

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

PROPERTY OWNERS WITHSTANDING
ETJ RETRACTIONS; and THE
SCHOENSTATT MOVEMENT OF
AUSTIN,

Plaintiffs,

v.

CITY OF AUSTIN; T.C. BROADNAX, *in his
official capacity* as City Manager; and KEITH
MARS, *in his official capacity* as Director of
Development Services Department,

Defendants.

Civil Action No. 1:26-cv-01518-RP

**PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Bill Cobb
TX Bar No. 00796372
Alexa L. Gervasi
TX Bar No. 24147091
COBB & GERVASI, PLLC
1250 S. Capital of Texas Hwy
Building 3, Suite 400
Austin, Texas 78746
(512) 955-5209
bill@cobbgervasi.com
alexa@cobbgervasi.com

Counsel for Plaintiffs

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The City does not engage with the Property Owners’ arguments. It changes the subject. The City opens with a standing argument that is flatly contradicted by the record, and then stakes everything on the meaning of “military base”—an issue irrelevant to this Motion.¹

Pretend that Bee Caves Armory is a “military base.” This Court’s analysis doesn’t change. The City still released the Property Owners from its jurisdiction, and then—without notice, hearing, or any statutory authority—reasserted jurisdiction, stripping the Property Owners of the interests they held minutes before. Even if Bee Caves Armory were a military base, the City would still be required to follow the Constitution and abide by the jurisdictional and statutory limits on its authority. The City does not justify its conduct under this standard. It can’t.

The Property Owners are entitled to protection from further irreparable harm while these proceedings are underway. Their request for a preliminary injunction should be granted.

ARGUMENT

The City and the Property Owners agree on more than they dispute: the City told the Property Owners they were released from the City’s ETJ (ECF 10 at 17); the City retracted those releases on March 13 (*id.* at 5); the City immediately began issuing notices of violation (*id.* at 6)²; the City did not provide notice or an opportunity to be heard before issuing the March Retractions (*id.* at 15–17); and the Property Owners are now subject to City land-use restrictions they were free from before the March Retractions (*id.* at 6, 20). Irrespective of the meaning of “military base,” the City’s actions were improper, and the Property Owners are entitled to preliminary relief.

¹ The Property Owners incorporate their Motion (ECF 6), including all facts, arguments, and defined terms. The declarations and exhibits referenced herein refer to those filed with the Motion.

² The City’s claim that enforcement “predate[s]” the retractions is misleading. ECF 10 at 6. There were no open, existing actions at the time of the March Retractions. The City issued *new* violation notices based on its reassertion of jurisdiction on March 16, 2026. *See* Gervasi Decl. ¶ 8 & Ex. D.

I. POWER has standing.

The City’s Response opens with a confounding claim: that “POWER . . . has not identified a single [member with standing] by name.” ECF 10 at 7. But the Property Owners’ pleadings expressly identify named Plaintiff Schoenstatt as “a POWER member” who “has Article III standing in its own right based on the concrete injury” it suffered because of the City’s actions. Compl. ¶¶ 10, 13; *see also* Gervasi Decl. ¶¶ 3, 5 & Exs. A–B (providing Schoenstatt’s release and retraction letters); Pinto Decl. ¶¶ 9–20 (describing Schoenstatt’s injury).

As the City agrees, an association establishes standing by: (1) identifying one member who would have standing to sue in his own right. *See* ECF 10 at 7; *see also* *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). From there, the association must show: (2) “that the interests it seeks to protect are germane to its organizational purpose”; and (3) that “neither the claim asserted nor the relief requested require the participation of individual members of the organization.” *Nat’l Infusion Ctr. Ass’n v. Becerra*, 116 F.4th 488, 497 (5th Cir. 2024).

POWER did exactly that—and more:

First, POWER identified Schoenstatt. *See* Compl. ¶¶ 10, 13. The City does not challenge Schoenstatt’s standing. Its injury is concrete and traceable to the City. *See* Pinto Decl. ¶¶ 9–20.

