NO. 15-0523

IN THE SUPREME COURT OF TEXAS

ACE CASH EXPRESS, INC.,
PETITIONER,
V.
THE CITY OF DENTON, TEXAS,
RESPONDENT.

RESPONSE TO PETITION FOR REVIEW

On Petition for Review from the Second Court of Appeals, Fort Worth, Texas
No. 02-14-00146-CV

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OBJECTIONS TO PETITIONER'S STATEMENT OF THE CASE[1]

Nature of the Case — For the most part, Respondent has no quarrel with Petitioner's Statement of the Nature of the Case, except where Petitioner either falsely or argumentatively claims that "Denton refused to prosecute ACE." Per the instructions of the Appellate Rules, this will be addressed in another portion of the Response. *See*, Tex. R. App. P. 53.2(d).

Trial Court proceedings: — In a similar fashion, Respondent does not, for the most part, dispute Petitioner's statement, but objects that the statement, "During the hearing, ACE reiterated that it would stipulate to responsibility for violating the ordinance", similarly attempts to inject facts unrelated to the trial court's ruling.

[1] Pursuant to Tex. R. App. P. 53.3(b), a statement of the case is not necessary unless the respondent is dissatisfied with that portion of the petition. Respondent agrees for the most part with Petitioner's Statement, except for a couple of statements that are incorrect or argumentative, and require refinement, as shown above.

STATEMENT OF JURISDICTION

Respondent respectfully disagrees with Petitioner's asserted bases for jurisdiction under Tex. Gov't Code §22.001(a)(2)[2] and (a)(6).

A. No Conflicts Jurisdiction.

As of this time, only two courts of appeals in this State have written opinions upon the limited regulation of credit access businesses by home rule municipal ordinances. One is the instant case, brought forward from the Second Court of Appeals in Fort Worth. The other comes out of the Fifth Court of Appeals in Dallas.[3] At this time, no other Court of Appeals has ruled upon such a challenge.

No conflict exists. Both the Dallas and Fort Worth opinions are unanimous in their analysis and treatment of all issues material to this case, and both concern virtually identical ordinances.[4] Moreover, Petitioner was a party in both cases, and the same challenges were disposed in an entirely consistent manner.[5]

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[2] Respondent notes that Tex. R. App. P. 53.3(d) directs that a statement of jurisdiction should ordinarily be omitted from the Response, unless the Petition fails to assert valid grounds. Here, the Petition is asserting a conflict among appellate districts where no conflict exists material to this case.

[3] *Consumer Service Alliance of Texas, Inc. v. City of Dallas*, 433 S.W.3d 796 at 809 (Tex. App. – Dallas, 2014, no pet.).

[4] In fact, Denton's CAB ordinance was based upon Dallas', and differed in its amendment to specifically exclude consumers from prosecution.

[5] See, Tex. Gov't Code §22.001(e), providing that for the purposes of §22.001(a)(2), a different ruling means that there is an inconsistency in their respective decisions that should be clarified to remove uncertainty in the law and unfairness to litigants. Although Petitioner's appeal was overruled in both cases, it was overruled consistently. Petitioner has pointed to no material difference between the Dallas and Fort Worth holdings that caused any unfairness to Petitioner or any other litigant. Petitioner argues that the Court of Appeals has interpreted the *Austin Cemetery* case differently from other courts, such that clarification is needed to remove uncertainty. However, Respondent will show that these cases cited by petitioner arose in different contexts, with distinguishable facts. These

B. No Error of Importance to Jurisprudence.

Tex. Gov't Code §22.001(a)(6) provides a basis for jurisdiction that inherently calls for judgment and discretion of this Court, where an error of law has been committed. Although Respondent disagrees that the Court of Appeals committed any predicate error of law allowing for such a discretionary determination, these points of error and State importance will be addressed in the context of Respondent's argument.

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distinctions do not promote uncertainty; rather, they add to the understanding of the law when these differences are examined in relation to their distinguishing contexts.

