

CAUSE No.

STATE OF TEXAS;
MARY ANN TEEL,
Plaintiffs,

IN THE DISTRICT COURT

v.

TRAVIS COUNTY, TEXAS

CITY OF AUSTIN; KIRK WATSON, in
his official capacity as Mayor of the City of
Austin; T.C. BROADNAX, in his official
capacity as City Manager of the City of
Austin,
Defendants.

____ JUDICIAL DISTRICT

345TH, DISTRICT COURT

**ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND INJUNCTIVE RELIEF**

The City of Austin intends to use taxpayer dollars to fund an illegal abortion-procurement scheme. The City of Austin approved its budget for fiscal year 2024–2025 that appropriates \$400,000 in taxpayer money to the city’s “Reproductive Health Grant.” Exhibits A–C. The City of Austin intends to use this money “to support Austinites traveling to access abortion . . . , including support for airfare, gas reimbursements, hotel stays, ride reimbursements, childcare stipends, companion travel, and food.” Exhibit D. The State of Texas and Mary Ann Teel bring this suit to require the City of Austin to follow state law and ensure that public dollars aren’t used to illegally fund abortions.

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff the State of Texas is a sovereign state.

3. Plaintiff Mary Ann Teel resides in the City of Austin and pays taxes to the City of Austin.

4. Defendant City of Austin is a local government entity as defined in Texas Government Code § 554.001. It may be served with citation by serving Mayor Kirk Watson through the City of Austin, Texas, located at 301 West 2nd Street, Austin, Texas 78701.

5. Defendant Kirk Watson is the mayor of the City of Austin. He may be served at his office at City Hall, 301 West 2nd Street, Austin, Texas 78701. He is sued in his official capacity as Mayor of the City of Austin.

6. Defendant T.C. Broadnax is the city manager of the City of Austin. He may be served at his office at City Hall, 301 West 2nd Street, Austin, Texas, 78701. He is sued in his official capacity as City Manager of the City of Austin.

III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims asserted under Article V, § 8 of the Texas Constitution, Section 24.007 of the Texas Government Code, Sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgment Act, and Section 65.021 of the Texas Civil Practice and Remedies Code.

8. The Court has jurisdiction over Texas’s request for injunctive relief against defendants Kirk Watson and T.C. Broadnax because these city officials are acting *ultra vires* by providing taxpayer money to fund elective abortions in violation of the state constitution.¹

9. Plaintiff Mary Ann Teel has taxpayer standing to seek declaratory and injunctive relief against these unlawful expenditures of public funds.²

10. Venue is proper because a substantial portion of the events giving rise to the claims occurred in Travis County, Texas, and the residence or principal office of all Defendants is in Travis County, Texas. *See* Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.003, 15.005, 15.035.

11. Plaintiffs bring their claims exclusively under state law and expressly disclaim any federal cause of action or any reliance on federal law that would trigger subject-matter jurisdiction under 28 U.S.C. § 1331.

IV. LEGAL BACKGROUND

12. Under the Texas Constitution, the Legislature has “no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual . . . whatsoever[.]” Tex. Const. art. III, § 52(a) (Gift Clause).

¹ *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 369 (Tex. 2009) (ruling that governmental immunity does not preclude prospective injunctive remedies in official-capacity suits against government actors who “violate statutory authority or constitutional provisions.”)

² *See Bland Independent Sch. Dist. v. Blue*, 34 S.W.3d 547, 556 (Tex. 2000) (“[A] taxpayer has standing to sue in equity to enjoin the illegal expenditure of public funds, even without showing a distinct injury.”).

13. The Texas Supreme Court has interpreted the Gift Clause to allow transfers of public funds to private entities so long as: “(1) the expenditure is not gratuitous but instead brings a public benefit; (2) the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party; *and* (3) the government retains control over the funds to ensure that the public purpose is in fact accomplished.”³

14. The Human Life Protection Act states that “[a] person may not knowingly perform, induce, or attempt an abortion.” Tex. Health & Safety Code § 170A.002. That prohibition does not apply if the woman on whom the abortion is performed “has a life-threatening physical condition” arising from a pregnancy that places her “at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed.” Tex. Health & Safety Code § 170A.002(b)(2)). The potential criminal penalty for violating this law is anywhere from two years to life in prison and a civil penalty of not less than \$100,000. *Id.*; Tex. Penal Code §§ 12.32–.33.

