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Chris Daniel - District Clerk Harris County
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By: Nelson Cuero
Filed: 12/15/2017 12:58 PM

NO. _____

JAMES NOTEWARE, Contestant,	§	IN THE _____ DISTRICT COURT
	§	
	§	
v.	§	
	§	OF
SYLVESTER TURNER, Mayor of the	§	
City of Houston, Texas, and CITY OF	§	
HOUSTON, TEXAS, Contestees.	§	HARRIS COUNTY, TEXAS

CONTESTANT JAMES NOTEWARE'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JAMES NOTEWARE ("Noteware" or "Contestant"), Contestant in the above-styled cause, complaining of and about the CITY OF HOUSTON and SYLVESTER TURNER, its Mayor, Contestees herein, and for such cause of action would respectfully show the Court the following:

Discovery Control Plan

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Contestant intends to conduct discovery in this case under Level 2.

Introduction

2. This is an election contest necessitated only because the City of Houston, led by Contestee Mayor Sylvester Turner, crafted a materially misleading ballot description for Proposition A in the November 2017 election.

3. Proposition A concerns the Pension Obligation Bonds; specifically, it seeks to plug a massive unfunded liability the City has created by issuing more than a billion dollars in new bond debt, and levying taxes to pay for it, *with such taxes to be excepted from the otherwise-applicable limitation in the Houston Charter on the annual growth of property taxes*.

4. The ballot description crafted by the City informed the voters that the Proposition would approve the issuance of bonds and levying of taxes to pay for them, but conveniently omitted the last fact: that those taxes would be unrestrained by the Charter's normal limitations.

5. The Mayor and City Council certainly have the prerogative to call on the goodwill of Houstonians, and ask Houston taxpayers to take on another billion-plus dollars in debt to bail the City out of the consequences of decades of poor decisions by elected officials who refused to constrain spending. But if they do so, the common law—not to mention common decency—requires that they be upfront with the voters about the impact on their tax liability.

6. Where a City has a limitation on the growth of revenue from property taxes, creating an exception to such limitation is, as a matter of law, a material feature and central component of the measure. Omitting the fact that the Proposition created a billion-dollar exception to default limits on the City's taxing authority renders the proposition materially misleading and void.

Parties

7. At all times mentioned in this petition, Contestant was an individual residing at 5402 Fieldwood Drive, Houston, Harris County, Texas, 77056, and a qualified voter of the City of Houston. *See* Tex. Elec. Code § 233.002 (providing that any qualified voter of the territory covered by the measure election may contest the election). In addition, Contestant voted against Proposition A in the November 7, 2017 election.

8. The last three numbers of Contestant's driver's license number are 554. The last three numbers of Contestant's social security number are 633.

9. Contestees are the City of Houston, Texas and its mayor, Sylvester Turner, who is sued in his official capacity as the presiding officer for the City of Houston, the final canvassing authority for the contested election. *See* Tex. Elec. Code § 233.003(a)(1). Contestees must be commanded

to answer this petition by 10:00 a.m. on the 10th day after service of the citation. Tex. Elec. Code § 233.007(a)(1). A citation issued in an election contest must direct the officer receiving the citation to return it unserved if it is not served within 20 days after the date of issuance. *Id.* § 233.008.

Jurisdiction and Venue

10. Contestant brings this action pursuant to title 14, chapter 233, Texas Election Code, to contest the results of the City of Houston election as to Proposition A on the November 7, 2017 ballot (the "contested election").

11. This election contest is timely filed because it is filed not later than the 30th day after the date the official result of the contested election was determined. Tex. Elec. Code § 233.006(b).

12. This court has original and exclusive jurisdiction of this contest pursuant to Texas Election Code § 221.002(a). Harris County is a proper venue for this election contest. Tex. Elec. Code § 233.005.

Notice to Secretary of State

13. A copy of this petition was delivered to the Texas Secretary of State as required by Texas Election Code § 233.006(c).

Factual Background

14. While the parties, and the interested public, will surely debate the merits of Contestee Turner's so-called pension reform plan on the sidelines of this litigation, this contest itself presents a narrow, simple issue.

15. In the absence of voter approval for a higher rate, the Houston Charter limits the growth of property tax revenue to the lower of (i) the combined rates of inflation and population growth, or (ii) 4.5 percent. HOUSTON, TEX. CHARTER art. III, § 1(a).

16. This limitation is frequently referred to by certain media, and by City officials who desire unrestrained taxing power, as a "revenue cap," but that is inaccurate. The City enjoys many different streams of revenue, and ad valorem property taxes are only a portion of the City's annual revenues. This Charter limitation is quite modest, in that it limits only the growth of one revenue stream—property tax revenues—to a certain amount, unless the voters approve otherwise in an election. Therefore, it is more accurately termed a property tax *growth* cap.

17. Mayor Turner's disdain for this limitation on the City's taxing authority is well known, and he has expressed his desire to repeal it. *See, e.g.*, Rebecca Elliott, "Turner changes mind, says unlikely he will ask voters to remove rev cap," *Houston Chronicle*, Jul. 5, 2017 (stating that "[l]ifting Houston's cap on property tax collections has been a pillar of the mayor's agenda, and he regularly discusses how the restriction constrains Houston's budget and ability to provide municipal services.").

18. Despite steady complaints from Houston mayors who would love to have unrestrained power to raise property taxes, no Mayor has ever asked for voter approval to raise property taxes above the default limit in the Charter.

19. Despite Mayor Turner's repeated complaints about his lack of unrestrained power to raise property taxes, he has not asked voters for permission to raise their property taxes above the default limit in the Charter. At least, not directly.

20. Mayor Turner's plan to tax Houstonians to pay for the one billion-plus dollars in new bond debt relies on an exception to this property tax growth cap.

21. This is apparent from the actual language of Proposition A, which provides, in full:

> **Shall the City Council of the City of Houston, Texas, be authorized to issue bonds of the City, which may be called City of Houston, Texas, Pension Obligation Bonds in the amount of $1,010,000,000**, maturing serially or otherwise at such times as may be fixed by the City Council, not to exceed 40 years

> from their date or dates and bearing interest at any rate or rates, either fixed, variable or floating, according to any clearly stated formula, calculation or method, not exceeding the maximum interest rate now or hereafter authorized by law, and to sell said bonds at any price or prices, all as shall be determined within the discretion of the City Council at the time of issuance, **and to levy a tax upon all taxable property in the City annually sufficient to pay the principal of and interest on the bonds (together with any bonds that may be issued to refund the bonds) as it accrues or accretes**, and to provide a sinking fund for the payment of the principal of the bonds (together with any bonds that may be issued to refund the bonds) as they mature, as well as all payments under any credit agreements, **such tax to be levied without being limited by any provisions of the City's home rule charter limiting or otherwise restricting the City's combined ad valorem tax rates or combined revenues from all City operations**, for the purpose of funding a portion of the unfunded liability of the City with respect to the Houston Police Officers' Pension System and the Houston Municipal Employees Pension System as contemplated by the pension reform plan contained in Senate Bill 2190 (adopted in the 85th (2017) Texas Legislature, Regular Session), and all matters necessary or incidental thereto?

Exhibit A (City of Houston Ord. No. 2017-608) at 2 (emphasis added).[1]

22. The Proposition therefore asks the voters to approve more than a billion dollars in new debt, the levying of taxes to pay for this debt, *and provides that such taxes are not subject to the Charter limitation on the* growth *of property tax revenues year after year*.

23. However, the actual language of Proposition A was not on the ballot. Instead, only a summary was provided to the voters.

24. The ballot language describing this measure omits the fact that voters are being asked to blow a billion-plus dollar hole in the default limitation on the growth of their property taxes:

> City of Houston, Proposition A
>
> The issuance of $1,010,000,000 pension obligation bonds for the purpose of funding a portion of the unfunded liability of the City with respect to the Houston Police Officers' Pension System and the Houston Municipal Employees Pension System as contemplated by the pension reform plan contained in Senate Bill 2190 (adopted in the 85th (2017) Texas Legislature, Regular Session), and the levying of taxes sufficient for the payment thereof and interest thereon.

