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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 25-0615

In the Supreme Court of Texas

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

Petitioners

v.

DON SPENCER and DENTON CENTRAL APPRAISAL DISTRICT,

Respondents

ON PETITION FOR REVIEW FROM
THE SECOND COURT OF APPEALS AT FORT WORTH
NO. 02-24-00305-CV

PETITIONERS' MOTION FOR RE-HEARING

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TO THE HONORBLE SUPREME COURT OF TEXAS

COME NOW, Appellants Mitch Vexler, Catherine Vexler, Mavex Shops of Flower Mound, LP, Jim Solinski, and Gloria Solinski (collectively the "Appellants" or the "Taxpayers") and file Motion for Rehearing pursuant to Rule 64.1 of the Texas Rules of Appellate Procedure. Appellants respectfully request that the Court request full briefing on the merits, grant Appellants' Petition for Review, reverse the Judgments of the Court of Appeals and the trial court, and remand this case for a trial on the merits. In so doing, this Court must reject the spurious argument that a taxpayer does not have a standing to protest a tax that is calculated – and thus collected – illegally. In support of these requests, Appellants would respectfully show the Court as follows:

SUMMARY OF THE ARGUMENT

I. The threshold question before the Court is whether Appellants had standing to bring their claims, and Appellants' entire lawsuit cannot be dismissed unless they lack standing for each claim alleged.

   A. The Taxpayers have standing because they have each suffered an individual injury.

II. Once the Appellants established standing, the Defendants had the burden to establish that the trial court lacked subject matter jurisdiction for some other reason, such as government immunity.

   A. The Appellants' claims are not barred by the alleged "exclusive remedy" doctrine.

   B. Governmental immunity is not available to defend against an ultra vires claim.

C. This Court has held that governmental immunity does not apply when a litigant asserts constitutional claims or claims seeking equitable relief.

D. The Courts must hold government officials liable when they openly disregard the law.

E. Disruption alone is no defense to an illegal act.

BACKGROUND

This case presents a dispute that has long confounded the trial courts and the Courts of Appeal.[1] Unfortunately, litigants, including Appellants, must continue to ask for this Court to intervene to help shape the most fundamental action between the government and its citizens – taxation. *See* Lee, "Boston Tea Party," ON THE RECORD, U.K. National Archives, available at: https://cdn.nationalarchives.gov.uk/documents/podcasts/on-the-record-boston-tea-party.mp3 (detailing the imposition of the Tea Act and other events that led to the Boston Tea Party and, eventually, the American Revolution). Invariably, taxpayers seeking to question the imposition of taxes against them have faced myriad obstacles enacted by the very legislative bodies they challenge and buttressed by common law created by the judicial branch. These roadblocks are often considered issues of

[1] Indeed, this Court has spoken on the interaction of standing and taxation on numerous occasions in the past five years, including the following cases: *Perez v. Turner*, 653 S.W.3d 191 (Tex. 2022); *Jones v. Turner*, 646 S.W.3d 319 (Tex. 2022); *In re: Dallas HERO*, 698 S.W. 242 (Tex. 2024), etc. In addition, a rudimentary Westlaw search reveals more than 100 such cases in the Court of Appeals. Indeed, yet another such case is currently pending before this Court. *See Busse v. South Texas Indep. Sch. Dist.*, No. 24-0782 (oral argument held on Nov. 5, 2025).

standing, immunity, or both. However, more recent cases have recognized that the authority of all branches of the Government stems from the will of the people – as expressed in both State and Federal Constitutions – and that such grant of authority may not be artificially defeated. *See e.g. Perez v. Turner*, 653 S.W.3d 191 (Tex. 2022) (recognizing that a party who suffered because of an illegal tax expenditure has standing to challenge that expenditure). Against this weighty backdrop, the Appellants humbly request that the Court reconsider their Petition for Review, reverse the judgments of both the Court of Appeals and the trial court, and remand some or all of Appellants' claims for adjudication on their merits.

