

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 25-50160

JUDY HARWARD; BRENT HARWARD; 3325 WESTLAKE OWNERS,
L.L.C.; KIRK FRITSCHEN, *as trustee of* THE 3705 WESTLAKE
TRUST; 4200 RIVERCREST, L.L.C., *Et al.*,

Plaintiffs—Appellants,

versus

CITY OF AUSTIN

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-95

Before WILLETT, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

DON R. WILLETT, *Circuit Judge*:

Several owners of shoreline property along Lake Austin (the Homeowners) sued the City of Austin over a 2019 ordinance declaring that their properties were—and always had been—within Austin’s full-purpose jurisdiction. Nearly six years later, the district court still has not ruled on all the City’s grounds for dismissal, let alone the merits. This is the case’s second trip to our court. After we previously reversed and remanded, the district court abstained under *Pullman* from ruling on the Homeowners’

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claims. That was error. The Homeowners raise a federal equal-protection claim—that Austin subjects them to full-purpose taxation but provides fewer services than other full-purpose residents receive—and that claim does not depend on any disputed question of Texas law. We REVERSE and REMAND.

I. BACKGROUND

This dispute concerns several properties along Lake Austin. In 2019, the City adopted an ordinance that (1) declared that the properties had always been within the City’s full-purpose jurisdiction, (2) repealed a 1986 Ordinance whose caption declared those properties to be within the City’s *limited*-purpose jurisdiction and provided that they would not be taxed until city services were provided,¹ and (3) subjected them to full taxation “because they are within City limits.”

The Homeowners sued, alleging that the 2019 Ordinance violates federal and state law. The City moved to dismiss the case on several grounds. The district court dismissed all claims without prejudice under the Tax Injunction Act.² On appeal, we reversed as to all but two of the Homeowners’ claims.³

¹ Texas home-rule cities exercise different powers depending on where the property falls. Within a city’s full-purpose jurisdiction, the city has full regulatory and taxing authority. *See* TEX. LOC. GOV’T CODE § 51.072. Within its limited-purpose jurisdiction, the city may exercise some regulatory authority but may not tax the property and need not provide full city services there. *See id.* § 43.130(c). Extraterritorial jurisdiction is even narrower: a city may regulate only “specific matters, including plats and subdivision of land, signage, public roads, and groundwater extraction.” *Elliott v. City of College Station*, 717 S.W.3d 888, 892 (Tex. 2025); *see also* TEX. LOC. GOV’T CODE § 212.003.

² *See* 28 U.S.C. § 1341.

³ *See Harward v. City of Austin*, 84 F.4th 319, 325 (5th Cir. 2023) (per curiam).

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On remand, the City reasserted its remaining grounds for dismissal: (1) the political-question doctrine, (2) *Pullman* abstention,⁴ (3) *Burford* abstention,⁵ and (4) failure to state a claim under Rule 12(b)(6).⁶ The magistrate judge recommended abstention under *Pullman* but did not address the City's other grounds for dismissal. Over the Homeowners' objection, the district court adopted that recommendation and dismissed the claims without prejudice. The court then entered final judgment, and the Homeowners appealed.

II. MOOTNESS

The City argues that the case is moot because Senate Bill 1844, passed by the Texas Legislature in 2025, provides a statutory mechanism for disannexation from the City.⁷

"A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'"⁸ But any "concrete interest, however small," keeps the dispute

⁴ See *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941).

⁵ See *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

⁶ See FED. R. CIV. P. 12(b)(6).

⁷ See Act of May 28, 2025, 89th R.S., ch. 235 (codified at TEX. LOC. GOV'T CODE § 43.141).

⁸ *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)).

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alive.⁹ The party asserting mootness “bears the burden of coming forward with the subsequent events that have produced that alleged result.”¹⁰

The case is not moot.

First, S.B. 1844 provides that “the landowners of the area” adjacent to a navigable waterway “are not eligible for a refund of taxes or fees.”¹¹ Any tax refund must be pursued through Texas’s tax-protest regime.¹² But the Travis County Appraisal District cannot adjudicate whether these properties lie within the City’s taxing jurisdiction, and the City cannot be joined in such a proceeding.¹³ The Homeowners therefore retain a financial stake in the validity of the 2019 Ordinance.¹⁴

Second, S.B. 1844 does not provide for automatic disannexation. The Homeowners say the City has “*partially* disannexed the properties of 127 Homeowners” and “rejected 31 Homeowners’ valid requests for disannexation.” The City has not shown otherwise. For those Homeowners,

⁹ *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307–08 (2012) (quoting *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 442 (1984)).

