

CAUSE NO. 2130313

CITY OF HUNTSVILLE, TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
WALKER COUNTY ESD NO. 3;	§	
THE BOARD OF ESD NO. 3; and	§	WALKER COUNTY, TEXAS
THE OFFICERS &	§	
COMMISSIONERS OF ESD NO.	§	
3, IN THEIR OFFICIAL	§	
CAPACITIES,	§	
	§	
Defendants.	§	Walker County - 278th District Court
		_____ JUDICIAL DISTRICT

**CITY OF HUNTSVILLE’S ORIGINAL PETITION, REQUEST FOR
TEMPORARY RESTRAINING ORDER AND REQUEST FOR
TEMPORARY AND PERMANENT INJUNCTION**

1. The City of Huntsville, Texas (“Huntsville” or the “City”), Plaintiff, files this Original Petition, Request for Temporary Restraining Order and Temporary and Permanent Injunction against a) Walker County Emergency Services District No. 3 (“ESD #3”); b) the Board of Commissioners of ESD #3 (the “Board”); c) Robert McCaffety, in his official capacity as a commissioner and as president of the Board; d) Billy Don Avritt, in his official capacity as a commissioner and as secretary of the Board; e) Mike Bilberry, in his official capacity as a commissioner and as treasurer of the Board; f) Huey Campbell, in his official capacity as a commissioner and as vice-president of the Board; and g) Floyd Garner, in his official capacity as a commissioner and assistant

Filed: 11/3/2021 2:38 PM
Robyn M. Flowers
District Clerk
Walker County, Texas
Melissa Fuentes

treasurer of the Board. The City brings this suit to enforce its statutory rights under Chapter 775 of the Texas Health & Safety Code.

**I.
DISCOVERY CONTROL PLAN**

2. Pursuant to Rule 190 of the Texas Rules of Civil Procedure, the City intends to conduct discovery under level 3.

**II.
PARTIES AND SERVICE**

3. Plaintiff is the City of Huntsville, Texas, a home-rule municipal corporation situated in Walker County, Texas, incorporated and operating under its City Charter and the laws of the State of Texas.

4. Defendant, Walker County Emergency Services District No. 3, is an emergency services district located in Walker County, Texas, and created and operating under authority of Chapter 775 of the Texas Health & Safety Code and may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

5. Defendant, Board of Commissioners of Walker County Emergency Services District No. 3 is the governing body of Walker County Emergency Services District No. 3 and may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

6. Defendant, Robert McCaffety (“McCaffety”) is president of the Board of Commissioners and is sued in his official capacity as a commissioner

and as president. He may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

7. Defendant, Billy Don Avritt (“Avritt”) is secretary of the Board of Commissioners and is sued in his official capacity as a commissioner and as secretary. He may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

8. Defendant, Mike Bilberry (“Bilberry”) is treasurer of the Board of Commissioners and is sued in his official capacity as a commissioner and as treasurer. He may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

9. Defendant, Huey Campbell (“Campbell”) is vice-president of the Board of Commissioners and is sued in his official capacity as a commissioner and as vice-president. He may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

10. Defendant, Floyd Garner (“Garner”) is assistant treasurer of the Board of Commissioners and is sued in his official capacity as a commissioner and as assistant treasurer. He may be served by delivering a copy of the citation to Robert McCaffety, the president of the Board of Commissioners of ESD #3.

III. JURISDICTION AND VENUE

11. An emergency services district may sue or be sued. Tex. Health & Safety Code § 775.031(a)(4). Huntsville has standing to bring this suit because Chapter 775 of the Texas Health & Safety Code gives Huntsville the right to control whether territory within its limits or ETJ is to be included in an emergency services district and the Defendants are acting ultra vires in an illegal attempt to deprive the City of its statutory rights.

12. Venue is proper in Walker County under Texas Civil Practice & Remedies Code section 15.0151, because it is an action against a political subdivision in a county with a population of less than 100,000. It is also proper under section 15.002 because it is the county in which all of the events or omissions giving rise to the claim occurred in Walker County and because the ESD #3's principal office is in Walker County.

IV. WAIVER OF BOND

13. Under section 6.002 of the Texas Civil Practice & Remedies Code and in article XI, section 11.04 of the City's Charter, the City is not required to post an injunction bond.

V.
FACTUAL AND LEGAL BACKGROUND

14. The creation and operation of emergency services districts in Texas is governed by Chapter 775 of the Texas Health & Safety Code. Under Chapter 775, a district cannot include any territory that is within the limits or extra-territorial jurisdiction of a city unless the city grants its consent. More specifically, the chapter contains the following provision:

If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

Tex. Health & Safety Code § 775.014(e).

