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October 7, 2022

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

RE: No. 22-0620; *Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District, By and Through Marya Crigler, Acting in Her Official Capacity as Chief Appraiser of Travis Central Appraisal District*

To the Honorable Members of the Court:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae* Texas Taxpayers and Research Association files this letter in the above-referenced cause in support of Texas Disposal Systems Landfill, Inc.'s motion for re-hearing.

Statement of Interest

The Texas Taxpayers and Research Association (TTARA) has a strong interest in this proceeding before the Court and wishes to express our deepest concerns for the negative ramifications it portends for the ability of property owners to pursue an appeal of an unequal appraisal of the owner's property.

In that vein, we offer the following thoughts on the important tax policy issue involved in the above referenced cause: the appropriate scope of review when a central appraisal district appeals an appraisal review board's order determining a property owner's claim of unequal appraisal, as prohibited by Art. VIII, § 1(a), Texas Constitution, and effectuated by the Property Tax Code.

TTARA is a non-profit, non-partisan membership-supported organization of businesses, trade associations, tax practitioners and individuals that endorse and advocate for sound state and local fiscal policy. Our more than 200 member companies come from a broad range of economic sectors and business forms.

For seventy years, TTARA (including its predecessor organizations the Texas Association of Taxpayers and the Texas Research League) has been recognized as the state's pre-eminent organization specializing in tax and fiscal policy and, as such, has long worked closely with legislators and executive officials in pursuit of a rational, balanced, and efficient system of taxation. Among our members are some of the largest property taxpayers in Texas and, thus, a quality system of ad valorem tax administration is vitally important to TTARA and to the Texas economy.

Consequently, TTARA has been an active, influential participant in the crafting and implementation of Texas property tax law, including adoption of the Property Tax Code in 1979 by the 66th Texas Legislature. We also have steadfastly defended the integrity of the Code against frequent incursions in both the Legislature

and the courts. In view of our longtime, intimate, and extensive participation in the formation of Texas' tax policy, we believe it is appropriate for us to comment on this critical property valuation appeal issue.

This letter brief has been prepared in the ordinary course of TTARA's operations. No fee has been paid for the preparation or filing of this letter brief.

Argument

Texas law gives a property owner two distinct bases for protesting the appraisal of the owner's property before the appraisal review board (ARB). The first, §41.41(a)(1), Tax Code, challenges the appraisal district's "determination of the appraised value of the owner's property." The second, §41.41(a)(2), Tax Code, alleges the "unequal appraisal of the owner's property." A property owner may protest an appraisal on both or only one of these grounds, and a determination of one does not determine the other. The purpose of a protest based on over-appraisal (i.e., a market value protest) is to assure that the appraisal district has adhered to the Tax Code's market value standard of appraisal. The purpose of a protest based on unequal appraisal is to enforce the equal and uniform standard embodied in Art. 8, § 1(a), Texas Constitution ("taxation shall be equal and uniform").

The evidence pertinent to each type of protest is likewise distinct. In a market value protest under §41.41(a)(1), the property owner claims that the appraisal district appraised the property above market value, that is, it over-valued the property. The

evidence in support of such a claim, for example, may be specific aspects of the condition of the property that lower its market value, inaccuracy in the data used by the appraisal district, or comparable sales in the area indicating that the owner's property has been over-appraised. The appropriate remedy for over-appraisal is to reduce the appraisal to a value consistent with market value based on that property's particular characteristics. *See* § 42.25, Tax Code (prescribing remedy for appeal based on appraisal in excess of market value).

For an unequal appraisal protest under §41.41(a)(2), the determinative evidence involves whether the property's appraised value "is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted." *See* § 41.43(b)(3), Tax Code. To show unequal appraisal, the property owner must establish that the owner's property was appraised above the median appraisal of comparable properties. For example, if the appraisal district appraises the property owner's home using the home's recent sales price but does not adjust the value of the comparable homes in the area accordingly, the district is guilty of unequal appraisal because it has appraised the owner's home at a higher value than that of the owner's neighbors' properties. The appropriate remedy for unequal appraisal based on a comparison of the appraised values of like properties, as TDS Landfill, Inc. claims, is to reduce the appraised value of the owner's property to the median level of appraisal of a representative number of comparable properties.

See § 42.26(a)(3), Tax Code. The market value of the property is irrelevant to this determination, as Texas courts have repeatedly held.

If a property owner is unhappy with the ARB's determination of either the property's market value or its level of appraisal—or both—the owner may appeal the ARB's order to district court pursuant to § 42.01, Tax Code. Because the generally informal ARB hearings are not governed by the procedural and evidentiary requirements of the Administrative Procedures Act and do not generate a record upon which an appeal may be made, the standard of review in district court is *de novo*. A property owner may appeal an ARB order to district court on five different grounds, one of which is the determination of a § 41.41 protest by the ARB. *See* § 42.01(a)(1)(A), Tax Code. The appraisal district, however, may only appeal an ARB order determining either a property owner's protest or a property owner's motion to correct the tax roll under § 25.25, Tax Code, (see § 42.02(a), Tax Code) and then only if the property has a value of at least $1 million and the appraisal district obtains written consent of the appraisal district board of directors to file the appeal. §§ 42.02(b), (c), Tax Code.

In our view, the court of appeals' opinion conflicts with the statutory scheme devised by the Legislature and should be reversed, first because it permits the appraisal district to proceed with an appeal in the absence of an ARB order determining market value, and second because it blurs the distinction between two

distinct, alternative grounds for a taxpayer protest and appeal. The plain language of § 42.02(a) restricts the appraisal district's right of protest to "an order of the appraisal review board" determining a taxpayer protest. As previously described, Texas law authorizes alternative grounds for protest that require distinct types of evidence with entirely different remedies. In this case, the only order issued by the ARB determined the unequal appraisal protest, not the market value protest. Even supposing that the appraisal district's appeal of the ARB's order is not barred by its failure to obtain written consent of the board as required by law, there is no statutory basis upon which the district may appeal a market value determination that was *never* made. The Legislature strictly limited the right of appeal of an appraisal district for good reason: property owners, big, medium, or small, should not be forced to relitigate (at great cost) ARB decisions against the government, which in many cases has superior resources compared to the property owner. The statutory requirement that the appraisal district board of directors consent in writing to an appraisal district appeal is part and parcel of the same policy, as is the provision allowing prevailing property owners to recover attorney's fees under certain circumstances. *See* § 42.29, Tax Code. These provisions and others form a larger statutory scheme designed to level the playing field for taxpayers and ensure that appraisal districts only appeal ARB orders they believe are clearly erroneous or fraudulent.

Finally, we are concerned that the Court's opinion could open the door to appraisal district appeals that are not currently authorized by the Tax Code and enable appraisal districts to obtain discovery of market value information irrelevant to the property owner's unequal appraisal protest. Texas courts have consistently held that an appraisal district may not obtain discovery of market value information from a property owner in an unequal appraisal appeal because, as we have noted, such information is irrelevant. Under the court of appeals' opinion, however, if the *appraisal district* appeals an ARB order determining a protest on the basis of unequal appraisal, the district could discover that information and use it to evade the ARB process altogether. As the Legislature designed it, this process can only be triggered by a taxpayer protest under § 41.41 or a taxing unit challenge under §41.03. If the appraisal district disagrees with the ARB, only then does a limited right to appeal exist. To the extent that the court of appeals permits the appraisal district to appeal something other than the ARB's order and drag a taxpayer into court to defend an issue the taxpayer did not pursue before the ARB, it turns the process on its head. If a tax policy change this significant is to be made, the Legislature ought to do it and not the courts.

Conclusion and Prayer

TTARA respectfully requests this Court to reverse the court of appeals' decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,531 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ George S. Christian

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on October 7, 2022. addressed as follows:

/s/ George S. Christian

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No. 22-0620

In the Supreme Court of Texas

TEXAS DISPOSAL SYSTEMS LANDFILL, INC.,

Petitioner,

v.

