No. 22-0102

In the Supreme Court of Texas

CITY OF DALLAS,
Petitioner,

v.

EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS,
Respondent.

On Petition for Review
from the Fifth Court of Appeals, Dallas

BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

JUDD E. STONE II
Solicitor General

RYAN S. BAASCH
Assistant Solicitor General
State Bar No. 24129238
Ryan.Baasch@oag.texas.gov

Counsel for the State of Texas

Identity of Parties, Amicus Curiae, and Counsel

The parties have correctly identified themselves and their counsel.

Amicus Curiae:
The State of Texas

Appellate Counsel for Amicus Curiae:
Ken Paxton
Brent Webster
Judd E. Stone II
Ryan S. Baasch (lead counsel)
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1700
Ryan.Baasch@oag.texas.gov

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Statement of Interest of Amicus Curiae

This Court has stated that the Home Rule "amendment effectively created home rule cities as mini-legislatures," subject to many of the same separation-of-powers principles applicable to state government. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 26 n.5 (Tex. 2003). The State of Texas thus has an interest in the proper interpretation of the Texas Constitution and the limits of legislative power as applied to home-rule cities. This appeal implicates those interests because it requires this Court to determine whether a home-rule city's governing body—functionally standing in the same position as the Legislature—has authority to effectively tie its own future hands by delegating a veto power over ordinances to an independent entity. The answer to that question is "no." In addition, the state law provisions that Respondent cites do not authorize this delegation. The State takes no position on any other issue presented in this appeal.

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

To the Honorable Supreme Court of Texas:

The principal facts here are undisputed: under the Charter of the City of Dallas, its city council is the governing body vested with "all powers conferred on the city." Dallas, Tex., Charter ch. III, § 1. In 1943, the city established a public pension fund pursuant to state statutory authorization. Tex. Rev. Civ. Stat. art. 6243d (providing authorization). That fund was enacted in ordinance form at Chapter 40A of the city code. *See* Dallas, Tex., City Code § 40A-1 *et seq.* But that ordinance contains an unusual delegation of authority. It provides, in relevant part, that "this chapter may not be amended except" if "approved by the [ERF] board." Dallas, Tex., City Code § 40A-35. This functionally delegates veto authority to a collection of seven individuals, none of whom are elected by the people of Dallas. *See id.* § 40A-2(c) (board composition).

That delegation was unconstitutional. Not even the city council may "bind a succeeding [city council] by such provisions." *Brown v. Shiner*, 19 S.W. 686, 688 (Tex. 1892). It necessarily follows that the city council may not delegate to an independent entity the power to bind succeeding city councils. Because of that, the ERF board had no authority to veto the city council's imposition of term limits on the ERF broad through Dallas code section 8-1.5(a-1), and that provision remains valid.

In concluding otherwise, the court of appeals mistakenly focused on cases that held invalid legislation for purporting to violate limitations contained in an *overriding authority* (*i.e.*, the Texas Constitution). But the two ordinances at issue here—Dallas city code section 8-1.5(a-1), and Dallas city code section 40A-35—were issued by the same authority. Thus, to the extent there is any irreconcilable conflict, the latter

(section 8-1.5(a-1) is deemed to repeal the former (section 40A-35)—either explicitly or implicitly. *See infra* at 9-10. And there is no merit to ERF's argument that provisions of *state* law authorized the city council to delegate authority to the ERF board to veto future city council enactments.

Summary of the Argument

I. Dallas city code section 40A-35 unconstitutionally delegated authority to the ERF board to veto future legislative acts. A legislature can only delegate those powers that is possesses. A legislature does not have the power to bind its future self. Necessarily, it cannot delegate authority to veto its future enactments. These principles apply with full force to the city council of a home-rule city. For that reason, the city council could not delegate to ERF the power to veto city code section 8-1.5(a-1), which imposes term limits on ERF board members, and that provision remains valid. The court of appeals reached the opposite conclusion by relying on inapposite precedent and functionally elevating section 40A-35 to quasi-constitutional status, unmodifiable by future city council enactments. That was error.

