No. 02-24-00305-CV

In the Second Court of Appeals
Fort Worth, Texas

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS AT FLOWER MOUND, LP, JIM SOLINSKI and GLORIA SOLINSKI

Appellants

v.

DON SPENCER and DENTON CENTRAL APPRAISAL DISTRICT,

Appellees

APPEAL FROM CAUSE NO. 23-9526-481
481ST JUDICIAL DISTRICT OF DENTON COUNTY TEXAS
HON. CRYSTAL LEVONIUS PRESIDING

APPELLANTS' REPLY BRIEF

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TO THE HONORABLE SECOND COURT OF APPEALS:

COME NOW, Mitch Vexler, Catherine Vexler, Jim Solinski, Gloria Solinski, and Mavex Shops of Flower Mound, LP, (collectively, the "Taxpayers" or the "Appellants") file this Reply Brief, and respectfully request that this Court reverse the Pleas to the Jurisdiction entered by the District Court. In the alternative, Appellants ask that the case be remanded to the trial court so they may replead. Appellants would respectfully show this Court as follows:

ISSUES PRESENTED

I. Plaintiffs pleaded a valid *ultra vires* claim against Spencer and DCAD and neither is entitled to immunity for such a claim. As such, the trial court has jurisdiction over Plaintiffs' *ultra vires* and declaratory judgment claims.

A. The Texas Supreme Court has repeatedly held – and Defendant Spencer admits – that there is no immunity for a valid *ultra vires* claim.

On multiple occasions, including as recently as three months ago, the Texas Supreme Court has confirmed that a valid ultra vires action survives a plea to the jurisdiction. *See City of Buffalo v. Moliere*, 703 S.W.3d 350, 353 (Tex. 2024) (holding "immunity is not implicated if a party properly pleads an *ultra vires* claim against government actors in their official capacities") citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373–74 (Tex. 2009) (holding same) and *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 161 (Tex. 2016) (same).

Because this is black letter law, Spencer admits this. [Appellee Spencer's Brief at page 8 ("Spencer's official immunity does not, of course bar a suit that asserts a valid claim that he acted ultra vires, that is, without lawful authority")].

However, Spencer then attempts to mislead the Court by framing his argument around the fact that the *ultra vires* doctrine is not expanded by the Uniform Declaratory Judgment Act. [*See id.* at pages 7–8 arguing that "the Uniform Declaratory Judgment Act ("UDJA") 'is not a general waiver of sovereign immunity'" and citing the inapposite case of *Tex. Dep't of Parks and Wildlife v. Sawyer Trust.*[1] Immediately thereafter, however, Spencer again admits that "The law is clear that the UDJA waives governmental immunity . . . for *ultra vires* claims against state officials who allegedly act without legal or statutory authority or who fail to perform a purely ministerial act." [Appellee Spencer's Brief at page 8 citing *Mustang Special Util. Dist. v. Providence Village*[2]]. Thus, a claim for a declaration (under the UDJA or otherwise) that a government official acted *ultra vires*, is a valid claim under State law. *Southwestern Bell Telephone v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015) (holding, "a suit for injunctive and declaratory relief brought against an officer in her official capacity is not shielded by immunity from suit"). Indeed, a declaration of the ultra vires action and an injunction to prevent it on a

[1] 354 S.W.3d 384, 388 (Tex. 2011).
[2] 392 S.W. 3d 311, 316 (Tex. App.—Fort Worth 2012, no pet.).

going forward basis are simply different remedies for the same conduct. *Id.*

B. Disregard of the requirements of Section 23.01 of the Texas Tax Code is not discretion.

After his attempt at misdirection, Spencer turns to his argument that the acts allegedly in violation of Section 23.01 were discretionary, and thus, not subject to the *ultra vires* doctrine. *See City of Houston v. Houston Mem. Employees' Pension Sys.*, 545 S.W.3d 566, 576 (Tex. 2015). Spencer's argument centers upon that because some of his acts involved in the appraisal process require the use of discretion, he is free to disregard the law, even as to those parts of the process which are statutorily mandated. [*See* Appellee Spencer's Brief at page 8–10]. Spencer argues – without legitimate authority – that because the totality of the appraisal process includes aspects that involve discretion, he is free to ignore the statutory commandment related specifically to the use of mass appraisal methods. [*See id.*]. Of course, Spencer is incorrect, as no party – and especially no government actor – is free to simply ignore the law. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 374 (Tex. 2009) (holding "the basis for the *ultra vires* rule is that a government official is not following the law, so that immunity is not implicated"). Stated more directly, "governmental immunity does not bar *ultra vires* claims seeking to bring government officials into compliance with statutory or constitutional provisions." *Herrera v. Mata*, 702 S.W.3d 538, 541 (Tex. 2024) (internal marks omitted) quoting *Chambers-Liberty Cntys. Navigation Dist. v. State*, 575 S.W.3d 339, 348 (Tex.