¹⁰ *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 98 (1993).

¹¹ TEX. LOC. GOV’T CODE § 43.141(g).

¹² Texas law channels disputes over the “identification of the taxing units in which the owner’s property is taxable” through the Tax Code’s protest process. TEX. TAX CODE § 41.41(a)(6). Appraisal review boards have exclusive jurisdiction over those protests. *See id.* § 25.22.

¹³ *See Bailey v. Travis Cent. Appr. Dist.*, No. D-1-GN-20-006182 (53rd Dist. Ct., Travis County, Tex. Jan. 26, 2021) (abating the case because the Tax Code prohibited joinder of the City). That proceeding remains stayed.

¹⁴ *See United States v. Washington*, 596 U.S. 832, 837 (2022) (“If there is money at stake, the case is not moot.”).

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a declaration that the 2019 Ordinance is unlawful could still determine whether their properties remain within the City’s full-purpose jurisdiction.

III. *PULLMAN* ABSTENTION

We turn next to *Pullman* abstention. We review *de novo* whether *Pullman*’s legal requirements are met, and we review the district court’s weighing of the equities for abuse of discretion.¹⁵

This case does not warrant *Pullman* abstention. The Homeowners allege that the City violates the Equal Protection Clause by treating them as full-purpose residents for taxation but not for municipal services. That federal claim does not turn on any disputed question of Texas law. The district court therefore erred in abstaining.

A. *Pullman*’s Requirements

Under *Railroad Commission of Texas v. Pullman Co.*, a federal court may, in narrow circumstances, defer deciding a federal constitutional claim while an uncertain state-law issue is resolved.¹⁶ Because “[a]bstention from the exercise of federal jurisdiction is the exception, not the rule,” it should be rare.¹⁷ We have described *Pullman* as requiring two things: “(1) a federal constitutional challenge to state action and (2) an unclear issue of state law that, if resolved, would make it unnecessary for us to rule on the federal

¹⁵ *Nationwide Mut. Ins. Co. v. Unauthorized Prac. of L. Comm.*, 283 F.3d 650, 652 (5th Cir. 2002).

¹⁶ *See* 312 U.S. at 500–01.

¹⁷ *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976); *see also City of Houston v. Hill*, 482 U.S. 451, 467 (1987) (“Abstention is, of course, the exception and not the rule.”).

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constitutional question.”¹⁸ Only the second is disputed here, and it has two parts.¹⁹

First, the state-law issue must matter to the federal claim. That is, resolving it must “render unnecessary or substantially modify the federal constitutional question.”²⁰

Second, the state-law issue must be genuinely uncertain—a “difficult and unsettled” question.²¹ The Supreme Court has described this inquiry as one of legal ambiguity,²² which requires an “uncertainty of meaning . . . that gives rise to any of two or more quite different but almost *equally plausible*

¹⁸ *Nationwide Mut. Ins. Co.*, 283 F.3d at 653.

¹⁹ Our older cases sometimes used “factors” language. *See, e.g., High Ol’ Times, Inc. v. Busbee*, 621 F.2d 135, 139 (5th Cir. 1980) (explaining that *Pullman* abstention “should be applied only when the court is convinced that at least one of the *Pullman* factors is present”). More recent cases state the requirements conjunctively. *See, e.g., Tex. Democratic Party v. Abbott*, 961 F.3d 389, 397 n.13 (5th Cir. 2020) (quoting *Moore v. Hosemann*, 591 F.3d 741, 745 (5th Cir. 2009)). We need not reconcile those formulations. Supreme Court precedent requires an uncertain state-law issue whose resolution could eliminate or materially alter the federal constitutional question.

²⁰ *Harman v. Forssenius*, 380 U.S. 528, 535 (1965); *see also Baran v. Port of Beaumont Nav. Dist.*, 57 F.3d 436, 442 (5th Cir. 1995) (*Pullman* abstention is appropriate only where “there is an issue of uncertain state law that is ‘fairly subject to an interpretation [by a state court] which will render unnecessary or substantially modify the federal constitutional question’” (quoting *La. Debating & Literary Ass’n v. City of New Orleans*, 42 F.3d 1483, 1492 (5th Cir. 1995))).