I. Appellants clearly established standing.

Standing is a mandatory component of subject matter jurisdiction.[2] *State v. Naylor*, 466 S.W.3d 783, 787 (Tex. 2015). A court has no jurisdiction to consider a claim when a litigant lacks standing to assert it. *Id.* However, standing is considered on a claim-by-claim basis, and no court should dismiss an entire lawsuit unless the plaintiff(s) lack standing to bring all of the claims therein. *See Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 392 (Tex. 2000) (dismissing some claims for lack of standing, yet remanding the remaining claims for adjudication on the merits);

[2] While standing is a necessary component of subject matter jurisdiction, it is not the only component. In some cases, a court may lack subject matter jurisdiction, not because a lack of standing, but because some other doctrine deprives the court of such. This is most often found in sovereign and government immunity cases, which are discussed *infra*. *See Perez*, 653 S.W.3d at 198.

Heckman v. Williamson Cty., 369 S.W.3d 137, 152 (Tex. 2012) (holding that a "court must analyze the standing of each individual plaintiff to bring each individual claim he or she alleges when that issue is before the court.").

"[T]o establish standing, a plaintiff must plead a particularized, concrete injury, distinct from that of the public, which courts have the power to redress." *Perez*, 653 S.W.3d at 198. "The threshold standing inquiry 'in no way depends on the merits of the [plaintiff's] contention that particular conduct is illegal.'" *Id.* quoting *Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021). As this Court explained in *Perez*, all too often, trial courts conflate the issue of standing (whether the plaintiff has pleaded a cause of action particular to them) with the issue of the merits (whether such a claim is likely to succeed). *See Perez*, 653 S.W.3d at 198. Such was the case here. As in *Perez*, the Appellants undisputedly had standing because they pleaded an injury particular to themselves.

A. Standing requires a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court.

As mentioned previously, there is currently a case pending before this Court considering standing in the context to a challenge to the assessment of an ad valorem tax. *See Busse v. South Texas Indep. Sch. Dist.*, No. 24-0782 (oral argument held on Nov. 5, 2025). During oral argument in that case, Chief Justice Blacklock noted that the taxpayers in that case had the most basic form of standing recognized by the law

– they had their property taken. *See Id.* Oral Arg. at 17:10 "collection (of an illegal tax), as to each taxpayer, [ ] is a classic particularized injury." (Blacklock, C.J.).[3] Justice Young echoed his similar view. *Id.* at 9:23 (Young, J.). Furthermore, this Court's written decisions, including *Perez*, affirm that a taxpayer subject to an illegal tax has standing. *Perez*, 653 S.W.3d at 202 ("on the preliminary question of Perez's standing to bring such a claim, her reimbursement claim focuses discretely on the personal financial injury to her and seeks to redress it by getting her money back. We can discern no *standing* defect in such a straightforward claim . . ."") (emphasis as in original). Just like Perez, the Appellants have demonstrated that they have standing to pursue all of their claims challenging the illegal calculation and collection of ad valorem tax against their property. As such, dismissal of the entirety of the Appellants' lawsuit was improper.

[3] Video of this recent oral argument is available at:
https://www.texasbarcle.com/new/TXSupremeCourtVideo.asp.

II. Because the Appellants have established that they have standing to pursue claims challenging the calculation of ad valorem taxes assessed against them, the burden shifts to the defendant to assert some other issue that would deprive the trial court of subject matter jurisdiction.

Although the Appellants clearly have standing, the subject matter jurisdiction inquiry does not end there. *See id.* A court may still reject a claim – even one asserted by a plaintiff with standing – if the court is deprived of subject matter jurisdiction on some other grounds, such as government immunity. *Id.* "At the pleading stage, a plaintiff suing the government must plead facts that, if true, affirmatively demonstrate that governmental immunity either does not apply or has been waived." *Id.* at 203. "This is because the government retains immunity from suit unless the plaintiff has pleaded a viable claim." *Id.* As with standing, subject matter jurisdiction is determined on a claim-by-claim basis. *Herrera v. Mata*, 702 S.W.3d 538, 543 (Tex. 2024) (holding that "subject matter jurisdiction is a claim-by-claim inquiry"); see also *Thomas v. Long*, 207 S.W.3d 334, 338–39 (Tex. 2006).