STATEMENT OF ISSUES (RESTATED)

I. The Court of Appeals opinion is entirely consistent with long standing legal precedent, including the *Austin Cemetery* decision.

II. Contrary to Petitioner's assertions, the Court of Appeals opinion does not conflict with long standing precedent, because the validity of this ordinance could be challenged in the context of a criminal prosecution.

A. The Court of Appeals correctly interpreted and applied the law

B. The policy argument put forward by Petitioner in its issue II.B. attempts to superimpose matters of opinion and judgment upon lower court rulings, concerning a jurisdictional challenge

III. There is no conflict in the Court of Appeals ruling with other courts, because Petitioner has identified no court that has characterized the type of property rights asserted by Petitioner as vested property rights.

IV. Petitioner's unbriefed issue regarding the constitutionality of Denton's ordinance is not properly before the Court. This case arose out of Denton's Plea to the Jurisdiction, and the merits of the claims made by the Plaintiff were never reached by the trial court. Petitioner apparently undertook to put on evidence of this point (over Denton's objection) during the jurisdictional hearing as a threshold issue under *Morales*, but the merits of the underlying action were not before the trial court at the jurisdictional hearing, and were not ruled upon. This issue is not within the jurisdictional bounds asserted by Petitioner. [likewise unbriefed, and objected to].

V. Petitioner's unbriefed issue related to express waivers of immunity under the Declaratory Judgment Act is a well settled issue of law, with no bearing on the opinion below. This issue is not within the jurisdictional bounds asserted by Petitioner. [likewise unbriefed, and objected to].

STATEMENT OF FACTS[6]

Respondent believes that the Court of Appeals opinion correctly stated the facts underlying the case. Respondent objects to, or disagrees with, Petitioner's recitation of facts as follows.

In the final sentence of section B of the PDR's Statement of Facts (p.4), Respondent would clarify that the CSO act partially regulates the field of business in which CABs operate.[7]

Respondent objects to Petitioner's assertion in the third line of page 6 of the PDR that "Denton refused to criminally prosecute ACE." First of all the record reference does not support the assertion. In fact, the referenced affidavit states only that Denton's [civil trial][8] attorney did not want to participate in an "arranged prosecution." This is very different from the assertion that Denton refused to criminally prosecute ACE, and is very misleading as stated. Second, later in that same paragraph, Petitioner misstates that "Denton refused to prosecute ACE" in response to two letters. At best, Petitioner's false characterization substitutes argument for fact. The trial court's record at pages 231 – 232 supplies the missing context. CR 231-32.

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[6] Pursuant to Tex. R. App. P. §53.3(b), the Response need not state a statement of facts unless Respondent is dissatisfied with them as stated by Petitioner. For the most part, Respondent has no quarrel with Petitioner's recitation, and will only point out specific statements that it finds to be incorrect or objectionable.

[7] Simply to clarify the distinction between the Petition for Review before this Court and the Petition filed in the trial court, Respondent will sometimes use the abbreviation PDR, to represent the older term Petition for Discretionary Review. Similarly, CAB will sometimes be used to denote a Credit Access Business, and the initialization CSO in CSO Act will mean Credit Services Organizations.

[8] It is important to note that ACE was not posing this question to Denton's prosecutor.

Within that letter, Denton's civil trial attorney took efforts to point out how the vaguely couched letters from ACE's civil attorney failed to provide sufficient information to support a criminal charge, and that his self-serving report did not state probable cause as a matter of law. Denton's responsive letter pointed out (as did previous responses, as alluded to in the responsive letter) that ACE was welcome to report any violations to the Denton Police for investigation and disposition. *Id.* The response letter clarified the distinct roles of the attorneys in the City Attorney's Office, and clarified that it would be unethical for a civil attorney to participate in the bringing of criminal charges for the purpose of gaining an advantage for either side in a civil case. *Id.* Petitioner's characterization as a "refusal" is clearly contradicted by further statements at CR 232 that "my refusal as a civil attorney to participate in bringing charges is not any indication that the City is unwilling to enforce . . . the intent to enforce was also voiced by the City's representative in the deposition . . . ." *Id,* (alluding to a party representative deposition). In short, the record reflects the OPPOSITE of what Petitioner has represented to this Court as fact. Not only did Denton not refuse to prosecute: Denton provided assurance through its party representative that fully intended to prosecute, and through its civil attorney that it WOULD consider prosecution if a sufficient report and sworn complaint were brought forward to the police. *Id.* The true fact is that ACE didn't follow through, and staged these letters to set up their later display of crocodile tears about Denton "refusing" to prosecute.

