate Family Support Act
of 2008.
```

Additional Information

See Section 3.03 of the *Texas Legislative Council Drafting Manual* for a discussion of the title or caption.

Enacting Clause. Section 29, Article III, Texas Constitution, also requires every bill to include an enacting clause in the exact language below. The enacting clause is in all caps, is indented, and ends with a colon.

```
   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
```

Substantive Provisions

Since the bill is the vehicle for enactment of law, most of the provisions in a bill add, amend, or delete statutory provisions. Following the bill's introductory language are the substantive provisions as discussed in this publication's section on Parts of a Statute: short title, statement of policy or purpose, definitions, principal operative provisions, and enforcement provisions.

Some of a bill's substantive provisions, however, do not amend a code or statute section and bear further discussion here.

Short Title. A short title is neither required nor appropriate for most bills but sometimes is included in a bill to provide a convenient way of citing a major, cohesive body of law that deals comprehensively with a subject. Some short titles are not introduced as an amendment to a particular statute and, therefore, are found only in the bill, like the following example from S.B. 572, 81st Legislature:

> SECTION 1. This Act shall be known as Jacob's Law.

Statement of Policy or Purpose. A statement of policy or purpose is neither required nor appropriate for most bills but may be included when a substantial body of new law is introduced or when the operative provisions of a short bill do not clearly indicate what the bill is intended to accomplish. Some statements of policy or purpose are not introduced as an amendment to a statute and, therefore, are found only in the bill, like the following example from S.B. 1026, 83rd Legislature:

> SECTION 4.01. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act. This Act does not increase or decrease the territory of any special district of the state as those boundaries exist on the effective date of this Act.

Repealers. Bills also can amend the law by repealing existing provisions. Repealers (see below) work by citing the portion of law to be repealed and may appear as an entire bill section or as a subsection within a bill section. Most repealers are found among the last sections of a bill or bill article. Be cautious as these provisions can make substantive changes.

> SECTION 10. The following sections of the Occupations Code are repealed:
> (1) Section 110.256;
> (2) Sections 401.2535(h) and (i); and
> (3) Section 402.154(h).

> SECTION 4. The Automobile Club Services Act (Article 1528d, Vernon's Texas Civil Statutes) is repealed.

Additional Information

See Section 3.11 of the *Texas Legislative Council Drafting Manual* for a discussion of repealers.

Procedural Provisions

There are several types of procedural provisions: severability provisions, saving provisions, transition provisions, and effective date provisions. Some procedural provisions are of temporary

significance. As such, they are not incorporated into the codes or revised statutes but appear only in the session laws.

Severability Provisions. There are two types of severability provisions: severability clauses and nonseverability clauses. They have been used in bills to resolve the question of whether, when part of a statute is held to be invalid, the remainder of the statute is invalid. There is no practical need for severability clauses since Sections 311.032 and 312.013, Government Code, provide that all statutes are severable unless specifically declared otherwise. However, severability clauses still occasionally appear in bills.

> SECTION 3. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Nonseverability clauses are used to make it clear that parts of a statute are meant to be treated together and rise and fall together under a constitutionality challenge. There are general nonseverability clauses, which declare that none of the provisions of an act are severable, and special nonseverability clauses, which declare that specific provisions are not severable.

> SECTION 3. NONSEVERABILITY. Section 1 of this Act, prohibiting the manufacture of widgets without a license, and Section 2 of this Act, imposing a tax on the manufacture of widgets, are not severable, and neither section would have been enacted without the other. If either provision is held invalid, both provisions are invalid.

Additional Information

See Section 3.13 of the *Texas Legislative Council Drafting Manual* for a discussion of severability and nonseverability clauses.

Saving Provisions. A saving provision "saves" from the application of a law certain conduct or legal relationships that occurred before or existed on the effective date of the law. The most common saving provision applies to criminal or civil offenses, as shown below.

> SECTION 9. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

Transition Provisions. A transition provision provides for the orderly implementation of legislation to avoid the confusion that can result from an abrupt change in the law. A common type of transition provision provides instruction for the transfer of powers and duties from one agency to another; another common type directs an agency to adopt rules or procedures required by a general substantive provision. Both can be found in the following example:

SECTION 5.03. . . .

