

CAUSE NO: 16-0137CV

JAMES FREDRICK MILES,	§	IN THE 87th DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.	§	LEON COUNTY, TEXAS
	§	
Defendant	§	

**TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.’S
PLEA TO THE JURISDICTION AND, SUBJECT THERETO, ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Texas Central Railroad & Infrastructure, Inc. (“TCRI”) files this Plea to the Jurisdiction and, subject thereto, Original Answer to the Original Petition and Request for Declaratory Relief (“Petition”) filed by James Fredrick Miles (“Mr. Miles”) and would respectfully show the Court as follows.

I. INTRODUCTION

TCRI will, using only private funds, construct the first high-speed passenger railroad in the United States. TCRI’s railroad will run at speeds up to 205 miles per hour, allowing passengers to travel between Dallas and Houston in only 90 minutes. In order to select the route for construction of the railroad, TCRI has asked landowners, such as Mr. Miles, to grant voluntary access to their properties for various surveys, inspections and evaluations. Mr. Miles declined that request, and (with no provocation from TCRI) filed this lawsuit. TCRI’s counsel has communicated to Mr. Miles’s counsel that the parties seem to agree regarding the scope of activities TCRI is statutorily entitled to conduct on Mr. Miles’s property, and in lieu of the voluntary survey permission form complained of herein, has asked if Mr. Miles would be willing to allow TCRI to conduct those

activities. There is no justiciable controversy that can be resolved in this litigation and TCRI asks the Court to dismiss Mr. Miles's petition.

II. PLEA TO THE JURISDICTION

In the Petition, Mr. Miles requests a declaratory judgment in accordance with Chapter 37 of the Texas Civil Practices and Remedies Code. A “[d]eclaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought.” *Bonham State Bank v. Beadle*, 907 S.W. 465, 467 (Tex. 1995). A controversy is not justiciable if it is unripe. *See Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) (holding that ripeness is a threshold issue “that emphasizes the need for a concrete injury for a justiciable claim to be presented.”). A case is not ripe when determining whether the plaintiff has a concrete injury depends on “contingent or hypothetical facts,” “events that have not yet come to pass,” or “uncertain or contingent future events that may not occur as anticipated or may not occur at all.” *Id.* at 852.

In his Petition, Mr. Miles incorrectly claims that “TCRI is attempting to enter Plaintiff’s Property to conduct unauthorized, unlawful activities” and that there is an “actual and justiciable controversy as to whether TCRI has the right to enter, under the auspices of court authority, Plaintiff’s [p]roperty to conduct the pre-condemnation surveys and procedures set forth in the Consent Form.” Pl.’s Pet. ¶¶ 15, 17. Mr. Miles seeks a declaration from this Court to the effect that the survey requests found in the Consent Form exceed the scope of survey activities allowed under Texas law. This is an invitation to issue an advisory opinion that the Court should not accept.

Simply put, the “Consent Form” is a **voluntary** survey permission form that was sent to Mr. Miles as part of a larger packet containing information on the project and the survey process in general. The Consent Form is broad. It asks for voluntary permission to undertake a broad range of

survey activities that TCRI might desire to undertake in the process of designing and siting its proposed-high speed railroad. There is nothing unlawful, unauthorized, unusual or unethical in making such a request. Making a voluntary request to enter onto Mr. Miles property to perform the activities in the Consent Form does not create grounds for a lawsuit.

Nevertheless, Mr. Miles, with some assistance from a group known as Texans Against High-Speed Rail, chose to sue under the assumption that TCRI would seek a temporary restraining order or temporary injunction to enforce the Consent Form. This was and is an incorrect assumption. TCRI has not threatened to sue Mr. Miles for his decision to not sign the Consent Form.¹ TCRI has not made any representation to Mr. Miles that if it were unable to reach a voluntary agreement to survey his property that it would seek a temporary restraining order or temporary injunction in which it would attempt to secure the right to conduct all of the activities contained in the Consent Form. That contingent event has not and will not occur—TCRI has no intention to sue Mr. Miles on the terms of the Consent Form. In fact, after receiving and reviewing Mr. Miles lawsuit, counsel for TCRI reached out to counsel for Mr. Miles with a modified request for the same survey and access rights that Mr. Miles' Petition appears to concede are allowable under the law. As part of that request, counsel for TCRI asked that this lawsuit be dismissed, given that TCRI is requesting access rights that Mr. Miles appears to concede it is entitled to exercise. Counsel for Mr. Miles has yet to respond to this request.

Succinctly stated, the Consent Form was and is a voluntary document. Mr. Miles did not sign it, and he incorrectly anticipated that his refusal to do so would trigger a lawsuit from TCRI in which it sought to enforce the terms of the Consent Form. TCRI has no intention to sue Mr. Miles

¹ Even if it had, it would not create a justiciable controversy. See *Texas Municipal Power Agency v. Johnston*, 405 S.W.3d 776 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

on the terms of the Consent Form. The issue is moot, and there is no ripe, justiciable controversy between the parties and Mr. Miles's Petition fails to demonstrate one. Accordingly, the Petition should be dismissed, as a matter of law, for lack of subject matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004).

**III. GENERAL DENIAL
SUBJECT TO PLEA TO THE JURISDICTION**

In accordance with Texas Rule of Civil Procedure 92, TCRI denies each and every, all and singular, the allegations contained in Mr. Miles's Original Petition and Request for Declaratory Relief and demands strict proof thereof by the appropriate legal standard.

IV. CONCLUSION & PRAYER

WHEREFORE, Defendant Texas Central Railroad & Infrastructure, Inc. respectfully requests that the Court grant its Pleas to the Jurisdiction, dismiss Plaintiff James Fredrick Miles's Petition, and grant Texas Central Railroad & Infrastructure, Inc. such other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Robert Neblett

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CERTIFICATE OF SERVICE

This is to certify that on this the 15th day of April 2016, a true and correct copy of the foregoing document was served via electronic mail to:

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