2019).

A valid *ultra vires* action simply requires an allegation that the actor acted in violation of the law. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 161 (Tex. 2016). When a statute provides the government actor with discretion to act in more than one way (*i.e.* with discretion), the act is not ultra vires. *See id.* at 162 citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373–74 (Tex. 2009). In discussing *Heinrich*, the *Houston Belt* Court analyzed it as follows:

> To be sure, Heinrich's claim was against the officers for acting pursuant to, yet outside the limits of, a statutory grant of authority. In other words, Heinrich alleged that the officers, making the type of determination which they had authority to make, made that determination in a way the law did not allow. Thus, *Heinrich* cannot reasonably be read to limit *ultra vires* claims to those challenging ministerial acts, nor can it be read to shield every act undertaken by an officer who has some limited authority.

Houston Belt, 487 S.W.3d at 162. The same holds true here. Spencer had *some* discretion in determining the ultimate appraised value of the properties in question. However, that discretion does not shield an ultra vires claim against him for failure to follow a statute that specifically requires him to act in a certain way.

In *Houston Belt*, the City of Houston enacted a drainage fee ordinance and City employee Daniel Kruger was in charge of determining whether a property was "benefitted" by the City's drainage system and, if so, what fees the benefitted property should pay to the City. *Id.* at 158–59. Kruger's determination of the fees to be paid turned on what percentage of the affected property contained "impervious

surface." *Id.* at 159. Both "benefitted property" and "impervious surface" were defined in the ordinance establishing the drainage fee system. *Id.* After receiving notices that their properties were being assessed drainage fees in excess of three million dollars, certain railroads filed an ultra vires suit against the City, complaining of Kruger's determinations as to both whether: (i) their properties were "benefitted properties" under the ordinance; and (ii) the percentage of "impervious surface" on each impacted property, which directly resulted in the fees levied against them. *Id.* at 159–60. The City responded with a plea to the jurisdiction and – as here – alleged that Kruger's authority to interpret the drainage fee ordinance and to determine the ultimate drainage fee assessed cloaked him with immunity under the argument that such decisions were discretionary and thus not subject to the *ultra vires* doctrine. *Id.* at 160. The Texas Supreme Court rejected the City's position and held that Kruger had no discretion to disregard the specific dictates of the ordinance, despite possessing some discretion concerning the assessment of drainage fees generally. *Id.* at 169.

The same situation is presented in this case. Section 23.01 of the Texas Tax Code expressly requires, "[i]f the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice (commonly known as "USPAP")." TEX. TAX CODE § 23.01(b). The use of the word "must"

makes compliance with this section mandatory, not discretionary or optional. *See Image API, LLC v. Young*, 691 S.W.3d 831, 841 (Tex. 2024) (holding "Section 32.705(d) is mandatory because it states that a statutorily required audit 'must be completed' within the time prescribed."). In their live petition, the Plaintiffs identified at least eight instances in which the 2023 appraisals performed by Spencer did not "comply with USPAP." [*See* Plaintiffs' First Amended Petition at pages 9, 10]. Because Spencer is directed by statute (*i.e.* he "must") comply with USPAP and Plaintiffs have alleged that he did not do so, Plaintiffs have stated a valid *ultra vires* action. *Houston Belt*, 487 S.W.3d at 169.

C. Because neither party submitted evidence in relation to the plea to the jurisdiction, the only question is whether the Plaintiffs alleged facts sufficient to support an *ultra vires* claim.