A. None of Appellants' claims are barred by the "exclusive remedy" provision of Section 42.09 of the Tax Code. In the alternative, certainly not all of Appellants' claims are so barred.

Despite the Court of Appeals conclusion to the contrary, Section 42.09(a)(2) of the Tax Code is not a general, "exclusive remedy" for all things related to ad valorum taxation.[4] Indeed, the Court of Appeals paints with too broad of a brush in its efforts to stifle citizen protests of property taxation. As to a plaintiff – such as the Appellants – Section 42.09(a)(2) expressly 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 arrest or prevent the tax collection process or to obtain a refund of taxes paid.

TEX. TAX CODE § 42.09(a)(2). In interpreting Section 42.09, it is important to keep in mind that, "[t]axing statutes are construed strictly against the taxing authority and liberally for the taxpayer." *Morris v. Houston Indep. Sch. Dist.*, 388 S.W. 3d, 310, 313 (Tex. 2012). Thus, even if Section 42.09(a)(2) were construed to bar Appellants claim for a refund of taxes paid in the past, it says nothing about barring Appellants' claims for declaratory and prospective injunctive relief.

[4] *See Cameron Cty. Appraisal District v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006) (holding that "most" – which, by definition, is something less than "all" – matters related to ad valorem taxes are to be exclusively resolved through the ARB process).

However, even that interpretation is a bridge too far. As this Court noted just last term, there are times when what appears on its face to be an exclusive remedy is not, in fact, so limited. *See Hensley v. State Comm'n on Judicial Conduct*, 692 S.W.3d 184, 190 (Tex. 2024). In *Hensley*, the Court recognized that a plaintiff need not exhaust administrative remedies when the purported exclusive remedy would not fully resolve all of the plaintiff's claims. *Id.* at 194. In such circumstances, pursuit of the "exclusive" remedy "would be a pointless waste of time and resources." *Id.* This is especially true when the body administering the "exclusive" remedy lacks the authority to grant the relief the plaintiff seeks. *Id.* Central to this analysis is the fact that District Courts are presumed to have jurisdiction to resolve all legal disputes. *Id.* at 193. Although the exclusive remedy doctrine may limit this authority, it is overbroad to do so in every case in which an administrative remedy may exist. Often, pursuing an administrative remedy (as to some claims) and a judicial remedy (as to claims outside of the administrative process) leads to double work for the litigants, the administrative body, and the judicial branch. *See generally id.* In such cases, the better solution is to simply allow the District Courts – courts of general jurisdiction – to resolve all disputed issues.[5]

[5] This is especially pertinent when, as here, the administrative remedy is not an exclusive remedy, but merely a procedural hurdle for the plaintiff to clear before pursing a statutorily-authorized de novo review in a District Court. *See Hensley*, 692 S.W.3d at 193.

B. Governmental immunity is not available to defend against an ultra vires claim.

Because it is established that the Appellants have standing, their claims for ultra vires actions may not be dismissed on the grounds of governmental immunity. *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 161 (Tex. 2016). Indeed, in *Houston Belt & Terminal*, this Court expressly held that "while governmental immunity provides broad protection to the state and its officers, it does not bar a suit against a government officer for acting outside his authority—*i.e.,* an *ultra vires* suit." *Id.* citing *Texas Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 393 (Tex. 2011). In this case, the Appellants pleaded a viable ultra vires suit by specifically alleging that: (i) the Tax Code requires that mass appraisal be calculated in a specific manner (*i.e.* in accordance with USPAP standards); (ii) that the action to be taken was not discretionary; (iii) that the government employee failed or refuses to act in accordance with the law; and (iv) seeking to enjoin future violations of the same unlawful action. *See Sawyer Trust*, 354 S.W.3d at 393. As such, Appellants' ultra vires claims are not – and indeed cannot – be barred by government immunity. *Houston Belt & Terminal*, 487 S.W.3d at 161.