(b) In accordance with the transition plan developed by the Texas Department of Transportation and the Texas Department of Licensing and Regulation under Subsection (a) of this section, on January 1, 2008:

(1) all functions and activities performed by the Texas Transportation Commission and the Texas Department of Transportation relating to tow trucks, towing operations, or vehicle storage facilities immediately before that date are transferred to the Texas Department of Licensing and Regulation; . . . .

SECTION 5.04. Not later than April 1, 2008, the Texas Commission of Licensing and Regulation shall adopt rules relating to an original application for a permit or license under Chapter 2303, Occupations Code, as amended by this Act, and Chapter 2308, Occupations Code, as added by this Act.

Additional Information

See Section 3.12 of the *Texas Legislative Council Drafting Manual* for a discussion of transition provisions.

Effective Date Provisions. Section 39, Article III, Texas Constitution, provides that a law, other than the general appropriations act, may not take effect "until ninety days after the adjournment of the session at which it was enacted" unless the legislature provides for an earlier effective date by a vote of two-thirds of the membership. There are standard types of effective date provisions: immediate effect, a specific effective date before the 91st day, a specific effective date after the 91st day, an effective date contingent on an event or expiration of a period of time, and an effective date contingent on passage of another bill or constitutional amendment. A bill may also be made effective contingent on an appropriation. Below are examples of the effective date provisions.

Immediate effect:

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

Specific effective date before the 91st day:

SECTION 7. This Act takes effect July 1, 2017, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect September 1, 2017.

Specific effective date after the 91st day:

```
   SECTION 7.  This Act takes effect September 1, 2017.
```

Effective date contingent on an event or expiration of a period of time:

```
   SECTION 7. (a) This Act takes effect on the date the commissioner
of education publishes the report required by Section 6 of this Act if
that date:
         (1) occurs before the 91st day after the last day of the
legislative session and this Act receives a vote of two-thirds of all
the members elected to each house, as provided by Section 39, Article
III, Texas Constitution; or
         (2) occurs on or after the 91st day after the last day of the
legislative session.
   (b) If that date of publication occurs before the 91st day after the
last day of the legislative session and this Act does not receive the
vote necessary for effect on that publication date, this Act takes effect
September 1, 2017.
```

Effective date contingent on the passage of another bill or a constitutional amendment:

```
   SECTION 7.  This Act takes effect September 1, 2017, but only if House
Bill 1676, 85th Legislature, Regular Session, 2017, becomes law. If that
bill does not become law, this Act has no effect.
```

```
   SECTION 7. This Act takes effect on the date on which the constitutional
amendment proposed by H.J.R. 45, 85th Legislature, Regular Session, 2017,
takes effect.  If that amendment is not approved by the voters, this
Act has no effect.
```

Effectiveness contingent on an appropriation:

```
   SECTION 7.  The Texas Historical Commission is required to implement
this Act only if the legislature appropriates money specifically for that
purpose. If the legislature does not appropriate money specifically for
that purpose, the commission may, but is not required to, implement this
Act using other appropriations available for the purpose.
```

Finally, a bill may have no effective date provision; in that case, it is effective on the 91st day after adjournment. Also note that parts of a single bill may take effect on different dates.

Additional Information

See Section 3.14 of the *Texas Legislative Council Drafting Manual* for a more thorough discussion of effective date provisions.

Tips for Reading and Understanding a Bill

Scanning the substantive provisions of a bill for certain features can help you learn valuable information quickly, in much the same way that reading the caption informs you about a bill's general subject matter.

- ***Check to see if the bill is adding new language, amending existing language, or both.*** To do this, look for underlined or bracketed language with strike throughs. If you are reading the session laws, new language is indicated by *italics* rather than underlining.

  Without even reading for comprehension, simply noticing the amount and placement of underlined or italicized text and bracketed text will give you an idea of the bill's complexity.

- ***Look for definitions.*** Definitions can help determine the scope of a bill and provide clues about its focus. What agencies or entities are involved? Is the bill directed at a particular group?