II. ERF is wrong that state law authorized the city council to delegate this power. True, state law *can* modify a home-rule city's powers. But assuming the State could theoretically authorize a home-rule city's governing body to enact an ordinance that validly binds its future self, such state legislation would have to speak with unmistakable clarity. Nothing in state law speaks with that clarity. And ERF's arguments about state pension and trust law fail.

ARGUMENT

I. Dallas City Code Section 40A-35(a) Unconstitutionally Delegates Power to Veto Future Enactments.

Dallas city code section 40A-35(a) is an unconstitutional delegation of power to an independent entity to veto future city council enactments. The city council is Dallas's governing body under home-rule. And its enactments are valid unless they are irreconcilable with a higher law (whether state or federal). The city council cannot elevate decisions of the ERF board by simple ordinance purporting to delegate a veto over a future council's acts. The court of appeals relied on inapposite precedent and did not address these foundational principles about delegations of power.

A. A legislative body generally has no power either to bind its future self, or to delegate power to another to veto its future enactments.

It is well-established that "[a]ll power which is not limited by the constitution inheres in the people, and an act of a state legislature is legal when the Constitution contains no prohibition against it." *Shepherd v. San Jacinto Junior Coll. Dist.*, 363 S.W.2d 742, 743 (Tex. 1962); *State v. Brownson*, 61 S.W. 114, 114 (Tex. 1901) ("The legislative department of a state government may make any law not prohibited by the constitution of the state or that of the United States."). That means that a court may not declare an act of the Legislature unlawful unless some higher legal authority (*i.e.*, the constitution, or federal law) requires it. *See, e.g.*, *Brownson*, 61 S.W. at 114.

1. One application of this rule is that "one Legislature cannot bind the hands of a subsequent Legislature by the enactment of laws which may not be altered or repealed by a subsequent Legislature." *Jefferson County v. Bd. of Cnty. & Dist. Rd. Indebtedness*, 182 S.W.2d 908, 915 (Tex. 1944) (orig. proceeding). After all, state

legislative enactments do not rise to the level of constitutional provisions (nor to the level of federal law). Therefore, they logically cannot prevent future state legislative enactments. *Brownson*, 61 S.W. at 114. This rule dates to before the nation's founding. *See, e.g.*, 1 W. Blackstone, Commentaries on the Laws of England 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not."). Thus, an "ordinary legislative act[] . . . is alterable when the legislature shall please to alter it." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

This Court recognized, in the early days of statehood, that this rule applies to the Legislature. *See, e.g.*, *Brown*, 19 S.W. at 688 (recognizing "[t]he principle . . . that one legislature may not bind a succeeding legislature"). After all, the people of Texas have created a method by which to bind the Legislature: the constitutional amendment process set out in article XVII, section 1 of the Texas Constitution. And the amendment process is the *only* way to bind the Legislature, because "[i]t is a rule for the construction of Constitutions, constantly applied, that where a power is expressly given and the means by which, or the manner in which, it is to be exercised is prescribed, such means or manner is exclusive of all others." *Walker v. Baker*, 196 S.W.2d 324, 327 (1946) (orig. proceeding).

That makes good practical sense. Permitting one group of elected officials to bind the hands of future officials produces "severe consequences" for the functioning of our system of government. *Graphic Packaging Corp. v. Hegar*, 538 S.W.3d 89, 104 (Tex. 2017) (discussing contractual commitments—one limited area where, because of the Contract Clause, one legislature may functionally tie the hands of a future legislature). This type of "[e]ntrenchment . . . has the potential . . . to preclude

the subsequent legislature from engaging in any cost-benefit analysis" and thereby "limit[s] a future legislature's power over the destiny of its constituents in ways that the constituents are likely to find far less acceptable than the mere imposition of cost." Stewart E. Sterk, *Retrenchment on Entrenchment*, 71 Geo. Wash. L. Rev. 231, 239 (2003).

