

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

The State of Texas v. The City of Houston, The City of San Antonio,
and The City of El Paso

No. 03-23-00531-CV · No. No. 03-23-00531-CV · Decided May 14, 2026

SUMMARY

This dissenting opinion addresses the denial of en banc reconsideration in a constitutional challenge to Texas House Bill 2127, known as the “Death Star Bill,” which limits certain municipal regulations. Justice Karin Crump concludes that the case presents extraordinary circumstances warranting en banc review and that Houston, San Antonio, and El Paso have standing to challenge the statute.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Karin Crump, Justice; Chief Justice Byrne; Justice Triana; Justice Kelly; Justice Theofanis; Justice Crump; Justice Ellis
JURISDICTION	Texas Court of Appeals, Third District at Austin
DECIDED	May 14, 2026
DOCKET	No. 03-23-00531-CV
DISPOSITION	other
PROCEDURAL POSTURE	Dissent from the majority's denial of the appellee cities' motion for en banc reconsideration after the court reversed the trial court's judgment and rendered judgment granting the State's plea to the jurisdiction for lack of standing.
STANDARD OF REVIEW	The opinion discusses the court's discretionary standard for determining whether extraordinary circumstances warrant en banc reconsideration; it does not state a separate standard of review for the standing issue.
PRECEDENTIAL VALUE	Published dissenting opinion; dissenting views are nonbinding
PARTIES	The State of Texas v. The City of Houston, The City of San Antonio, The City of El Paso

TOPICS

appellate procedure

appellate jurisdiction

municipal law

home rule

federalism

PRACTICE AREAS

appellate procedure

constitutional law

municipal law

governmental immunity

federalism

QUESTIONS PRESENTED

1. Whether extraordinary circumstances and issues of statewide significance warranted en banc reconsideration under Texas Rule of Appellate Procedure 41.2(c).
2. Whether the cities had standing to assert their claims that HB 2127 was unconstitutional.

HOLDINGS

1. The majority denied the cities' motion for en banc reconsideration; the dissenting judge would have granted the motion because the case presented issues of statewide significance and extraordinary circumstances.
2. The dissenting judge would have concluded that Houston, San Antonio, and El Paso had standing to assert their constitutional challenges to HB 2127. The majority had previously concluded that the cities lacked standing.

KEY QUOTATIONS

“En banc consideration is not favored and should not be ordered “unless necessary to secure or maintain uniformity of the court’s decisions or unless extraordinary circumstances require en banc consideration.”” (at 2)

“Given the continued statewide significance of these issues, I believe it is important that the entire Court hears and decides this appeal.” (at 2)

“For these reasons, I would grant Plaintiffs’ motion for en banc reconsideration, conclude that the Plaintiffs have standing to bring their claims, and proceed to consider the merits of their challenge to HB 2127.” (at 3)

FACTUAL BACKGROUND

House Bill 2127 prohibits home-rule cities from adopting, enforcing, or maintaining local laws regulating conduct in eight specified fields already regulated by statewide statutory codes unless another state statute expressly authorizes the local regulation. Houston, San Antonio, and El Paso challenged the statute's constitutionality. The cities' challenge raised issues concerning the relationship between statewide law and local municipal law and attracted extensive statewide media coverage and legal analysis.

PROCEDURAL HISTORY

The cities challenged the constitutionality of House Bill 2127, commonly known as the Death Star Bill. The Travis County district court held HB 2127 unconstitutional. The court of appeals reversed and rendered judgment granting the State's plea to the jurisdiction, concluding that the cities lacked standing. The cities moved for en banc reconsideration, which a majority of the court denied; Justice Crump dissented and would have granted reconsideration and reached the merits.