In Section E of Petitioner's proffered Statement of Facts (p. 6 PDR), Petitioner again argues that Denton's civil attorney's stated belief that arranged prosecutions violate rules of attorney discipline, is stated as an organizational refusal to prosecute. Again, Petitioner's is directly contrary to the fact that Denton repeatedly assured that it intended to prosecute upon a report to police and sworn complaint stating required elements and probable cause.

In all fairness the final statement in Petitioner's Statement of Facts that "To date, Denton has not prosecuted ACE for violating the ordinance" is outside the trial and appellate record, unsupported, and should not be included. However, Respondent would agree to include this unsupported comment outside the record if it could complete the context by adding that to date, no one (including ACE or its representatives) have reported a violation by ACE to the police, or sworn out a criminal complaint for violation, stating required elements and probable cause.[9]

[9] Certainly at the time of the jurisdictional hearing at the trial court, ACE's witness admitted that, despite his awareness of the details of the violations commented upon in ACE's letters, neither he nor any other representative of ACE to his knowledge, reported any ordinance violation to the police, signed any sworn complaint. RR, p. 70, l. 1 – 71, l. 4.

SUMMARY OF THE ARGUMENT

The decision of the Second Court of Appeals in this case presents nothing new or inconsistent with the legal precedent of this State. The Courts of Appeals examining this issue to date are unanimous in their analysis of the issues, and in refusing to allow the payday lending industry to recharacterize the facts with exaggerated descriptions of these ordinances, in an attempt to argue for a reform that would actually *erode* the long standing jurisprudence of this State.

Contrary to Petitioner's exaggerated characterizations, the court of appeals opinion does not "disregard" the *Austin Cemetery* case; rather, it rejected Petitioner's novel and counterintuitive suggestion that a direct civil challenge to Austin's cemetery ordinance was allowable as an exception to long standing general legal principles of penal law abstention recently affirmed in the *Morales* decision, because, they claim (without factual support), that the cemetery ordinance placed cemetery *employees*[10] in terror of prosecution. Rather than to "disregard" the rule of law announced in that case, the opinion below noted that the "[c]ourts have consistently understood the concern in *City of Austin* to regard the prosecution of customers of the cemetery, not the employees."[11] Denton's ordinance, as amended, addressed and satisfied the narrow exception created by that case, by excluding consumers from the scope of prosecution. (See Petitioner's Exhibit E). As applied below, the opinion's analysis is entirely

[10] "Grave diggers" was the specific example Petitioner used.
[11] *ACE Cash Express v. City of Denton*, 2015 WL 3523963 at *2.

consistent with the body of Texas law construing this narrow exception to *Morales*, and entirely consistent with the opinions of every other Court of Appeals opinion to date that has construed civil challenges to CAB ordinances like Denton's.

The opinion below did not blaze new trails in deeming certain property rights to be not "worthy" of protection; rather, it consistently applied long standing legal precedent holding that equity will step in only when vested property rights are at stake, rather than those which are speculatively based upon individually perceived value, under presumed future conditions which may or may not hold true, independently of the ordinance. Petitioner's characterization of the "substantial" impacts of Denton's ordinance upon portfolio values and default rates, fails to recognize the simple fact that Denton's ordinance only applies within its own city limits, and that anyone desiring to renew a loan outside the terms of the ordinance's protections needs only to cross the city limits lines to do so at any of the other ACE Cash Express locations that are not subject to Denton's ordinance.