When a jurisdictional challenge relies solely on the petition (i.e. when neither party submits evidence), the court must decide if the facts, taken as true and liberally construed in the plaintiff's favor, state a valid ultra vires action. *See Perez v. Turner*, 653 S.W.3d 191, 201 (Tex. 2022) (noting that the allegation alone – not the ultimate correctness of the allegation – is the relevant inquiry when the pleadings are challenged). As the Texas Supreme Court explained only a few months ago:

> When, as in this case, a jurisdictional plea rests solely on the sufficiency of the pleadings, courts must "determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). We construe the pleadings liberally in favor of the pleader. *Id.* In addition, a plaintiff "should be afforded

> the opportunity to amend" if the challenged jurisdictional defect may be cured with further factual allegations. *Tex. Tech Univ. Sys. v. Martinez*, 691 S.W.3d 415, 419 (Tex. 2024). We grant a jurisdictional plea challenging the pleadings only if the pleadings "affirmatively negate" jurisdiction. *Hous. Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 160 (Tex. 2016). The trial court's ruling on a plea to the jurisdiction is a question of law we review de novo. *Id.*

Herrera v. Mata, 702 S.W.3d 538, 541 (Tex. Dec. 6, 2024). Here, the Plaintiffs pleaded that the Denton Central Appraisal District (acting through Spencer) violated and continue to violate Section 23.01(b) of the Texas Tax Code by ignoring that section's express requirement that "the mass appraisal standards must comply with [USPAP]." [See Plaintiff's First Amended Petition at pages 8–12]. The Plaintiffs sought both declaratory and injunctive relief for these wrongful actions. [*Id.*]. The ultra vires plaintiff only needs to plead the violations of the actor at this stage. *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 169 (Tex. 2016).

In determining that the railroads had properly alleged an ultra vires action, the *Houston Belt* Court observed:

> In their pleadings before the trial court, the railroads argued that Krueger's aerial photography approach – which they now characterize as, "if it is green, it must be pervious" – is necessarily unreliable: under it, anything green, even artificial turf, will be found to be pervious; anything brown, even sandy areas with no vegetation, will be found to be impervious. Thus, the railroads contended that Krueger's chosen method failed to produce results consistent with the ordinance's definition of "impervious surface." Their properties, they argued, contained significantly less impervious surface than Krueger had determined – indeed, they were "designed, engineered, and built so that

> [they] readily absorb[ ] water and allow[ ] water to percolate to the undisturbed underlying soil strata." The city countered that Krueger acted within his discretion in choosing to use aerial data, even if it ultimately resulted in improperly classifying pervious surfaces as impervious. Thus, the city argues that even if Krueger had determined brown grass was impervious, his determination would be protected by governmental immunity. However, the city assumes an incorrect view of the standard for alleging an *ultra vires* claim under *Heinrich*. **Under the proper standard, the railroads need only to allege that Krueger acted outside his discretion by using an unreliable or dissimilar method to classify their properties as impervious**. Here, we need not conclusively decide that aerial photography is dissimilar to digital map data or otherwise unreliable. In light of the railroads' allegations that use of digital map data would in fact yield a significantly lower area of impervious surface on their properties than Krueger's aerial-photography method, and that Krueger's chosen method led to an improper classification of areas not meeting the "impervious surface" definition as impervious, our standard of review leads us to infer unreliability and dissimilarity in this case. *See Heinrich*, 284 S.W.3d at 378; [*Texas Dep't of Parks and Wildlife v.*] *Miranda*, 133 S.W.3d at 226–27. Accordingly, construing the pleadings liberally in favor of the railroads, we find that the railroads' pleadings are sufficient to confer the trial court with jurisdiction over their claim that Krueger acted *ultra vires* in determining the impervious surface of their properties. The railroads' pleadings affirmatively allege that Krueger acted "without legal authority" in both his "benefitted property" and "impervious surface" determinations, and thus they have alleged viable *ultra vires* claims as to each. *See Heinrich*, 284 S.W.3d at 372, 378.

Houston Belt, 487 S.W.3d at 169. The same result is mandated here. Because the Plaintiffs alleged that DCAD and Spencer acted in contravention of the Tax Code, the Plaintiffs "have alleged viable *ultra vires* claims as to each" and that alone is sufficient to confer jurisdiction on the trial court. *Id.* Whether the Plaintiffs' allegations are ultimately correct or otherwise is an issue to be decided at a merits hearing and may not be resolved by the pleadings alone. *See Heckman v. Williamson*

Cty., 369 S.W.3d 137, 153 (Tex. 2012).