TRAVIS CENTRAL APPRAISAL DISTRICT, BY AND THROUGH MARYA CRIGLER, ACTING IN HER OFFICIAL CAPACITY AS CHIEF APPRAISER OF THE TRAVIS CENTRAL APPRAISAL DISTRICT

Respondent.

On Petition for Review from the
Third Court of Appeals, Austin
Case No. 03-20-00122-CV

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STATEMENT OF INTEREST[1]

The Texas Public Policy Foundation ("TPPF") is a nonprofit, nonpartisan research foundation dedicated to promoting and defending liberty, personal responsibility, and free enterprise throughout Texas and the nation. To advance these aims, TPPF provides academically sound research, policy recommendations, and advocacy. TPPF also fights government overreach through litigation, seeking to enforce constitutional and statutory limits on governmental authority.

This case implicates TPPF's interests because the decision below allowed an appraisal district to interject new issues into an appeal of a property tax protest despite statutory limits on the court's jurisdiction. This not only ignores the statutory scheme that was designed to give Texans more options when challenging their property taxes, but it will also discourage Texans from challenging unfairly high tax appraisals of their property. Accordingly, TPPF submits this amicus brief to discuss the limits on what an appraisal district can challenge on appeal and how the courts of appeals's decision, if allowed to stand, will have far-reaching negative consequences.

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[1] No fee was paid or will be paid for preparing this brief. *See* Tex. R. App. P. 11(c).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In this case, an appraisal district disregarded a statutorily mandated process for adjudicating appraisal protests and asserted a market-value claim over which the district court had no jurisdiction. This case thus provides the Court with an opportunity to clarify the Texas Tax Code's limits on a district court's jurisdiction over appeals from review board determinations and the difference between market-value and unequal-appraisal claims.

The parties' disagreement began when Texas Disposal Systems Landfill, Inc. ("Texas Disposal") believed the appraisal district's assessment of its property tax liability was wrong. Texas Tax Code § 41.41(a) provides property owners, such as Texas Disposal, the right to protest various determinations made by an appraisal district to a local appraisal review board. Texas Disposal ultimately elected to protest only the "unequal appraisal of [its] property," *id.* § 41.41(a)(2), and not the "determination of its appraised or market value," *id.* § 41.41(a)(1), or any other determination, *see id.* § 41.41(a)(3)-(9). The review board decided the only claim before it—the § 41.41(a)(2) claim—in Texas Disposal's

favor, ordering the property's "Equal Appraised Value" to be lowered to $2.8 million. Appellee Br., Appendix 6.

The appraisal district then appealed this order to the district court under Texas Tax Code § 42.02(1), which allows the appraisal district to "appeal an order of the appraisal review board determining . . . a taxpayer protest." In its appeal, the appraisal district challenged the order on the ground that it resulted in an unequal appraised value. *Travis Cent. Appraisal Dist. v. Tex. Disposal Systems Landfill*, No. 03-20-00122-CV, 2022 Tex. App. LEXIS 4248, at *2 (Tex. App.—Austin June 22, 2022, pet. filed). It also raised a new claim—a market-value claim—and argued that the $2.8 million appraisal was below market value. *Id.* Texas Disposal filed a plea to the jurisdiction, arguing the district court had no jurisdiction over the market-value claim because the review board did not issue an order that determined market value. *Id.* The district court agreed and granted the plea to the jurisdiction as to the appraisal district's market-value claim. *Id.*

Unhappy with the district court's ruling, the appraisal district turned to the court of appeals. The court reversed the district judgment. *Id.* at *1. It reasoned that the appraisal district was "not challenging the

[review board's] market value determination," but rather was challenging the review board's "appraisal value determination on the ground that it [was] below market value." *Id.* at *15. Accordingly, it concluded the district court had jurisdiction to consider the market-value claim. *Id.*

This reasoning is flawed. Under the statute, the appraisal district may only appeal from the review board's order. And here the review board's order included only an unequal-value determination under Texas Tax Code § 41.41(a)(2)—it did not include a market-value determination under § 41.41(a)(1). The district court therefore lacks jurisdiction to consider a market-value claim that was not raised by the taxpayer or decided by the review board.

What is more, the court of appeals's conclusion that the district court has jurisdiction to consider the market-value claim will hurt property owners and the Texas economy. Because the court's decision will embolden appraisal districts to raise new claims against property owners on appeal, it will make challenging property taxes more burdensome and uncertain. This, in turn, will lead to fewer property tax

protests and therefore cause more unfairly high appraisals to remain intact, which will increase the costs of operating a business in Texas.

This Court should thus grant review to enforce statutory limits on the district court's jurisdiction and to protect the Texas economy.

ARGUMENT

I. The Court of Appeals Wrongly Concluded the District Court Had Jurisdiction over a Market-Value Claim, Because It Misunderstood the Statutory Scheme.

The court of appeals disregarded the concerns raised by amici, reasoning amici's concerns that it was improperly merging the market-value and unequal-appraisal claims were irrelevant to the jurisdictional inquiry. *See Tex. Disposal*, 2022 Tex. App. LEXIS 4248, at *18-19. This conclusion is fundamentally flawed and reflects the court's misunderstanding of the statutory scheme that limits the district court's jurisdiction. Because Texas Disposal protested only the unequal appraisal of its property and the review board determined only the equal-appraisal value, the appraisal district could appeal only that equal-appraisal value determination. That is, there was no determination of "appraised or market" value to appeal—only an unequal-appraisal determination. Accordingly, the district court had no jurisdiction over

the appraisal district's market-value claim under the Texas Constitution and Texas Tax Code.

A. The Texas Tax Code limits the district court's jurisdiction over appraisal disputes.

Although district courts are courts of general jurisdiction, the Texas Constitution allows their jurisdiction to be constrained by statute. The Texas Constitution provides that "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions . . . *except* in cases where exclusive, appellate, or original jurisdiction *may be conferred by* this Constitution or *other law on some other . . . administrative body*." Tex. Const. art 5, § 8.

For appraisal disputes, the Texas Tax Code is the "other law" that constrains the district court's jurisdiction and confers jurisdiction on local appraisal review boards. *See id.* Chapter 41 vests appraisal review boards with exclusive original jurisdiction over appraisal protests. *See, e.g., City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607, 617-18 (Tex. App.—Austin 2016, no pet.) ("The Tax Code is a pervasive regulatory scheme, vesting appraisal review boards with exclusive jurisdiction to decide protests and challenges as permitted under chapters 41 and 42."). The Tax Code, however, does not completely

deprive the district court of jurisdiction. Instead, Chapter 42 grants the district court appellate jurisdiction over "an order of the appraisal review board determining . . . a taxpayer protest." *See* Texas Tax Code § 42.02(1).

Because the district court's jurisdiction, as relevant here, is limited to appeals of appraisal review board orders determining appraisal protests, the district court's jurisdiction is constrained by the statutory limits on the protests that a local appraisal review board can consider. Because appraisal protests are statutory causes of action, their scope is governed by the Texas Tax Code. Property owners and tax entities cannot bring any protest that they wish, nor do local review boards have jurisdiction to consider any protest. *See City of Austin*, 506 S.W.3d at 617-18 (describing the Texas Tax Code as providing a "limited statutory right to challenge certain actions of the appraisal district before a local review board"). Instead, the Texas Tax Code authorizes only certain legal challenges. Among the specific review board "actions" that a property owner can protest are "[1] in the case of land appraised[,] . . . determination of its appraised or market value; [or] (2) unequal appraisal of the owner's property." Texas Tax Code § 41.41(a). Depending on what

type of protest a property owner brings—a market-value protest, an unequal-appraisal protest, or both—the review board will render a decision regarding the appraised value or the unequal-appraised value (or both).