And the rule has long applied to Congress. *See, e.g.*, *Dorsey v. United States*, 567 U.S. 260, 274 (2012) ("[S]tatutes enacted by one Congress cannot bind a later Congress, which remains free to repeal the earlier statute, to exempt the current statute from the earlier statute, to modify the earlier statute, or to apply the earlier statute but as modified."). That is important, because in the past—and particularly around the time of the home-rule amendment's adoption in 1912—this Court consulted federal practice for guidance on legislative delegation questions. *See, e.g.*, *Trimmier v. Carlton*, 296 S.W. 1070, 1079 (Tex. 1927) ("[T]he general principles of constitutional law, as declared by the various states of the Union, and by the Supreme Court of the United States, on the subject of delegation of legislative power, are applicable and may be examined in determining the meaning of our own constitutional provisions [regarding delegation].").

One federal example from that era is *Manigault v. Springs*, a dispute between landowners near the mouth of a South Carolina creek. 199 U.S. 473, 473 (1905). The South Carolina legislature authorized the defendant landowners to dam the creek. *Id.* The plaintiff challenged the authorizing act because it "was passed without the formality required by" a previous South Carolina law. *Id.* at 486. Specifically, a previous South Carolina law provided that "no bill for the granting of any privilege or

immunity, or for any other private purpose whatsoever, shall be introduced or entertained . . . except by petition, to be signed by the persons desiring such privileges" with "sixty days notice" to interested persons. *Id.* at 486-87. Ostensibly, the authorization for defendants to dam the creek was a "privilege" within the meaning of that law. *Id.* So the law purported to require that it could be enacted only if a person petitioned for it, and provided 60 days' notice to interested persons. But the Supreme Court concluded that this earlier law could not block the authorization because it was "not a constitutional provision," and was a "general law enacted by the legislature" that could "be repealed, amended, or *disregarded* by the [future] legislature." *Id.* at 487 (emphasis added). It "is not binding upon any subsequent legislature, nor does a noncompliance with it impair or nullify the provisions of an act passed without the requirement of such notice." *Id.*

2. Because the Legislature cannot restrict future enactments of the Legislature, it necessarily cannot delegate to *another* the ability to restrict future enactments of the Legislature. This Court has repeatedly stated that "[t]he Legislature may delegate *its* powers to administrative agencies to establish rules and regulations when the Legislature has provided reasonable standards to guide the agencies in carrying out a legislatively prescribed policy." *Proctor v. Andrews*, 972 S.W.2d 729, 734 (Tex. 1998) (emphasis added) (collecting cases). But the Legislature can no more delegate a power not granted to it by the people of Texas than it can exercise a power granted by the people of Texas to another department of government. *Cf. Walker*, 196 S.W.2d at 327; *Ex parte Youngblood*, 251 S.W. 509, 512 (Tex. Crim. App. 1923).

To say otherwise would be to create a back-door way for the Legislature to bind its future self. Instead of doing so directly (*i.e.*, through legislation expressly forbidding new legislation), it could do so via a delegation to another party (*i.e.*, allowing another party to prevent the passage of new legislation).

3. This same limitation on the power of Congress and of the Texas Legislature applies (on a smaller geographic scale) to city councils. Through the home-rule amendment, the people of Texas "effectively created home rule cities" like Dallas "as 'mini-legislatures.'" *City of Boerne*, 111 S.W.3d at 26 n.5. "A home rule city derives its powers . . . from Article XI, Section 5 of the Texas Constitution." *See, e.g.*, *Proctor*, 972 S.W.2d at 733. But, through that amendment, home-rule cities have "all the powers of the state not inconsistent with the Constitution, the general laws, or the city's charter." *City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007).

For purposes of this analysis, Dallas's city council functionally stands in the same position as the Legislature, except that its actions are subject to not just federal and constitutional law, but also to the terms of state law and the Dallas City Charter. *See id.* The Dallas City Charter vests governing authority for the city solely in the city council, Dallas, Tex., Charter ch. III, § 1—just like how the Texas Constitution vests legislative authority for the State solely in the Legislature. And, just as the Constitution binds the Legislature and cannot be changed by ordinary legislation, the Dallas City Charter's terms bind the city council. *City of Galveston*, 217 S.W.3d at 469. And, like the Constitution is subject to amendment by the people of Texas, the City Charter is subject to amendment by the people of Dallas, Tex. Loc. Gov't Code § 9.004.