POWER also supported its Motion with documents that identify additional members. For instance, POWER included a representative sample of the release and retraction letters “that the City of Austin sent to *members of POWER*”—including the letters sent to the Waldrop Trust, Thomas Mangold, and Jo Ann and Craig Smith. Gervasi Decl. ¶¶ 3, 5 & Exs. A–B (emphasis added). POWER, likewise, provided the “notice of violation that the City issued to a *member of POWER*,” which identifies POWER member Waldrop Trust by name. Gervasi Decl. ¶ 8 & Ex. D (emphasis added). The City does not dispute the authenticity of those documents or the Waldrop

Trust’s standing.³ See ECF 10 at 5–6. Nor does the City dispute that it released and then un-released 170 *properties*—it just characterizes 170 as “several.” ECF 10 at 5.

Second, the interests POWER seeks to protect are germane to its organizational purpose, and the City does not argue otherwise. POWER’s organizational purpose is “to vindicate the statutory and constitutional rights of property owners whose properties were released from the City of Austin’s [ETJ] under Chapter 42 of the Texas Local Government Code and whose releases the City has purported to rescind.” Ford Decl. ¶ 4. And that is exactly what POWER seeks to protect through this lawsuit and in requesting a preliminary injunction.

Third, neither the claim asserted nor the relief requested require the participation of individual members of the organization. The claims are based on the City’s retraction of the Property Owners’ releases. They do not depend on individualized facts. POWER also seeks only declaratory and injunctive relief that is the same for all members. This is exactly the type of associational standing the Fifth Circuit has repeatedly recognized. See, e.g., *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 805 (5th Cir. 2025); *Nat’l Infusion Ctr. Ass’n*, 116 F.4th at 497–504; *Ass’n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 551, 553 (5th Cir. 2010).

The City argues against associational standing because a preliminary injunction requires the Court “to assess irreparable harm[] and the balance of equities,” which, the City claims, must

³ The City does argue (without citation) that Mr. Ford’s declaration is incompetent evidence. See ECF 10 at 9. First, the declaration states that it was based on personal knowledge. Ford Decl. ¶¶ 1, 3. Second, the proof required to demonstrate standing is lower at the preliminary-injunction stage. See *Speech First, Inc. v. Fenves*, 979 F.3d 319, 329–30 (5th Cir. 2020), *as revised* (Oct. 30, 2020). As are the procedural and evidentiary requirements for granting a preliminary injunction. See *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

be done on an individualized basis.⁴ ECF 10 at 10. The City offers no support for this claim. *See id.* Nor can it. Accepting the City’s argument would mean that a preliminary injunction can never be granted to an association. And that is certainly not the law. *See, e.g., Career Colleges & Schs. of Tex. v. U.S. Dep’t of Educ.*, 98 F.4th 220, 254 (5th Cir. 2024) (subsequent history omitted); *Speech First*, 979 F.3d at 338 (affirming association’s standing to seek preliminary injunction).

It, likewise, does not matter that some Property Owners have suffered a greater magnitude of harm than others. *See* ECF 10 at 10. That is an issue of *degree* not *kind*. All of POWER’s members have suffered the same type of irreparable injury: denial of due process and loss of municipal freedom. And the equities are the same: the public always has an interest in preventing constitutional violations, and the City has no legitimate interest in violating the Constitution or exercising jurisdiction it relinquished. Associational standing is, therefore, appropriate for “judicially efficient management.” *Ass’n of Am. Physicians*, 627 F.3d at 553.

* * *

The City’s standing argument “is more bewildering than persuasive.” *Career Colleges & Schs. of Tex.*, 98 F.4th at 234. POWER identified members with standing by name. It is protecting interests that align with its purpose. And all Property Owners were harmed by the March Retractions, which can be redressed with injunctive relief. POWER has associational standing.

