Affirmed and Majority and Concurring Opinions filed August 17, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00393-CV

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

V.

CARROLL G. ROBINSON, BRUCE R. HOTZE AND JEFFREY N. DAILY, Appellees

On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 2014-19507

C O N C U R R I N G O P I N I O N

When a city and its elected officials refuse to comply with a citizen-initiated amendment to the city charter that limits the city's ability to raise taxes and other revenue, can its taxpaying citizens ask the courts to order their representatives to obey the law? We hold today that the courts of Texas are open to their suit.

In reaching this conclusion, we confront a clash among fundamental principles of government. The City of Houston and its Mayor contend that doctrines of standing

and governmental immunity shield their position—that the Proposition 2 charter amendment is ineffective—from even being questioned in court. The citizen-plaintiffs respond that their representatives must give effect to the charter amendment as an exercise of direct legislative power by the people, and that the Texas Legislature and the courts have modified standing and immunity doctrines in order to ensure the rule of law: the principle that government is subordinate to the law and thus individuals exercising governmental power must respect its limits.

The majority opinion, which I join, correctly applies these modifications to hold that the plaintiffs have standing and that governmental immunity does not bar their suit. Because standing and immunity are notoriously complex and changing doctrines, featuring fictions and exceptions that do not always seem coherent,[1] I write separately to explain how the structural principles of government at stake support our holding.

I. The City's standing and immunity arguments implicate fundamental principles of government.

A. The rule of law

The Texas Constitution's Bill of Rights provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. Our Bill of Rights also ensures that citizens may seek a remedy in Texas courts for unlawful deprivations: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." *Id.* § 13.

These sections, like the Due Process Clauses of the Federal Constitution,[2] have

[1] *See, e.g.*, Douglas Laycock, *Modern American Remedies* 482 (3d ed. 2002).

[2] *See* U.S. Const. amends. V, XIV.

an ancient heritage. In Magna Carta, King John gave sanction to the rule of law by agreeing not to deny free men "right or justice" or deprive them of liberty or property except "by the law of the land."[3]

"Th[e] outlawing by Magna Carta of certain arbitrary and capricious executive action against private citizens went a long way toward establishing" that "the king himself was subordinate to the law," and that his exercise of sovereign authority was not legitimate when he acted outside its bounds. Steven G. Calabresi, *The Historical Origins of the Rule of Law in the American Constitutional Order*, 28 Harv. J. L. & Pub. Pol'y 273, 276 (2004). The American colonists relied on this principle centuries later, listing King George III's repeated violations of law among their reasons for declaring independence. *See* The Declaration of Independence (U.S. 1776).

Americans eventually ratified a Federal Constitution designed to preserve the rule of law against an all-powerful executive while also guarding their liberty and property against the infringements by elected legislatures that had occurred under the weak Articles of Confederation. Calabresi, *supra*, at 278–79. To maintain the balance between order and freedom and secure the rule of law, the Federal Constitution limited governmental power by dividing it vertically and horizontally using the framework "we know as federalism and the separation of powers" and by including "a strong Bill of Rights." *Id*. at 279. As Alexander Hamilton observed in the Federalist Papers, a separate and independent judiciary "is peculiarly essential" in preserving these limits imposed by the people on their representatives in government.[4]

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[3] Charles R. Eskridge III, *Modern Lessons from Original Steps Towards the American Bill of Rights*, 19 Tex. Rev. L. & Pol. 25, 29 (2016) (quoting Magna Carta (June 15, 1215), *reprinted in Sources of our Liberties: Documentary Origins of Individual Liberties in the United States Constitution and Bill of Rights* 11, 17 cl. 39–40 (Richard L. Perry & John C. Cooper eds., rev. ed. 1978)).

[4] *The Federalist* No. 78, at 466 (Clinton Rossiter ed., 1961) ("The complete independence of the courts of justice is peculiarly essential in a limited Constitution . . . which contains certain

Our Texas Constitution also limits governmental power, and it goes even further than its federal counterpart by including "an explicit Separation of Powers provision to curb overreaching and to spur rival branches to guard their prerogatives." *In re State Bd. for Educator Certification*, 452 S.W.3d 802, 808 n.39 (Tex. 2014) (orig. proceeding) (citing Tex. Const. art. II, § 1). In addition, as noted above, the Texas Bill of Rights expressly recognizes the role of courts in providing due course of law. Tex. Const. art. I, § 19.