[1] All exhibits are fully incorporated herein.

25. The election was held on November 7, 2017.

Election Contest

26. On November 17, 2017, a final and official canvass and certification of the election results for the contested election was completed by the City of Houston. The certified vote allocation shows that Proposition A passed, in an election with less than 10% turnout, by a vote of 74,856 for and 22,230 against.

27. Contestant will show on the trial of this cause that this was not the true outcome of the election for the following reasons.

28. Contestant will show that "an election officer or other person officially involved in the administration of the election…engaged in fraud or illegal conduct or made a mistake," Tex. Elec. Code § 221.003(a)(2), by means of an insufficient ballot description that failed to "substantially submit[] the question…with such definiteness and certainty that the voters are not misled." *Dacus v. Parker*, 466 S.W.3d 820, 826 (Tex. 2015).

29. Twice in 2015, the Supreme Court of Texas held that ballot language drafted by the City of Houston was materially misleading, and granted relief against the City. Copies of these opinions are attached hereto as **Exhibits B** and **C**.

30. In *Dacus v. Parker*, an election contest like the instant case, the Court announced the standard to be applied in this context:

> In an election contest challenging the sufficiency of the ballot description, the issue is whether the ballot "substantially submits the question ... with such definiteness and certainty that the voters are not misled." An inadequate description may fail to do that in either of two ways. First, it may affirmatively misrepresent the measure's character and purpose or its chief features. Second, it may mislead the voters by omitting certain chief features that reflect its character and purpose…. [A] description that does either of the foregoing fails to comply with the standard.

466 S.W.3d at 826 (internal citation omitted) (emphasis added).

31. *Dacus* held that "drainage charges" providing the source of a dedicated fund for the improvement of Houston's drainage and streets were a "chief feature of the amendment, part of the amendment's character and purpose." 466 S.W.3d at 826. But the City-drafted proposition stated only: "Shall the City Charter…be amended to provide for the enhancement, improvement and ongoing renewal of Houston's drainage and streets by creating a Dedicated Pay-As-You-Go Fund for Drainage and Streets?," without mentioning the charges that would provide the funding. *Id.* at 822. Because the proposition on the ballot did not identify this feature, the proposition was misleading. *Id.* at 826.

32. *Dacus* recognized that although "the ballot need not reproduce the text of the amendment or mention every detail, it must substantially identify the amendment's purpose, character, and chief features." *Id.* at 822.

33. Moreover, "though voters are presumed to be already familiar with measures before reaching the voting booth, they can still be misled by an incomplete ballot description," and therefore, the ballot must "inform voters of the chief features of the measures they vote on." *Id.* at 828.

34. The Supreme Court emphasized that a "fiscal burden" and "funding mechanism" are chief features of an amendment:

> Merely stating that a fund is being established provides little definiteness or certainty about something important to the people—will they directly pay for it? Because the ballot did not mention the charges, it fell short of identifying the measure for what it is—a funding mechanism and fiscal burden on benefitting property owners…. Again, not every detail need be on the ballot, and short, general descriptions are often acceptable. But when the citizens must fund the measure out of their own pockets, this is a chief feature that should be on the ballot, and its omission was misleading.

Dacus, 466 S.W.3d at 826.

35. Justice Eva Guzman wrote separately to drive home the point that "[t]he City [of Houston]'s semantic obfuscation is particularly egregious here, considering that the ballot proposition at issue concerned a revenue-raising measure." *Id.* at 830 (Guzman, J., concurring).

36. Proposition A is also a revenue-raising measure, and similarly misled the voters by omitting a chief feature of the Proposition – the fact that the more than one billion dollars in new debt would be funded by taxes unrestrained by the otherwise-applicable property tax limitation.

37. The City will surely march into Court breathlessly pointing out that the ballot language mentions that taxes will be levied. While this was certainly necessary, it was not sufficient to apprise the voters of the chief features of the measure.

38. The Charter imposes a blanket limit on property tax revenue growth. Given that this limitation is contained in the City's fundamental law as the status quo, a rational and reasonable voter who reads the Proposition A ballot description may feel confident voting for the pension obligation bonds, believing that any damage to her pocketbook from the new debt would be restrained under the Charter. But asking voters to approve a billion dollars in new debt, to be financed by taxes *unrestrained* by the default limit in the Charter, is a fundamentally different question. The exception to the otherwise generally-applicable Charter limitation is a "central component" of the Proposition that was required to be on the ballot under *Dacus*'s rationale.

39. In fact, Proposition A is even more materially misleading than the proposition invalidated in *Dacus*. Here, the property tax growth cap itself expressly requires voter approval if the City is to exceed the limitation. Charter art. III, § 1(a) ("The City Council shall not, without voter approval…."). Where the *Charter itself* requires voter approval to exceed a limitation on the City's taxing authority, the City is obligated to tell the voters—on the ballot—that they are being asked to approve such an exception.

40. Rather than play it straight with the voters, the Mayor hid the fact that Proposition A would create a massive exception to the status quo in which the spending proclivities of the City's officials are at least constrained by a limit on the growth of *one* stream of revenue. That limited constraint was too much for the Mayor to bear, but his deceptive ballot description also reveals that he understood quite well that *lifting* even that modest guard against fiscal insanity would be too much for the voters to bear.

41. As a result of the above, the outcome of the election is not the true outcome.

Notice of Disqualification

42. Pursuant to Texas Election Code § 231.004, notice is hereby given that this matter involves territory covered by the Harris County, Fort Bend County, and Montgomery County District Courts. As such, the district judge of this court, and judges of any Fort Bend County or Montgomery County court, are statutorily disqualified. Tex. Elec. Code § 231.004(a) ("The judge of a judicial district that includes any territory covered by a contested election that is less than statewide is disqualified to preside in the contest."); *see also id.* § 231.001 (providing that the disqualification statute applies to any election contest of which the district court has jurisdiction). Contestant requests that the District Clerk promptly notify the judge of this filing so that a special judge may be assigned to hear this matter. Tex. Elec. Code § 231.004(b).

Notice of Consolidation

43. Pursuant to Texas Election Code § 233.013, notice is hereby given that this action shall be consolidated with any other election contest involving the same measure. At present, to counsel's knowledge, no other contests of this election have been filed.

Conditions Precedent

44. All conditions precedent have been performed or have occurred.

Prayer

WHEREFORE, PREMISES CONSIDERED, Contestant respectfully requests:

1. That this cause be set for trial and given precedence over all other causes as provided by law;

2. That notice of the filing of the petition and of any hearing date be given to all parties;

3. That the Court declare the contested election void, as if the election had not been held;[2]

4. That Contestant be awarded all other relief to which Contestant may be entitled.

Respectfully submitted,

/s/ Jerad Najvar
Jerad Wayne Najvar
Texas Bar No. 24068079
NAJVAR LAW FIRM, PLLC
2180 North Loop West, Ste. 255
Houston, TX 77018
281.404.4696 phone
281.582.4138 fax
jerad@najvarlaw.com
Counsel for Contestant Noteware

[2] *See* Tex. Elec. Code § 233.012(a) (providing that "[t]he effect of a void election…is the same as if the election had not been held").

Exhibit A

City of Houston Ordinance No. 2017-608

AN ORDINANCE ORDERING AN ELECTION TO BE HELD JOINTLY ON NOVEMBER 7, 2017, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF HOUSTON, TEXAS, A PROPOSITION FOR THE ISSUANCE OF PENSION OBLIGATION BONDS FOR THE PURPOSE OF FUNDING A PORTION OF THE UNFUNDED LIABILITY OF THE HOUSTON MUNICIPAL EMPLOYEES PENSION SYSTEM AND THE HOUSTON POLICE OFFICERS' PENSION SYSTEM; DESIGNATING THE LOCATION OF EACH POLLING PLACE AND THE HOURS THAT THE POLLS SHALL BE OPEN; PROVIDING FOR SEVERABILITY; MAKING OTHER PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * *

WHEREAS, the City of Houston, Texas (the "City"), hereby finds and determines that it is necessary and advisable to call and hold an election in the City to submit a proposition for the issuance of pension obligation bonds (the "Proposition"), for the purpose of funding a portion of the unfunded liability of the Houston Municipal Employees Pension System and the Houston Police Officers' Pension System (collectively, the "Pension Systems") as contemplated by the pension reform plan contained in Senate Bill 2190 (adopted in the 85th (2017) Texas Legislature, Regular Session), as hereinafter set forth; and

WHEREAS, the City Council hereby finds and determines that said election shall be held on a uniform election date established by Section 41.001(a) Texas Election Code, as amended, as required by Texas law; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The statements contained in the preamble of this Ordinance are true and correct and are hereby adopted as part of this Ordinance.