Taken together, these rules means that, just like the Legislature, the Dallas city council cannot bind the hands of future councils, and thus cannot delegate authority to veto future city council enactments. Its imposition of term limits on ERF board members in city code section 8-1.5(a-1) was therefore valid. After all, in exercising power of the city council to manage the pension program, ERF serves as the city council's agent. It is a bedrock principle of agency law that a delegation to an agency can always be revoked by the principal (absent a legal impediment). *E.g.*, Restatement (Third) of Agency § 3.10 (2006); *accord Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 590 (Tex. 2017) (citing the Third Restatement with favor). The same rule applies to legislative agents: "[w]here a municipal corporation under charter or legislative act has power to create by ordinance an office, it also has the power to abolish it." *See, e.g.*, *City of San Antonio v. Wallace*, 338 S.W.2d 153, 156 (Tex. 1960) (alterations omitted). That power to abolish the ERF board necessarily includes, as the city council did here, the power to impose limits on the ERF board.

B. The court of appeals relied on inapposite precedent and did not address the constitutional defect with a delegation of veto authority.

The court of appeals erred by relying on two inapposite precedents: *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), and *Burroughs v. Lyles*, 181 S.W.2d 570 (Tex. 1944). Neither of these cases are even about legislative delegation. Thus, they say nothing about whether the legislature that delegated a power to a board or other administrative agency can disregard that delegation at a later time.

Each of these cases asked whether legislation could be reconciled with limitations contained in a higher legal authority or instead must be deemed invalid. In *Term Limits*, an Arkansas statute purported to add qualifications to congressional office above and beyond those already contained in the U.S. Constitution. 514 U.S. at 837. That law was held invalid because it could not be reconciled with the U.S. Constitution. *Id.* at 837-38. *Burroughs* was similar because it turned on the related question of whether a Texas statute could "impose an additional test of eligibility" for state office "other than what is prescribed by the [State] Constitution." 181 S.W.2d at 574. Applying the ordinary rules of statutory and constitutional interpretation, the Court said "no" because when a lower legal authority (there a statute statute) conflicts with a higher legal authority (there, the state constitution), the lower authority must give way. *Id.* at 574-75.

The court of appeals erroneously concluded that these cases were analogous because here it treated the City of Dallas's pension trust as a "controlling" piece of higher authority, much like the U.S. Constitution in *Term Limits* and the Texas Constitution in *Burroughs*. *See Emps.' Ret. Fund of City of Dallas v. City of Dallas*, 636 S.W.3d 692, 697 (Tex. App.—Dallas 2021, pet. granted). That was wrong; the pension trust is both created by and embodied in an ordinance, and its provision that purports to delegate veto authority to the ERF board, Dallas Tex., Code § 40A-35, is not a constitution or even a city charter and is entitled to no greater weight than the subsequent ordinance imposing term limits on the ERF board, Dallas Tex., Code § 8-1.5(a-1). Thus, which of the two governs in the event of a conflict is governed by the principle of implied repeal—not constitutional supremacy. Although

"disfavored," such repeals are recognized to give effect to the will of the *later* legislature where it cannot be reconciled with the actions of the earlier. *Hegar v. Health Care Serv. Corp.*, 652 S.W.3d 39, 45 & n.32 (Tex. 2022).

ERF may argue that, even if the city council was not permanently bound by the delegation of veto power in section 40A-35, it was nevertheless required to clearly set that section aside before enacting section 8-1.5(a-1). But the city council functionally did so when it enacted term limits for ERF board members in section 8-1.5(a-1) without following section 40A-35's amendment process requiring board approval. Granted, the city council did not recite an explicit combination of words, such as "section 40A-35 is not applicable to this Act," when it enacted section 8-1.5(a-1). But there is no "magical passwords" requirement for one legislature to exempt new legislation from terms set by a prior piece of legislation. *Marcello v. Bonds*, 349 U.S. 302, 310 (1955). A prior enactment "cannot justify a disregard of the will of [the legislature] as manifested, either expressly or by necessary implication in a subsequent enactment." *Great N. Ry. Co. v. United States*, 208 U.S. 452, 465 (1908); *Quick v. City of Austin*, 7 S.W.3d 109, 130 (Tex. 1998) (applying the same rule). And here, at a minimum, the necessary implication of section 8-1.5(a-1) is that the city council intended to place term limits on ERF board members notwithstanding the delegation in section 40A-35 that purports to make such action ineffective if vetoed by the board.