Petitioner's apocalyptic warning that this case impacts every business in Texas, because of the histrionic fear of "unenforceable criminal ordinance[s] driv[ing] businesses to financial ruin", unless this Court changes longstanding legal precedent, runs contrary to logic and reason, and simply is not supported by history.

First, consistent with the governmental structure maintained for centuries, and arising out of the Texas Constitution, the Texas Legislature has maintained tight constraints upon the legislative authority of even home rule municipalities like Denton,

and has always reserved the power to constrain home rule authority as tightly as it sees fit, provided that it does so with unmistakable clarity.[12] Yet Petitioner sees fit to ask this Court to take an activist role in modifying over a century of legal precedent, where there is no present disagreement among the Courts of Appeals, rather than to seek relief with the Texas Legislature over its perceived doomsday prophecies of sudden statewide business ruination at the hands of city councils run amok.

Second, it is important to maintain perspective. For among the historical constraints of municipal home rule authority is the limitation that the maximum penal sanction arising from a municipal ordinance is a Class C misdemeanor. Shutting down businesses is simply not within that penal authority. The mere fact that municipal regulations can indirectly impact the profitability of a business does not create a right to civil remedies. For example, ordinances imposing local speed limits and traffic regulations within the authority not reserved to the State promote safety, but they could impact the profitability of a taxi service or courier.

Third, the application of penal authority carries a whole host of statutory and due process limitations, before any sanction can be imposed. It is for this very reason that Petitioner's argument about its civil attorney's "confession" of violation fails. There are very specific constraints imposed by statute and due process which prevent

[12] *Dallas Merch's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993).

penal charges from being filed on the basis of a vague suggestion of an ordinance violation by the party's attorney, seeking to gain an advantage in a civil case.

ARGUMENT

I. The Court of Appeals opinion is entirely consistent with long standing legal precedent, including the *Austin Cemetery* decision.

Petitioner starts by insisting that this Court should take the opportunity to clarify the argued "misapplication" of *Austin Cemetery* by the lower courts, yet Petitioner cites no examples of any such misapplication, and Denton cannot find any such widespread misapplication.[13] Even with regard to the *State v. Morales* case, which figured significantly in the opinion below, Petitioner acknowledges that "[i]mportantly, this Court did not overrule or abrogate *City of Austin*." PDR, at 9 – 10.

In fact, the opinion below is entirely consistent with *Austin Cemetery* and other precedent. Contrary to Petitioner's claim that there is a disagreement among the appellate districts, the 2nd District opinion below is entirely consistent with the analysis and holding of the 5th District, when it considered a nearly identical ordinance passed by the City of Dallas (also involving Petitioner as a party).[14] Fundamental to the whole notion of *Morales* and penal abstention in general is the idea that courts exercising criminal jurisdiction are best poised to construe penal laws, as well as any Constitutional or statutory limitations upon their enforcement. Moreover, the construction is best

[13] To the contrary, the Court of Appeals below noted the consistency with which cases have interpreted Austin Cemetery in a manner contrary to the novel position argued by Petitioner, and cited numerous examples. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963 at *2 (Tex. App. – Fort Worth June 4, 2015, pet. filed) (mem. op., not designated for publication).

[14] See, *Consumer Service Alliance of Texas, et al. v. City of Dallas*, 433 S.W.3d 796 (Tex. App. – Dallas, 2014, no pet.). Respondent notes that although Petitioner was a party in the Dallas case, it apparently felt no compelling urgency to seek a petition for review in that case.

applied in the context of a real case and controversy, rather than in the hypothetical vacuum of a civil challenge.[15]

But more importantly, a trial court regularly exercising criminal jurisdiction over such matters would immediately see the folly of the approach suggested by Petitioner's civil trial attorney, in expecting criminal charges to be filed on the basis of a vague letter to a civil attorney, obliquely suggesting in an unsworn statement that an unknown employee violated an unspecified provision of the ordinance in an unspecified manner, at some unspecified date and time, with no mention of any corporate involvement. No charging instrument could have been prepared on that basis, and if any attempt had been made to do so, it would have been immediately quashed.[16] Contrary to Petitioner's claim, this letter was a misguided strategic ploy to gain an advantage in a civil suit, not an "admission" that could have sustained criminal charges or conviction, and Petitioner's claim to the contrary is very much disputed.

