

No. _____

THOMAS G. KILGORE,
Plaintiff,

v.

CITY OF LAKEWAY, TEXAS, AND
SANDY COX, RON MASSA, BRIDGE
BERTRAM, DWIGHT HALEY, STEVE
SMITH, AND KEITH TRECKER,
IN THEIR OFFICIAL CAPACITIES,
Defendants.

§
§
§
§
§
§
§
§
§

IN THE JUDICIAL DISTRICT OF

TRAVIS COUNTY, TEXAS

____TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Thomas G. Kilgore, through his attorneys, brings this action for declaratory and injunctive relief against defendants the City of Lakeway, Texas, Sandy Cox, in her official capacity as Mayor, and Ron Massa, Bridge Bertram, Dwight Haley, Steve Smith and Keith Trecker, in their official capacities as members of the Lakeway City Council. Based on actual knowledge with respect to himself and his own acts, and on information and belief as to all other persons and matters, Kilgore alleges as follows:

Discovery Level

1. Based on the relief sought, discovery should be conducted under a Level 3 plan pursuant to Texas Rule of Civil Procedure 190.3.

Nature of the Action

2. This is a suit for declaratory and injunctive relief resulting from defendants' change to how Lakeway city council members are elected, effectively amending the City of Lakeway's home-rule charter, without first gaining approval from the qualified voters of Lakeway, Texas in violation of the Texas Constitution and the Texas Local Government Code. The City of Lakeway and its council members decided to forgo the constitutionally required process and instead effectively amended the charter through city ordinance and council action.

The city's actions denied the ability of Mr. Kilgore to decide the type of voting system the City will use in future elections and deprives Mr. Kilgore of his right to vote for all councilmember positions in direct violation of the Texas Constitution and state law. Amending the charter without the approval of the qualified voters supplants the will of Mr. Kilgore on a fundamental issue—how their own representatives will be elected.

Parties

3. Thomas G. Kilgore is a citizen of Lakeway, Texas residing in Lakeway, Texas.

4. Defendant City of Lakeway is a Texas city located in Travis County. The City of Lakeway voted to become a home-rule municipality in 1990. The city may be served by serving the city attorney, Cobby Caputo, at 1102 Lohmans Crossing Road Lakeway, TX 78734.

5. Defendant Sandy Cox, in her official capacity as Mayor, is an individual residing in Lakeway, Texas and may be served at 1102 Lohmans Crossing Road Lakeway, TX 78734.

6. Defendants Ron Massa, Bridge Bertram, Dwight Haley, Steve Smith and Keith Trecker, in their official capacities as council members, are individuals residing in Lakeway, Texas and may be served at 1102 Lohmans Crossing Road Lakeway, TX 78734.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this case. *See* TEX. CIV. PRAC. & REM. CODE §37.003.

8. This Court also has personal jurisdiction over defendants, a Texas municipality, its mayor, and its council members.

9. Venue in this matter is proper in Travis County, pursuant to §15.002 of the Texas Civil Practice and Remedies Code. The City of Lakeway is a political subdivision located in Travis County. The individual defendants all reside or work in Travis County, and the facts giving rise to the claims in this case arose in Travis County.

FACTUAL BACKGROUND

A. The Citizens of Lakeway Establish Home Rule and Adopt the City Charter.

10. In the late 1980s, the citizens of Lakeway, Texas voted to establish a charter commission. The commission drafted the home-rule charter, providing for the administration of the city government in accordance with Texas Local Government Code Chapter 9.

11. At the time the proposed charter was presented to the citizens of Lakeway, Texas Constitution article XI, § 5 required, as it still does, that “Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters.” Additionally, Texas Local Government Code §§ 9.004 and 9.005 required, and still do, that all charter amendments be submitted to the qualified voters of the municipality for approval before the amendments could be adopted.

12. The qualified voters of Lakeway overwhelmingly approved the home-rule charter proposed by the charter commission and established Lakeway as a home-rule municipality.

B. The Citizens of Lakeway Amend Their City Charter to Elect Councilmembers to Three-Year Terms.

13. In 2014, the qualified voters of Lakeway approved an amendment to that charter related to how they will elect their councilmembers. Relevant to these proceedings, § 3.01 of the charter states, “The City Council, referred to herein as the Council consists of the Mayor and six Councilmembers. (a) The Mayor and the Councilmembers will be elected from the City at large. (b) Term of office for all members will be three (3) years. Office term will commence at the first regular Council meeting after a member of the Council has been declared elected.” Section 11.14 further provides that “[a]mendments to this Charter must be formulated and submitted to the voters of the City in the manner prescribed by the laws of the State of Texas.”