Although Defendant DCAD characterizes many of the words in Plaintiffs' live petition as either conclusions of law or argument, the facts pleaded by the Plaintiffs are clear. Plaintiffs have alleged: (i) that they each own property in Denton County [§§ 2.01 – 2.03]; (ii) that Denton county uses mass appraisal through a system known as PACS Appraisal [§ 4.08]; (iii) that DCAD and Spencer "manipulate" the data generated by the PACS Appraisal system by, among other things, "pulling data out of the [PACS] system" and "put it back again" [§ 4.08]; (iv) utilizing a Microsoft Excel spreadsheet to manipulate said data [§ 4.08]; (v) knowingly and fraudulently represented to the Comptroller which protests have been resolved and which are still pending [§ 4.06]; (vi) engaged in purported "workarounds" to manipulate data outside the PACS system [§ 4.08]; engaged in at least 10 enumerated deviations from USPAP standards [§ 5.04]; (vii) that, as a result of the foregoing, the 2023 appraised values calculated by the Defendants exceed the maximum amount allowed by law [§ 5.05]; and (viii) that Spencer and DCAD authorized and condoned the practices of DCAD that resulted in overappraisals [§ 6.03].

D. The fact that other parties were involved in the complete process of assessing, applying, and ultimately collecting property taxes does not render the Defendants immune for their own actions.

Appellee DCAD argues that because it (and Spencer) played only a partial role in the ultimate process of assessing and collecting taxes, they cannot be held liable for their actions. [*See* Appellee DCAD's Brief at page 15–22]. After explaining in detail how the property tax system functions and the various persons and government entities that play a role therein, DCAD argues that because it does not control the process from start to finish, it is not subject to review. [*Id.* at page 19]. In essence, DCAD's theory is summarized by its assertion that "the appraised values are not DCAD's." [*Id.*]. While it is true that other entities play a role in the ultimate determination and collection of taxes, that is no excuse to allow DCAD and Spencer to openly ignore that statutory mandates that govern their role in the process, including Section 23.01 of the Tax Code. This is especially true when, as here, the assessment performed by the Defendants provides the foundation upon which the actions of every subsequent actor rests. Indeed, if DCAD's theory were correct, no party would ever be accountable for its actions, so long as any other party was also involved in the process somewhere along the way. Each party could simply point at each other and claim that they are not "solely responsible" for the ultimate decision, and thus, are not accountable for the role they did play. Without question, this is not – and should not be – the law. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 374

(Tex. 2009) (noting that the reason for the existence of ultra vires claims is to correct a government official who is "not following the law.").

E. Because the acts of DCAD and Spencer were not discretionary, good faith plays no part in the Court's analysis.

When a government employee performs a discretionary act, she must act in good faith in order to be entitled to immunity. *See e.g. City of Lancaster v. Chambers*, 883 S.W.2d 650, 655 (Tex. 1994). This issue most often arises in cases in which immunity is expressly conditioned on both the exercise of discretion **and** a showing of good faith on the part of the actor. *Id.* at 653. However, this case involves an act for which a statute – specifically Section 23.01 of the Tax Code – provides mandatory guidance on how the act is to be performed. *See Image API, LLC v. Young*, 691 S.W.3d 831, 841 (Tex. 2024) (discussing mandatory statutory directives). Thus, there is no discretion involved and, as such, good faith is irrelevant to the Court's analysis.

F. So long as the Plaintiffs demonstrate they are entitled to some relief as to their claims, the trial court has jurisdiction to consider such claims, even if the Plaintiffs do not ultimately obtain all of the relief requested.

As relevant to the *ultra vires* action,[3] the Plaintiffs have pleaded a single claim – that the Court declare that DCAD and Spencer have violated – and will likely continue to violate Section 23.01 of the Texas Tax Code in appraising the properties in question. [*See* Plaintiffs' First Amended Petition at pages 8–12]. In connection with this claim, the Plaintiffs have sought various forms of relief, including declarations from the Court and prospective injunctive relief. [*Id.*]. Defendants base a jurisdictional challenge on the fact that the declarations could have the effect of requiring payment of money from the Government for acts committed in the past. [*See e.g.* Appellee Spencer's Brief at page 12]. Defendants then argue that the dismissal for want of jurisdiction must be upheld on the basis that one form of relief sought by the Plaintiffs may only be partially available. However, in reviewing a plea to the jurisdiction, the court is directed to evaluate the petition on a "claim-by-claim" basis (not as to each remedy). *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 153 (Tex. 2012). While the Plaintiffs agree that a petition that sought only relief barred by immunity may be subject to dismissal, the inclusion of one or more unavailable remedies cannot have the effect of requiring dismissal of the entire claim

[3] The Plaintiffs have also separately asserted a tax refund claim and a constitutionality challenge. Those stand apart from the ultra vires action described in this Section.

when at least one remedy requested in the petition is permitted. In this case, it is undisputed that if Plaintiffs' allegations that the failure to comply with USPAP standards is a violation of the Tax Code are correct, the Plaintiffs are entitled to prospective injunctive relief as a matter of law. *See e.g. Herrera v. Mata*, 702 S.W.3d 538, 541 (Tex. 2024) (holding "governmental immunity does not bar *ultra vires* claims seeking to bring government officials into compliance with statutory or constitutional provisions."). Whether other remedies are available under the same claim is an issue best resolved by the trial court.