The district court's jurisdiction is then limited to reviewing the specific order being appealed. To be sure, the district court applies de novo review, *id.* § 42.23(a), but the standard of review does not change what is being reviewed: the review board's order, *id.* § 42.02(a). Accordingly, when the taxpayer brings a market-value protest and the review board order includes a "determination of the appraised value," *id.* § 41.41(a)(1), the district court may "fix the appraised value of property" because "the appraised value is at issue," *id.* § 42.24(1). In contrast, when taxpayer brings an unequal-appraisal protest and the review order decides the "unequal appraisal of the owner's property," *id.* § 41.41(a)(2), the district court may "enter the orders necessary to ensure equal treatment under the law" because "inequality in the appraisal of his property is at issue," *id.* § 42.24(2). Under the statute, the district court is limited to reviewing what was "at issue" before the local appraisal review board. *Id.* § 42.24.

B. The district court has no jurisdiction over the appraisal district's market-value claim.

Because only an unequal-appraisal protest was at issue before the review board, the district court's jurisdiction is limited to that claim. The district court thus properly dismissed the appraisal district's market-value claim, and the court of appeals erred by reinstating it.

Texas Disposal ultimately brought only an unequal-appraisal claim under § 41.41(a)(2); it did not bring a market-value claim or otherwise challenge the determination of the appraised value under § 41.41(a)(1). Accordingly, how the appraised value related to market value was not at issue. Instead, the only issue before the review board was whether the property was unequally appraised. *Cf. In re Catherine Tower, LLC*, 553 S.W.3d 679 (Tex. App.—Austin 2018, orig. proceeding) (concluding that information about market value was irrelevant to an unequal-value protest and thus not discoverable). As such, the review board decided only the "Equal Appraisal Value," which it determined was $2.8 million. Appellee Br., Appendix 6. Because the appeal is limited to that order under Texas Tax Code § 42.02(a)(1), the district court's jurisdiction is limited to that order: an unequal-appraisal determination.

The court of appeals misunderstood the review board's order and the statutory scheme, concluding every review board order necessarily includes a determination of the appraised value and hence market value. *See Tex. Disposal*, 2022 Tex. App. LEXIS 4248, at *19-20 (citing Texas Tax Code § 41.47(b)-(c)). It therefore reasoned that the appraisal district could challenge the review board's "appraisal value determination on the ground that it is below market value," even though the review board did not consider a market-value claim or determine an appraised value based on market value. *See id.* at *15.

But the court of appeals overlooked the statute's plain text and its repeated distinction between market-value claims and unequal-appraisal claims. Texas Tax Code § 41.47(b) simply authorizes the review board to correct the appraisal records if they are "incorrect in some respect raised by the protest" by "changing the appraised value" or "making other changes in the appraisal records that are necessary." It does not merge the separate grounds for a protest in § 41.41(a), nor does it expand the scope of the review board's review. What is more, § 41.47(c) only applies—and requires a review board to set the appraised value of the land and of the improvement—"[i]f the protest is of the determination

of the appraised value." Section 41.47(c) thus reinforces the distinction between a protest regarding the "determination of its appraised or market value" under § 41.41(a)(1) and a protest regarding the "unequal appraisal of the owner's property" under § 41.41(a)(2).

Therefore, a review board's order regarding an unequal-appraisal claim and an equal-appraisal value under § 41.41(a)(2) does not involve a "determination of the appraised or market value" under § 41.41(a)(1). That means "appraised or market value" is not at issue, and the district court has no authority to consider a market-value claim or fix the appraised value under § 42.24(1).

II. The Court of Appeals's Decision Will Have Far-Reaching Negative Consequences.

Although the Texas Legislature has amended the Texas Tax Code to make protesting property taxes easier for taxpayers, the court of appeals's decision makes unequal-appraisal protests more burdensome and uncertain. If allowed to stand, the court's decision will not only deter protests and harm property owners, but it will also harm the Texas economy.

The court of appeals's decision will disincentivize property tax protests and encourage abusive discovery practices. Such a result is

contrary to both a proper interpretation of the statutory framework, *see supra* Section I.A, and to legislative intent.

The Texas Legislature authorized unequal-appraisal protests to "facilitat[e] tax remedies for property owners," giving taxpayers a less burdensome option for protesting their taxes. *See City of*, 506 S.W.3d at 614-15. Specifically, it authorized taxpayers to bring an unequal-appraisal protest premised on comparable tax appraisals rather than challenging the underlying appraisal valuation or relying on market-value evidence. *See* Texas Tax Code §§ 41.41(a)(2), 41.43(b), 42.26(a); *see also In re Catherine*, 553 S.W.3d at 686-87. By bringing this type of protest, taxpayers should not need to marshal market-value evidence or worry about invasive discovery requests from the government.

Yet appraisal districts have a history of seeking sensitive, market-value information from taxpayers who bring an unequal-appraisal claim, likely seeking "to deter or punish taxpayers who avail themselves" of the unequal-appraisal remedy authorized by statute. *See In re Catherine*, 553 S.W.3d at 688-89. In recent years, courts of appeals have granted mandamus relief to protect taxpayers from overbroad discovery orders, which may have somewhat curtailed these abusive discovery tactics. *See*

id. at 689 (intending for the opinion to "provide some needed clarification as to the respective rights of Texas property taxpayers and local appraisal districts who serve them," especially since "Texas property taxpayers typically cannot afford to carry the fight" to the appellate level); *In re APTWT, LLC*, 612 S.W.3d 85, 92-93 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding) (holding the taxpayer did not need to produce "irrelevant information such as the price that [it] paid for the Apartments (stated in sales documents and closing statements) and the value of the Apartments stated in the appraisal").

The opinion below, however, will prompt an increase in intrusive discovery requests for market-value information and chill taxpayers from exercising their statutory right to bring a limited unequal-appraisal protest. After all, if appraisal districts can raise market-value claims in the district court—even though the review board considered only an unequal-appraisal protest—then an appraisal district can argue that market-value information will be relevant and is discoverable. This threat of "disclosure of sensitive financial information to taxing and other governmental authorities" as a price of bringing an unequal-appraisal

protest will discourage taxpayers from bringing such protests. *See In re Catherine Tower, LLC*, 553 S.W.3d at 688.

Fewer protests means that more unequal and unfairly high appraisals will remain intact, which will increase the costs of operating a business in Texas. These costs will inevitably be passed onto Texas renters and consumers, who will have less money to take care of their families and less money for discretionary spending. Furthermore, the protests that do occur will become more expensive, which will likewise increase business costs in Texas. If property owners cannot limit their protest to a narrow unequal-appraisal claim, they will need to be prepared for the possibility of burdensome discovery and expensive discovery disputes. These increased costs, especially during the current period of high inflation, will limit Texas economic growth.

To protect the Texas economy and taxpayers' statutory right to bring a narrow unequal-appraisal protest, this Court should grant review to correct the court of appeals' misunderstanding of the Texas Tax Code.

PRAYER

The Court should grant the petition for review and reverse the court of appeals's judgment to hold that the district court lacked jurisdiction over the appraisal district's market-value claim.

Dated: October 10, 2022 Respectfully submitted,

/s/Robert Henneke

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word-count limitations in Rules 9.4(i)(2)(D) and 11(a) of the Texas Rules of Appellate Procedure because it contains 2,657 words, excluding the parts exempted by Rule 9.4(i)(1).

/s/Robert Henneke
ROBERT HENNEKE

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I certify that, on October 10, 2022, a copy of the foregoing document was electronically served on counsel of record through the electronic filing manager in accordance with Rule 9.5(b)(1) of the Texas Rules of Appellate Procedure.

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SENATOR PAUL BETTENCOURT
DISTRICT 7

October 11, 2022

Blake A. Hawthorne
Clerk of the Supreme Court of Texas
201 W. 14th St.
Austin, Texas 78701

RE: No. 22-0620
Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District, by and through Marya Crigler, Acting in her Official Capacity as Chief Appraiser of the Travis Central Appraisal District

To the Honorable Supreme Court of Texas:

I am writing this letter pursuant to Texas Rule of Appellate Procedure Rule 11 to express support of Texas Disposal Systems Landfill, Inc.'s Petition for Review.

As the former Harris County Tax Assessor-Collector (1998 – 2008) and as a current Texas State Senator, I have spent much of my life advocating for taxpayers and working with the State's property tax statutes. The Court of Appeals' opinion gives me significant concern and I urge review to avoid irreparable harm to Texas taxpayers.