⁴ The City argues this Court cannot grant relief that benefits all affected property owners. *See* ECF 10 at 8 (quoting *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025)). This overstates *CASA*’s holding. 606 U.S. at 861. Complete relief to these Plaintiffs means enjoining the City from enforcing the March Retractions—the unlawful act that injures them. An injunction that fully remedies the plaintiff’s injury is proper even if it incidentally benefits others. *Id.* at 851–52.

Moreover, the Supreme Court expressly declined to adopt the City’s argument that this Court cannot grant relief because POWER has not named all of its members. *Id.* at 838 n.2. That said, POWER can certainly provide a complete list of its members to the Court at its request.

II. The City deprived the Property Owners of protected interests without due process.

The City argues that the Property Owners cannot show a denial of due process because Subsection D's *mandatory release* is not available to properties subject to the Military Base Exception. So, the City argues, the Property Owners do not have a protected property interest. *See* ECF 10 at 10–15. This response fails to engage with the Property Owners' actual claim.

The Property Owners identified three specific, protected interests the City deprived them of, none of which depend on the meaning of “military base”: (i) the “unrestricted right of use, enjoyment and disposal” of their real property, which the Property Owners possessed between the time of their releases and the March Retractions; (ii) the statutorily protected right to remain outside a city's ETJ once released; and (iii) the vested right to develop and use their land free of the City's ETJ restrictions—created by the City's written confirmation that the properties were released and its years-long treatment of the properties as released. *See* ECF 6 at 9–10. Each of these interests exists even if Bee Caves Armory were a “military base.” *See id.*

The City does not engage with any of them. Instead, it hangs its hat on the circular argument that because (it believes) the properties were not eligible for release under Subchapter D, the Property Owners do not have a protected interest in having been released from the City's ETJ. But the law disagrees: a municipality cannot simply take away an interest it's given.

Take, for instance, the Fifth Circuit's decision in *Bowlby*. There, a city issued a permit to a business owner but, two months later, decided the permit had been issued in error and attempted to revoke it. *Bowlby v. City of Aberdeen*, 681 F.3d 215, 218 (5th Cir. 2012). The business owner filed suit, alleging that the revocation denied her procedural due process, and the municipality raised the same defense the City raises here—that there was no property interest in the permit issued in error. *Id.* at 219–20. There, as should occur here, the Fifth Circuit flatly rejected the city's claim.

Id. at 220. “Once issued,” the Court explained, “a license or permit cannot be taken away by the State without due process.” *Id.* The Court expressly recognized that “privileges . . . qualify as property interests for purposes of procedural due process.” *Id.* (internal quotation omitted); *see also, e.g., Jabary v. City of Allen*, 547 F. App’x 600, 606 (5th Cir. 2013) (recognizing interest in certificate of occupancy); ECF 6 at 9–10 & n.4 (listing cases upholding protection of government-conferred benefits). The releases issued here are entitled to the same protection—they conferred privileges on the Property Owners that the Property Owners reasonably relied on and that directly impact their ability to earn a living, worship, and enjoy their land.

The City’s citation to *Mahone v. Addicks Util. Dist.*, 836 F.2d 921 (5th Cir. 1988), cannot overcome its failure to engage with the Property Owners’ identified interests. In *Mahone*, unlike here, a property owner petitioned *for* annexation—he wanted *into* a jurisdiction he was not previously part of. 836 F.2d at 930. The Fifth Circuit recognized that the Fourteenth Amendment’s “due process safeguards also extend to the interests that a person has already acquired in specific benefits,” but determined that the owner was not entitled to annexation. *Id.* at 930–31 (internal quotation omitted). In short, *Mahone* stands for the unremarkable proposition that a municipality is not required to bring a property into its jurisdiction absent a statutory obligation otherwise. *Id.*⁵ That has nothing to do with the interests at issue here: the Property Owners *were* granted a release from the City’s ETJ; they *did* rely on that released status; and the City *did* take away the specific benefits of their releases with the March Retractions.