The constitutional guarantee of procedural due course of law requires the government, at minimum, to provide notice that it is depriving a citizen of a liberty or property interest as well as "an opportunity [for the citizen] to be heard at a meaningful time and in a meaningful manner." *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929–930 (Tex. 1995). In the hearing, the citizen's challenge to the deprivation must be determined "according to law." *Freeman v. Ortiz*, 153 S.W. 304, 304 (Tex. 1913). In this way, our due course of law guarantee empowers courts to resolve disputes about whether officials are legitimately exercising governmental power within the democratically established limits of the law.

The plaintiffs in this case contend, in part, that they are entitled to have a court hear and determine their complaint that the City is collecting taxes and fees from them and spending the money in violation of the Proposition 2 charter amendment, which they consider a valid part of the City's own governing law. I explore below how rule-

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specified exemptions to the legislative authority . . . . Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing."); *id.* (concluding that "every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void," and rejecting the alternative "that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid").

of-law values, including plaintiffs' constitutional right to due course of law, interact with the doctrines of standing and immunity on which the City relies.

B. Popular sovereignty and direct democracy

Before reaching those doctrines, it is also important to consider the status of the Proposition 2 charter amendment, which was proposed through a citizen initiative and adopted by popular vote. The Texas Constitution recognizes that "[a]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit." Tex. Const. art. I, § 2. The people generally have chosen a republican form of government for our state and its political subdivisions, electing representatives to exercise political power on their behalf. But people in home-rule municipalities like the City of Houston also have the right to exercise sovereign power directly by submitting a petition to amend the city charter signed by the required number of qualified voters and approving the charter amendment in an election. *See* Tex. Loc. Gov't Code Ann. § 9.004(a) (West 2008); Houston, Tex., City Charter art. VII-b (effective 1913) (amended 1991). This form of direct democracy through "the power of initiative and referendum, as provided for in the city's charter, is the exercise by the people of a power reserved to them, and not the exercise of a right granted." *Taxpayers' Ass'n of Harris County v. City of Houston*, 105 S.W.2d 655, 657 (Tex. 1937).[5]

Although elected representatives may not like the result when voters intervene directly in making public policy, the Supreme Court of Texas has rejected attempts to limit citizens' direct lawmaking power. *See Glass v. Smith*, 244 S.W.2d 645 (Tex. 1951). "[T]o protect the people of the city in the exercise of this reserved legislative

[5] Under the City Charter, an initiative is a petition seeking a vote on a proposed ordinance or resolution, while a referendum is a petition seeking a vote that an ordinance or resolution enacted by the City Council shall not take effect. *See* Houston, Tex., City Charter art. VII-b, §§ 2–3. The charter amendment at issue was adopted as an initiative.

power, . . . charter provisions should be liberally construed in favor of the power reserved." *Taxpayers' Ass'n*, 105 S.W.2d at 657; *see also City of Houston v. Todd*, 41 S.W.3d 289, 298 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). In this case, there can be no dispute that the citizens of Houston were entitled to exercise their sovereign function under the city charter to impose limits on their representatives' exercise of the power to raise revenue.[6]

C. Standing

The City contends, however, that plaintiffs lack standing to sue to enforce the limits contained in Proposition 2. "The standing requirement stems from two limitations on subject matter jurisdiction": the interpretation of our constitutional separation-of-powers provision "to prohibit courts from issuing advisory opinions"; and the limitation of our constitutional guarantee of "open courts . . . [to] those litigants suffering an injury." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 –44 (Tex. 1993).

Generally, to establish standing, "a plaintiff must demonstrate that he or she possesses an interest in a conflict distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury." *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001). Citizens do not ordinarily have a right to bring suit challenging governmental decision-making because "[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) (citing *Osborne v.*

[6] Given the procedural posture of the case, we do not reach the merits of the City's argument that the Proposition 2 charter amendment is invalid because it is inconsistent with the Proposition 1 amendment, which received more votes.