²¹ *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984).

²² *See Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971) (“Where there is no ambiguity in the state statute, the federal court should not abstain but should proceed to decide the federal constitutional claim.”); *Harman*, 380 U.S. at 535 n.9 (finding abstention inappropriate where there was no “material ambiguity” of state law).

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interpretations.”²³ Mere disagreement between the parties does not make state law uncertain.²⁴

Pullman sets a high bar—and does so on purpose.²⁵ It applies “only in narrowly limited” circumstances.²⁶ Abstention is not appropriate simply because no state court has yet provided a definitive answer to a state-law question.²⁷ State-court silence does not make a question “difficult and unsettled.” If ordinary interpretive tools yield a discernible answer,²⁸ the law is not uncertain, and the federal court should answer the question—not abstain so a state court can answer it first.²⁹

Even when those rigorous requirements are met, *Pullman* abstention remains discretionary. It “is not an automatic rule applied whenever a federal

²³ ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 425 (2012) (emphasis added).

²⁴ *See Haw. Hous. Auth.*, 467 U.S. at 237 (“[T]he relevant inquiry is not whether there is a bare, though unlikely, possibility that state courts might render adjudication of the federal question unnecessary,” but whether “‘the statute is of an uncertain nature, and is obviously susceptible of a limiting construction.’” (quoting *Zwickler v. Koota*, 389 U.S. 241, 251 n.14 (1967))).

²⁵ *Id.* at 236 (“*Pullman* abstention is limited to uncertain questions of state law because ‘[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.’” (quoting *Colo. River Water Conservation Dist.*, 424 U.S. at 813)).

²⁶ *Zwickler*, 389 U.S. at 248.

²⁷ *See Harman*, 380 U.S. at 534–35 (“If the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question, it is the duty of the federal court to exercise its properly invoked jurisdiction.”).

²⁸ The district court identified uncertainty but did not ask whether ordinary interpretive tools resolved the disputed state-law questions.

²⁹ *See Davis v. Mann*, 377 U.S. 678, 690 (1964) (“Where a federal court’s jurisdiction is properly invoked, and the relevant state constitutional and statutory provisions are plain and unambiguous, there is no necessity for the federal court to abstain pending determination of the state law questions in a state court.”).

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court is faced with a doubtful issue of state law; it rather involves a discretionary exercise of a court's equity powers."³⁰ And in exercising that discretion, a court may consider how long the case has been pending.³¹

B. *Pullman* Does Not Apply Here

The parties dispute the meaning and effect of the 1986 Ordinance. The Homeowners argue that the 2019 Ordinance unlawfully repealed it. The 1986 Ordinance is captioned as "DECLARING THE LIMITED PURPOSE JURISDICTION STATUS OF ALL SHORELINE PROPERTIES." Its body states that "the City of Austin has not regularly and routinely provided comparable municipal services" to those properties, that they "have never been taxed by the City of Austin," and that "certain services normally provided in limited purpose jurisdiction areas . . . have been long provided in this area." The Homeowners argue that those provisions established their properties' limited-purpose status, making the 2019 Ordinance unlawful under several federal and state laws.

The City reads the Ordinance differently. It argues that the body never expressly placed the shoreline properties in the City's limited-purpose jurisdiction. It also says the caption is irrelevant because a title does not bear on a law's meaning.³²

³⁰ *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964).

³¹ *See Mayor of Phila. v. Educ. Equal. League*, 415 U.S. 605, 628 (1974).

³² The parties dispute whether the caption matters to the Ordinance's meaning, an issue of Texas law we need not decide. *See Sanders v. Boeing Co.*, 680 S.W.3d 340, 348 (Tex. 2023) ("We agree, of course, that a statute's title can inform its meaning, but it 'cannot override the plain meaning of the underlying text.'" (quoting *Brown v. City of Houston*, 660 S.W.3d 749, 754 (Tex. 2023))); SCALIA & GARNER, *supra*, at 221–22 ("The title and headings are permissible indicators of meaning" so long as they are consistent with "the plain words of a text.").