Section 2. It is hereby ordered that an election (the "Election") be held for and within the City on Tuesday, November 7, 2017, between the hours of 7:00 a.m. and 7:00 p.m., at which the following proposition for the issuance of bonds to fund a portion of the unfunded liability of the Houston Municipal Employees Pension System and the Houston Police Officers' Pension System, and the levy of taxes for payment thereof and interest thereon, shall be submitted to the qualified voters of the City:

Exhibit A
Noteware orig petition

CITY OF HOUSTON, PROPOSITION A

Shall the City Council of the City of Houston, Texas, be authorized to issue bonds of the City, which may be called City of Houston, Texas, Pension Obligation Bonds in the amount of $1,010,000,000, maturing serially or otherwise at such times as may be fixed by the City Council, not to exceed 40 years from their date or dates and bearing interest at any rate or rates, either fixed, variable or floating, according to any clearly stated formula, calculation or method, not exceeding the maximum interest rate now or hereafter authorized by law, and to sell said bonds at any price or prices, all as shall be determined within the discretion of the City Council at the time of issuance, and to levy a tax upon all taxable property in the City annually sufficient to pay the principal of and interest on the bonds (together with any bonds that may be issued to refund the bonds) as it accrues or accretes, and to provide a sinking fund for the payment of the principal of the bonds (together with any bonds that may be issued to refund the bonds) as they mature, as well as all payments under any credit agreements, such tax to be levied without being limited by any provisions of the City's home rule charter limiting or otherwise restricting the City's combined ad valorem tax rates or combined revenues from all City operations, for the purpose of funding a portion of the unfunded liability of the City with respect to the Houston Police Officers' Pension System and the Houston Municipal Employees Pension System as contemplated by the pension reform plan contained in Senate Bill 2190 (adopted in the 85th (2017) Texas Legislature, Regular Session), and all matters necessary or incidental thereto?

Section 3. The election precincts and polling places for the Election are hereby established as set forth in Exhibit "A," which is attached hereto and made a part of this Ordinance for all purposes. In the event the Mayor shall find that one or more of the polling places designated above shall have become unavailable or unsuitable for use at the Election or that alternate locations were otherwise designated by Harris County, Fort Bend County and Montgomery County in connection with the administration of the Election, he is hereby authorized to designate substitute polling places and provide or cause to be provided such notice as required by applicable law. The Mayor is further authorized to approve any changes to the precincts and polling

places described in Exhibit A as may be required by the laws of the State of Texas and United States.

Section 4. The Election shall be held under the provisions of the Charter of the City of Houston, Texas, the Constitution and laws of the State of Texas and United States, and this Ordinance. Only voters of the City of Houston, Texas, who are qualified under state and federal law shall be allowed to vote at the Election, and each voter shall vote at the polling place designated for the election precinct in which such voter resides.

Section 5. The City Secretary is hereby authorized and directed to have prepared and provided the ballots for the Election and any other necessary supplies and services not provided for under the terms of the election services contracts to be entered into between the City and Harris County, Fort Bend County, and Montgomery County, in accordance with the applicable law. On such ballots shall appear a proposition corresponding to the Proposition set forth in Section 2 of this Ordinance. Such proposition shall be as follows with provision to vote "FOR" or "AGAINST" the Proposition:

CITY OF HOUSTON, PROPOSITION A

The issuance of $1,010,000,000 pension obligation bonds for the purpose of funding a portion of the unfunded liability of the City with respect to the Houston Police Officers' Pension System and the Houston Municipal Employees Pension System as contemplated by the pension reform plan contained in Senate Bill 2190 (adopted in the 85th (2017) Texas Legislature, Regular Session), and the levying of taxes sufficient for the payment thereof and interest thereon.

Voting at the Election shall utilize a voting system approved pursuant to the provisions of the Texas Election Code and/or the United States Department of Justice, as applicable ("an approved voting system").

Exhibit B

466 S.W.3d 820
Supreme Court of Texas.

Allen Mark DACUS, Elizabeth C. Perez, and Rev. Robert Jefferson, Petitioners,
v.
Annise D. PARKER and City of Houston, Respondents

No. 13–0047
|
Argued February 24, 2015
|
Opinion Delivered: June 12, 2015
|
Rehearing Denied September 11, 2015

Synopsis

Background: Voters filed election contest against City, seeking declaration that a drainage systems and streets funding measure was invalid due to use of a misleading proposition on the ballot. The 234th District Court, Harris County, Reese Rondon, J., entered summary judgment in favor of City. The Houston Court of Appeals affirmed, 383 S.W.3d 557. Voters' petition for review was granted.

Holdings: The Supreme Court, Devine, J., held that:

[1] Supreme Court had jurisdiction to review decision of Court of Appeals with respect to election contest in order to resolve conflict among courts of appeal, and

[2] ballot proposition's failure to mention drainage charges to be imposed on most real property owners rendered funding measure invalid.

Reversed and remanded.

Guzman, J., issued concurring opinion in which Willett, J., joined.

***821** ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Attorneys and Law Firms

Robert B. Gilbreath, Hawkins Parnell Thackston & Young LLP, Dallas, TX, for Houston Area Pastor Council: Amicus Curiae.

Shane Pennington, Baker Botts LLP, Houston, TX, Thomas R. Phillips, Baker Botts LLP, Austin, TX, for Houston Building Owners and Managers Association, National Association of Industrial and Office Properties Houston: Amici Curiae.

Brandon M. Barchus, Faulk Barchus, PLLC, Houston, TX, for Little Nell Apartment, LP, HFI Regency Park Apartments, LP, and Windshire Apartment, LP: Amicus Curiae.

Scott N. Houston, Texas Municipal League, Austin, TX, for Texas City Attorneys Association, Texas Municipal League: Amici Curiae.

Dylan B. Russell, Joseph O. Slovacek, Hoover Slovacek LLP, Houston, TX, William A. 'Andy' Taylor, Andy Taylor & Associates, P.C., Brenham, TX, for Allen Mark Dacus: Petitioners.

Dylan B. Russell, Joseph O. Slovacek, Hoover Slovacek LLP, Houston, TX, for Elizabeth C. Perez and Rev. Robert Jefferson: Petitioners.

C. Robert Heath, Gunnar Seaquist, Bickerstaff Heath Delgado Acosta LLP, Austin, TX, David M. Feldman, City of Houston Legal Department, Houston, TX, Denise Lastnick Miller, Assistant City Attorney, John B. Wallace, Senior Assistant City Attorney, Judith Lee Ramsey, Chief, General Litigation Section, Lynette Fons, ***822** City of Houston Legal Department, Houston, TX: for Annise D. Parker: Respondent.

Opinion

JUSTICE DEVINE delivered the opinion of the Court.

In this election contest, we consider whether a ballot proposition for a proposed city charter amendment meets the common law standard preserving the integrity of the ballot. The court of appeals upheld the proposition in this case. 383 S.W.3d 557, 571 (Tex.App.–Houston [14th Dist.] 2012). Even though the ballot did not make clear that the amendment imposed charges directly on many voters, the court concluded it still described the

amendment's character and purpose and enabled voters to distinguish it from other propositions on the ballot. *See id.* at 566. In so doing, the court departed from the applicable standard, which requires that proposed amendments be submitted with such definiteness and certainty that voters are not misled. Though the ballot need not reproduce the text of the amendment or mention every detail, it must substantially identify the amendment's purpose, character, and chief features. Widespread charges are such a chief feature. Accordingly, we reverse the judgment of the court of appeals and remand to the trial court for further proceedings.