Keith, 177 S.W.2d 198, 200 (1944)); *see also Andrade v. Venable*, 372 S.W.3d 134, 136 (Tex. 2012).

Both the courts and the Legislature have created exceptions to this general rule, however. Plaintiffs argue that the court-created exception for taxpayer standing applies here.[7] Texas courts long ago recognized that taxpayers may sue to enjoin the illegal collection of funds by government,[8] which is consistent with the general standing rule because the actual or threatened loss of the taxpayer's own funds is a particular injury. But Texas courts also hold that taxpayers have standing to enjoin the future illegal expenditure of state or local funds without demonstrating a particular injury.[9] This exception is founded on the rule of law: it "provides important protection to the public from the illegal expenditure of public funds without hampering too severely the workings of the government." *Bland Indep. Sch. Dist.*, 34 S.W.3d at 556.

The taxpayer standing exception recognized by Texas courts mirrors the doctrine of municipal taxpayer standing used in federal courts. *Williams*, 52 S.W.3d at 181; *see also DaimlerChrysler v. Cuno*, 547 U.S. 332, 349 (2006). Federal courts recognize a narrower standing exception for taxpayers who contend that federal or state expenditures violate the Federal Constitution, requiring them to "establish a logical

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[7] In a prior case, another panel of this Court held that plaintiffs lacked standing to challenge the City's refusal to enforce Proposition 2. *White v. Robinson*, 260 S.W.3d 463, 470–75 (Tex. App.—Houston [14th Dist.] 2008), *vacated on other grounds sub nom. Robinson v. Parker*, 353 S.W.3d 753 (Tex. 2011). This holding does not control our analysis of taxpayer standing because plaintiffs did not raise that exception as a basis for standing in the prior case.

[8] *See Davis v. Burnett*, 13 S.W. 613 (Tex. 1890); *Morris v. Cummings*, 45 S.W. 383, 385 (Tex. 1898); *George v. Dean*, 47 Tex. 73, 84 (1877); *Blessing v. City of Galveston*, 42 Tex. 641, 654 (1875).

[9] *See Venable*, 372 S.W.3d at 137; *Williams*, 52 S.W.3d at 179; *Calvert v. Hull,* 475 S.W.2d 907, 908 (Tex. 1972); *Osborne*, 177 S.W.2d at 200; *Hoffman v. Davis*, 100 S.W.2d 94, 95 (Tex. 1937) ("When a taxpayer brings an action to restrain the illegal expenditure . . . of tax money he sues for himself, and it is held that his interest in the subject-matter is sufficient to support the action"); *Terrell v. Middleton*, 187 S.W. 367, 369 (Tex. Civ. App.—San Antonio 1916), *writ ref'd*, 191 S.W. 1138 (Tex. 1917) (per curiam); *City of Austin v. McCall*, 68 S.W. 791, 794 (Tex. 1902); *Hendee v. Dewhurst*, 228 S.W.3d 354, 378–79 (Tex. App.—Austin 2007, pet. denied).

nexus between being a taxpayer and the type of action challenged, and demonstrate a link between their taxpayer status and the precise nature of the constitutional violation alleged." *Williams*, 52 S.W.3d at 181. This test has been met only with respect to Establishment Clause violations,[10] as the Federal Constitution lacks detailed fiscal regulations of the sort that often appear in state constitutions and laws and in municipal charters and ordinances. The Texas courts' approach to taxpayer standing promotes the rule of law by making such legal limits on taxing and spending power enforceable.[11] In Part II.A. below, I address whether the taxpayer standing exception applies in this case.