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The district court found the 1986 Ordinance unclear because its body does not expressly address the shoreline properties' jurisdictional status. It also suggested that the Ordinance might violate the Texas Constitution's requirement that all property taxation be "equal and uniform."³³ But the district court did not apply ordinary rules of statutory construction to determine what the 1986 Ordinance means. Nor did it decide whether the 1986 Ordinance is "fairly subject" to a construction that violates the Texas Constitution.³⁴

We need not resolve those state-law disputes. Whatever the 1986 Ordinance means, the Homeowners' equal-protection claim does not turn on it—so its meaning cannot control the *Pullman* question before us.

The Homeowners claim that Austin taxes their properties as if they were within its full-purpose jurisdiction but denies them the services that go with that status.³⁵ Whether they can recover back taxes or obtain disannexation may affect their state-law claims and remedies. But those questions do not answer whether the Fourteenth Amendment permits Austin to impose those taxes while withholding those services.

The district court disagreed. It reasoned that the equal-protection claim "would be rendered moot by a state-court determination that, under state law . . . the provision of municipal services to the shoreline properties

³³ TEX. CONST. art. VIII, § 1(a).

³⁴ *Harman*, 380 U.S. at 535. The Texas Constitution forbids municipalities from imposing taxes except as "authorized by law or by their charters." TEX. CONST. art. XI, § 5(a). Texas law also prohibits cities from taxing property in their limited-purpose jurisdiction, *see, e.g.*, TEX. LOC. GOV'T CODE § 43.130(c), presumably reflecting the Legislature's judgment that cities cannot tax residents they cannot serve. The district court did not address either provision.

³⁵ *See* U.S. CONST. amend. XIV, § 1 ("[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.").

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was not required here.” But whether Texas law required the City to provide those services is a different question from whether the Fourteenth Amendment lets the City tax without providing them.³⁶ *Pullman* therefore does not apply.

We do not decide whether the Homeowners will prevail on their equal-protection claim. We hold only that *Pullman* abstention was not a proper basis for declining to decide it. If the claim fails, the district court can say so on the merits.

The district court dismissed the entire case on *Pullman* grounds without reaching the City’s other defenses. But because *Pullman* does not permit abstention on the equal-protection claim, the judgment cannot stand. We therefore reverse and remand the entire case.³⁷

* * *

The Homeowners filed this suit in January 2021. It is still at the pleading stage. The district court has twice dismissed it on threshold grounds without reaching the City’s remaining defenses or the merits. We reversed the first dismissal in substantial part. We reverse the second today. Three grounds remain undecided: the political-question doctrine, *Burford* abstention, and Rule 12(b)(6).

³⁶ See *McNeese v. Bd. of Ed. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 674 (1963) (“[P]etitioners assert that respondents have been and are depriving them of rights protected by the Fourteenth Amendment. It is immaterial whether respondents’ conduct is legal or illegal as a matter of state law.”).

³⁷ See *Batterman v. Leahy*, 544 F.3d 370, 375–76 (1st Cir. 2008) (remanding the entire case to the district court for further proceedings after concluding that “no single abstention doctrine, or probably any combination of them, would justify abstention for *all* of the counts”) (emphasis added).

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The Homeowners ask us to remand with instructions to reach the merits. We decline because “we are a court of review, not first view.”³⁸ We express no view on the City’s remaining grounds for dismissal. On remand, the district court should address those grounds in the first instance—and *together*, rather than send this case back to us one threshold issue at a time. As to *Burford*, we note only that abstention remains a narrow exception to the “virtually unflagging obligation” of federal courts to exercise the jurisdiction Congress has given them.³⁹

IV. CONCLUSION

This case is not moot. S.B. 1844 neither refunds the Homeowners’ taxes nor automatically disannexes their properties, so they retain a concrete stake in the validity of the 2019 Ordinance.

The district court erred in abstaining under *Pullman*. No matter how the 1986 Ordinance is read, the Homeowners’ federal equal-protection claim does not depend on resolving a disputed question of Texas law. The district court should have decided it.

We REVERSE the district court’s judgment and REMAND for consideration of the City’s remaining grounds for dismissal.

³⁸ *Ficher v. Bickham*, 70 F.4th 257, 260 (5th Cir. 2023).

³⁹ *Colo. River Water Conservation Dist.*, 424 U.S. at 817.