Neither do these vague, unsworn, and unsupported statements constitute a judicial admission. Contrary to Petitioner's assertions, the Court below did not say that Petitioner "must" sign an offense report – this was merely acknowledged as an option. Basing criminal charges upon a sworn complaint is not something that the Court below

[15] Nowhere is this point better illustrated than in this case. The PDR before you, as well as the record below, is replete with Petitioner's exaggerated claims of business ruination at the hands of a Class C ordinance, with jurisdiction over exactly 2 of the many business locations Petitioner maintains in Texas. RR at 30, l. 17-19.

[16] Tex. Code Crim. P., art. 45.018, 019. See also, Tex. Pen. Code §7.22 (criminal responsibility of a corporation).

just dreamed up and suddenly "established". The requirement of a sworn complaint, stating probable cause of a specific violation, by a specific person, on a specific date, as to each and every element, is, and has for time immemorial been, the law of this State, and demanded by due process. It is not, as Petitioner suggests, a "rule" that the Court of Appeals "established" in this case, or that this Court should reconsider in this context. These are requirements imposed by the Texas Legislature in the Code of Criminal Procedure, codifying principles of due process arising out of the U.S. and Texas Constitutions.

II. Contrary to Petitioner's assertions, the Court of Appeals opinion does not conflict with long standing precedent, because the validity of this ordinance could, be challenged in the context of a criminal prosecution

A. The Court of Appeals correctly interpreted and applied the law

Petitioner declares, without any basis, that the *Austin Cemetery* case is correctly read to allow a civil challenge under equity jurisdiction, where the employee of a business is in fear of criminal prosecution. The case did not say that.[17]

[17] For Petitioner to infer such a reading from the phrase "any person" is simply unsupported, and ignores the fact that the employee works on behalf of the employer. The excerpt quoted by Petition stops before the Court's further clarification in its analogy to someone selling meat at a meat market: "If a penalty was denounced against no one but the market man who should sell, it would seem that his remedy would be to proceed with his business, and defeat any prosecution that should be brought against him for the infraction of the void ordinance." *Austin Cemetery*, 87 Tex. at 337. In all fairness, the description of a market man selling meat could just as plausibly apply to a butcher salesperson in the employ of the shop owner as Petitioner's argument that a "person burying" a body necessarily includes a grave digger. For that matter, who's to say that the cemetery owner had any employees at all? Perhaps the owner was an undertaker who undertook that responsibility for himself – the opinion doesn't say. The fact of the matter is that *Austin Cemetery* does not clearly contemplate, much less compel, any rule of law in cases where an employee might be prosecuted, and it is disingenuous to suggest that the Court of Appeals "misapplied" a standard that was never clearly stated with respect to employees.

An employee presumably works at the direction of his employer. Where the proprietor is a large corporation, such as Petitioner, all potential actors are employees, and thus there is no logical basis for reading *Austin Cemetery* to distinguish between the owner and employee when they are engaged in a common enterprise.[18]

Finally, Petitioner offered to stipulate on the trial court record that ACE, not an individual employee, was responsible for the purported violation of the ordinance, and that the employee was acting on the corporation's behalf. (Pet. App. H at 113, l. 22 – 25). Through that judicial admission,[19] Petitioner effectively dispensed with the distinction that it tries so desperately to make in the *Austin Cemetery* case with respect to individual employees. Even if the Court were to find merit in Petitioner's argument that *Austin Cemetery* protects the bringing of civil challenges in courts of equitable jurisdiction where an employee is in fear of prosecution, Petitioner dispensed with that distinction by admitting to directing the action at the corporate level. RR p. 113, l. 22-25. Thus, regardless of the status that the *Austin Cemetery* case intended with respect to employees in its analogies (if, indeed the Court did either way, which Denton disputes) it is clear and undisputed that ACE would find itself in a position analogous to the "market man", rather than a "gravedigger", and thus the narrow exception in *Austin Cemetery* would not apply anyway.