The court's opinion determining that the district court had jurisdiction over Travis CAD's market value claim in an appeal of an ARB order determining a taxpayer's unequal appraisal protest is troubling, at best, and warrants review for the reasons discussed herein.

1. The opinion expands a chief appraiser's right to sue taxpayers far beyond the Legislature's intent.

The opinion expands chief appraisers' right to sue taxpayers in a district court well beyond the Legislature's intent, which is conveyed through the plain wording it chose to use in Section 42.02.

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The Legislature intentionally limited an appraisal district's right to appeal to an order of the ARB determining a taxpayer protest. But in this case, the ARB did not determine a taxpayer protest of excessive market value and did not issue an order determining the property's market value. Despite the absence of an ARB determination on market value, the Court of Appeals improperly found jurisdiction over the chief appraiser's alleged market value claim under Section 42.02. As such, the court effectively rewrote Section 42.02 to create additional grounds of appeal not contained in Section 42.02. It is the Legislature's job to write the statutes and courts' job to enforce those statutes as written. "Moreover, when [courts] stray from the plain language of a statute, [they] risk encroaching on the Legislature's function to decide what the law should be." *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999).

This expansion of the chief appraiser's right to sue property owners in district court places property owners in danger of being sued by the government on grounds never protested and never determined by the ARB. If not corrected, I believe the court of appeals opinion will have a chilling effect on taxpayers' efforts to pursue the nine grounds of protest made available to them in Section 41.41(a) of the Tax Code. That potential impact causes me considerable concern.

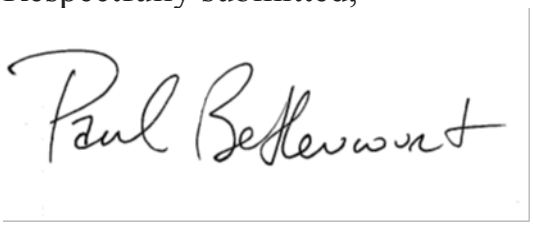
2. The opinion misconstrues trial de novo review.

The decision misconstrues the trial de novo standard of review, treating it as a vehicle for jurisdiction. The standard of review only establishes the type of review the district court should conduct of the ARB order. The nature of the review does not alter what may properly be reviewed. The terms of Section 42.02 control appraisal districts' right to appeal an ARB determination and the district court's jurisdiction. By expansively interpreting the statutory phrase "trial de novo," the opinion again ignored the plain meaning of the statutory terms selected by the Legislature and reached a conclusion unsupported by the legislative text.

For the reasons stated herein, I respectfully urge the Court to grant the petition for review.

In compliance with Rule 11, I state that no fee was paid or will be paid for the preparation of this amicus submission.

Respectfully submitted,



Paul Bettencourt
Texas State Senator, District 7

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I certify that on October 11, 2022, a copy of the foregoing amicus letter by Senator Bettencourt was served on all parties.

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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 22-0620

IN THE SUPREME COURT OF TEXAS

TEXAS DISPOSAL SYSTEMS LANDFILL, INC.,
Petitioner,

v.

TRAVIS CENTRAL APPRAISAL DISTRICT, BY AND THROUGH MARYA CRIGLER, ACTING IN HER OFFICIAL CAPACITY AS CHIEF APPRAISER OF TRAVIS CENTRAL APPRAISAL DISTRICT,
Respondent.

On Petition for Review from the
Third Court of Appeals at Austin, Texas
No. 03-20-00122-CV

Brief in Support of Petition for Review of Amicus Curiae Valero Refining – Texas, LP

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TO THE HONORABLE SUPREME COURT OF TEXAS

Valero Refining – Texas, LP ("Valero") submits this Brief as Amicus Curiae in support of Petitioner, Texas Disposal Systems Landfill, Inc.

STATEMENT OF INTEREST

Amicus curiae Valero paid the fees for preparation of this brief on their behalf in support of Petitioner's Petition for Review. Valero submits this brief pursuant to Rule 11 of the Texas Rules of Appellate Procedure.

Valero and its affiliates constitute the largest independent petroleum refiner in the world and the world's second largest renewable fuels producer. Valero has a substantial real estate presence in Texas, operating numerous refineries—including cogeneration units, a payment service center, corporate offices, a wind farm, pipelines, and eleven terminals throughout the state. As such, Valero is significantly affected by changes in the state's property tax laws. The shadow cast over taxpayers' rights and remedies by the opinion of the Third Court of Appeals is therefore of great concern to Valero and similarly situated taxpayers throughout the state.

Valero's interest in the consistency, reliability, and equity of the application of the Texas Tax Code has for years helped to shape and protect taxpayers' rights in ad valorem tax disputes in this state, and now spurs the necessity of this amicus curiae brief. Valero respectfully requests the Court to grant Petitioner's Petition for Review and reverse the opinion of the Third Court of Appeals.

ARGUMENT AND AUTHORITIES

I. A *Trial de Novo* Standard of Review Does Not Expand the Trial Court's Jurisdiction.

As statutory creations of the state, Appraisal Districts are vested only with those powers and rights explicitly granted them within the Texas Tax Code. *See, e.g., Bullock v. Statistical Tabulating Corp.*, 549 S.W.2d 166, 169 (Tex. 1977); *Wilson Commc'ns, Inc. v. Calvert*, 450 S.W.2d 842, 844 (Tex. 1970); *Morris v. Hous. Indep. Sch. Dist.*, 388 S.W.3d 310 (Tex. 2012).

By its terms, § 42.02(a) of the Texas Tax Code (the "Code") limits a chief appraiser's ability to appeal administrative decisions to instances where there is (1) a taxpayer protest or motion to correct the appraisal roll, (2) an appraisal review board ("ARB") determination of that protest, and (3) an order issued by the ARB determining that protest or motion.

Allowing appraisal districts to step outside the boundaries set by § 42.02(a) undermines the administrative appeal and judicial review scheme established by Chapters 41 and 42 of the Code. Such disregard for the scope of proper appeals also diminishes the long-standing protections for taxpayers provided by both the Texas Legislature and the courts of this state. Free from the constraints of limited review, appraisal districts may subject taxpayers to abuse for the exercise of their right to be fairly taxed, as discussed at II, *infra*.

By adopting a *trial de novo* standard, the Texas Legislature did not intend by § 42.23(a) to expand subject matter jurisdiction to claims which may not otherwise be heard. Just as a *de novo* review from a trial court ruling is limited to the scope of the issues pled and presented by the parties, the scope of *de novo* review from an ARB determination must be limited to those issues presented and determined at the administrative review—without deference to the prior determination.

For decades, appraisal districts such as Respondent argued—as Petitioner does here, and in stark contrast to Respondent-appraisal district's current argument—that trial courts have no jurisdiction where there was no ARB determination of a potential ground of protest. *See Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.*, No. 03-20-00122-CV, 2022 WL 2236109 (Tex. App.—Austin June 22, 2022, pet. filed) (mem. op.) (op. on reh'g).

And for as many years, this Court "repeatedly held that 'a taxpayer's failure to pursue an appraisal review board proceeding deprives the courts of jurisdiction to decide most matters relating to ad valorem taxes.'" *Cameron Appraisal Dist. V. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006) (citing *Matagorda County Appraisal Dist. v. Coastal Liquids Partners, L.P.*, 165 S.W.3d 329, 331 (Tex.2005); *Gen. Elec. Credit Corp. v. Midland Cent. Appraisal Dist.*, 826 S.W.2d 124, 125 (Tex.1992) (per curiam); *Webb County Appraisal Dist. v. New Laredo Hotel, Inc.*, 792 S.W.2d 952, 954–55 (Tex.1990); *In re Entergy Corp.*, 142 S.W.3d 316, 321–22 (Tex.2004)).

