

# **Bond Case Briefs**

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## **PREEMPTION - TEXAS**

### **City of Austin v. Paxton**

**United States Court of Appeals, Fifth Circuit - December 4, 2019 - F.3d - 2019 WL 6520769**

City brought action against Texas Attorney General and Texas Workforce Commission, seeking to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

The United States District Court denied defendants' motion to dismiss for lack of subject matter jurisdiction. Defendants filed interlocutory appeal.

The Court of Appeals held that:

- Texas Attorney General lacked a sufficient connection, arising from compulsion or constraint, to enforcement of the challenged statute, as would be required for *Ex parte Young* exception to Eleventh Amendment sovereign immunity from suit in federal court, and
- Texas Workforce Commission, as a state agency, had Eleventh Amendment sovereign immunity from suit in federal court.

Texas city, by alleging that the challenged Texas statute was preempted by federal law, sufficiently alleged an ongoing violation of federal law, as element for *Ex parte Young* exception to Eleventh Amendment sovereign immunity from suit in federal court, in city's action against Texas Attorney General, seeking to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

Texas Attorney General lacked a sufficient connection, arising from compulsion or constraint, to enforcement of Texas statute for which a Texas city sought to enjoin enforcement, as would be required for *Ex parte Young* exception to Eleventh Amendment sovereign immunity from suit in federal court, in city's action to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers; Attorney General's enforcement authority was odd, in that enforcement apparently would be pursued as a defense in a private suit by city against a landlord who refused to abide by city's ordinance, with Attorney General intervening in such a suit to enforce the supremacy of state law, and other cases involving municipal ordinances, in which Attorney General had intervened to enforce the supremacy of state law, lacked any overlapping facts with the case at bar and were not even remotely related to city's ordinance.

Texas Workforce Commission, as a state agency, had Eleventh Amendment sovereign immunity from suit in federal court, with respect to Texas city's action to enjoin enforcement of Texas statute barring municipalities and counties from adopting or enforcing an ordinance or regulation prohibiting a landlord from refusing to rent to a potential tenant who would pay rent with federal housing vouchers.