15. In addition to the Human Life Protection Act, Texas has several statutes predating *Roe v. Wade* that address the subject of abortion. *See* Tex. Rev. Civ. Stat. arts. 4512.1–.4, .6. Under those statutes, any person who causes an abortion is guilty of an offense and shall be confined in a penitentiary. *Id.* at 4512.1. An individual may not act as an accomplice to abortion or an attempted abortion. *Id.* at 4512.2.–.3.

³ *Borgelt v. Austin Firefighters Ass’n*, 692 S.W.3d 288, 301 (Tex. 2024); *see also Texas Mun. League Intergovernmental Risk Pool v. Texas Workers’ Compensation Comm’n*, 74 S.W.3d 377, 383 (Tex. 2002).

COUNT I

The City’s Allocation of \$400,000 for “Logistical Support” of Abortion Violates the Texas Constitution’s Gift Clause

16. The City of Austin’s allocation violates the Texas Constitution. Sections 4512.1 and 4512.2 of the Revised Civil Statutes, as well as section 7.02 of the Texas Penal Code, outlaw conduct in Texas that “procures” a drug-induced abortion. *See* article 4512.1, Revised Civil Statutes; Tex. Penal Code § 1.04(a)(1).

17. It is also a crime to aid or abet a violation of the state’s abortion laws. *See* Tex. Penal Code § 7.02(a)(2).

18. As such, the “logistical support” of out-of-state abortions serves to support and encourage acts that are unlawful in Texas and is a transparent attempt to undermine and subvert Texas law and public policy.

19. The City’s payment of public funds to procure abortions does not serve a “legitimate public purpose,” as there is no “return consideration” for financially supporting the abortion of an unborn child out-of-state.⁴ Because there is no legitimate public purpose, the City cannot establish that it has “retain[ed] public control over the funds to ensure that the public purpose is accomplished and to protect the public’s investment.”⁵

20. The “predominant purpose” of the City’s transfer of public dollars is to assist abortion-assistance organizations and pregnant mothers who want to abort their unborn children in procuring abortions that would be unlawful in Texas.⁶

⁴ *Borgelt*, 692 S.W.3d at 301.

⁵ *Texas Mun. League*, 74 S.W.3d at 384.

⁶ *See Borgelt*, 692 S.W.3d at 304.

21. There is no “legitimate public purpose” in expending taxpayer dollars to assist women in procuring elective abortions that are prohibited by state law, nor can there be any “legitimate public purpose” in an expenditure that is solely aimed at undermining and subverting state law and public policy.

22. There is no “clear public benefit” that the City of Austin will receive by using taxpayer money to undermine Texas law.⁷ Nor there is a “clear public benefit” from using taxpayer money to help mothers abort their unborn children. Through passing laws that generally prohibit elective abortion, Texas has established public policy negating any argument that funding abortions procured out of state can serve a “clear public benefit” — the two are mutually exclusive.

23. Even if there were a legitimate public purpose (and there isn’t), the City of Austin does not contemplate retaining control over the use of the funds.

24. Because the provision in the City of Austin’s budget allocating \$400,000 to “logistical support” for women seeking abortions violates the Gift Clause, Defendants’ expenditures are *ultra vires* and must be enjoined, and the expenditure should be declared invalid under the Uniform Declaratory Judgment Act.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

25. A temporary restraining order provides emergency relief to preserve the status quo until a hearing may be held on a temporary injunction.⁸

⁷ See *Texas Mun. League*, 74 S.W.3d at 383.

⁸ *Texas Aeronautics Comm’n v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

26. “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”⁹

27. To obtain a temporary injunction, an applicant must plead and prove: “(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.”¹⁰ These requirements are readily met here.

A. Plaintiffs are Likely to Succeed on the Merits

28. Plaintiffs are likely to succeed on the causes of action described above. Texas, as a sovereign entity, “has an intrinsic right to enact, interpret, and enforce its own laws.”¹¹ This includes a right to “reassert the control of the state.”¹² Injuries to this right are sufficient to both create standing to sue and show irreparable harm.¹³

29. The State is “the guardian and protector of all public rights” and has authority to sue to redress any violations of those rights.¹⁴ The State’s interests extend to preventing “an abuse of power by public officers” and to issues concerning the “maintenance and operation of its municipal corporations in accordance with law.”¹⁵

⁹ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

¹⁰ *Id.* at 204.