The language of the Code at that time supported the argument; taxpayers were provided no additional relief where they lacked an order from the ARB on a particular basis of protest. But the Legislature responded in 2019, when it codified § 42.231, providing taxpayers remedies by which a trial court may gain jurisdiction over an *ad valorem* suit, despite there being no ARB determination of a particular ground of protest when the suit was filed. The Legislature chose not to extend this jurisdictional fix to appeals by appraisal districts.

In the case of an appeal *by a taxpayer*, the Code now provides that the court's jurisdiction may—by agreement—extend to matters not determination by the ARB, or the trial court may remand that claim or protest for determination by the ARB in order to gain jurisdiction once a determination is made. *See* TEX. TAX CODE § 42.231. However, no such relief from the jurisdictional bar is provided to appraisal districts' appeals. If the Legislature intended the trial court's jurisdiction to be as malleable for appraisal districts, it would not have begun § 42.231 to limit that the "section applies *only to an appeal by a property owner* of an order of the appraisal review board…" *Id*. (emphasis added). Reading the Code as a comprehensive and cohesive body, it becomes indefensible that the Legislature intended no such jurisdictional limitation within § 42.02(a), when it surgically appended the Code for taxpayer appeals in a way that further elucidates how similar provisions otherwise are.

Because only the equal and uniform value was presented to and determined by the ARB[1], the market value could not be raised on appeal by the appraisal district, and the trial court had no jurisdiction over such a claim.

By allowing a new and separate claim by Respondent related to the market value of the property, the Third Court of Appeals misapplied the concept of *de novo* review, premised on a flawed theory of valuation historically abused by appraisal districts, and rejected not only by this Court, but by the Third Court of Appeals itself.

II. Market Valuation and Uniform Valuation are Distinct Bases of Appeal

The Code provides two distinct valuation theories as bases for property owners to protest the appraisal of their property before the ARB. The Third Court of Appeals conflates the theories, exposing taxpayers to harassment through discovery abuses and chilling taxpayers' exercise of their rights.

Under § 41.41(a)(1), property owners may challenge the "determination of the appraised value of the owner's property." The purpose of a protest under this basis is to assure that the appraisal district has adhered to the Tax Code's market value standard of appraisal. If a taxpayer believes that the appraised value exceeds the market value, the owner may protest to correct the appraisal roll. Separately, under § 41.41(a)(2), property owners may challenge the "unequal appraisal of the owner's property." The purpose of a protest under this basis is to ensure that similarly situated

[1] *See TDSL*, 2022 WL 2236109, at *1.

taxpayers are treated equitably, and their properties valued consistent with Article VIII, § 1(a) of the Texas Constitution. Property owners may protest an appraisal on either or both of these unrelated grounds, among others.

After an ARB hearing and determination of a property owner's chosen protest(s), § 42.01 of the Code allows the owner to appeal the ARB's order to district court if they are dissatisfied with the result. As discussed *supra*, § 42.02(a) allows a chief appraiser—after first obtaining approval—to appeal the order determining the taxpayer's protest.

Here, Petitioner-taxpayer ultimately protested and argued only the equal and uniform valuation of its property. *TDSL*, 2022 WL 2236109, at *1 There was never an ARB order on market value. *Id*. Nevertheless, Respondent filed suit on an ARB order as to the market valuation which did not exist.

Despite this, the Third Court of Appeals found that jurisdiction existed over the appraisal district's market value claim. By allowing the appraisal district to appeal a basis for which there was no protest, and for which there was no determination or order, the court's opinion undermines the finality that must accompany an ARB's determination.

Determining that the trial court had jurisdiction of the market value claim by virtue of a tangential relationship between the different appraisal valuations, the

Third Court of Appeals conflated two distinct challenges[2]—in contradiction of established caselaw, including its own jurisprudence. *See Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding that the trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted); *Duke Realty Ltd. P'ship v. Harris County Appraisal Dist.,* No. 14-15-00543—CV, 2016 WL 3574666, *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.) (recognizing an equal and uniform determination requires only a comparison of the appraisal of the property at issue with the median appraised value of comparable properties appropriately adjusted); *In re Catherine Tower*, 553 S.W.3d 679, 685-688 (Tex. App.— Austin 2018, orig. proceeding) (recognizing claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property's appraisal is consonant with its market value); *see also In re APTWT, LLC*, 612 S.W.3d 85 655 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding).

In its opinion in *Catherine Tower*, the court of appeals correctly identified that the appraisal district's requests—broadly related to market valuation when the market value was not at issue—were *at best* "a mere 'fishing expedition.'" *In re Catherine Tower*, LLC, 553 S.W.3d at 688. The court further identified—on the

[2] *TDSL*, 2022 WL 2236109, at *8.

basis of briefs by numerous *amici*—that such "discovery tactics are common among appraisal districts statewide," but "eluded appellate review because Texas property taxpayers typically cannot afford to carry the fight to that level." *Id*. at 688-89.

But now, the court has effectively found that *any* order determining a protest is now subject to appeal by the appraisal district on the basis of market value, without regard to the plain language of § 42.02(a) or the context provided throughout the Code. In so doing, the court of appeals again exposes taxpayers, often without the financial resources to combat such discovery abuses, to the same fishing expeditions. *See id.* The court of appeals' opinion at issue muddies any "clarification as to the respective rights of Texas property taxpayers and local appraisal districts who serve them" the previously provided. *See id*. at 689.

The court briefly analyzed in its opinion the various provisions of Chapter 42 which address the scope of review. *TDSL*, 2022 WL 2236109, at *7. Although it noted that "[section 42.21(a)] does not limit the issues of fact and law that may be raised," this determination is inconsistent with the language of that section. Reading further, § 42.21(a) does not merely provide that a party "must file a petition for review with the district court" an appeal of *an* order, it provides the petition must emanate from "a final order… *from which an appeal may be had*." TEX. TAX CODE § 42.21(a). The language implies a limitation as to which orders are appealable, thus over which a court might have jurisdiction.

The court further correctly noted that § 42.23(a) provides that "[t]he district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." *TDSL*, 2022 WL 2236109, at *7. But this offers no support for its decision, as courts trying general civil suits are also limited from trying cases over which they have no jurisdiction, even in a *de novo* review.

Similarly, the court points out that "[t]he statutory scheme requires that the ARB 'shall determine the protests and make its decision by written order," when opining that it is merely the "order," generally, being appealed. *Id*. (citing TEX. TAX CODE § 41.47(a)). But the court ignores that an order to correct the appraisal records in that manner may only be made if "the board finds that the appraisal records are incorrect *in some respect raised by the protest*." TEX. TAX CODE § 41.47(b). The ARB's order itself is thus constrained by the protest.

Taken together, the relevant provisions of the Code provides that:

1. An owner is entitled to identify for itself one or more grounds of protest, and to make such a protest before an ARB[3];
2. The ARB must "schedule a hearing *on the protest*"[4];
3. The ARB may issue an order to correct the appraisal records "[if]…the board finds that the appraisal records are incorrect *in some respect raised by the protest*."[5]; and
4. The chief appraiser may only appeal "an order of the [ARB] *determining… a taxpayer protest*.[6]

[3] TEX. TAX CODE § 41.41(a)(1), (a)(2)
[4] TEX. TAX CODE § 41.45 (emphasis added)
[5] TEX. TAX CODE § 41.47(b) (emphasis added)
[6] TEX. TAX CODE § 42.02(a)

The persistent theme of the appeal scheme is not the ARB's order, but the taxpayer's protest. That § 42.231 was added to ensure jurisdiction might be achieved not just from an order generally, but as the result of a particular protest only further illustrates the intent of the Legislature. Allowing the court of appeals' opinion to stand in contravention of the case law, and without regard to the statutory scheme established by the Legislature, invites abuse of taxpayers throughout the state, and must not be abided.

CONCLUSION AND PRAYER

For the above reasons, Valero respectfully requests that this Court grant the Petition for Review and reverse the decision of the Third Court of Appeals.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation TEX. R. APP. P. 9.4(i) because:

    - This brief contains 2,353 words, excluding the parts of the Brief exempted by TEX. R. APP. P. 9.4(i)(1) and (2)(B).