I. Background and Procedural History

A narrow majority of voters in the City of Houston adopted an amendment to their City Charter creating a "Dedicated Pay–As–You–Go Fund for Drainage and Streets." The amendment—approved in the November 2, 2010 election—required the City to obtain funding from several sources. One source was drainage charges to be imposed on properties benefitting from the drainage system.[1] Prior to the election, the text of the proposed amendment (and the text of two others), a fiscal impact summary, and the text of the proposition to be placed on the ballot were published in the *Houston Chronicle*. The fiscal impact summary and the text of the amendment indicated that drainage charges would be imposed. The language on the ballot, however, merely stated the amendment was "Relating to the Creation of a Dedicated Funding Source to Enhance, Improve and Renew Drainage Systems and Streets." It asked, "Shall the City Charter of the City of Houston be amended to provide for the enhancement, improvement and ongoing renewal of Houston's drainage and streets by creating a Dedicated Pay–As–You–Go Fund for Drainage and Streets?" It did not mention the drainage charges.

1 The amendment described this source of funding as follows:

> [a]ll proceeds of drainage charges, which beginning in fiscal year 2012, and continuing thereafter shall be imposed in an equitable manner as provided by law to recover allocable costs of providing drainage to benefitting properties, with drainage charges initially set at levels designed to generate at least $125 million for fiscal year 2012.

Shortly after the election, several voters (the "Contestants")[2] filed an election contest. They sought a declaration that the proposition was "illegal and invalid as a matter of law," and a determination that the adoption of the amendment was invalid. The Contestants named the City of Houston and the Mayor, Annise Parker, as ***823** the contestees.[3] The City filed a motion for summary judgment, which the trial court granted, denying the Contestants all relief. The Contestants thereafter filed a motion to modify the judgment or enter judgment nunc pro tunc, as well as a motion for a new trial. The trial court denied the Contestants' motions, and the court of appeals affirmed. Here, the Contestants argue that the court of appeals erred in affirming the trial court's summary judgment in favor of the City and denying their motion for new trial.

2 We refer to the petitioners, Allen Mark Dacus, Elizabeth C. Perez, and Rev. Robert Jefferson, as the "Contestants." It is not disputed in this summary judgment proceeding that they have standing as registered qualified voters in Harris County, Texas. *See* TEX. ELEC. CODE § 233.002.

3 We refer to the City and Mayor collectively as "the City."

II. Jurisdiction

[1] **[2]** This is an election contest with special jurisdictional considerations. The court of appeals' decision in an election contest is generally final. TEX. GOV'T CODE § 22.225(b)(2). There are exceptions, however, such as when "one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court." *Id.* §§ 22.001(a)(2); 22.225(c). Courts hold differently from each other "when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants." *Id.* § 22.225(e). As discussed in more detail below, the decisions of the courts of appeals conflict regarding the common law standard for describing a measure on the ballot. This inconsistency should be clarified, and we have jurisdiction.

III. Sufficiency of Ballot Language

[3] The parties dispute whether the ballot sufficiently described the charter amendment when it did not mention that drainage charges would be imposed.[4] The Texas Election Code grants discretion to "the authority ordering the election [to] prescribe the wording of a proposition" unless otherwise provided by law. TEX. ELEC. CODE § 52.072(a). The "proposition" is "the wording appearing on a ballot to identify a measure," and the "measure" is "a question or proposal submitted in an election for an expression of the voters' will"—in this case, the proposed Charter amendment. *See id.* § 1.005(12), (15). The proposition must be printed "in the form of a single statement." *Id.* § 52.072(b).

4 The Contestants' briefing focuses on the drainage charges, mentioning another funding source imposed by the amendment—developer-impact fees—only in passing. The Contestants did not mention the developer-impact fees in the court of appeals. Accordingly, we decide this case on the basis of the drainage charges without considering whether the ballot should have mentioned the developer-impact fees.

The common law protects the integrity of the election with a minimum standard for the ballot language, but the parties disagree over what the standard requires. In 1888, we held that the proposition must "substantially submit [ ] the question ... with such definiteness and certainty that the voters are not misled." *Reynolds Land & Cattle Co. v. McCabe,* 72 Tex. 57,12 S.W. 165, 165 (1888).[5] Beyond summarizing ***824** parties' arguments about the standard in 1999, *Blum v. Lanier,* 997 S.W.2d 259, 262 (Tex.1999), and commenting on the standard for ballot descriptions of state constitutional amendments in 1949, *R.R. Comm'n v. Sterling Oil & Ref. Co.,* 147 Tex. 547, 218 S.W.2d 415, 418 (1949), we have not elaborated on the standard since then. In the meantime, the courts of appeals have articulated several additional rules. Some have said that the proposition should "constitute a fair portrayal of the chief features of the proposed law ... in words of plain meaning, so that it can be understood by persons entitled to vote."[6] Under this standard, the ballot language "is sufficient if enough is printed on the ballot to identify the matter and show its character and purpose."[7] Some have said that the test of a description's sufficiency is not the level of detail, but "whether from the ballot wording a voter of average intelligence can distinguish one proposition from another on the ballot."[8] And, at least in cases involving state constitutional amendments, some have said that the ballot should disclose the amendment's "intent, import, subject matter, or theme."[9]

5 The statement in *Reynolds Land & Cattle Co.* may have referred to the order calling the election rather than the text of the ballot. *See* 12 S.W. at 166. Since then, this standard has frequently been applied to the ballot language, and we do so today. *See Blum v. Lanier,* 997 S.W.2d 259, 262 (Tex.1999); *City of McAllen v. McAllen Police Officers Union,* 221 S.W.3d 885, 895 (Tex.App.–Corpus Christi 2007, pet. denied); *Brown v. Blum,* 9 S.W.3d 840, 847 (Tex.App.–Houston [14th Dist.] 1999, pet. dism'd w.o.j.); *Bischoff v. City of Austin,* 656 S.W.2d 209, 212 (Tex.App.–Austin 1983, writ ref'd n.r.e.); *Moore v. City of Corpus Christi,* 542 S.W.2d 720, 723 (Tex.Civ.App.–Corpus Christi 1976, writ ref'd n.r.e.); *Wright v. Bd. of Trs. of Tatum Indep. Sch. Dist.,* 520 S.W.2d 787, 792 (Tex.Civ.App.–Tyler 1975, writ dism'd); *England v. McCoy,* 269 S.W.2d 813, 815 (Tex.Civ.App.–Texarkana 1954, writ dism'd); *Turner v. Lewie,* 201 S.W.2d 86, 91 (Tex.Civ.App.–Fort Worth 1947, writ dism'd).

6 *Turner,* 201 S.W.2d at 91; *see McAllen Police Officers Union,* 221 S.W.3d at 895; *Brown v. Blum,* 9 S.W.3d at 848; *Wright,* 520 S.W.2d at 792.

7 *Turner,* 201 S.W.2d at 91; *see In re Roof,* No. 14–12–00258–CV, 2012 WL 1072038, at *1 (Tex.App.–Houston [14th Dist.] Mar. 28, 2012) (per curiam) (mem. op.); *McAllen Police Officers Union,* 221 S.W.3d at 895; *Brown v. Blum,* 9 S.W.3d at 848; *Hardy v. Hannah,* 849 S.W.2d 355, 358 (Tex.App.–Austin 1992, writ denied); *Winger v. Pianka,* 831 S.W.2d 853, 856 (Tex.App.–Austin 1992, writ denied); *Moore,* 542 S.W.2d at 723; *Wright,* 520 S.W.2d at 792; *Hill v. Evans,* 414 S.W.2d 684, 692 (Tex.Civ.App.–Austin 1967, writ ref'd n.r.e.); *England,* 269 S.W.2d at 815; *Whiteside v. Brown,* 214 S.W.2d 844, 851 (Tex.Civ.App.–Austin 1948, writ dism'd).