The Legislature may also expand standing by statute. *Scott v. Bd. of Adjustment*, 405 S.W.2d 55, 56–57 (Tex. 1966). Plaintiffs argue that they have standing by virtue of Proposition 2 itself, which is an act of municipal legislative power that expressly confers standing on any voter to enforce its provisions. Because another panel of this Court rejected plaintiffs' argument in a prior case, I do not revisit it here.[12]

D. Immunity

The City next contends that its governmental immunity bars plaintiffs' suit. "Sovereign immunity requires the state's consent before it can be sued." *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). Cities and other political subdivisions of the state share in this immunity—referred to as "governmental immunity"—when they are performing governmental functions. *Gates v. City of Dallas*, 704 S.W.2d 737, 738–39 (Tex. 1986).

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[10] *Cuno*, 547 U.S. at 347.

[11] *See* Joshua G. Urquhart, *Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limitations and Permissive Taxpayer Standing Doctrines*, 81 Fordham L. Rev. 1263, 1265–67, 1295–96 (2012).

[12] *See White*, 260 S.W.3d at 473–75.

The doctrine of immunity, which does not appear in our Constitution, has its origins in the common law and the feudal fiction that "the King can do no wrong." *Brown & Gay Eng'g, Inc. v. Olivares*, 461 S.W.3d 117, 121 (Tex. 2015); *see Tooke v. City of Mexia*, 197 S.W.3d 325, 331 (Tex. 2006); *Hosner v. DeYoung*, 1 Tex. 764, 769 (1847). The reasons given for the doctrine "have evolved over the centuries," and its modern "purpose is pragmatic: to shield the public from the costs and consequences of improvident actions of their governments." *Tooke*, 197 S.W.3d at 331–32. Immunity also "preserves separation-of-powers principles by preventing the judiciary from interfering with the Legislature's prerogative to allocate tax dollars." *Brown & Gay Eng'g*, 461 S.W.3d at 121.

As with standing, both the courts and the Legislature have recognized exceptions to immunity. The common-law exceptions likewise have deep historical roots, tracing their heritage to courts' issuance of writs of habeas corpus, mandamus, and injunction against government officials to check acts in excess of lawful authority or compel the performance of a clear legal duty.[13] In explaining why mandamus was the correct remedy for a government official's refusal to carry out his ministerial duty to deliver a commission, Chief Justice Marshall in *Marbury v. Madison* looked to the rule of law: "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." 5 U.S. (1 Cranch) 137, 163 (1803). The Supreme Court of the United States rejected the argument that "the heads of departments are not amenable to the laws of their country," quoting *Blackstone's Commentaries* to show that the common law furnished methods of detecting errors and misconduct by government agents that injured private property rights. *Id.* at 164–65.

[13] *See* Vicki C. Jackson, *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, 35 Geo. Wash. Int'l L. Rev. 521, 524–25 & nn. 7-10 (2003).

The Court adopted the legal fiction that when a government official's "powers are limited by statute, his actions beyond those limitations [that affect the plaintiff's property] are considered individual and not sovereign actions," and thus immunity does not bar a suit against him for specific relief. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689, 701–02 (1949).

Texas courts also recognize an *ultra vires* exception, which allows a plaintiff to sue a government official who "acted without legal authority or failed to perform a purely ministerial act." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). An official acts without legal authority "if he exceeds the bounds of his granted authority or if his acts conflict with the law itself." *Houston Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016). Because an official's unauthorized acts "should not be considered acts of the state at all," a citizen's suit to protect his property against such acts is not barred by immunity. *Hall*, 508 S.W.3d at 238; *see also Heinrich*, 284 S.W.3d at 370.

The Supreme Court of Texas has explained that "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state" over one of its officials. *Heinrich*, 284 S.W.3d at 372. "Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy." *Id.* While acknowledging the modern fiscal rationale for immunity, the supreme court concluded that it does not apply to *ultra vires* suits: "extending immunity to officials using state resources in violation of the law would not be an efficient way of ensuring those resources are spent as intended." *Id.*