2. This Brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because:

    - This Brief has been prepared in a conventional typeface using Microsoft Word 2016 in a font no smaller than 14 pt.

/s/ David M. Hugin
David M. Hugin

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I certify that a true and correct copy of this motion was filed electronically and was served on counsel of record on October 14, 2022, pursuant to Texas Rule of Appellate Procedure 9.5.

/s/ David M. Hugin
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TEXAS APARTMENT ASSOCIATION

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October 25, 2022

Blake A. Hawthorne
Clerk of the Supreme Court of Texas
201 W. 14th St.
Austin, Texas 78701

RE: No. 22-0620
Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District, by and through Marya Crigler, Acting in her Official Capacity as Chief Appraiser of the Travis Central Appraisal District

To the Honorable Supreme Court of Texas:

Texas Apartment Association ("TAA") respectfully submits this letter supporting Texas Disposal Systems Landfill, Inc.'s Petition for Review. This letter is being submitted pursuant to Texas Rule of Appellate Procedure 11.

TAA is a non-profit statewide trade association that provides advocacy, education, and communication for the Texas rental housing industry. TAA serves all types of rental professionals, including property owners, builders, developers, property management firms, and service providers.

Four out of ten Texas families rent their homes and TAA's member companies provide more than 2.3 million of these homes and units across Texas. Our members pay more than $3.5 billion in property taxes annually on $150 billion in property value, helping to finance the public schools and pay first responders of Texas. The court of appeals decision holding that jurisdiction existed over TCAD's market value claim is of serious concern to TAA and its members. TAA urges reconsideration for the reasons discussed below.

- **The opinion effectively removed the constitutional right of TAA members to equal and uniform appraisals for taxation purposes by merging a market value claim with an equal and uniform claim**.

The court of appeals, by holding that an appraisal district can bring a market value challenge to determine the equal and uniform value, effectively merged the two separate and distinct claims into one. As a result, the opinion all but eliminated the constitutional right of TAA's members to equal and uniform appraisals for taxation purposes by allowing appraisal districts to inject a determination of the property's market value into an equal and uniform challenge. This holding is contrary to established Texas case law recognizing the separate nature of these two types of claims.

Until now, Texas courts have been consistent in holding that an independent appraisal of market value is not part of an equal and uniform challenge brought under Section 42.26(a)(3) of the Texas Property Tax Code and that establishing the property's market value cannot defeat a claim of unequal appraisal. *Harris County Appraisal District v. United Investors Realty Trust,* 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted); *Duke Realty Ltd. P'ship v. Harris Cty. Appraisal Dist.*, No. 14-15-00543-CV, 2016 WL 3574666, *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.) (recognizing an equal and uniform determination requires only a comparison of the appraised of the property at issue with the median appraised value of comparable properties appropriately adjusted).

Consistent with *United Investors* and its progeny, in 2018 and again in 2021, two appellate courts properly rejected appraisal districts' attempts to merge the separate and distinct claims into one. *In re Catherine Tower*, 553 S.W.3d 679, 685-688 (Tex. App.—Austin 2018, orig. proceeding) (recognizing claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property's appraisal is consonant with its market value); *see also In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (same).

TAA urges the Court to grant rehearing and employ the same reasoning used in *Catherine Tower* and *APTWT* to hold that the trial court correctly ruled there was no jurisdiction over TCAD's asserted market value claim.

- **The opinion ignores the plain wording of Section 42.02 and improperly expands the chief appraiser's ability to sue taxpayers.**

The decision ignores the plain wording of Section 42.02 of the Texas Property Tax Code and as a result expands the chief appraiser's right of appeal well beyond the plain and limiting language the Legislature utilized.

The language used by the Legislature limited an appraisal district's right to appeal to an order of the ARB determining a taxpayer protest. Here, it is undisputed that the ARB did not determine a taxpayer protest of excessive market value and never issued an order determining a taxpayer protest on market value.

This expansion of the chief appraiser's right to sue property owners in district court goes well beyond what the Legislature intended. The result is alarming and places property owners at risk of being sued by the government on grounds never protested and never determined by the ARB. As a result, the lower court's opinion will likely have a chilling effect on our members' pursuit of their various rights to protest set forth in Section 41.41(a) of the Property Tax Code because the opinion creates a fear that a protest will lead to being sued by an appraisal district on grounds never protested.

For the reasons set forth herein, the Texas Apartment Association urges the Court to grant review.

In compliance with Rule 11, I state that no fee was paid or is to be paid for preparing this amicus letter.

Respectfully submitted,

/s/ Sandy Garcia Hoy
Sandy Garcia Hoy
State Bar No. 24087759
General Counsel
Texas Apartment Association

Certificate of Service

I certify that on October 25, 2022, a copy of the foregoing amicus letter by Texas Apartment Association was served on all parties.

/s/ *Sandy Garcia Hoy*
Sandy Garcia Hoy
SBN 24087759

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October 20, 2022

Blake Hawthorne
Clerk of the Court
Supreme Court of Texas
201 W. 14th Street, Room 104
Austin, Texas 78701

Re: Amicus Curiae Letter for No. 22-0620, *Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District, by and through Marya Crigler, Acting in her Official Capacity as Chief Appraiser of the Travis Central Appraisal District*

To the Honorable Justices of the Texas Supreme Court:

The Texas Building Owners and Managers Association (Texas BOMA) submits this *amicus* letter in support of Petitioner Texas Disposal Systems Landfill, Inc. in the above-entitled case. We ask the Court to grant Texas Disposal Systems Landfill Inc.'s petition for review.

Statement of Interest

Texas BOMA represents the interests of commercial real estate owners in the State of Texas. The organization has more than 2,000 members, collectively supporting over 65,000 jobs and contributing more than $7.8 billion to Texas's economy.

Property taxes can be the largest operating expense for commercial property owners in Texas. Texas Disposal Systems Landfill Inc.'s petition for review presents issues that are critically important to building owners and managers throughout the State of Texas. The Court of Appeals decision marks a decided change in Texas law regarding property tax appraisals for which review is warranted.

Summary of Argument

Texas BOMA urges the Court to grant the Petition for Review for three primary reasons:

1. The Court of Appeals opinion creates a troubling expansion of governmental appraisal entities' ability to sue Texas property owners in district court, beyond the Legislature's intent set forth in Section 42.02 of the Texas Property Tax Code.
2. The rationale employed by the Court of Appeals improperly injects a market value determination in an equal and uniform claim, in conflict with longstanding case law holding that the property's market value plays no role in determining whether a property was unequally appraised under Section 42.26(a)(3) of the Texas Property Tax Code.
3. The opinion opens the door to overly intrusive and punishing discovery tactics by appraisal districts.

Argument

I.

The Texas Legislature, through Section 42.02 of the Texas Property Tax Code created a specific and limited right of appeal of appraisal review board orders determining taxpayer protests to chief appraisers. Chief appraisers have no right to sue taxpayers in district court on matters not previously heard or determined by an appraisal review board ("ARB").

In this case, there was no ARB order determining a taxpayer protest on market value. The ARB issued an order solely on the taxpayer's protest of unequal appraisal. Since there was no ARB order determining a taxpayer protest on market value, which could be appealed, there can be no jurisdiction over TCAD's market value claim.

Texas BOMA is concerned that if the opinion remains intact allowing governmental appraisal districts unfettered authority to sue Texas property owners in district court, it will discourage property owners from pursuing their rights to lawful tax appraisals.

II.

The Texas Constitution prohibits governmental appraising entities from favoring some Texas property owners over others in the government's appraisal of

real property. *See* TEX. CONST. art. VIII, § 1(a). When a governmental appraising entity discriminates among properties to the detriment of a property owner, it is that owner's right to demand equal treatment under the law.

To facilitate equality in taxation, the Texas Legislature crafted Texas Property Tax Code § 42.26(a)(3), which states that trial courts "shall grant relief" in an unequal appraisal claim if "the [government's] appraised value of the property exceeds the median [of the government's] appraised value of a reasonable number of comparable properties appropriately adjusted." *See* TEX. PROP. TAX CODE § 42.26(a)(3).