[18] The Court of Appeals noted this as well. *ACE v. Denton,* at *2.

[19] Note that even with these admissions on the record in addition to the letters, the combined information still does not satisfy the requisites of a criminal charge under the Code of Criminal Procedure.

B. The policy argument put forward by Petitioner in its issue II.B. attempts to superimpose matters of opinion and judgment upon lower court rulings, concerning a jurisdictional challenge

It is important to recognize that the trial court's dismissal of the action came in response to a jurisdictional plea. Policy arguments directed to matters of municipal legislative authority are properly directed to the Texas Legislature, and have no place in this Court's consideration of a PDR. Nevertheless, the Court of Appeals noted that Petitioner failed to demonstrate its inability to challenge the ordinance in the context of a prosecution, and thus, no review is necessary to address the necessity of a change in the long standing jurisprudence of the state, simply because of Petitioner's failure to exercise options available to it.[20]

III. There is no conflict in the Court of Appeals ruling with other courts, because Petitioner has identified no court that has characterized the type of property rights asserted by Petitioner as vested property rights.

Petitioner is simply misplaced in his assertion that Denton's ordinance "destroyed" vested property rights in ACE's pre-ordinance contracts. First of all, there is nothing to suggest that Petitioner could not exhaust all legal remedies that it ever held against defaulting borrowers if it saw fit to do so. Petitioner may have **expected** or

[20] *ACE v. Denton* at *2. RR at 70, l. 1 – 71, l. 4. Ironically, one of the maxims of equity is the requirement that the person seeking equity must have "clean hands". Petitioner's ploy of sending letters between civil trial counsel, obliquely alluding to a vague and indeterminate ordinance violation, and placing Respondent's civil attorney in an ethical dilemma, while refusing to take any real action to initiate a prosecution, all to gain a strategic advantage in already filed litigation, seems fundamentally inconsistent with this notion. To the extent that Petitioner is asking this Court to exercise its jurisdiction in a discretionary manner, in support of a policy argument more appropriate to the Legislature, Respondent offers this consideration in rebuttal.

desired to keep borrowers in a cycle of debt with successive refinancings of old loans with their associated fees, but it never had any legal assurance that customers would continue to take the bait. Denton's ordinance also required CABs to conspicuously post disclosures relating to the terms of these loans, and it is certainly possible that these efforts to educate consumers led to a reduction in successive refinancings. Again, Denton's ordinance does nothing to prohibit consecutive refinancings outside Denton's jurisdiction, at any other location in the State of Texas.

Bear in mind also that Petitioner is in no position to complain that the Ordinance or opinion below inhibits ACE's ability to pursue its expected value of pre-ordinance loans, and Petitioner's request that the Court exercise its 22.001(a)(6) jurisdiction cannot do so either. According to stipulated facts found in an administrative consent order issued by the Consumer Financial Protection Bureau ("CFPB") in 2014[21], the pre-Ordinance value that Petitioner claims involved placing borrowers on a cycle of debt through successive refinancings of the original principal, with new fees added (in a manner that Denton's Ordinance sought to discourage). In its request for this Court to exercise jurisdiction under Tex. Gov't Code 22.001(a)(6), on a matter of importance

[21] See, Consent Order filed July 10, 2014, in Administrative Proceeding 2014-CFPB-0008 (copy attached as Respondent Appendix A). The Consent Order provided imposed a five million dollar fine, together with an order to pay another five million dollars in restitution. On stipulated findings (note that ACE did not stipulate for all purposes, but only for the consent order), the CFPB found that ACE trained its employees to bring customers into a cycle of debt through successive refinancing of old obligations with new fees. See associated Stipulation, attached as Respondent Appendix B. Again, these do not suggest the "clean hands" of a party that this Court should discretionarily extend jurisdiction to under 22.001(a)(6), in order to consider facilitating its access to courts of equity. Denton's original ordinance went into effect April 9, 2013. Pet's Appx. D.