8 *Hardy,* 849 S.W.2d at 358; *see In re Roof,* 2012 WL 1072038, at *1; *McAllen Police Officers Union,* 221 S.W.3d at 895; *Brown v. Blum,* 9 S.W.3d at 848; *Rooms With a View, Inc. v. Private Nat'l Mortg. Ass'n, Inc.,* 7 S.W.3d 840, 850 (Tex.App.–Austin 1999, pet. denied); *Evans,* 414 S.W.2d at 692.

9 *Rooms With a View, Inc.,* 7 S.W.3d at 850; *see Whiteside,* 214 S.W.2d at 851. Texas law is more specific about propositions describing state

> constitutional amendments than those describing charter amendments. If the legislature does not word the proposition submitting a constitutional amendment, then the secretary of state must "describe the proposed amendment in terms that clearly express its scope and character." TEX. ELEC. CODE § 274.001(a), (b).

The Contestants assert that the ballot must do more than merely enable voters to identify and distinguish the different propositions from each other, as the court below, 383 S.W.3d at 566, and some other courts of appeals have held, *see, e.g., Hardy,* 849 S.W.2d at 358; *Hill,* 414 S.W.2d at 692. Instead, it must "substantially submit" the amendment with "definiteness and certainty." *See Reynolds Land & Cattle Co.,* 12 S.W. at 165. The ballot in this case should have mentioned the drainage charges required by the amendment; by ignoring the charges, the ballot obscured the amendment's "chief features" and its "character and purpose."

The City responds that because of election notices and publication requirements, voters are presumed to be familiar with the measure before the election. *See Sterling Oil & Ref. Co.,* 218 S.W.2d at 418. The ballot need not educate voters about what they are already familiar with; it need only identify and distinguish which proposition refers to which measure so ***825** that voters know which is which on the ballot. *See Hardy,* 849 S.W.2d at 358. According to the City, requiring the ballot to identify a measure's "chief features" is just another way of saying that the proposition must sufficiently identify the measure so that the different propositions can be distinguished on the ballot.

[4] **[5]** It is true that voters are presumed to be familiar with every measure on the ballot.[10] Election notices for city charter amendments must be published in the newspaper before the election, and the notice must "include a substantial copy of the proposed amendment." TEX. LOC. GOV'T CODE § 9.004(c)(1). Accordingly, the amendment need not be printed in full on the ballot–not all details must be there. *See Sterling Oil & Ref. Co.,* 218 S.W.2d at 418. The proposition on the ballot, according to the Election Code, serves to "identify a measure." TEX. ELEC. CODE § 1.005(15).

10 *See Sterling Oil & Ref. Co.,* 218 S.W.2d at 418; *In re Roof,* 2012 WL 1072038, at *1; *Brown v. Blum,* 9 S.W.3d at 847–48; *Rooms With a View, Inc.,* 7 S.W.3d at 850; *Hardy,* 849 S.W.2d at 358; *Winger,* 831 S.W.2d at 856; *Bischoff,* 656 S.W.2d at 212; *Moore,* 542 S.W.2d at 723; *Hill,* 414 S.W.2d at 692; *England,* 269 S.W.2d at 815; *Whiteside,* 214 S.W.2d at 851.

But *how* must the ballot identify the measure? Does anything go as long as the voters will manage to distinguish the different propositions on the ballot and which measures they refer to? Our jurisprudence indicates otherwise. Many cases have stated that the proposition must substantially submit the measure, name its chief features, or describe its character and purpose, without even mentioning whether the election involved other propositions needing to be distinguished.[11] Simply put, the proposition must "substantially submit[ ] the question" with "definiteness and certainty." *See Reynolds Land & Cattle Co.,* 12 S.W. at 165. In other words, the ballot must identify the measure *by* its chief features, showing its character and purpose. *See Wright,* 520 S.W.2d at 792; *Turner,* 201 S.W.2d at 91. Even the Election Code suggests that propositions "describe" measures. *See* TEX. ELEC. CODE § 274.001(a), (b) (requiring the secretary of state at times to word propositions "describ[ing]" proposed state constitutional amendments).

11 *See, e.g., Reynolds Land & Cattle Co.,* 12 S.W. at 165–66; *Moore,* 542 S.W.2d at 724; *England,* 269 S.W.2d at 817–18; *Whiteside,* 214 S.W.2d at 850–51; *Flowers v. Shearer,* 107 S.W.2d 1049, 1054 (Tex.Civ.App.–Amarillo 1937, writ dism'd).

[6] **[7]** **[8]** A measure may be identified in many ways, but not all suit the ballot. News commentary might identify it by popular title. Local officials could refer to it by a number. Special interest groups may discuss it by reference to details that incidentally impact them but nonetheless fall short of being "chief features." Citizens may discuss it in any number of ways. But, on the ballot, the identification must be formal and sure; it must capture the measure's essence. Implicit in the common law standard is that though neither the entire measure nor its every detail need be on the ballot, the importance and formality of an election still demand a threshold level of detail. The common law standard prevents confusion at the ballot box over measures voters are already familiar with by ensuring that propositions identify measures for what they are. In other words, though voters are presumed to be already familiar with measures before reaching the voting booth, they can still be misled by an incomplete ballot description. Given the importance of the

***826** ballot, the common law relies on more than just a presumption; it ensures that the ballot informs voters of the chief features of the measures they vote on.

[9] **[10]** In an election contest challenging the sufficiency of the ballot description, the issue is whether the ballot "substantially submits the question ... with such definiteness and certainty that the voters are not misled." *Reynolds Land & Cattle Co.,* 12 S.W. at 165. An inadequate description may fail to do that in either of two ways. First, it may affirmatively misrepresent the measure's character and purpose or its chief features. Second, it may mislead the voters by omitting certain chief features that reflect its character and purpose. The common law standard thus requires that the ballot identify the measure for what it is, and a description that does either of the foregoing fails to comply with the standard. The common law safeguards the election, preventing voters from being misled and ensuring that the ballot substantially submits the measure.

Accordingly, we disapprove of language suggesting that the ballot need *only* "direct[ ] [the voter] to the amendment so that he can discern its identity and distinguish it from other propositions on the ballot."[12] True, the ballot should allow voters to identify and distinguish the different propositions, but in the process, it must also substantially submit the measure with definiteness and certainty.

12 *See, e.g., In re Roof,* 2012 WL 1072038, at *1; *McAllen Police Officers Union,* 221 S.W.3d at 895; *Brown v. Blum,* 9 S.W.3d at 848; *Rooms With a View, Inc.,* 7 S.W.3d at 850; *Hardy,* 849 S.W.2d at 358; *Hill,* 414 S.W.2d at 692.

Here, the ballot stated that the amendment would create a pay-as-you-go fund for drainage and streets. But the ballot did not identify a central aspect of the amendment: the drainage charges to be imposed on benefitting real property owners across the city. Such charges imposed directly on most residents of Houston are a chief feature of the amendment, part of the amendment's character and purpose. Merely stating that a fund is being established provides little definiteness or certainty about something important to the people—will they directly pay for it? Because the ballot did not mention the charges, it fell short of identifying the measure for what it is—a funding mechanism and fiscal burden on benefitting property owners. Failing to identify something for what it is can be misleading, even for those presumed to be familiar with it. Again, not every detail need be on the ballot, and short, general descriptions are often acceptable. But when the citizens must fund the measure out of their own pockets, this is a chief feature that should be on the ballot, and its omission was misleading.

Though our past decisions demonstrate that municipalities generally have broad discretion in wording propositions, they do not suggest that this discretion is unlimited. For example, in *Reynolds Land & Cattle Co.,* voters adopted a tax to fund new school buildings and supplement the state school fund. 12 S.W. at 165–66. The official order of election merely queried whether taxes "shall be levied for school purposes" without mentioning the specific purposes of building schools and supplementing the state fund. *Id.* at 165. Nonetheless, the order still "substantially submit[ted] the question ... with such definiteness and certainty that the voters [were] not misled." *Id.* at 165–66. Similarly, in *City of Austin v. Austin Gas–Light & Coal Co.,* the electorate approved "a special additional annual tax" to help fund Austin public schools. 69 Tex. 180, 7 S.W. 200, 204 (1887). We rejected arguments ***827** that voters were confused about the details of the tax and its relationship to preexisting taxes; the "proposition [was not] likely to mislead." *See id.* at 205. In both cases, the proposition identified the general purpose of the measure (school purposes) and the tax to accomplish it. The governing authorities in these cases substantially submitted the measure by making clear all chief features. Accordingly, the ballot was not misleading.