15. ESD #3 was created in 2019 to include within its boundaries an area of Walker County that is north and west of the incorporated limits and extra-territorial jurisdiction of the City of Huntsville. The original boundaries of ESD #3 did not include any territory that was within the limits or ETJ of the City of Huntsville and, for that reason, ESD #3 was not required to obtain Huntsville's consent. Had any territory in Huntsville's limits or ETJ been included within the proposed boundaries of ESD #3, it is undisputed that the consent of Huntsville would have been required.

16. It now appears that the individuals behind the creation of ESD #3 always intended to include, within the district's ultimate boundaries, territory that is within Huntsville's ETJ, but sought to evade the statutory requirement

of obtaining the City's consent. ESD #3 now claims to have succeeded in its efforts to deprive the City of its approval rights by simply omitting the subject ETJ territory when creating the district and then, almost immediately, seeking to annex the omitted ETJ territory. According to ESD #3, the municipal consent requirement in section 775.014(e) is effectively meaningless because it applies only to the inclusion of municipal territory in the initial creation of a district and has no application to the subsequent annexation of the same municipal territory, even if done immediately after creation.

17. Although ESD #3 now asserts that the City's consent was not required for the proposed annexation of a substantial territory within the City's ETJ, the petition for inclusion¹ that, on information and belief, was prepared by or in consultation with ESD #3 attorneys and board members, falsely states that the City consented to the annexation of its ETJ. The statement in the inclusion petition was as follows:

The municipalities, The City of Huntsville, from which consent to this expansion of the existing Walker County Emergency Services District No. 3, was obtained as the territory proposed to be included as shown on Exhibit "A" will not enter the municipal territory of the city limits, only the ETJ as provided by consent.

(Emphasis added).

¹ The first step in the district annexation process is the preparation and circulation of a petition requesting the inclusion of territory in the district. Tex. Health & Safety Code § 775.051(a).

18. When Huntsville became aware of ESD #3's attempt to annex an area within Huntsville's ETJ, it contacted the district's attorney and reminded her that the City had not granted its consent to the inclusion of the disputed territory within the district and pointed out the false statement in the inclusion petition. ESD #3's attorney responded by conceding that: a) the district did not have the City's consent to including the City's ETJ in the district; and b) the inclusion petition that was circulated to the voters for signature contained a false representation stating that the City had consented.

19. The attorney then stated that the district was going forward with the annexation process despite the lack of consent and despite the fact that the inclusion petition contained a false statement of a material fact. Regarding the false statement in the inclusion petition, ESD #3 thought it appropriate to ignore the problem and its attorney chose to make a joke out of it by stating:

The petitioners could have said that they received consent from Bing Crosby, which is also not required, and it would not discount or disqualify the rest of the petition that was actually required or relevant.

20. In fact, the City's consent is required and the statement in the annexation petition regarding the City's consent was material, false, and misleading. For these reasons and more, the petition, the election, and any other actions taken in the attempt to annex territory within Huntsville's ETJ are void and of no legal effect.

VI. HUNTSVILLE'S CAUSES OF ACTION

21. Chapter 775 grants Texas cities the right to control whether any areas within their municipal limits or ETJ are included within an emergency services district. That authority is recognized in section 775.014(e), which contains the consent requirement, and in section 775.002, which provides that a city that annexes property that is within a district has the unilateral right to require that the annexed property be removed from the district.

22. ESD #3 and its commissioners and officers have acted ultra vires by attempting to annex municipal territory without Huntsville's consent and based on a petition that contained a material and false statement of fact. If their attempted annexation of municipal territory is allowed to stand, Huntsville will be deprived of its statutory right to control whether areas within its limits or ETJ are included in an emergency services district and to elect whether it will provide services to those areas using its own resources. Additionally, Huntsville will suffer specific harm in the limitation of its right to annex property within its ETJ in the future.

23. More specifically, if the City annexes property within an emergency services district and wished to exercise its statutory right to remove the annexed territory from the district and be the sole provider of emergency services to the territory, it is required to pay the territory's pro rata share of

the district's bonded and other indebtedness. The City must meet this requirement regardless of whether any of the indebtedness was incurred to construct facilities within the annexed territory and regardless of whether the City already has the facilities necessary to provide service. Tex. Health & Safety Code § 775.022. The City has already entered into a number of development agreements with property owners, in the area of its ETJ that ESD #3 is attempting to annex, that provide for the future annexation of their property. For those reasons, the City will suffer irreparable harm if ESD #3 is not prevented from: a) enforcing the purported annexation; b) taking any action to impose a property tax or sales tax; and c) imposing any debt obligation on the area of the City's ETJ it is attempting to annex.