to the jurisprudence of this State, Petitioner is arguing that it should have the right to directly seek in a court of equity, what it claims to be property rights arising out of pre-Ordinance loans through successive refinancings contrary to the Ordinance. Respondent is not raising this as a legal argument outside the record below or to sling mud, but insofar as Petitioner argues preservation of revenue expectations is a matter of critical importance to the State, it seems fair to point out that the CFPB has already fined the Petitioner for doing what it argues that it should be allowed to do. Thus, the necessity of such an exercise of jurisdiction is at least questionable.

Vested property rights are not built upon a mere expectation.

> Property rights are created and defined by state law. [citations omitted]. A person's property interests include actual ownership of real estate, chattels, and money. [citations omitted]. The term " 'property right' refers to any type of right to specific property, including tangible, personal property." [citations omitted]. A right is "vested" when it "has some definitive, rather than merely potential existence."[citations omitted]. Property owners do not have a constitutionally protected, vested right to use property in any certain way. [citations omitted]. However, a seller does have a vested property right in the lawful possession of physical items of inventory that it owns. [citations omitted].

Consumer Service Alliance of Texas v. City of Dallas, 433 S.W.3d 796 (Tex. App. – Dallas, 2014, no pet.). Internal citations are omitted in the interest of brevity, but include many of the cases Petitioner cites as "misapplying" *Austin Cemetery*.

Petitioner's assertions of reduced or destroyed value are matters of subjective opinion not tried in any case on the merits, and likely address loans subject to a later consent order anyway. There is simply no basis in the record for Petitioner's assertion

that Denton's ordinance "effectively required ACE to surrender its inventory of contracts in existence when the ordinance became effective", nor could such a conclusion be reached from a fair reading of Denton's ordinance.

CONCLUSION

There is no jurisdiction based upon conflicts, because the only two courts of appeals to rule upon these issues in the context of a municipal ordinance providing limited regulation of CABs are in total agreement. Petitioner's argument that *Austin Cemetery* provides for employees to challenge penal ordinances in equity has no basis for support in the opinion itself, other than Petitioner's inductive reading of matters unstated. Petitioner's exaggerated claims of importance to State jurisprudence notwithstanding, there simply is nothing compelling that warrants review. Any deviations in the reading of *Austin Cemetery* can be rationalized by distinguishing facts and changing times. Even if this Court were to agree with Petitioner's policy arguments in support of discretionary jurisdiction, Petitioner's ability to seek relief in support of contractual rights that are likely subject to a CFPB consent order are probably questionable in a court of equity jurisdiction. Finally, with respect to limited municipal regulation of CABs, there is absolutely nothing that this Court can do that would give any more clarity to the uniform and entirely consistent holdings arising out of the 5th and 2nd Courts of Appeals.

PRAYER

Respondent asks that the Petition be DENIED.

RESPECTFULLY SUBMITTED,

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By: /s/ Jerry E. Drake, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2015, a true and correct searchable PDF electronic copy of the foregoing document was served upon Clayton Bailey and Benjamin Stewart, Attorneys of record for Appellant, in accordance with Texas Rule of Appellate Procedure 4.

By: /s/ Jerry E. Drake, Jr.
Jerry E. Drake, Jr.

CERTIFICATE OF COMPLIANCE WITH RULE 9.4

1. This brief complies with the type volume limitation of Tex. R. App. P. 9.4(i)(2) because Microsoft Office Word 2013 reports it to contain 4,093 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1).

2. This brief complies with the typeface requirements and the type style requirements of Tex. R. App. P. 9.4(e) because it was prepared with Microsoft Word 2013 software, using a proportionally spaced 14-point Garamond typeface in the body and a 12-point Garamond typeface in the footnotes.

By: /s/ Jerry E. Drake, Jr.
Jerry E. Drake, Jr.

Dated: December 14, 2015