Our 1949 decision in *Sterling Oil & Refining Co.* likewise demonstrates that some details may be omitted from the ballot description, but it does not suggest that the proposition may fail to substantially submit the measure. Texas voters amended the constitution, empowering the Legislature to authorize direct appeals to this Court in certain cases. 218 S.W.2d at 416; *see also* TEX. CONST. Art. V, § 3–b. The ballot had disclosed that direct appeals could be allowed in cases involving the constitutionality of laws and regulatory orders, but it had not mentioned that direct appeals could also be authorized in cases regarding the validity of a regulatory order on grounds other than the constitution. *Id.* at 416–17. Nonetheless, the description was sufficient. *Id.* at 418. The pre-election notices ensured the voters were "familiar with the amendment and its purposes when they cast their ballots." *Id.* Thus, the ballot omitted technical

information about some types of direct appeals that could be authorized, but it still described the chief features of the amendment. In contrast, in this case, the ballot withheld a central component of the charter amendment —the drainage charges—essential to the character of the amendment.

The City notes that only twice have courts of appeals sided against the governing authority in disputes over ballot language. *See McAllen Police Officers Union,* 221 S.W.3d at 895; *Turner,* 201 S.W.2d at 91. Yet, importantly, almost none of the cases upholding an election involved a proposition that did not mention widespread charges against the citizenry.[13] Indeed, in several early cases, we refused the writ where the lower court correctly upheld the election because the proposition disclosed the purpose of the measure and the costs the citizens would directly bear. In *Beeman v. Mays,* the ballot allowed voting "For School Tax" and "Against School Tax," whereas it should have said, "For *increase* of school tax" and "Against *increase* of school tax." 163 S.W. at 359. The election was valid, *id.* at 359–60, for the ballot still described the character and purpose of the measure. *See also Moerschell,* 236 S.W. at 998, 1000 (upholding proposition about "continu[ing] or discontin[uing]" a tax even though the election arguably concerned a new tax). And in *Texsan Service Co. v. City of Nixon,* the ***828** propositions in a bond election stated they concerned "funds to aid in the construction, purchase, extension *and* improvement" of waterworks and sewer systems, without expressly mentioning that the city could choose between constructing *or* purchasing the systems. 158 S.W.2d 88, 90 (Tex.Civ.App.–San Antonio 1941, writ ref'd) (emphasis added). Voters would understand that the city could choose to construct or purchase the systems, and the ballot was not "misleading and confusing." *Id.* at 91. These cases involved, at most, technical errors, and contrast sharply with the City's failure to disclose on the ballot that many voters would face new drainage charges.

13 Many appellate cases regarding the sufficiency of ballot descriptions have related, to some extent, to widespread taxes. In almost all of these, the ballot disclosed that the tax would be imposed. *See, e.g., Wright,* 520 S.W.2d at 789; *Whiteside,* 214 S.W.2d at 849; *Texsan Serv. Co. v. City of Nixon,* 158 S.W.2d 88, 90 (Tex.Civ.App.–San Antonio 1941, writ ref'd); *Moerschell v. City of Eagle Lake,* 236 S.W. 996, 998 (Tex.Civ.App.–Galveston 1921, writ ref'd); *Beeman v. Mays,* 163 S.W. 358, 359 (Tex.Civ.App.–Dallas 1914, writ ref'd); *cf. Wiederkehr v. Luna,* 297 S.W.2d 243, 245 (Tex.Civ.App.–Waco 1956, no writ) (upholding election where three related propositions were voted on, two of which mentioned the tax that would be imposed). *But see Cameron v. City of Waco,* 8 S.W.2d 249, 255 (Tex.Civ.App.–Waco 1928, no writ) (holding that bond election was valid although election order did not mention the levy of taxes to pay the interest on the bonds). Here, although the Contestants conceded at oral argument that the drainage charges are not a tax (at least insofar as the charges were not used to improve streets), a question we need not reach, the point is the same: the ballot must substantially submit the measure.

The City emphasizes that one court of civil appeals once upheld a six-word proposition submitting an entire city charter to a vote, *see England,* 269 S.W.2d at 816, and that another held that the two words "maintenance tax" sufficiently described a school-tax measure, *see Wright,* 520 S.W.2d at 790, 792. Texas law, however, now prevents the entire charter from being submitted to voters as a whole; instead, the charter shall be prepared "so that to the extent practicable each subject may be voted on separately." TEX. LOC. GOV'T CODE § 9.003(c). This statutory requirement reflects what the common law has always been—that the measure should be substantially submitted with definiteness and certainty to the voters. And, though mere use of the two words "maintenance tax" is suspect, at least it acknowledged the direct fiscal impact to citizens—something that the ballot in the present case failed to do. In neither of these cases did the governing authority omit such a central feature as in this case. In neither case did the governing authority so clearly fail to substantially submit the measure with such definiteness and certainty that voters would not be misled.

Thus, both we and the courts of appeals have generally upheld ballot descriptions identifying the character and purpose of the proposition. Schools and taxes. Direct appeals. Waterworks and bonds. But the proposition in this case contrasts sharply with the others—it did not mention the drainage charges to be imposed on most real property owners across the city. Because the proposition omitted a chief feature—part of the character and purpose —of the measure, it did not substantially submit the measure with such definiteness and certainty that voters would not be misled. Accordingly, the proposition was inadequate, and summary judgment should not have been granted in the City's favor.

In reaching this conclusion, we do not consider the Contestant's evidence that some voters were subjectively confused about the nature of the measure. Those who oppose election results will always be able to find voters who claim to have been misled. Admittedly, some court of appeals decisions have suggested that such evidence may be considered. [14] Nonetheless, we base our decision solely on the failure ***829** of the proposition to present the measure's chief features and its character and purpose. Because the ballot omitted a chief feature of the measure, it did not substantially submit the measure with such definiteness and certainty that voters would not be misled.

14 *See, e.g., Hardy,* 849 S.W.2d at 358 ("These voters did not, however, state that they were unable to distinguish this particular proposition from the other twelve propositions on the ballot, nor does Podesta assert that any voters had this difficulty."); *Hill,* 414 S.W.2d at 693 ("No voter is shown to have been deceived or misled by the proposition as stated on the ballot."); *Wiederkehr,* 297 S.W.2d at 247 ("[T]here is no evidence in the case at bar that any elector was misled or deceived by the ballot proposition employed."); *Whiteside,* 214 S.W.2d at 851 ("It is not shown that any voter was misled or deceived by the form of submission of this amendment."); *Moerschell,* 236 S.W. at 1000 ("[T]here is neither contention that they did not understand what they were voting on nor that a different result would have followed if the proposition had been for or against the levy of such a tax as appellant suggests it should have been.").

In an amicus brief, the Texas Municipal League and Texas City Attorneys Association urge that home rule cities should look first to their charter, not the common law, for the standard governing ballot language. Notably, although the Houston charter provides no means for amending the charter, the Texas Local Government Code does. *See* TEX. LOC. GOV'T CODE § 9.004(a). Moreover, the Texas Election Code, not the City's charter, authorizes election contests. *See* TEX. ELEC. CODE § 233.001. Accordingly, state statutes and common law govern this dispute. Our common law prohibits the City from submitting such an amendment to the voters without disclosing on the ballot that many of them will pay for it out of their own pockets.

IV. Conclusion

The City did not adequately describe the chief features —the character and purpose—of the charter amendment on the ballot. By omitting the drainage charges, it failed to substantially submit the measure with such definiteness and certainty that voters would not be misled. Accordingly, summary judgment should not have been granted in the City's favor. We reverse the judgment of the court of appeals, and, because only the City moved for summary judgment, remand to the trial court for further proceedings consistent with this opinion.