The illegal collection of revenue is one type of *ultra vires* act to which immunity does not apply. As the supreme court observed in addressing the procedural due process available to contest the constitutionality of a tax, "consent of the Legislature is not required in order to sue the County Tax Assessor-Collector for recovery of an

illegal tax involuntarily paid under duress." *Shaw v. Phillips Crane & Rigging of San Antonio, Inc*., 636 S.W.2d 186, 188 (Tex. 1982). Consent is unnecessary because "revenue generated from a tax determined to be illegal should not be treated as property of the State or municipality to which the principles of sovereign immunity apply, and an illegally collected fee should be refunded if paid as a result of . . . duress, without respect to waiver of sovereign immunity." *Nivens v. City of League City*, 245 S.W.3d 470, 474 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

Aside from these deeply rooted common-law exceptions, Texas courts have been reluctant to recognize other types of suits to which immunity does not apply, preferring to defer to the Legislature to determine when immunity should be waived. *Brown & Gay Eng'g*, 461 S.W.3d at 121. The Legislature has been active in waiving immunity, concluding that governmental activities should be subordinate to the law in many areas where courts have not found an exception.

One such waiver appears in the Uniform Declaratory Judgments Act. The Act authorizes a person whose rights are affected by a statute or municipal ordinance to have a court "determine[] any question of construction or validity arising under" the statute or ordinance "and obtain a declaration of rights . . . thereunder." Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a) (West 2015). If the question "involves the validity of a municipal ordinance . . . , the municipality must be made a party and is entitled to be heard." *Id.* § 37.006(b). This requirement to make the municipality a party is a waiver of its immunity from suit. *Heinrich*, 284 S.W.3d at 373 n.6. In Part II.B., I discuss whether this waiver and the *ultra vires* exception apply here.

II. Under these principles, plaintiffs have standing and governmental immunity does not bar their suit.

Understanding how the rule of law and popular sovereignty have shaped the doctrines of standing and immunity helps to show why neither doctrine bars this suit.

I examine the parties' arguments under each doctrine in turn.

A. Plaintiffs have taxpayer standing.

To establish taxpayer standing, a plaintiff must plead facts showing that: (1) he is a taxpayer; and (2) public funds are expended on the allegedly illegal activity. *Williams*, 52 S.W.3d at 179. It is undisputed that plaintiffs are City taxpayers. In their petition, plaintiffs "seek[] to prevent the illegal expenditure of public funds not yet expended." They assert in some detail that the City has "assessed, collected and spent" funds illegally exceeding the revenue cap in Proposition 2, as well as the cap in Proposition 1—which is calculated differently and which the City recognizes as valid. They also allege that the City plans to continue these practices under its current and proposed budgets.

The City responds that these allegations are insufficient because taxpayer standing to challenge an illegal expenditure does not extend to this suit to enforce legal limits on the collection of revenue. The City also argues that plaintiffs have failed to specify the illegal activity on which the funds were spent.

The City's response is misplaced for three reasons. First, if it is illegal for the City to collect the revenue in the first place, it cannot legally spend that revenue on any activity. Thus, plaintiffs have alleged "an expenditure of public funds that would not otherwise be made." *Venable*, 372 S.W.3d at 139.

Second, as discussed above, Texas law recognizes that taxpayers have standing to challenge illegal collection as well as illegal expenditure of revenue. Indeed, both challenges share a common purpose. In upholding a taxpayer's standing to challenge the expenditure of state funds exceeding the governor's constitutionally capped salary to buy chicken salad and other supplies for his use, the court in *Terrell v. Middleton* explained:

> Citizens are allowed to prevent, by injunction, the collection of illegal taxes, and the reasons for allowing them this power are no stronger than to allow restraint of an officer who seeks to expend the taxes when collected for an illegal or unconstitutional purpose. The diversion of the taxes after collection from legal purposes would be equally as injurious to the taxpayer as the collection of illegal taxes. In either event, the burdens of the taxpayer are increased.

187 S.W. 367, 369 (Tex. Civ. App.—San Antonio 1916), *writ ref'd*, 191 S.W. 1138 (Tex. 1917) (per curiam); *see also Calvert v. Hull,* 475 S.W.2d 907, 908 (Tex. 1972).