¹¹ *State v. Naylor*, 466 S.W.3d 783,790 (Tex. 2015).

¹² *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

¹³ *See, e.g., Valentine v. Collier*, 956 F.3d 797, 803 (5th Cir. 2020); *Texas v. EEOC*, 933 F.3d 433, 447–48 (5th Cir. 2019); *Texas Ass’n of Bus. v. City of Austin, Texas*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet. denied).

¹⁴ *Yett v. Cook*, 115 Tex. 205, 220 (281 S.W. 837, 842) (1926); *see also Alfred L. Snapp & Son, Inc. v. Puerto Rico ex re. Barez*, 458 U.S. 592, 607 (1982) (“[A] State has a quasi-sovereign interest in the health and wellbeing—both physical and economical—of its residents in general.”).

¹⁵ *Yett*, 115 Tex. at 220.

30. Plaintiffs have a probable right to relief because the City of Austin’s planned expenditure violates the Texas Constitution, intentionally undermines Texas’s criminal and civil statutes, and flouts the State’s prohibition against gratuitous payments of public funds to private persons without any return consideration to the State or its political subdivision. The purpose of the expenditure is not to accomplish a legitimate public purpose but rather to financially support abortion-assistance organizations and subsidize the procurement of abortions for pregnant mothers who wish to abort their unborn children.¹⁶ There is no public benefit from subsidizing the procurement of abortions.

B. Plaintiffs will be Imminently and Irreparably Injured Absent an Injunction

31. This litigation implicates important State interests, namely, the sanctity of its constitution and its laws.

32. The Texas Supreme Court has explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”¹⁷ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s control over local officials who are misapplying or defying State laws.¹⁸ The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”¹⁹

¹⁶ *Texas Mun. League*, 74 S.W.3d at 383–84 (discussing the prohibition against gratuitous payments of public funds to private persons).

¹⁷ *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (quoting *Yett*, 115 Tex. at 842).

¹⁸ *Id.*

¹⁹ *Id.* (internal citations omitted).

33. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”²⁰ The Court found that “[w]hen the State files suit to enjoin ultra vires action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”²¹

34. Ms. Teel will also suffer probable, imminent, and irreparable injury absent a temporary injunction because the state supreme court has not yet recognized or resolved a taxpayer’s standing to claw back money that a public entity has already spent. *See Pidgeon v. Turner*, 538 S.W.3d 73, 84–85 (Tex. 2017) (declining to resolve whether taxpayers have standing to pursue a “claw back” of illegally spent public funds, while acknowledging that the arguments were “interesting and important”).

C. Emergency Injunctive Relief is Necessary to Preserve the Status Quo

35. “The status quo is the last actual, peaceable, non-contested status which preceded the pending controversy.” Here, the status quo is before Defendants, without legal authority, unconstitutionally allocated \$400,000 to fund abortions. It is crucial that this Court maintain the status quo during the pendency of this action so that public dollars are not used to fund abortions before this Court can determine the constitutionality of Defendants’ allocation.

²⁰ *Id.*

²¹ *Id.*

V. DEMAND FOR RELIEF

The State of Texas and Ms. Teel demand the following relief:

- a. A declaration that the defendants are violating the state constitution's gift clause by spending taxpayer money on "logistical support" for abortion;
- b. A temporary and permanent injunction that prohibits the defendants from spending taxpayer money on "logistical support" for abortions;
- c. Grant temporary and permanent injunctions prohibiting Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them from continuing to implement the allocation of taxpayer dollars to "logistical support" for abortions;
- d. An award of costs and attorneys' fees;
- e. All other relief that the Court may deem just, proper, or equitable.

Dated: September 26, 2024

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

AUSTIN KINGHORN
Deputy Attorney General for Legal Strategy

/s/ Amy Snow Hilton
AMY SNOW HILTON
Chief, Healthcare Program Enforcement Division
Texas Bar No. 24097834
Amy.Hilton@oag.texas.gov
Office of the Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone: (512) 936-1709
Fax: (512) 499-0712

COUNSEL FOR STATE OF TEXAS

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

COUNSEL FOR MARY ANN TEEL