- ***Scan the recital for each bill section.*** Is the bill adding or amending just one section or article of the statutes? Is it adding or amending a subsection? Is it adding an entire subchapter or chapter? Is it making a series of similar changes to sections in different codes or different chapters of one code?

- ***Look for conforming changes.*** Many times a bill makes a single substantive change to the law that necessitates related changes to be made in other sections of law. These changes are known as conforming changes. Identify such changes and move on; don't spend time trying to understand a change if it is not substantively changing the statute. These changes are often easy to spot because they involve multiple insertions or deletions of the same words or phrases. For example, if the name of an agency is changed, every reference to the agency throughout the codes must be changed to conform to the new name.

- ***Check for repealers.*** Read the provisions that the bill repeals. How many repealers are there? Is the bill replacing one chapter or subchapter with another?

- ***Refer to the surrounding sections of the statute to put the bill or bill section in context.*** Understanding the context of the change to law made by the bill is essential to understanding the change. From an initial reading of the example below, the fee information in Subsection (b) of Sec. 214.194, Local Government Code, appears transparent. The alarm system permit fee charged by a municipality may not be more than $50 per year.

> Sec. 214.194. MUNICIPAL PERMIT FEE GENERALLY. (a) If a municipality adopts an ordinance that requires a person to pay an annual fee to obtain a permit from the municipality before the person may use an alarm system in the municipality, the fee shall be used for the general administration of this subchapter, including the provision of responses generally required to implement this subchapter other than specific responses to false alarms.
>
> (b) A municipal permit fee imposed under this section may not exceed the rate of $50 a year for a residential location.

However, the context provided by the surrounding statutes is key to accurately understanding the permit fee, as shown below.

> SUBCHAPTER F. BURGLAR ALARM SYSTEMS IN CERTAIN MUNICIPALITIES WHOLLY LOCATED IN CERTAIN COUNTIES
>
> Sec. 214.191. DEFINITIONS
>
> Sec. 214.1915. APPLICABILITY
>
> Sec. 214.192. CATEGORIES OF ALARM SYSTEMS
>
> Sec. 214.193. DURATION OF MUNICIPAL PERMIT
>
> Sec. 214.194. MUNICIPAL PERMIT FEE GENERALLY

Of particular note in this instance is Sec. 214.1915 (shown below) relating to applicability.

> Sec. 214.1915. APPLICABILITY. This subchapter applies only to a municipality with a population of less than 100,000 that is located wholly in a county with a population of less than 500,000.

The provision limits the applicability of the subchapter to certain municipalities. An understanding of Sec. 214.194(b) must include the limitation imposed by the applicability provision. Therefore, a precise description of Subsection (b) would read as follows:

> The alarm system permit fee charged by a municipality with a population of less than 100,000 that is located wholly in a county with a population of less than 500,000 may not be more than $50 per year.

Practice Exercises

This section provides three bills that have been considered by the Texas Legislature, showing examples of underlining and bracketing and discussing points that must be considered when reading and understanding the bills.

Exercise 1

AN ACT

relating to the designation of certain fire marshals and related officers, inspectors, and investigators as peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

...

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section; [~~and~~]

(35) investigators commissioned by the Texas Juvenile Probation Commission as officers under Section 141.055, Human Resources Code; and

(36) the fire marshal and any related officers, inspectors, or investigators commissioned by a county under Subchapter B, Chapter 352, Local Government Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The change illustrated above is fairly simple. The caption establishes that the bill relates to who is considered a peace officer in Texas law. The amended statute is a list of persons considered peace officers, and the underlining and bracketing should immediately indicate that persons are being added to the list.

In essence, the bill amends the Code of Criminal Procedure to include among peace officers the fire marshal and any related officers, inspectors, or investigators appropriately commissioned by a county.

