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Filed in The District Court
of Travis County, Texas

AUG 04 2016

At 4:01 P.M. *NWR*
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Re: Cause No. D-1-GN-16-001762; *Grayson Cox, et. al vs. City of Austin; in the 126th Judicial District Court, Travis County, Texas*

Dear Counsel,

I have received Plaintiffs' follow-up brief in this matter, as well as an email with the City's argument. Neither has persuaded the court from its position on Monday that ruling on the motions for summary judgments would be an improper advisory opinion. Therefore, the court lacks subject-matter jurisdiction at this time and cannot rule on any pending motions.

All counsel and parties are directed to the Texas Supreme Court opinion in *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex.1993), which explains in detail how and why Texas courts lack jurisdiction to issue advisory opinions.

At the outset, the court recognizes the irony of this situation. Many days, the district courthouse is inundated with pleas to the jurisdiction brought by the City, State and County, which are over-pled, overbroad and oftentimes abusive of the court's time – because not everything involving government actors is subject to jurisdictional attack – nor should it be.

However, this is a textbook case of asking a court for an improper advisory opinion. Ultimately, all parties want the court to tell Austin City Council whether it must approve the Grove PUD ("Planned Unit Development") by a $\frac{3}{4}$ supermajority or whether a simple majority will suffice – before Council takes the vote. Moreover, Plaintiffs do not even seek

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THIS IS A TRUE

Valva L. Price, District Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court, at Austin, Texas, this 1st day of January, 1901.

Valva L. Price, District Clerk

Witness my hand and the seal of said Court, at Austin, Texas, this 1st day of January, 1901.

Valva L. Price, District Clerk

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emergency relief in the form of an injunction; therefore, there is no indication that any decision by the Court would bind the City one way or the other. “The distinctive feature of an advisory opinion is that it decides an abstract question of law without binding the parties.” *Texas Ass’n of Bus.*, 852 S.W.2d at 445 (citing *Alabama State Fed’n of Labor v. McAdory*, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389, 89 L.Ed. 1725 (1945); *Firemen’s Ins. Co.*, 442 S.W.2d at 333; *Puretex Lemon Juice, Inc.*, 160 Tex. at 591, 334 S.W.2d at 783.).

Plaintiffs and the City both rely on the fact that this case was brought by Plaintiffs as Uniform Declaratory Judgment Act claim, and is, therefore, a ripe dispute. However, styling this matter as a UDJA action does not save it on ripeness. The UDJA, Tex. Civ. Prac. & Rem. Code §§ 37.001–.011, is merely a procedural device for deciding cases *already within a court’s jurisdiction* rather than a legislative enlargement of a court’s power, permitting the rendition of advisory opinions. *See Texas Ass’n of Bus.* at 446.

The UDJA claim here is whether Austin City Code 25-2-284 is materially inconsistent with Section 211.006 of the Texas Local Government Code (the Texas Zoning Enabling Act), but courts do not simply decide statutory matters in a vacuum. There must first be an injury. And therein lies the problem. Right now, Plaintiffs have suffered a hypothetical injury (because a vote has yet to occur). *See Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984).

At least four possible scenarios could render any ruling by this court moot:

- (1) Austin City Council could simply not take a vote at all – for whatever reason;
- (2) Council, comprised of many lawyers and educated and opinionated members, could disregard advice of co-defendant Mr. Guernsey (director of Austin Planning and Zoning) and choose to vote by simple majority;
- (3) A vote on the Grove PUD could fail at Austin City Council by less than a majority; or
- (4) A vote on the Grove PUD could pass at Austin City Council by more than a $\frac{3}{4}$ majority.

A ruling by this court today ignores the possibility (even if unlikely) that any of these scenarios could occur. It would be advisory because rather than remedying an actual or imminent harm, the judgment would address only a hypothetical injury – or possibly no injury at all.


While Plaintiffs’ frustration in this case and their desire to move the slow bureaucratic process along is understandable, subject-matter jurisdiction is fundamental to the American system of jurisprudence and cannot simply be waived aside because of expediency or efficiency.

This court declining to issue an advisory opinion is the basic principle of separation of powers at work. Under this doctrine, governmental authority vested in one branch of government (the legislative or executive branches) cannot be exercised by another branch (the judicial branch) unless expressly permitted by the Constitution. *See Texas Ass’n of Bus.* at 446; *Firemen’s Ins. Co.*, 442 S.W.2d at 333.

For all these reasons, the Court lacks jurisdiction to rule on the motions for summary judgment.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'ACM', with a long horizontal flourish extending to the right.

Amy Clark Meachum
Judge, 201st District Court
Travis County, Texas

Original: Velva L. Price, District Clerk