II. No State Law Unmistakably Authorized the City of Dallas to Delegate Power to Limit its Future Enactments.

ERF argues that provisions of state pension law (Tex. Rev. Civ. Stat. art. 6243d) and state trust law (Tex. Prop. Code § 111.0035(b)) authorized the city council to delegate the veto authority at issue here. Resp. Br. 31. But nothing in that law authorized the city council to delegate power to veto its future enactments.

It is black-letter law that, under ordinary circumstances, "the Legislature can limit or augment a [home-rule] city's self-governance." *Wilson v. Andrews*, 10 S.W.3d 663, 666 (Tex. 1999). It is not clear, however, that the Legislature may do so in a manner that permits a home-rule city to delegate power to an unelected board to veto its own future enactments. Assuming it can, however, one would expect the Legislature to speak with "unmistakable clarity"—just like it must do when it alters a home-rule city's other powers. *Proctor*, 972 S.W.2d at 733; *Quick*, 7 S.W.3d at 122.

The Legislature typically speaks with unmistakable clarity by specifically identifying when and whether a home-rule ordinance can be effective. *See Dallas Merch.'s & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993) (using express language altering home-rule city authority). The Legislature is not regarded to speak with this clarity merely because it has "enacted a law addressing a subject" that a home-rule city also enacts ordinances on. *City of Richardson v. Responsible Dog Owners of Tex.*, 794 S.W.2d 17, 19 (Tex. 1990). In that event, "a city ordinance will not be held" invalid if a "reasonable construction" can leave it in place without violating state law. *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. [Comm'n Op.] 1927).

Nothing in state pension or trust law speaks with the requisite unmistakable clarity to support ERF's arguments.

A. State pension law did not authorize the city council to delegate to the ERF board veto power over subsequent city council enactments.

ERF contends throughout its brief that the state pension code provision at Texas Revised Civil Statute article 6243d supports its argument that Dallas city code section 40A-35 constitutionally delegated veto power to the board. *E.g.*, Resp. Br. 31, 42. ERF even implies that this provision of the state pension code is a mirror image of section 40A-35(a)'s amendment process. Resp. Br. 26, 35. But article 6243d did not authorize the veto power delegation, much less do so with unmistakable clarity.

Article 6243d authorized the City of Dallas to "formulate and devise a pension plan for the benefit of all employees in the employment of such city." Tex. Rev. Civ. Stat. art. 6243d, § 1. As relevant here, the article also provides as follows:

> Before said pension plan as devised and formulated by the governing body of such city or town shall become effective, said entire pension plan shall be submitted in ordinance form by said governing body to the qualified electors of such city or town and be approved by said qualified electors at an election duly held.

Id.

By it terms, this provision governs only the enactment of a pension plan. It says nothing about the amendment of a pension plan, and so does not speak with the unmistakable clarity required to prevent a municipality such as the City of Dallas from amending the pension plan—much less does it authorize the City of Dallas to delegate authority to veto its future enactments. Instead, there is a "reasonable

construction leaving both" Article 6243d, section 1 and Dallas city code section 8-1.5(a-1) "in effect," *City of Richardson*, 794 S.W.2d at 19. Specifically, Article 6243d, section 1 governs initial enactment of a city's pension plan, whereas section 8-1.5(a-1) is a lawful amendment to the plan, unlimited by Article 6243d's procedures governing initial enactment.