Exercise 2

A BILL TO BE ENTITLED
AN ACT

relating to the hours for the wholesale delivery or sale of beer in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 105, Alcoholic Beverage Code, is amended by adding Section 105.052 to read as follows:

Sec. 105.052. SALE OF BEER BY DISTRIBUTOR'S LICENSEE IN CERTAIN METROPOLITAN AREAS. In addition to the hours specified for the sale of beer in Section 105.05(b), the holder of a general, local, or branch distributor's license whose premises is located in a county with a population of 1.8 million or more or in a county adjacent to a county with a population of 1.8 million or more may sell, offer for sale, or deliver beer beginning at 4 a.m. on any day except Sunday.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

First, scan the caption and the section heading to Section 105.052, Alcoholic Beverage Code. The caption tells you that the bill will affect the hours for the wholesale delivery or sale of beer in certain counties. You may infer from this that the bill will either extend or reduce the hours during which wholesale delivery or sale of beer can occur. Note the use of the word "certain" in the caption and the section heading. This is a key word alerting you to the fact that the bill will not affect all counties, and those counties affected will be defined or described in the bill.

Now note that the added statutory language begins with "[i]n addition to the hours . . . ." Clearly the bill is adding to the hours during which wholesale delivery or sale of beer can occur.

Also note that the new hours are in addition to the hours specified in Section 105.05(b), Alcoholic Beverage Code. When you read for comprehension, you should read that section to obtain the context for the changes made by the bill.

(b) A person may sell, offer for sale, or deliver beer between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell beer between midnight and 1:00 a.m. and between noon and midnight, except that permittees or licensees authorized to sell for on-premise consumption may sell beer between 10:00 a.m. and noon if the beer is served to a customer during the service of food to the customer.

In summary, the bill amends the Alcoholic Beverage Code to authorize the holder of a general, local, or branch distributor's license whose premises is located in a county with a population of at least 1.8 million or in a county adjacent to such a county to sell or deliver beer beginning

at 4 a.m. on any day except Sunday. This is in addition to any other period during which the sale or delivery of beer is authorized.

Exercise 3

A BILL TO BE ENTITLED
AN ACT

relating to the payment of damages awarded against members of local governments, including directors of soil and water conservation districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 102.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Employee" includes an officer, volunteer, or employee, a former officer, volunteer, or employee, and the estate of an officer, volunteer, or employee or former officer, volunteer, or employee of a local government. The term includes a member of a governing board. The term does not include a county extension agent.

(2) "Local government" means a county, city, town, special purpose district, including a soil and water conservation district, and any other political subdivision of the state.

SECTION 2. The amendment by this Act of Section 102.001, Civil Practice and Remedies Code, is intended to clarify rather than change the existing law.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Two aspects of the bill should stand out immediately. First, the caption explains that the bill relates to the payment of damages awarded against certain members of local governments. Notice that the bill achieves its purpose by amending the definitions section of Chapter 102, Civil Practice and Remedies Code. To fully understand the bill, you need to scan the chapter. What are the damages to which the bill refers? What is the subject matter of Chapter 102? You should look up that chapter and, at the very least, read through the subchapter and section headings to understand the context of the bill.

Second, note that the bill is not actually making a change in the law. The statement of intent in SECTION 2 makes that clear. This is a rare example. The bill's single purpose is to clarify the law.

The bill clarifies that the authority of a local government to pay actual damages awarded against one of its employees and to provide legal counsel in a suit for such damages may be exercised by a soil and water conservation district on behalf of a member of the district's governing board.

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Envelope ID: 53972941
Status as of 6/1/2021 1:42 PM CST

Associated Case Party: BruceR.Hotze

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William A. Taylor	19727600	ataylor@andytaylorlaw.com	6/1/2021 12:27:47 PM	SENT
Allen Parker		info@txjf.org	6/1/2021 12:27:47 PM	SENT

Associated Case Party: The City of Houston

Name	BarNumber	Email	TimestampSubmitted	Status
Collyn A.Peddie		collyn.peddie@houstontx.gov	6/1/2021 12:27:47 PM	SENT
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Associated Case Party: Bruce Hotze

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William A. Taylor	19727600	ataylor@andytaylorlaw.com	9/23/2022 5:02:55 PM	SENT

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Associated Case Party: City of Houston

Name	BarNumber	Email	TimestampSubmitted	Status
Collyn A.Peddie		collyn.peddie@houstontx.gov	9/23/2022 5:02:55 PM	SENT
Arturo G.Michel		arturo.michel@houstontx.gov	9/23/2022 5:02:55 PM	SENT
Suzanne R.Chauvin		suzanne.chauvin@houstontx.gov	9/23/2022 5:02:55 PM	SENT