II. The redundant remedies doctrine is not implicated in this case.

Spencer next turns to the redundant remedies doctrine to defeat the Plaintiffs case. [Appellee Spencer's Brief at page 12 citing *McLane Co., Inc. v. Texas Alcoholic Bev. Comm'n,* 514 S.W.3d 871 (Tex. App.—Austin 2017, pet. denied)]. However, the Defendants tortured reading of the redundant remedies doctrine would turn that doctrine on its head and render it a "no remedies" doctrine.

The facts of *McLane Co.* are illustrative of why the Defendants' argument must fail. *See generally id.* In *McLane Co.*, the corporation filed a Public Information Request to the Texas Alcoholic Beverage Commission (the "TABC"). *Id.* at 873. The TABC refused to provide the requested information and instead requested an opinion from the Attorney General as to whether withholding the information was permissible. *Id.* at 874. The Attorney General determined, with

two exceptions not relevant here, that withholding the information was not permissible. *Id.* Still unconvinced, the TABC filed suit against the Attorney General, as permitted by the Public Information Act. *Id.* McLane Co. intervened in this suit and requested a writ of mandamus from the trial court against the TABC also as expressly authorized by statute. *Id.* In addition to its request for a writ of mandamus, McLane Co. sought various declaratory judgments and an ultra vires claim against TABC and its public information officer. *Id.* In applying the redundant remedies doctrine, the Austin Court of Appeals noted that because the Legislature had expressly provided a remedy in this exact scenario – *i.e.* that McLane Co. could seek a writ of mandamus to obtain the information it alleged was wrongfully withheld – the declaratory judgment action and ultra vires claim were "redundant." *Id.* at 877. In stark contrast, the Defendants in the present case attempt to use the redundant remedies doctrine to argue that the Plaintiffs have no viable remedy. Importantly, the Defendants never point to an alternate means – such as the writ of mandamus in McLane Co. – that would provide the same relief to the Plaintiffs as the claim(s) alleged in their petition. The Defendants preferred remedy – challenging each year's taxes through the ARB process – fails for two reasons. First, the ARB is limited, in both knowledge and statutory authority, to address systemic misinformation provided to it by DCAD. Second, the ARB process is retroactive and provides no final remedy and does nothing to adjudicate the

correctness of future actions. *See Patel v. Texas Dep't of Licensing and Regulation*, 469 S.W.3d 69, 79 (Tex. 2015) (rejecting the redundant remedies doctrine and recognizing that a remedy merely addressing past actions is not redundant to a suit seeking prospective relief). Indeed, the Court in *Patel* recognized, and this case illustrates, why prospective injunctive relief is needed. *See id.* Otherwise, affected parties, such as Patel and the Plaintiffs, are stuck in a never-ending cycle of violations (or over-appraisals), requests for reviews, and, ultimately, actions in the district court. This is not only unfair, but it improperly punishes the taxpayer (or citizen) by subjecting him to repeated (and expensive) mistreatment by government actors.

III. Section 42.09 of the Tax Code does not provide an exclusive remedy in this circumstance.

A. Defendants begin from the mistaken premise that the Tax Code's exclusive remedies provision is applicable in this case, then bootstrap from there.

Defendants incorrectly start their argument with the assumption that the exclusive remedy provision of Section 42.09 of the Tax Code applies. This is incorrect. Section 23.01 of the Texas Tax Code provides:

> If the appraisal district determines the appraised value of a property using mass appraisal standards, the mass appraisal standards must comply with the Uniform Standards of Professional Appraisal Practice.

TEX. TAX CODE §23.01(a).

In relevant part, Section 42.09(a) provides:

> (the) procedures prescribed by this title for adjudication of **the grounds of protest authorized by this title** are exclusive, and a property owner may not raise any of those grounds . . . as a basis of a claim for relief in a suit by the property owner to . . . obtain a refund of taxes paid.

