



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2021

Court of Appeals
Third District of Texas
P.O. Box 12547
Austin, Texas 78711-2547

RE: Court of Appeals Number: 03-21-00214-CV
Trial Court Case Number: D-1-GN-20-006848

Style: Terry Burns, M.D. & Stephen M. Rapkin v.
The City of San Antonio, Texas, acting by and through the City Public Service Board of
San Antonio, Texas et. al.

To the Honorable Court,

I write in response to the City of San Antonio's *Motion to Dismiss and to Expedite Appeal*, filed May 21, 2021, and pursuant to Rule 10.1 of the Rules of Appellate Procedure offer this letter to the Court regarding Appellee the Office of the Attorney General's position.

This appeal arises from a bond validation proceeding under the Expedited Declaratory Judgment Act ("EDJA"), Chapter 1205 of the Texas Government Code. The Attorney General is a required party in such matters and has specific duties, including a duty to raise appropriate defenses, and a duty to help facilitate a just and expeditious resolution. *See* TEX. GOV'T CODE § 1205.063 (Duties of Attorney General). Accordingly, the Attorney General remains neutral in this dispute except when necessary to effectuate the correct application of law.

The City's Motion raises multiple grounds for dismissal of this appeal, arguing, among other things, that Rule 329 of the Texas Rules of Civil Procedure does not apply because Appellants did not answer and appear before final judgment was entered. *Mot. to Dismiss* at 17. The Attorney General is opposed to granting the City relief on this basis.

While questions still linger over how exactly Rule 329 applies in EDJA actions, it is undisputed that this Court has already concluded that Rule 329 does apply to suits under the EDJA. *See City of Magnolia v. Magnolia Bible Church*, No. 03-19-00631-CV, 2020 WL 7414730 (Tex. App.—Austin Dec. 18, 2020, no pet.) (plurality opinion) (per curiam); *see id.* at *9 (Triana, J., concurring). And in *Magnolia*, the movants had likewise failed to appear and answer before final judgment was entered. *Id.* at *2 (Rose, J., concurring); *id.* at *6 (Triana, J., concurring).

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Moreover, statutes should be interpreted “in a manner to avoid constitutional infirmities” when at all possible. *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex. 1996); *see also United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69 (1994); *Stockton v. Offenbach*, 336 S.W.3d 610, 618 (Tex. 2011). This principle requires interpreting Chapter 1205 of the Texas Government Code to respect the fundamental requirements of due process. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”). If Rule 329 did not apply in EDJA suits, there are circumstances—as in *Magnolia*—where EDJA proceedings could violate due process by extinguishing private rights without notice and an opportunity to be heard. The Government Code must give way to the demands of, and protections afforded by, constitutional due process.

The Attorney General, however, takes no position on whether Appellants were entitled to relief under Rule 329 or whether due process required that they receive actual notice of this EDJA action.

If requested, the Attorney General will provide further briefing on this issue to better assist the Court.

Respectfully,

/s/ Wm. Sumner Macdaniel
WILLIAM SUMNER MACDANIEL
Assistant Attorney General
State Bar No. 24093904
Financial Litigation and Charitable Trusts Division
Office of the Attorney General
P.O. Box 12548/Mail Stop 017
Austin, Texas 78711-2548
Telephone: (512) 936-1862/Fax: (512) 477-2348
Email: William.Macdaniel@oag.texas.gov_

Counsel representing Attorney General of Texas

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CERTIFICATE OF SERVICE

I certify that on June 1, 2021, the foregoing was filed with the Clerk of this Court and served on the following parties of record via EFileTexas.gov efileing service.

Michael W. O'Donnell
Mike.Odonnell@nortonrosefulbright.com
Paul Trahan
Paul.Trahan@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP

Rosemarie Kanusky
rkanusky@mphlegal.com
MCCALL, PARKHURST & HORTON LLP

*Counsel for Plaintiff, The City of San Antonio
Texas, acting by and through the City Public
Service Board of San Antonio, Texas and
conducting business as CPS Energy*

Darby Riley
darbyriley@rileylawfirm.com
RILEY & RILEY, ATTORNEYS AT LAW

*Counsel for Appellants, Terry Burns,
M.D. and Stephen M. Rapkin*

/s/ Wm. Sumner Macdaniel
WILLIAM SUMNER MACDANIEL
Assistant Attorney General

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Laura Edwards on behalf of William MacDaniel
Bar No. 24093904
laura.edwards@oag.texas.gov
Envelope ID: 53996760
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Associated Case Party: The City of San Antonio, Texas, acting by and through the City Public Service Board of San Antonio, Texas, et al.

Name	BarNumber	Email	TimestampSubmitted	Status
Paul Trahan		paul.trahan@nortonrosefulbright.com	6/1/2021 5:37:15 PM	SENT
Rosemarie Kanusky	790999	rkanusky@mphlegal.com	6/1/2021 5:37:15 PM	SENT
Courtney Spizzo		courtney.spizzo@nortonrosefulbright.com	6/1/2021 5:37:15 PM	SENT
Michael WO'Donnell		mike.odonnell@nortonrosefulbright.com	6/1/2021 5:37:15 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William SMacDaniel		william.macdaniel@oag.texas.gov	6/1/2021 5:37:15 PM	SENT

Associated Case Party: Terry Burns

Name	BarNumber	Email	TimestampSubmitted	Status
Charles Riley	16924400	darbyriley@rileylawfirm.com	6/1/2021 5:37:15 PM	SENT