DISPOSITION

other

CASES CITED

- State v. City of Houston, No. 03-23-00531-CV, __ S.W.3d __, 2025 WL 2014935 (Tex. App.—Austin July 18, 2025, no pet. h.)
- Chakrabarty v. Ganguly, 573 S.W.3d 413, 415–16 & n.4 (Tex. App.—Dallas 2019, no pet.)
- Rodriguez v. Cuellar, 143 S.W.3d 251 (Tex. App.—San Antonio 2004, pet. dism’d)
- Lawrence v. State, 41 S.W.3d 349 (Tex. App.—Houston [14th Dist.] 2001, pet. ref’d), rev’d, 539 U.S. 558 (2003)
- Twigland Fashions, Ltd. v. Miller, 335 S.W.3d 206, 226 (Tex. App.—Austin 2010, no pet.) (Jones, C.J., concurring in denial of en banc reh’g)
- Lawrence v. Texas, 539 U.S. 558 (2003)

OPINION

The State of Texas v. the City of Houston, the City of San Antonio, and the City of El Paso
PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-23-00531-CV

The State of Texas, Appellant v. The City of Houston, The City of San Antonio, and The City of El Paso, Appellees

FROM THE 345TH DISTRICT COURT OF TRAVIS COUNTY

NO. D-1-GN-23-003474, THE HONORABLE MAYA GUERRA GAMBLE, JUDGE
PRESIDING

DISSENTING OPINION

TO DENIAL OF EN BANC RECONSIDERATION

This case involves a challenge to the constitutionality of the “Death Star Bill,” as House Bill 2127 (HB 2127) is widely known. HB 2127 prohibits home-rule cities from “adopting, enforcing, or maintaining” local laws regulating conduct in eight specified fields already regulated by statewide statutory codes unless the local regulation is “expressly authorized” by another state statute. After the trial court held HB 2127 unconstitutional, this Court reversed the district court’s judgment and rendered judgment granting the State’s plea to the jurisdiction, concluding that the Plaintiffs—the Cities of Houston, San Antonio, and El Paso—lacked standing to assert their claims. See State v. City of Houston, No. 03-23-00531-CV, __ S.W.3d __, 2025 WL 2014935 (Tex. App.—Austin July 18, 2025, no pet. h.). On September 17, 2025, Plaintiffs filed a motion for en banc reconsideration. A majority of the Court has voted to deny that motion while two justices would grant en banc reconsideration. See Tex. R. App. P. 49.7 (requiring approval of majority of court before appeal may be reconsidered en banc). Because I would grant the motion, I respectfully dissent from that denial. En banc consideration is not favored and should not be ordered “unless necessary to secure

or maintain uniformity of the court’s decisions or unless extraordinary circumstances require en banc consideration.” Tex. R. App. P. 41.2(c). The rules do not define what constitutes “extraordinary circumstances,” and courts have discretion to determine whether such circumstances exist in a given case. See *Chakrabarty v. Ganguly*, 573 S.W.3d 413, 415–16 & n.4 (Tex. App.—Dallas 2019, no pet.). Several courts have granted en banc reconsideration in cases involving issues of statewide importance that were highly significant to the public or in which the public had a high level of interest. See, e.g., *Rodriguez v. Cuellar*, 143 S.W.3d 251 (Tex. App.—San Antonio 2004, pet. dismissed); *Lawrence v. State*, 41 S.W.3d 349 (Tex. App.—Houston [14th Dist.] 2001, pet. refused), *rev’d*, 539 U.S. 558 (2003); see also *Twigland Fashions, Ltd. v. Miller*, 335 S.W.3d 206, 226 (Tex. App.—Austin 2010, no pet.) (Jones, C.J., concurring in denial of en banc rehearing and opining that “extraordinary circumstance” includes “addressing issues that are highly significant to the public or in which the public has a high level of interest”). HB 2127 has received extensive media coverage and legal analysis. This case also touches on the relationship between statewide law and local, municipal law and could have far-reaching legal and policy ramifications in future cases. Given the continued statewide significance of these issues, I believe it is important that the entire Court hears and decides this 2 appeal. Furthermore, with regard to the merits of the Court’s opinion, I would conclude that the Plaintiffs have standing to assert their claims that HB 2127 is unconstitutional. For these reasons, I would grant Plaintiffs’ motion for en banc reconsideration, conclude that the Plaintiffs have standing to bring their claims, and proceed to consider the merits of their challenge to HB 2127. Because the Court does not, I respectfully dissent. _____ Karin Crump, Justice Before Chief Justice Byrne, Justices Triana, Kelly, Theofanis, Crump, and Ellis Dissenting Opinion to Denial of En Banc Reconsideration Filed: May 14, 2026 3