Even if article 6243d's provision for initial promulgation had some relevance to this dispute, though, it could not plausibly support ERF's argument that *its board* was lawfully delegated authority to limit future city council enactments. That is because article 6243d says nothing about a city's pension board. Instead, the only relevant limitation it provides on home-rule city authority is that the "qualified electors" of a city have a role in the initial promulgation of a pension plan. Tex. Rev. Civ. Stat. art 6243d, § 1. Because article 6243d includes only "qualified electors" as the class of persons outside a city's governing body who may have any say in the formulation of a city pension plan, there is a strong "negative implication" that other parties, such as city pension boards, have no role under state law to play in the promulgation or amendment of these plans. *Sommers for Alabama and Dunlavy v. Sandcastle Homes*, 521 S.W.3d 749, 755 (Tex. 2017) (employing negative implication canon of construction).

B. State trust law did not authorize the city council to delegate to the ERF board veto power over subsequent city council enactments.

ERF also contends, and the court of appeals concluded, that state trust law supports section 40A-35's delegation because, under that law, the "specific method or manner" that a trust sets for its amendment process is "controlling and must be

followed." *Emps.' Ret. Fund*, 636 S.W.3d at 696. The underlying premise is that although "Chapter 40A of the [Dallas] City Code" is a local ordinance, it is *also* a "[t]rust [d]ocument," and is therefore governed by the state trust code. *Id.* at 694; *see also* Resp. Br. 18 ("ERF's Trust Document is equivalent to a pension plan document governing a private company pension."). Accordingly, the argument goes, the city council could not enact board term limits without following the "specific method" for amendment laid out in Dallas city code section 40A-35—the provision that requires board approval for all amendments. *Emps.' Ret. Fund*, 636 S.W.3d at 696. That conclusion is flawed in multiple respects.

1. To start, the trust code does not purport to regulate city pensions at all, much less does it purport to alter when and whether a city may enact an ordinance affecting its pension. Granted (and as the court of appeals recognized), the trust code does apply to "pension trust[s]" as a general matter. Tex. Prop. Code § 121.003; *Emps.' Ret. Fund*, 636 S.W.3d at 696. But the trust code generally concerns private-party instruments, which are largely determined by private arrangements—it says nothing about application to *government* instruments that have unique idiosyncrasies as they are both trusts *and* statutes or ordinances. To counsel's knowledge, only one court of appeals has held that the trust code applies to a city pension fund. *Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 735 (Tex. App.—Corpus Christi 1994, writ denied). And it did so without any meaningful reasoning, merely concluding that the trust code should be given "liberal[]" "coverage." *Id.* It is therefore an open question in this Court whether the trust code regulates city pensions at all. But this Court need not reach that question here. Even if the trust code did regulate government

pensions in certain respects, it does not contain the unmistakably clear language required to conclude that it permits cities to delegate veto power over their future enactments merely because those future enactments may relate to a trust.

2. ERF (at 50) and the court of appeals (at 636 S.W.3d at 696) claim that Texas property code section 111.0035(b) supports the conclusion that section 40A-35 validly delegated the veto authority. That provision states, in relevant part, that, generally, "[t]he terms of a trust prevail over any provision of this subtitle." Tex. Prop. Code § 111.0035(b). For multiple reasons, that provision does not displace the City of Dallas's authority.

First, like the rest of the trust code, this provision does not purport to govern *government* pensions at all. *Cf. Herschbach*, 883 S.W.2d at 735.

Second, this provision provides only that the terms of a trust prevail over the default trust rules in that part of the state code. The provision does not address city ordinances, let alone prohibit amendment of parts of a trust.

Third, this statutory feature ensures that the trust settlors' intent controls and that default statutory terms generally should not stand in the way of that outcome. *See, e.g.*, *Episcopal Diocese of Forth Worth v. Episcopal Church*, 602 S.W.3d 417, 434 (Tex. 2020); *Alpert v. Riley*, 274 S.W.3d 277, 289 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) ("settlor's intent"). Here, to the extent there is anything approximating a *bona fide* settlor, only the City of Dallas *itself*, acting through its city council, could fit that description. And a settlor may amend a "trust unless it is irrevocable by [its] express terms." Tex. Prop. Code § 112.051. Here, that is functionally what the city council did when it enacted section 8-1.5(a-1). That general trust rule

allowing amendment applies with even greater force here where the settlor is also a public governing body that has no general power to bind its future self. The ERF board, standing in functionally the same shoes as a trustee, had no authority to veto that amendment just as a trustee normally cannot veto a settlor's amendments.