C. Governmental immunity is not available to defend against constitutional claims or a claim seeking equitable relief.

As recently as last term, this Court held that a claim asserting constitutional violations and seeking equitable relief is not barred by either government immunity or the exclusive remedies doctrine. *Hensley*, 692 S.W.3d at 193. As Chief Justice Blacklock noted in a recent oral argument, if a State official were to enact a clearly illegal tax – such as an income tax – there would be little question that a person against whom that tax is assessed would have standing to challenge the Constitutional violation. *Busse v. South Texas Indep. Sch. Dist.*, No. 24-0782 (oral argument held on Nov. 5, 2025) Oral Arg. at 17:52 (Blacklock, C.J.).

The Chief Justice's astute observations square directly with this Court's precedent, including in *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 75–76 (Tex. 2015). In *Patel*, the State conceded, and the Court confirmed, that "sovereign immunity is inapplicable when a suit challenges the constitutionality of a statute and seeks [ ][6] equitable relief." *Id.* Thus, both the ultra vires claims and the Constitutional challenges cannot be dismissed on sovereign immunity grounds,

[6] Although the *Patel* opinion includes the phrase "seeks *only* equitable relief," this is a distinction without a difference as the Court has also recognized that the Texas Rules of Pleading allow for multiple theories to be pleaded in the alternative, even if they are internally inconsistent with one another. *Herrera v. Mata*, 702 S.W.3d 538, 543 (Tex. 2024).

at least to the extent they seek equitable or prospective injunctive relief. *Id.* (constitutional claims); *Houston Belt & Terminal*, 487 S.W.3d at 161 (ultra vires).

D. No citizen – whether he is a civilian, a state employee, or the Governor himself – may ignore the law.

Although the issues presented in this case are nuanced and the parties discrete, this case stands for a far wider proposition – that no person is above the law. This universal truth is perhaps at its most profound when the actor undertakes an illegal action under the cloak of government authority. Courts should drag those who violate the rules into the light of day and let them be judged for their actions, against the backdrop of both statutory law and the Texas and United State Constitutions. Instead, far too many courts allow arcane concepts, like immunity, to shelter these bad actors – and the government entities who benefit from them – against the consequences of their actions. There is little debate that immunity serves a valid purpose – whether that is couched as protecting the public fisc or the idea that "the King can do no wrong." However, immunity not only foists the cost of such illegality upon the citizens, it prevents the real facts surrounding the government's (or the government employee's) actions from even coming to light in the first place. A reasonable balance can be – and has been struck – allowing citizens to prevent malfeasance going forward, without overburdening government coffers. However, when such doctrines are misapplied – as they were in this case – everyone suffers. It is without question that the judiciary has the right and duty to "say what the law

is;" it should do so in this case and remand the case to the trial court for further proceedings.

E. Disruption alone is no defense to an illegal act.

As a last hope, the Defendants here (as every government defendant does) assert that undoing any past taxes – or even requiring prospective changes to comply with the law going forward – is simply too great of a burden to impose on them. As multiple justices noted during oral argument in *Busse*, such arguments – if they have any validity at all – are not (and should not be) issues of subject matter jurisdiction. *See e.g. Busse v. South Texas Indep. Sch. Dist.*, No. 24-0782 (oral argument held on Nov. 5, 2025) Oral Arg. at 20:16 (Young, J.). Such arguments – even assuming they merit consideration[7] – would best be dealt with in the context of formulating an equitable remedy.

CONCLUSION AND PRAYER

Because the lower courts' decisions are legally erroneous and – if allowed to stand – endorse the proposition that Texas government employees are not required to follow the law, those decisions must be reversed and this case should be remanded to the trial court with instructions to deny the Respondents' pleas to the jurisdiction.

[7] The irony should not be lost that when the government – the entity that should be most liable to public scrutiny – comes into court, it is allowed to make this argument when such considerations would not even be considered in the context of any private litigation. For example, a small business sued for copyright infringement by a Forbes 50 company would not be heard to argue that complying with copyright law (or even litigating the matter) would be "totally disruptive to my business or family."

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 3075 words (excluding the cover, tables, signature block, and certificates).

/s/Ryan C. Gentry

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 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:

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