TEX. TAX CODE §42.09(a) (emphasis added). What the Defendants repeatedly ignore is that nowhere within the Property Tax Code[4] (*i.e.* "this title") does the statute provide grounds for protesting the failure of the appraisal district to comply with the requirements of Section 23.01(a) concerning mass appraisal. As set forth in the Appellants' petition, DCAD has repeatedly (and, Appellants contend, intentionally) manipulated mass appraisal numbers to artificially inflate Denton County property values and hide the evidence of so doing. Given these allegations – which must be taken as true at the pleading stage, there is simply no statutory methodology for even presenting such claim to an Appraisal Review Board, let alone obtaining a favorable value adjustment from the ARB.[5] More importantly, the exhaustion statute – Section 42.09(a) – does not require that this type of claim be exhausted by presenting it to the ARB. Indeed, neither of the briefs submitted by the Defendants attempts to explain what Section of the Property Tax Code would authorize the challenge set forth in the Plaintiffs' petition (*i.e.* that DCAD and

[4] The Property Tax Code is comprised of Chapters 1, 5, 6, 11, 21, 22, 23, 24, 25, 26, 31, 32, 33, 34, 41, 42, 42A, and 43 of the larger Tax Code.

[5] Notably, members of the ARB are volunteers and are not required to have any experience in real estate appraisal in general and are certainly not qualified to interpret and understand if an appraisal district has manipulated mass appraisal numbers. *See generally* TEX. TAX CODE § 6.41, et seq. (discussing the qualifications and disqualifying factors for ARB Members).

Spencer failed to follow Section 23.01). [*See generally* Spencer Appellee Brief; DCAD Appellee Brief]. Instead, both parties simply treat Section 42.09 as categorically applying to "all" challenges of the assessed value. (*Contra* TEX. TAX CODE § 42.09(a) only applying the exclusivity bar to claim that could have been made "under this Code."). Because Section 42.09 only requires that the grounds of protest "authorized by" the Property Tax Code be exhausted before pursuing the common law remedy of a refund and Appellants do not assert a ground that requires such exhaustion, reversal and remand of the Appellants refund claim is appropriate.

B. Furthermore, even if the exclusivity doctrine applies, it would not bar a claim for prospective or future relief under the ultra vires doctrine.

As discussed above, the ability to obtain prospective or future relief enjoining a government official from continuing to misapply (or simply ignore) the law is a valuable right. *See Patel v. Texas Dep't of Licensing and Regulation*, 469 S.W.3d 69, 79 (Tex. 2015). Without such a remedy, an effected party would be forced to wait to be cited in violation of the law, then limited to challenging that single citation. *Id.* This cycle could repeat indefinitely. *Id.* Of course, this would be both costly and inconvenient to the affected party who might, in certain circumstances, choose to forego the costs a challenge and instead submit to an improper application of the law. *Id.* The same is true in a property tax case. As DCAD explains, the property tax

appraisal, assessment, and collection process borders on the Byzantine. [*See* Appellee DCAD's Brief at pages 16–21]. At each step, the taxpayer is faced with the burden of convincing the decision maker to alter the initial determination of property value created by the appraisal district. [*See id.*]. This is often difficult – if not impossible – to accomplish. And, even when successful, requires the taxpayer to expend his or her resources, time, and money. [*Id.*]. If the matter proceeds to District Court, the taxpayer must pay for adequate representation or risk the risk of attempting to litigate *pro se*. Naturally, these consequences have the effect of generating compliance through simple inaction. Because this is fundamentally unfair, a taxpayer may seek the remedy of prospective injunctive relief. *Herrera v. Mata*, 702 S.W.3d 538, 540 (Tex. 2024) (holding, "[b]ecause the homeowners have pleaded facts sufficient to demonstrate the trial court's jurisdiction over their ultra vires claim, we reverse.").

CONCLUSION

For the foregoing reasons, the Court should reverse and remand this case to the trial court so that it may proceed on the merits. Alternatively, the Court should remand the case to the trial court so that Appellants may have an opportunity to replead their claims to demonstrate the trial's court's jurisdiction. *See Dohlen v. City of San Antonio*, 643 S.W.3d 387, 397 (Tex. 2022).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief was prepared using Microsoft Word. Relying on the word count function in that software, I certify that this brief contains no more than 4,850 words (excluding the cover, tables, signature block, and certificates).

/s/Ryan C. Gentry

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2025, a true and correct copy of the foregoing was sent e-file to all counsel of record. Additional courtesy copies were sent via email to: efarrar@pbfcm.com and bmefcalf@njdhs.com.

/s/Ryan C. Gentry