24. Accordingly, Huntsville is entitled to appropriate relief vindicating its statutory rights including declarations that: a) ESD #3's attempt to annex Huntsville's municipal territory is void and of no legal effect; b) the petition for inclusion of territory within Huntsville's ETJ was void and of no legal effect because it contained a statement that was material, false and misleading; and c) the November 2, 2021 election held by ESD #3 was void and of no legal effect. Huntsville is also entitled to injunctive relief prohibiting ESD #3 from enforcing the attempted annexation, including a prohibition on any action that would impose any form of taxation or debt obligations on the territory included in the attempted annexation.

**VII.
JURY DEMAND**

25. The City requests a trial by jury and tenders the jury fee pursuant to Rule 216 of Texas Rules of Civil Procedure.

**VIII.
TEXAS RULE OF CIVIL PROCEDURE 47(c)**

26. Huntsville seeks only non-monetary relief and attorney's fees and costs.

**IX.
REQUESTS FOR RELIEF**

27. Temporary Restraining Order. Huntsville requests that the Court, after holding a hearing on the request, issue a temporary restraining order:

- a) Restraining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from taking any action that would impose a debt obligation on any property within Huntsville's ETJ;

28. Temporary Injunction. Huntsville requests that the Court, after holding a hearing on the request, issue a temporary injunction:

- a) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from taking any action that would impose a debt obligation on any property within Huntsville's ETJ;
- b) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from imposing or assessing any ad valorem tax on any property within Huntsville's ETJ;

- c) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from imposing a sales tax on any sales occurring on any property within Huntsville's ETJ;
- d) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from taking any action to enforce the attempted annexation of property within Huntsville's ETJ.

29. Permanent Injunction. Huntsville requests that the Court issue a permanent injunction:

- a) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from taking any action that would impose a debt obligation on any property within Huntsville's ETJ;
- b) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from imposing or assessing any ad valorem tax on any property within Huntsville's ETJ;
- c) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from imposing a sales tax on any sales occurring on any property within Huntsville's ETJ;
- d) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from taking any action to enforce the attempted annexation of property within Huntsville's ETJ;
- e) Enjoining Defendants, their agents, employees, or anyone acting with them, at their direction, or on their behalf, from attempting to annex territory within Huntsville's ETJ without first obtaining the City's consent under the request and petition process set out in Chapter 775 of the Texas Health & Safety Code;

30. Declaratory Relief. Huntsville requests that the Court enter a judgment declaring the following:

- a) ESD #3's attempted annexation of territory within Huntsville's ETJ was void and of no effect;
- b) The petition for inclusion of territory within Huntsville's ETJ was void and of no legal effect because it contained a statement that was material, false and misleading;
- c) The election held by ESD #3 on November 2, 2021 was void and of no effect.

31. Attorney's Fees. Huntsville asks the Court to award the City judgment against the public official defendants, in their official capacities, for its reasonable and necessary attorney's fees and attorney's fees under authority of the Texas Declaratory Judgments Act.

32. Other Relief. Huntsville requests an order awarding it its costs of court and such other relief to which it may show itself entitled.

Respectfully submitted,

OLSON & OLSON, L.L.P.

By: /s/ John J. Hightower
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**COUNSEL FOR PLAINTIFF,
CITY OF HUNTSVILLE, TEXAS**

VERIFICATION

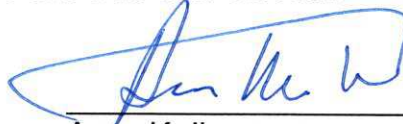
STATE OF TEXAS

§
§

COUNTY OF WALKER §

BEFORE ME, the undersigned notary, on this day personally appeared Aron Kulhavy, the affiant, whose identity is known to me. After I administered an oath, Aron Kulhavy testified as follows:

My name is Aron Kulhavy. I certify that I am qualified and authorized to make this verification. I am the City Manager for the City of Huntsville, Texas. I have read the City of Huntsville's Original Petition, Request for Temporary Restraining Order and Request for Temporary and Permanent Injunction. The facts stated in it are within my personal knowledge and are true and correct.

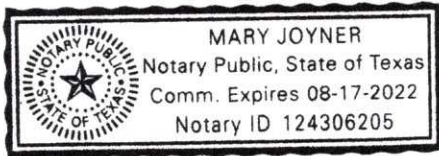


Aron Kulhavy

Sworn to and subscribed to me by Aron Kulhavy on November 3rd, 2021.



Notary Public in and for
The State of Texas



My Commission Expires: 8-17-2022

Automated Certificate of eService

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Kaela Olson on behalf of John Hightower
Bar No. 9614200
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Envelope ID: 58820292
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Associated Case Party: City of Huntsville, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Allison Killian	24099785	akillian@olsonllp.com	11/3/2021 2:38:42 PM	SENT
John Hightower	9614200	jhightower@olsonllp.com	11/3/2021 2:38:42 PM	SENT