Texas Courts have consistently held the fair market value of the subject property plays no role in determining whether a property is unequally appraised under Section 42.06(a)(3). "'Determining whether the appraised value of property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted' requires only a comparison of the appraised value of the property at issue with the median appraised value of 'comparable properties appropriately adjusted.'" *Duke Realty Ltd. P'ship v. Harris Cty. Appraisal Dist.*, No. 14-15-00543-CV, 2016 WL 3574666, *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.); *In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding); *In re Catherine Tower*, 553 S.W.3d

679, 685-688 (Tex. App.—Austin 2018, orig. proceeding) ("The relief authorized by Section 42.26(a)(3), as Catherine correctly observes, does not hinge upon whether the subject property's appraisal is consonant with its market value."); *Harris County Appraisal District v. United Investors Realty Trust,* 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted). *See also Weingarten Realty Investors v. Harris County Appraisal District*, 93 W.W.3d 280, 287 (Tex. App.—Houston [14th Dist.] 2002, no pet. *Harris County Appraisal District v. Kempwood Plaza, Ltd*., 186 S.W.3d 155, 162 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

The Court of Appeals opinion conflicts with the longstanding precedent stated above by finding jurisdiction over TCAD's market value claim through a flawed rationale, explaining, "But TCAD's market value claim is not challenging the ARB's market value determination; TCAD is challenging the ARB's appraisal value determination [of unequal appraisal] on the ground it's below market value." Op. at *6. As a result, the opinion authorized an unprecedented injection of a market value determination into an equal and uniform determination. The consequence of this

faulty reasoning is the ultimate erosion of property owners' right to equal and uniform taxation.

III.

Two separate appellate circuits have recognized and rejected the punishing and abusive discovery tactics employed by governmental appraisal entities in unequal appraisal cases.

In 2018, the Third Court of Appeals held that market data or other evidence concerning factors that affect market value, such as sales price and lease terms, are not discoverable in an equal and uniform case brought under Section 42.26(a)(3) of the Texas Property Tax Code because the market value of the property is not in issue. *Catherine Tower,* 553 S.W.3d at 684. The Court further held that "such discovery tends to undermine the 42.26(a)(3) remedy altogether." *Id* at 688. The Court went on to say, "By threatening disclosure of sensitive financial information to taxing and other government authorities as a price of invoking Section 42.26 (a)(3), the tactic tends to deter or punish taxpayers who avail themselves of the remedy." *Id.* at 688.

More recently in 2020, the Houston Court of Appeals, Fourteenth District, held consistently with the Third Court that sales price and other financial information, such as lease terms, are not discoverable in an equal and uniform case because the information is "patently irrelevant" in determining an unequal appraisal

challenge where the market value of the property is not in issue. *In re APTWT,* 612 S.W.3d 85, 88-89, 92 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding, pet. filed).

A major concern of Texas BOMA is that the opinion of the Court of Appeals will now open the door to the punishing discovery tactics of appraisal districts in unequal appraisal cases previously rejected by Texas courts.

Texas BOMA thanks the Court for the opportunity to file this letter in support of Texas Disposal Systems Landfill, Inc. Texas BOMA is not a party to this case and has paid all fees associated with this letter.

Respectfully submitted,

By: /s/ *Sarah Lacy*
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COUNSEL FOR TEXAS BUILDING OWNERS AND MANAGERS ASSOCIATION

Certificate of Service

I certify that on October 20, 2022, a copy of the foregoing amicus letter by Texas Building Owners and Managers Association was served on all parties.

/s/ *Sarah Lacy*
Sarah Lacy

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Associated Case Party: Texas Taxpayers and Research Association

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Associated Case Party: Senator Paul Bettencourt

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POPP | HUTCHESON PLLC
The Property Tax Firm

November 8, 2022

Blake A. Hawthorne
Clerk of the Supreme Court of Texas
201 W. 14th Street
Room 104
Austin, Texas 78701

Re: No. 22-0620; *Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District*

Amici Curiae Letter Brief:
Texas Association of Realtors and Walgreen Co.

Dear Mr. Hawthorne:

Pursuant to Texas Rule of Appellate Procedure 11, Texas Association of Realtors, Inc. ("Texas REALTORS®") and Walgreen Co. hereby submit this letter brief as amici curiae in connection with the above-referenced matter. Texas REALTORS® and Walgreen Co. support the position of Texas Disposal Systems Landfill, Inc. (the "Landfill") and respectfully request that the Landfill's petition for review be granted. Please provide this letter brief to the members of the Court for their consideration.

Texas REALTORS® and Walgreen Co. have neither paid nor been paid to prepare this letter brief.

A. Statement of Interest

Texas REALTORS® is a statewide trade association made up of 72 local associations and approximately 150,000 members, known as REALTORS®, located across the state. Based in Austin, Texas REALTORS® has more than 70 employees. Texas REALTORS® represents REALTORS'® interests in all segments of the industry. Texas REALTORS® provides education and accreditation through certifications and designations for its members. By enforcing ethics and deciding grievances against members, Texas REALTORS® strives to elevate the standards of professional conduct for REALTORS®. Texas REALTORS® also assists with real estate transactions by drafting forms to help REALTORS® perform their services to Texas consumers. Finally, Texas REALTORS® advocates in litigation on issues that have statewide impact for its members and their clients.

Walgreen Co. owns, leases, and operates about 750 commercial retail properties throughout Texas, including many in the greater Austin area. These properties are typically freestanding retail buildings out of which "Walgreens" conducts its business and serves its customers. Like Texas REALTORS®, Walgreen Co. has an interest in the outcome of issues with statewide impact on commercial properties, particularly those in the retail space.

In order to ensure equal and uniform taxation of real property, Texas property owners rely on the unequal appraisal remedy found in Sections 41.43(b)(3) and 42.26(a)(3) of the Texas Tax Code. The Third Court of Appeals has jeopardized this unequal appraisal remedy by recognizing trial court jurisdiction over competing market value claims (demanding judgment for a higher appraised value) brought by appraisal districts, in this case Travis Central Appraisal District ("TCAD"). Its ruling directly conflicts with other appellate court decisions, including its own in *In re Catherine Tower, LLC*, that confirm and protect the distinction between unequal appraisal claims and market value claims. *See Harris Cty Appraisal Dist. v. United Inv'rs Realty Tr.*, 47 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2001, pet. denied); *In re Catherine Tower, LLC*, 553 S.W.3d 679, 686–87, 689 (Tex. App.—Austin 2018, orig. proceeding); *In re APTWT, LLC*. 612 S.W.3d 85, 89–90 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding). Accordingly, Texas REALTORS® and Walgreen Co. hereby urge the Court to grant the Landfill's petition for review and reverse the judgment of the Third Court of Appeals.

B. Equal and uniform appraisal always prevails over market value; thus, TCAD's market value claims are irrelevant and moot.

It has long been the law that, for Texas property tax purposes, equal and uniform taxation prevails over taxation at market value. *United Inv'rs Realty Tr.*, 47 S.W.3d at 654 ("If a conflict exists between taxation at market value and equal

and uniform taxation, equal and uniform taxation must prevail."); *Harris Cty. Appraisal Dist. v. Kempwood Plaza Ltd.*, 186 S.W.3d 155, 162 (Tex. App.—Houston [1st Dist.] 2006, no pet.). The priority of equal and uniform taxation over market value was confirmed in *In re Catherine Tower, LLC*, when the Third Court of Appeals granted mandamus relief to prevent discovery that conflated market value claims with equal and uniform claims. 553 S.W.3d at 686–87, 689 (quoting *United Investors*); *see also In re APTWT, LLC*, 612 S.W.3d at 89–90 (quoting *United Investors*).

The Third Court of Appeals' opinion conflicts with this longstanding precedent. In reversing the trial court's dismissal of TCAD's market value claim, the Third Court of Appeals explained that, even though the ARB only addressed an unequal appraisal protest:

> TCAD is raising by its pleading an issue of fact and law that the stated appraised value in the ARB order is below market value, and the statutory language does not preclude the district court from exercising its jurisdiction to try this issue raised by TCAD's pleadings.

Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc., No. 03-20-00122-CV, 2022 WL 2236109, at *8 (Tex. App.—Austin June 22, 2022). This passage creates confusion and will likely be cited for the proposition that an equal and uniform appraisal determination may somehow be challenged on the ground that it is below market value. That is not the law in Texas. An equal and uniform claim is

a distinct remedy that is separate and distinct from a market value claim. *In re Catherine Tower*, 553 S.W.3d at 686–87 ("The relief authorized by Section 42.26(a)(3), as Catherine correctly observes, does not hinge upon whether the subject property's appraisal is consonant with its market value.").

Additionally, the opinion of the Third Court of Appeals will very likely lead to the discovery abuse that its earlier opinion, *In re Catherine Tower*, intended to stop. 553 S.W.3d at 688–89. Appraisal districts would file a market value appeal under Section 42.02 of the Texas Tax Code for the purpose of discovering sensitive financial and sales information from the owner when the owner only challenged unequal appraisal of its property. This deters and punishes property owners who exercise their protest rights to ensure equal and uniform taxation through the threat of having to disclose to the government private and confidential information that is otherwise irrelevant to their equity challenge. This was not the intent of the Legislature.

The Third Court of Appeals sidestepped this longstanding precedent by focusing on procedural aspects of the litigation. It stated:

> These concerns and the cited cases, however, do not address the procedural posture of this appeal: our inquiry at this stage concerns the district court's jurisdiction over TCAD's market value claim, not the merits of the claim or the relevance of discovery.

Tex. Disposal Sys. Landfill, 2022 WL 2236109, at *7. It further explained that "procedural mechanisms" other than plea to the jurisdiction are available to taxpayers in this type of situation. This, however, ignores the reality that TCAD's market value claim is moot. The Third Court of Appeals even acknowledged:

> As its market value claim, **TCAD asserted that "[t]he market value of [the Landfill's] property is greater than the determination of the ARB"** and that "[t]he result of the ARB's determination is an appraisal of the subject property below market value[.]"

Id. at *6 (emphasis added). Through this assertion, TCAD has judicially admitted that its market value claim would yield a value above the ARB's equal and uniform determination, thus making it irrelevant.

Because equal and uniform taxation prevails over market value, as held in *United Investors* and its progeny, TCAD's market value claim is moot as there is no case or controversy. A ruling on TCAD's market value claim could not grant the relief requested by TCAD (i.e., raising the property's appraised value from its equal and uniform value to its market value) or otherwise affect the parties' rights or interests. *See Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 634–35 (Tex. 2021) ("A case becomes moot when (1) a justiciable controversy no longer exists between the parties, (2) the parties no longer have a legally cognizable interest in the case's outcome, (3) the court can no longer grant the requested relief or otherwise affect the parties' rights

or interests, or (4) any decision would constitute an impermissible advisory opinion.").

It would make no difference if the property's market value was higher than its equal and uniform value. Such a fact would be wholly irrelevant because the court would be required to apply the lower equal and uniform value as a matter of law. Accordingly, a court has no jurisdiction if the case is moot, and a plea to the jurisdiction is the correct vehicle to dispose of the lawsuit. *See Glassdoor, Inc. v. Andra Group, LP*, 575 S.W.3d 523, 527 (Tex. 2019) ("If a case becomes moot, the court must vacate all previously issued orders and judgments and dismiss the case for want of jurisdiction.").

C. Prayer

For these reasons, Texas REALTORS® and Walgreen Co. respectfully urge the Court to grant the Landfill's petition for review and reverse the judgment of the Third Court of Appeals. Thank you for your time and consideration of this letter brief.

Respectfully submitted,

Daniel R. Smith
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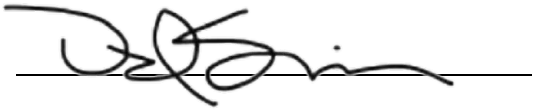
ATTORNEYS FOR TEXAS REALTORS® AND WALGREEN CO.

CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,584 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing amicus letter was served on counsel of record by using the Court's CM/ECF system on November 8, 2022. addressed as follows

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Allyson Cox on behalf of Daniel Smith
Bar No. 24013525
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Envelope ID: 69970685
Status as of 11/8/2022 10:51 AM CST

Associated Case Party: Texas Disposal Systems Landfill, Inc.

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Melanie Plowman		mplowman@adjtlaw.com	11/8/2022 10:40:56 AM	SENT
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Associated Case Party: Travis Central Appraisal District

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Associated Case Party: Texas Taxpayers and Research Association

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Associated Case Party: Texas Public Policy Foundation

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Associated Case Party: Senator Paul Bettencourt

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Associated Case Party: Texas Apartment Association

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STATE *of* TEXAS
HOUSE *of* REPRESENTATIVES

HUGH D. SHINE
DISTRICT 55
BELL COUNTY

December 13, 2022

Blake A. Hawthorne
Clerk of the Supreme Court of Texas
201 W. 14th St.
Austin, Texas 78701

RE: No. 22-0620, *Texas Disposal Systems Landfill, Inc. v. Travis Central Appraisal District*

To the Honorable Members of the Supreme Court of Texas:

Pursuant to Texas Rule of Appellate Procedure Rule 11, I am writing to express my support of Texas Disposal Systems Landfill, Inc.'s Petition for Review.

As a member of the Texas House of Representatives' Ways and Means Committee who has drafted and examined legislation concerning property taxes and as a member who has worked diligently with property tax groups and organizations for the past six years to ensure the State's property tax code protects the rights of Texas property owners, I have serious concerns about the Third Court of Appeals' decision.

The opinion created a disturbing expansion of a chief appraiser's right to sue Texas property owners in a district court, far beyond the Legislature's intent. In Section 42.02 of the Property Tax Code, the Legislature limited a chief appraiser's right to appeal to an order of the ARB determining a taxpayer protest. In this case, the ARB never made determination on a taxpayer protest of excessive market value and never issued an order determining market value. Yet, the Court of Appeals found jurisdiction over the chief appraiser's market value claim under Section 42.02.

HUGH.SHINE@HOUSE.TEXAS.GOV

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STATE *of* TEXAS
HOUSE *of* REPRESENTATIVES

HUGH D. SHINE
DISTRICT 55
BELL COUNTY

The court's failure to recognize Section 42.02's jurisdictional limits has dire consequences for Texas property owners. The holding allows appraisal districts to sue taxpayers on any protest ground, even when, like here, the protest ground was never raised by the taxpayer or resolved by the Appraisal Review Board. This improper expansion of jurisdiction over ARB orders is also likely to chill taxpayers' willingness to pursue their protest rights because doing so will open them up to lawsuits by appraisal districts on new and additional grounds.

In compliance with Rule 11, I state that no fee was paid or will be paid for the preparation of this amicus submission.

Thank you for your consideration. For these reasons, I urge the Court to grant review.

Respectfully submitted,

Hugh D. Shine
Texas State Representative, District 55

Certificate of Service

I certify that on December 13, 2022, a copy of the foregoing amicus letter by Hugh D. Shine was served on all parties.

Hugh D. Shine

HUGH.SHINE@HOUSE.TEXAS.GOV

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Gina Verlander on behalf of Melanie Plowman
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Associated Case Party: Texas Disposal Systems Landfill, Inc.

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Alexandra WilsonAlbright		aalbright@adjtlaw.com	12/13/2022 9:21:05 AM	SENT
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Associated Case Party: Texas Public Policy Foundation

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David Hugin		david.hugin@ryanlawyers.com	12/13/2022 9:21:05 AM	SENT

Associated Case Party: Travis Central Appraisal District

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Michelle Wenckens		michelle.wenckens@haynesboone.com	12/13/2022 9:21:05 AM	SENT

Associated Case Party: Texas Taxpayers and Research Association

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Associated Case Party: Senator Paul Bettencourt

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Associated Case Party: Texas Apartment Association

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