Third, plaintiffs also have a right to procedural due course of law to test whether the City collected revenue from them in violation of its own charter. *See McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Fla. Dep't of Bus. Regulation*, 496 U.S. 18, 36 (1990) ("Because exaction of a tax constitutes a deprivation of property, the State must provide procedural safeguards against unlawful exactions in order to satisfy the commands of the Due Process Clause."); *Shaw*, 636 S.W.2d at 188. For each of these reasons, the trial court correctly rejected the City's plea to the jurisdiction challenging plaintiffs' standing.

B. Governmental immunity does not bar plaintiffs' suit.

Plaintiffs, who have sued the City of Houston as well as the Mayor in his official capacity, offer a different response to each defendant's assertion of governmental immunity. Plaintiffs allege that the City's immunity has been waived under the Declaratory Judgments Act, and they seek declarations that the caps in both Propositions 1 and 2 are valid, and that budgets for fiscal years 2011 through 2017 exceed the caps and are unauthorized. Recognizing the City's position that a "poison pill" provision in Proposition 1 invalidates Proposition 2, plaintiffs contend that the "poison pill" is itself invalid, or alternatively that Proposition 1 in its entirety and another section of the city charter are invalid.

These declarations fall within the Act's waiver of immunity, which extends to

"claims that a statute is invalid for constitutional or nonconstitutional reasons and claims merely seeking interpretation or clarification of a statute." *Lone Star Coll. Sys. v. Immigration Reform Coal. of Tex. (IRCOT)*, 418 S.W.3d 263, 271 (Tex. App.—Houston [14th Dist.] 2013, pet. denied). The City asserts that plaintiffs are primarily seeking to validate the propositions. But the statute does not require the plaintiff to seek invalidity; it simply requires a "proceeding that involves . . . validity." Tex. Civ. Prac. & Rem. Code Ann. § 37.006(b). This proceeding involves the validity of Proposition 2, which the City contends is invalid. Moreover, plaintiffs are seeking to invalidate budget ordinances for noncompliance with Propositions 1 and 2, and to invalidate the "poison pill" provision in Proposition 1 in order to defeat the City's position that Proposition 2 is invalid.[14]

Turning to the Mayor, plaintiffs allege that the *ultra vires* exception to governmental immunity applies because the Mayor "acted without legal authority . . . in permitting the illegal assessment, collection and expenditure of drainage fees, in exempting those drainage fees from the caps in Propositions 1 and 2, in passing budgets for FY 2011 to FY 2017 which exceed the caps and violate the other provisions of Proposition 1 and 2, and in expending public monies which exceed the caps in Proposition 1 and 2." They seek prospective injunctive relief segregating and ultimately directing the proper disposition of monies exceeding the caps.

The City responds that the acts alleged are not within the authority of the Mayor, who merely submits a proposed budget to the members of City Council (non-parties to this suit). But as the majority opinion points out, this evidence regarding the Mayor's budget authority does not conclusively negate all of plaintiffs' allegations regarding

[14] Because the Act's waiver of immunity applies, we need not consider whether Proposition 2 also waived the City's immunity by expressly giving a voter the right to enforce the charter amendment by injunction or other remedy.

the Mayor's actions. Accordingly, the trial court correctly rejected the plea to the jurisdiction based on governmental immunity.

* * *

"What this case is really about," says the City, is whether plaintiffs may seek to enforce "a broad restriction on the amount of revenue the City may collect from all sources." In the City's view, that "is a political issue, not a legal issue." The City is incorrect.

When the Mayor of Houston and the members of the City Council look down from their dais in the Council Chamber, they see the following words written above the doors: "The people are the city." The people settled the political issue of how much revenue their government may collect from them: they initiated the Proposition 2 amendment to the City Charter and approved it at the ballot box. Whether the City and the Mayor must comply with this limit on their authority is a legal issue, and doctrines of standing and governmental immunity—as shaped by our rule-of-law values—do not bar the people from asking a court to resolve that issue. The City is not above the law. I therefore respectfully concur in the decision to affirm the trial court's order denying the plea to the jurisdiction.

/s/ J. Brett Busby
Justice

Panel consists of Justices Busby, Donovan, and Brown (Opinion by Donovan, J.) (Brown, J., joining both the Opinion and the Concurring Opinion).