14. Under Texas Constitution article XI, § 11, electing councilmembers to three-year terms requires elections by majority vote, which would require the councilmembers to be elected by place and allow Mr. Kilgore to cast a vote for each councilmember position that was up for election.

C. The City Amends Its Charter Without Voter Approval and Removes the Right to Vote on Each Councilmember Position.

15. In 2018, nearly four years after the citizens of Lakeway amended their charter, the Lakeway city council unilaterally decided to “suspend” the 2014 charter amendment and to conduct its future elections using plurality voting to elect its councilmembers to two-years or fewer years.

16. As its July 2018 ordinance stated, each citizen would have “a” vote in the upcoming November 2018 elections. (Ordinance No. 2018-07-16-01).

17. These changes were not presented to the qualified voters, such as Mr. Kilgore, for approval as required by the Texas Constitution.

**First Cause of Action
(Declaratory Relief)**

18. Kilgore realleges the material facts alleged in the preceding paragraphs against defendants.

19. The City of Lakeway is a city with more than five thousand inhabitants.

20. The City of Lakeway has proposed and put into effect a de facto amendment to its charter but has failed to present the amendment to the qualified voters of Lakeway for approval. Instead, the city has bypassed the constitutional and statutory requirements in order to effectively amend its charter without the required approval from its citizens. Defendants have thus violated the Texas Constitution and Texas Local Government Code.

21. Additionally, defendants have violated Plaintiff's rights to participate in the democratic process by negating his right to vote for all positions on his city council.

22. Kilgore has been and will continue to be damaged as a result of defendants' constitutional and statutory violations.

**Second Cause of Action
(Injunctive Relief)**

23. Kilgore realleges the material facts alleged in the preceding paragraphs against defendants.

24. Defendants intend to hold an election for the Lakeway city council by using a plurality voting system to elect two members of its city council to two-year terms in November 2018. The use of the proposed electoral system would effectuate defendants' violation of the Texas Constitution, Texas Local Government Code, and the City of Lakeway's Charter.

25. Plaintiff will be imminently and irreparably harmed if defendants are allowed to conduct the scheduled elections using plurality voting for two-year (or fewer) terms.

Attorneys' Fees

26. Kilgore has been required to retain the services of the undersigned attorneys in the prosecution of this claim. Pursuant to Texas Civil Practice and Remedies Code § 37.009, Kilgore is entitled to recover his reasonable attorneys' fees and costs necessarily expended in prosecuting this matter.

Prayer for Relief

Thomas G. Kilgore respectfully requests judgment, after trial or final hearing, as follows:

1. That the Court enter a judgment against defendants, as appropriate, that they have:

a. Violated Texas Constitution article XI, § 5 by refusing to present the proposed effective amendment of Lakeway's charter to the qualified voters of Lakeway;

b. Violated Texas Constitution article XI, § 11 by refusing to allow Mr. Kilgore to vote for each councilmember position by majority vote; and

c. Violated Texas Local Government Code §§ 9.004 and 9.005 by refusing to present the proposed effective amendment of Lakeway's charter to the qualified voters of Lakeway.

2. That the Court order that the scheduled November 2018 elections for the Lakeway city council be conducted on a place basis using majority voting in accordance with the City of Lakeway's Charter and the Texas Constitution or that the Court order that the November 2018 elections shall be moved to May 2018 and that they be conducted on a place basis using majority voting in accordance with the City charter and the Texas Constitution.

4. That the Court order defendants to pay Mr. Kilgore both the costs of this action and the reasonable attorneys' fees incurred by him in prosecuting this action; and

5. That the Court grant to Plaintiff such other and additional relief to which plaintiff has shown himself to be justly entitled, whether at law or in equity.

Respectfully submitted,

CLEVELAND | TERRAZAS PLLC
4611 Bee Cave Road, Suite 306B
Austin, Texas 78746
512-680-3257

By: /s/ Kevin J. Terrazas
Kevin J. Terrazas
State Bar No. 24060708
kterrazas@clevelandterrazas.com
Timothy Cleveland
State Bar No. 24055318
tcleveland@clevelandterrazas.com

**ATTORNEYS FOR PLAINTIFF THOMAS G.
KILGORE**