⁵ The City’s citations to *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), and *Chacon v. Granata*, 515 F.2d 922 (5th Cir. 1975), fare no better. Neither involves a state law that *prohibited* the annexation, as § 42.022(b) does here. The City does not address this statutory right against annexation without consent. And *Chacon* recognizes that a jurisdictional change that causes “some diminution in the owner’s rights of use” would implicate a protected interest. 515 F.2d at 925.

Try as it might, the City cannot defend its actions by resting on Bee Caves Armory being a “military base.” Even if the City were right that the properties were originally released in error, it was still required to provide notice and a hearing before stripping the Property Owners of the benefits it had granted months and *years* prior.

The City does not disagree that it issued the March Retractions without providing any due process,⁶ and it expressly declined to engage with the *Mathews* analysis. *See* ECF 10 at 10–15. The City has, therefore, forfeited these issues, along with any arguments against the specific, unaddressed interests the Property Owners identified in their Motion. *See Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014) (finding that government forfeited argument it failed to raise in response to motion for preliminary injunction). The Property Owners have demonstrated they are likely to prevail on their procedural due process claim.

III. The March Retractions were *ultra vires*.

The City’s merits defense boils down to a single mantra: the March Retractions were justified because the properties “were never eligible for release.” ECF 10 at 16. But the City betrays its own position throughout its Response. Still pretending Bee Caves Armory is a “military base,” it is simply not true that the Released Properties “were never eligible for release.” They just weren’t eligible for release *under Subchapter D*. This is a distinction with difference.

A municipal act is void only where the municipality “lack[ed] statutory authority to act.” *Village of Creedmoor v. Frost Nat’l Bank*, 808 S.W.2d 617, 621 (Tex. App. 1991). Section 42.101(b)

⁶ The City repeatedly argues that Subchapter D did not grant a right to appeal the denial of a petition. *See* ECF 10 at 15. The Property Owners don’t argue otherwise. This case is not about the denial of a petition; it’s about the revocation of releases that were granted and relied upon. Subchapter D’s lack of an appellate process has no bearing on whether *the Constitution* requires an opportunity to be heard before depriving property owners of their vested interests.

does not *forbid* a city from releasing property within five miles of a military base; it provides only that such a property isn't *entitled* to Subchapter D's *mandatory* release. Separate from Subchapter D, the City unquestionably has the power to release properties from its ETJ, and that power is in no way limited by proximity to a military base. *See, e.g.*, TEX. LOC. GOV'T CODE § 42.023.

The City does not argue otherwise. To the contrary, the City makes much ado about the fact that it didn't release the properties here under § 42.023. It does not dispute that it *could have*. *See* ECF 10 at 17. That implicit concession betrays the City's "never eligible" claim and proves the Property Owners' point. The City had the authority to release the properties. It just exercised that authority under the wrong procedural mechanism. An act a body is empowered to take, accomplished through the wrong procedure, is *voidable*, not void. *See Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 438–39 (Tex. 1991).

The City's own authority is instructive. In *Creedmoor*, the municipal act was void because the city tried to *annex* land inside another municipality's ETJ—something no statute empowered it to do. 808 S.W.2d at 621. Releasing property in its own ETJ is the opposite: it's a power the City holds, and one it exercised roughly 170 times.

Where the City did lack statutory authority, however, was in its *March Retractions*. Nothing in Chapter 42 or the City's charter authorizes a municipality to reconsider, rescind, or void a completed release; once an area is released, regulation returns to the county. *See Elliott v. City of College Station*, 717 S.W.3d 888, 896 (Tex. 2025). The City does not engage with *Elliott* or offer any statutory authority for its actions. Under the very rule the City invokes, it is the March Retractions—not the releases—that are void *ab initio*:

City Action	Did the City have authority?	What type of error?	Void or voidable?
The Releases	<i>Yes.</i> A municipality <i>may</i> (but isn't required to) release property from its ETJ, even if the property is within 5 miles of a military base. <i>See, e.g.,</i> § 42.023.	<i>Procedural.</i> The City granted releases it was not required to, but could, grant.	Voidable. Valid unless set aside through quo warranto proceedings.
The March Retractions	<i>No.</i> The City does not have any statutory authority to undo an effectuated release. Once released, jurisdiction returns to the county.	<i>Substantive.</i> The City took an action beyond its authority— <i>ultra vires</i> .	Void. The action has no legal effect; the properties remain outside the ETJ.