3. Article 6243d of the property code further confirms Texas trust law does not bind home-rule cities. As noted *supra* at 12-13, *section one* of article 6243d does not support ERF's argument. But *section three* of that article is also relevant. It states:

> This Act shall not repeal Articles 6229 to 6243, both numbers inclusive, of the Revised Civil Statutes of Texas, 1925, as amended by Acts of 1933, Forty-third Legislature, page 206, Chapter 94, but the provisions of said Articles 6229 to 6243, as amended, shall not apply whenever a city or town as provided in this Act shall formulate, devise and adopt a pension plan according to the terms and provisions of this Act.

Tex. Rev. Civ. Stat. art. 6243d, § 3. When article 6243d was enacted, articles 6229 to 6243 governed "the subject of city pensions." *Jud v. City of San Antonio*, 184 S.W.2d 821, 822 (Tex. 1945). Those articles have since been repealed, but before repeal they contained detailed rules requiring the creation of city pensions and governing how those pensions would operate. *See* Act of Feb. 5, 1919, 36th Leg., R.S., ch. 10, 1919 Tex. Gen. Laws 10 (available at https://lrl.texas.gov/scanned/sessionLaws/36-0/HB_10_CH_10.pdf); *see Byrd v. City of Dallas*, 6 S.W.2d 738, 739 (Tex. [Comm'n Op.] 1928).

Although those articles have been repealed, they are highly relevant here because they formed the default rules for city pensions when Dallas enacted the ordinance that ERF now seeks to elevate to quasi-constitutional status. And section 3 of article 6243d allowed cities to opt out of those provisions by adopting their own

unique pension plans. *See* Tex. Rev. Civ. Stat. art. 6243d, § 3 (the articles "shall not apply" to such pension plans). That is what the City of Dallas did when it enacted Chapter 40A. It is implausible that, having allowed the city to expressly opt out of articles 6229-6243, the Legislature nevertheless left state *trust* law to *sub silentio* restrict the city council's ability to amend its pension plan.

* * *

In sum, ERF has pointed to no clear statement from the Legislature giving the city council the extraordinary power to bind its hands regarding the structure of its pension plan (or anything else relevant to this case). In the absence of such a clear statement, the Court should conclude that no such power exists, that Dallas's current city council may amend the acts of its predecessors, and that the term limits imposed on ERF's board are valid.

Prayer

The Court should reverse the court of appeals' judgment and remand the case for further proceedings.

Respectfully submitted.

Ken Paxton
Attorney General of Texas

Brent Webster
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

Judd E. Stone II
Solicitor General

/s/ Ryan S. Baasch
Ryan S. Baasch
Assistant Solicitor General
State Bar No. 24129238
Ryan.Baasch@oag.texas.gov

Counsel for the State of Texas

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On March 8, 2023, this document was served on Kathleen Fones, lead counsel for Petitioners, via kathleen.fones@dallas.gov, and Thomas F. Loose, lead counsel for Respondent, via tloose@lockelord.com.

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
James BPinson		james.pinson@dallascityhall.com	3/8/2023 11:58:59 AM	SENT
Stacy JordanRodriguez		stacy.rodriguez@dallas.gov	3/8/2023 11:58:59 AM	SENT
Taylor Brinkman	24069420	taylor.brinkman@capitalone.com	3/8/2023 11:58:59 AM	SENT
Thomas F. Loose	12561500	tloose@lockelord.com	3/8/2023 11:58:59 AM	SENT
Stefan Prentiss Smith	24013536	spsmith@bakerlaw.com	3/8/2023 11:58:59 AM	SENT
Seth Roberts	24051255	sroberts@lockelord.com	3/8/2023 11:58:59 AM	SENT
Kathleen M.Fones		kathleen.fones@dallas.gov	3/8/2023 11:58:59 AM	SENT

Associated Case Party: City of Dallas

Name	BarNumber	Email	TimestampSubmitted	Status
Lilia Villegas		lilia.villegas@dallas.gov	3/8/2023 11:58:59 AM	SENT