Justice Guzman filed a concurring opinion, in which Justice Willett joined.

Justice Brown did not participate in the decision.

JUSTICE GUZMAN, joined by JUSTICE WILLETT, concurring.

I agree with the Court that the language of the ballot proposition was sufficiently uncertain and indefinite as to be potentially misleading. I further agree that by not describing the nature of the drainage charges, the ballot language omitted a chief feature of the proposition, thereby violating the common-law standard governing ballot clarity. I write separately to indicate my confidence in the continued viability of the common-law standard as it applies to ballot questions and to underscore its particular utility in the context of revenue-raising ballot propositions.

Texas has long required a baseline degree of precision in ballot language. In 1888, we held that a ballot question must be submitted "with such definiteness and certainty that the voters are not misled." *Reynolds Land & Cattle Co. v. McCabe,* 72 Tex. 57, 12 S.W. 165, 165 (1888). Decades later, a Texas appellate court held that a ballot proposition had to state the measure's "chief features" so as to indicate its "character and purpose." *See Turner v. Lewie,* 201 S.W.2d 86, 91 (Tex. Civ. App.–Fort Worth 1947, writ dism'd) (citing 18 AM. JUR. § 180 at 298 (1939), collecting cases, and deriving "chief features" language from *In re Opinion of the Justices,* 271 Mass. 582, 171 N.E. 294, 297 (1930)). Though not the sole articulation of the law in this context, these standards form the essential

contours of our ballot-language jurisprudence involving questions of this nature.

In the City's accommodating view, the chief-features test essentially means ballot language must be specific enough to permit a voter to distinguish one proposition from another on the ballot. This concept is frequently traced back to *Hill v. Evans,* ***830** which suggested that the ballot need only "direct" the voter to the amendment so it can be identified and distinguished from other propositions on the ballot. 414 S.W.2d 684, 692 (Tex.Civ.App.–Austin 1967, writ ref'd n.r.e.). Today, the Court disapproves of this language. I wholeheartedly concur and wish to further reiterate the infeasibility of the City's construction.

Take, for example, a ballot featuring multiple questions on dramatically different topics. With very little thematic overlap, even a cursory description of the varying questions could serve to differentiate one from another and would thus serve to identify each as distinct. But identification hardly guarantees that the same cursory definition would accurately describe the chief features of the ballot question. Better yet, put aside the theoretical and simply take the present case. In addition to the drainage-fund proposition at issue here, the November 2010 ballot also contained propositions addressing the terms of residency for Houston's elected officials and the use of red-light cameras in the city. Even a substantially less thorough description of the drainage-fund proposition than the inadequate one the City provided would nonetheless identify the drainage-fund question as distinct from the red-light-camera or residency questions. But again, such a pithy description would hardly ensure that the measure's chief features are described or meet the standard we have required for more than a century: A ballot proposition must be written with such definiteness and certainty that the voters are not misled. *Reynolds,* 12 S.W. at 165. Providing only enough information on a ballot to allow propositions to be distinguished from one another is necessary, but not necessarily sufficient. To satisfy the chief-features requirement, more than mere identification is required. Therefore, I agree with the Court that the City's argument to the contrary is unpersuasive, and I would overrule decisions from the courts of appeals to the extent they suggest the ballot need only enable voters to identify and distinguish the different propositions from one another. *See, e.g., Dacus v. Parker,* 383 S.W.3d 557, 566 (Tex.App.–Houston [14th Dist.] 2012); *Hardy v. Hannah,* 849 S.W.2d 355, 358 (Tex.App.–Austin 1992, writ denied); *Hill,* 414 S.W.2d at 692.

The City's semantic obfuscation is particularly egregious here, considering that the ballot proposition at issue concerned a revenue-raising measure. The City refers to this—perhaps euphemistically—as a drainage "charge" to be paid into a "dedicated pay-as-you-go fund." Before this Court, the parties disputed whether this charge was in fact tantamount to a "fee" or a "tax." If the drainage charges involved here are not a tax, they at least bear some of its hallmarks. *See TracFone Wireless, Inc. v. Comm'n on State Emergency Commc'ns,* 397 S.W.3d 173, 175 n. 3 (Tex.2013) ("A charge is a fee rather than a tax when the primary purpose of the fee is to support a regulatory regime governing those who pay the fee."); *Hurt v. Cooper,* 130 Tex. 433, 110 S.W.2d 896, 899 (1937) (noting that where a fee's "primary purpose ... is the raising of revenue, then such fees are in fact ... taxes ... regardless of the name by which they are designated"). But whatever the true nature of the "charge" here, I find it difficult to conceive of a scenario in which a revenue-raising measure would be an element of a proposition and yet not constitute one of its chief features. To be sure, voters are presumed to have knowledge of the features and issues contained on a ballot. But that presumption does not absolve the City of the responsibility to fairly and fully portray a revenue-raising measure on the ballot, and the fact that the complete text is published in a newspaper before the ***831** election does not relieve the City of this responsibility, as it suggests. [1] If the common-law standard is to maintain currency, it must at least mean that revenue-raising elements of a proposition are a chief feature, and the ballot language should reflect as much.

1 The dissent in *Hill v. Evans* rightly noted that newspaper publication is simply a statutory requirement, not a panacea that insulates the actual proposition language from review:

> The majority seems to imply that compliance with publication requirements relating to proposed constitutional amendments cures all. This is patently erroneous. The law requires certain publication of the proposed amendment. It also requires a ballot which describes the scope and character of the proposed amendment. These requirements complement each other. Substantial compliance with both requirements is prerequisite to a fair or lawful election.

> *Hill v. Evans*, 414 S.W.2d 684, 696 (Tex.Civ.App.–Austin 1967, writ ref'd n.r.e.) (Hughes, J., dissenting).

Direct democracy is of paramount importance to the citizens of this State. In perhaps no other area of self-government is the citizen brought closer to the legislative process. A fact issue exists as to whether the City's ballot language omitted a chief feature of a measure and thereby deprived voters of the opportunity to make a fully informed decision. Accordingly, I respectfully concur in the Court's decision to remand to the trial court for further proceedings.

All Citations

466 S.W.3d 820, 58 Tex. Sup. Ct. J. 1076

Exhibit C

470 S.W.3d 819
Supreme Court of Texas.

IN RE F.N. WILLIAMS, Sr.,
and Jared Woodfill, Relators

NO. 15–0581
|
Opinion Delivered: August 19, 2015

Synopsis

Background: Referendum proponents petitioned for writ of mandate challenging wording of ballot question.

Holdings: The Supreme Court held that:

[1] ballot question on referendum for repeal of ordinance had to be phrased so a "No" vote meant to repeal the ordinance, but

[2] referring to ordinance as city's "Equal Rights Ordinance" was not improperly politically slanted.

Petition granted.

***820** ON PETITION FOR WRIT OF MANDAMUS

Attorneys and Law Firms

William A. 'Andy' Taylor, Amanda Eileen Staine Peterson, Andy Taylor & Associates PC, Brenham, for Relators.

Kathleen Hopkins Alsina, Senior Assistant City Attorney, Donna L. Edmundson, Chief, General Litigation Section, City of Houston Legal Department, James M. Corbett, Judith Lee Ramsey, Patricia L. Casey, City of Houston Legal Dept., Houston, C. Robert Heath, Bickerstaff Heath Delgado Acosta LLP, Austin, for Respondents.

Opinion

PER CURIAM

This case involves yet another mandamus proceeding concerning the City of Houston's equal rights ordinance, the referendum petition calling for its repeal, and the City Council's duties in response. *See In re Woodfill,* 470 S.W.3d 473, 481, 2015 WL 4498229, at *7 (Tex.2015) (per curiam) (directing the City Council to comply with its ministerial duties and either repeal the ordinance or submit it to popular vote). Though the ordinance is controversial, the law governing the City Council's duties is clear. Our decision rests not on our views on the ordinance—a political issue the citizens of Houston must decide—but on the clear dictates of the City Charter. The City Council must comply with its own laws regarding the handling of a referendum petition and any resulting election. When the law imposes a ministerial duty on the City Council and the City Council does not comply, and there is no adequate remedy by appeal, mandamus may issue. *Id.* at 475–476, 2015 WL 4498229, at *1.