The fly in the City's ointment is clear from its own Response. On the one hand, the City insists that "no duty exists for a municipality to make threshold eligibility decisions." ECF 10 at 17. On the other, it argues it had a "non-discretionary obligation" to undo the releases because the properties were not eligible. *Id.* It claims it released the properties because "[t]he Legislature told the City what to do and the City complied." *Id.* But it also argues that the releases were void because they were taken without statutory authority, while identifying no statutory provision that authorizes a municipality to void an ETJ release. *Id.* These positions are irreconcilable.

The reality is much clearer: the City had statutory authority to release the properties from its ETJ (even if it effectuated the releases through the wrong procedure); it did not have statutory authority to undo or void the releases once granted.

The Property Owners are likely to succeed on the merits of their *ultra vires* claim.

IV. There is no basis for this Court to abstain.

The City's request for abstention has no basis. Abstention is an extraordinary exception to federal courts' "virtually unflagging obligation" to exercise jurisdiction that "rarely should be invoked." *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992). This case doesn't come close.

Pullman abstention requires an unsettled question of state law that is “fairly subject to an interpretation which will render unnecessary adjudication of the federal constitutional question.” *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984). There is none here. The Motion assumes the City’s interpretation of “military base” is correct—and it changes nothing. A state-law issue that does not affect the federal question cannot support *Pullman* abstention. *Id.*

Burford abstention requires the “existence of a state administrative proceeding to which the federal court could defer.” *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 145 F.3d 238, 242 (5th Cir. 1998). There is none here. The City’s abstention theory is that this case involves S.B. 2038, which is the subject of unrelated *civil lawsuits* (not administrative proceedings). The Supreme Court has already rejected this argument. Where, as here, the plaintiffs’ assertion is that the defendants “have been and are depriving them of rights protected by the Fourteenth Amendment[,] [i]t is immaterial whether [the defendants’] conduct is legal or illegal as a matter of state law.” *McNeese v. Bd. of Educ. for Cmty. Unit Sch. Dist.* 187, 373 U.S. 668, 674 (1963). “Such claims,” the Supreme Court says, “are entitled to be adjudicated in the federal courts.” *Id.*

V. The City has no interest in unconstitutional, unauthorized conduct.

The City’s remaining argument—that the equities weigh against an injunction because its ordinances protect waterways—misses the boat. This Motion concerns the validity of the City’s *jurisdiction*, not the wisdom of its ordinances. If Travis County, which holds jurisdiction over these properties, believes such protections are warranted, it may impose them. The Property Owners, by contrast, face concrete and irreparable injury, and the public interest lies in holding the City to its constitutional and statutory limits. *Jackson Women’s Health Org.*, 760 F.3d at 458 n.9.

CONCLUSION

The City does not dispute the facts that matter, misstates the record on standing, and never engages with the Property Owners’ actual legal arguments. It offers a debate about “military base” that—even resolved in the City’s favor—leaves its retractions unconstitutional and void. The Property Owners respectfully ask for a preliminary injunction to prevent further harm.

Respectfully submitted,

/s/ Alexa L. Gervasi

Bill Cobb

TX Bar No. 00796372

Alexa L. Gervasi

TX Bar No. 24147091

COBB & GERVASI, PLLC

1250 S. Capital of Texas Hwy

Building 3, Suite 400

Austin, Texas 78746

(512) 955-5209

bill@cobbgervasi.com

alexa@cobbgervasi.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on July 1, 2026, a true and correct copy of the foregoing was served on all counsel of record in accordance with the Federal Rules of Civil Procedure via the Court's electronic filing system.

/s/ Alexa L. Gervasi
Alexa L. Gervasi