Pursuant to a citizen-initiated referendum petition, the Houston City Council ordered that the ordinance be submitted to voters in the upcoming November 2015 election. The City Council chose to describe the issue on the ballot as follows:

PROPOSITION NO. 1

[Relating to the Houston Equal Rights Ordinance.]

> Shall the City of Houston repeal the Houston Equal Rights Ordinance, Ord. No.2014–530, which prohibits discrimination in city employment and city services, city contracts, public accommodations, private employment, and housing based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy?
>
> The ballot will allow voters to choose between "Yes" and "No" when voting on this proposition.

The Relators—two signers of the referendum petition—contest this wording. They urge that the City Charter requires an up or down vote on the ordinance itself rather than a vote on its "repeal." They also assert that the phrase "Houston Equal Rights Ordinance" should not be on the ballot. The City responds that this Court lacks jurisdiction to grant mandamus relief and interfere with the ongoing election process or to enjoin the City from ***821** using the phrase "Houston Equal Rights Ordinance" on the ballot. The City argues the Charter gives it discretion to submit the repeal of the ordinance—rather than the

ordinance itself—to the voters, and the City may identify the ordinance as the "Houston Equal Rights Ordinance."

The Texas Election Code confers jurisdiction on this Court to "issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election." TEX. ELEC. CODE § 273.061. In *Blum v. Lanier,* we held that signers of a petition may seek injunctive relief to correct deficiencies in the ballot language "if the matter is one that can be judicially resolved ... without delaying the election." 997 S.W.2d 259, 263–64 (Tex. 1999). Although that case involved injunctive relief, the reasoning also applies to mandamus proceedings. *See id.* at 262 (relying on cases granting mandamus relief when holding the petition signers had standing to seek injunctive relief).

[1] Although the Relators did not seek mandamus first in the court of appeals, we note "the imminence of the election places this case within the narrow class of cases in which resort to the court of appeals is excused." *Bird v. Rothstein,* 930 S.W.2d 586, 587 (Tex. 1996) (orig. proceeding); *see also* TEX. R. APP. P. 52.3(e). Indeed, for the same compelling reason that we exercise jurisdiction even though mandamus relief was not first sought in the court of appeals, we also immediately grant relief without requesting additional briefs on the merits. *See* TEX. R. APP. P. 52.8(b).

The City Council adopted the current ballot language on August 5, 2015. Two days later, the Relators petitioned for emergency and mandamus relief, averring that the Houston Voter Registrar requires final ballot language for printing no later than August 31, 2015, for the election on November 3, 2015, and that if this Court grants relief, the City Council should have time to meet and adopt revised language. The City Council filed a response but did not contest the deadlines identified by the Relators. In the past, we have granted relief without requesting additional briefing—especially in election cases—when time is critical, the issues are clear, and all parties have had a chance to respond. *See, e.g., In re Palomo*, 366 S.W.3d 193, 194 (Tex. 2012) (per curiam) (noting that the Court granted mandamus relief "without opinion so as not to delay printing of the ballots"); *In re Francis,* 186 S.W.3d 534, 538, 543 (Tex. 2006) (conditionally granting mandamus relief fourteen days after petition was filed); *In re Fitzgerald,* 140 S.W.3d 380, 381 (Tex. 2004) (per curiam) (conditionally granting mandamus relief three days after petition was filed); *In re Sanchez,* 81 S.W.3d 794, 795 (Tex. 2002) (per curiam) (noting that mandamus relief was conditionally granted with opinion to follow). Such situations are infrequent, but when prompt action is required, we may act accordingly.

[2] **[3]** Mandamus may issue to compel public officials to perform ministerial acts, as well as "to correct a clear abuse of discretion by a public official." *Anderson v. City of Seven Points,* 806 S.W.2d 791, 793 (Tex. 1991). "An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion." *Id.*

[4] **[5]** Cities "generally have broad discretion in wording propositions" on the ballot. *Dacus v. Parker,* 466 S.W.3d 820, 826 (Tex. 2015). State or local laws, however, ***822** may limit this discretion. *See id.* at 823. The common law also limits it, demanding that the ballot "substantially submit the measure with definiteness and certainty" by identifying the measure's chief features and character and purpose. *Id.* at 826.

In this case, the Houston Charter outlines the City Council's duties. Once a referendum petition and certification properly invoke the City Council's duties, then the City Council

> shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote at the next city general election, or the Council may, in its discretion, call a special election for that purpose; and such ordinance or resolution shall not take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

Houston, Tex., Charter, art. VII-b, § 3. Of its own accord, the City Council may also submit proposed ordinances to popular vote for adoption or repeal:

> The Council, on its own motion, may submit to popular vote for adoption or rejection or repeal at any election any proposed ordinance or resolution or measure, in the same

> manner and with the same force and effect as provided in this Article for submission on petition.

Id. art. VII-b, § 4.

Because the Charter requires a majority vote "in favor" of the ordinance for it to take effect, the Relators argue that the City Council must submit the ordinance such that voters may vote directly "in favor" of the ordinance or against it. The City Council responds that the Charter allows it to ask voters whether they would "repeal" the ordinance. According to the City, a vote against repeal is the same as a vote in favor of the ordinance. The Charter authorizes the Council to "submit to popular vote for adoption or rejection or *repeal* at any election any proposed ordinance." *Id.* (emphasis added).

[6] Although the parties argue about the meaning of a vote "in favor" of the ordinance, Section 5 of the Charter clearly requires the vote to be on the ordinance itself rather than its repeal:

> The ballots used when voting upon such proposed and referred ordinances, resolutions or measures shall set forth their nature sufficiently to identify them, and shall also set forth upon separate lines the words "For the Ordinance" and "Against the Ordinance", or "For the Resolution" or "Against the Resolution."

Id. art. VII-b, § 5. Admittedly, the Texas Election Code preempts part of this mandate, allowing only the choice between "FOR" and "AGAINST," or else "YES" and "NO," to appear on the ballot. TEX. ELEC. CODE § 52.073(a), (e). Nonetheless, the mandate that the vote be on the ordinance itself remains.

Here, the City Council determined that voters should choose between "Yes" and "No" regarding the repeal of the ordinance. The Charter, however, when read in conjunction with the Election Code, requires a choice of "Yes" or "No" (or "For" or "Against") as to the ordinance itself. Because the Charter clearly defines the City Council's obligation to submit the ordinance—rather than its repeal—to the voters and gives the City Council no discretion not to, we hold that this is a ministerial duty.

[7] The Relators also argue that the words "Houston Equal Rights Ordinance" ***823** should not appear on the ballot because they are not in the ordinance and are politically slanted. Yet this is a *Houston ordinance,* and the ordinance itself contains the words "*Equal Rights* " in a heading. Even the referendum petition referred to "Ordinance No.2014–530, otherwise known as the 'Equal Rights Ordinance.' " The City Council did not abuse its discretion by placing these words on the ballot.

[8] In summary, the City Council has a ministerial duty to submit the ordinance to an affirmative vote by the people of Houston. As discussed above, the deadline for revising the ballot language is rapidly approaching. The City Council asserts that despite the short deadlines, a post-election election contest provides an adequate remedy by appeal. We have previously rejected this argument, holding that if "defective wording can be corrected" prior to the election, then "a remedy will be provided that is not available through a subsequent election contest." *Blum,* 997 S.W.2d at 264. No adequate remedy by appeal exists.

Accordingly, without hearing oral argument, we conditionally grant mandamus relief. TEX. R. APP. P. 52.8(c). The City Council is directed to word the proposition such that voters will vote directly for or against the ordinance. The writ will issue only if the City Council does not comply.

All Citations

470 S.W.3d 819, 58 Tex. Sup. Ct. J. 1564

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