No. ______

IN THE

SUPREME COURT OF THE UNITED STATES

MITCHELL VEXLER, CATHERINE VEXLER,
JIM SOLINSKI, AND GLORIA SOLINSKI,
Petitioners,

v.

DON SPENCER, IN HIS OFFICIAL CAPACITY AS CHIEF APPRAISER OF DENTON CENTRAL APPRAISAL DISTRICT; DENTON CENTRAL APPRAISAL DISTRICT; AND MAVEX SHOPS OF FLOWER MOUND, LP,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

MITCHELL VEXLER
CATHERINE VEXLER
Petitioners, Pro Se
1913 Justin Road, Suite 117
Flower Mound, Texas 75028
214-725-9013 | 214-850-6999
mitch@mockingbirdprop.com
Catherine@mockingbirdprop.com

JIM SOLINSKI
GLORIA SOLINSKI
Petitioners, Pro Se
4529 Mahogany Lane
Copper Canyon, Texas
75077
210-825-2306
Jesolinski@stoneglazing.com

Designated correspondence contact: Mitchell Vexler

QUESTIONS PRESENTED

1. Whether the Due Process Clause permits a State to make an administrative remedy exclusive when the designated tribunal lacks authority to grant the prospective relief sought, leaving no state court able to adjudicate the claim.

2. Whether a federal due-process objection to a state court's final foreclosure of all available remedies is timely under 28 U.S.C. § 1257 when the objection could not become complete until the state court of last resort denied rehearing.

PARTIES TO THE PROCEEDING

Petitioners are Mitchell Vexler, Catherine Vexler, Jim Solinski, and Gloria Solinski, each an individual who was a plaintiff and appellant below. Respondents Don Spencer, in his official capacity as Chief Appraiser of the Denton Central Appraisal District, and the Denton Central Appraisal District were defendants and appellees below. Mavex Shops of Flower Mound, LP was a co-plaintiff and appellant below but does not join this petition; under Rule 12.6, it is listed as a respondent. Mavex is aligned with Petitioners on the relief requested.

RULE 29.6 STATEMENT

No Petitioner is a nongovernmental corporation. Mavex Shops of Flower Mound, LP is a party below but is not a petitioner and makes no disclosure through this filing.

STATEMENT OF RELATED PROCEEDINGS

Vexler v. Spencer, No. 23-9526-481, 481st Judicial District Court, Denton County, Texas (order granting Spencer's plea entered May 2, 2024; final judgment entered May 8, 2024; signed order denying the motion for new trial entered July 10, 2024).

Vexler v. Spencer, No. 02-24-00305-CV, Court of Appeals for the Second District of Texas (judgment entered May 1, 2025).

Vexler v. Spencer, No. 25-0615, Supreme Court of Texas (petition for review denied October 24, 2025; rehearing denied May 8, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Court of Appeals for the Second District of Texas, left undisturbed by the Supreme Court of Texas.

OPINIONS BELOW

The memorandum opinion of the Court of Appeals for the Second District of Texas is unreported and available at 2025 WL 1271691. Pet. App. 1a-26a. The court entered judgment on May 1, 2025. Pet. App. 27a-28a. The Supreme Court of Texas denied review on October 24, 2025, and denied rehearing on May 8, 2026. Pet. App. 32a-33a.

The trial court entered an order granting Spencer's plea on May 2, 2024, a final judgment on May 8, 2024, and a signed order denying Petitioners' motion for new trial on July 10, 2024. Pet. App. 29a-31a.

JURISDICTION

The court of appeals entered judgment on May 1, 2025. The Supreme Court of Texas denied discretionary review on October 24, 2025, and denied a timely motion for rehearing on May 8, 2026. Pet. App. 32a-33a. Under Rule 13.3, the time to seek certiorari runs from the denial of rehearing. This petition is timely if filed on or before August 6, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

Petitioners preserved throughout the state proceedings the operative remedial issue: they sought prospective relief, contested the application of Texas Tax Code § 42.09, and identified the appraisal review board's inability to issue the requested injunction. Pet. App. 34a-76a. Petitioners do not contend that the state pleading contained a freestanding Fourteenth Amendment count. Their jurisdictional submission is that the federal due-process objection arises from the state courts' completed foreclosure of that preserved claim. The timeliness of that judgment-created objection is presented directly in Question 2.

Brinkerhoff-Faris Trust & Savings Co. v. Hill held that a federal objection arising from a state court's own disposition may be timely when presented at the first available opportunity. 281 U.S. 673, 677-678 (1930). Petitioners acknowledge the demanding presentation rules applied in *Adams v. Robertson*, 520 U.S. 83 (1997), and *Webb v. Webb*, 451 U.S. 493 (1981). This petition therefore identifies both what was preserved below and what federal characterization allegedly became complete only upon finality.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in relevant part: "No State shall ... deprive any person of life, liberty, or property, without due process of law."

Texas Tax Code § 23.01(b) requires generally accepted appraisal methods and provides that, when an appraisal district uses mass-appraisal standards, those standards must comply with the Uniform Standards of Professional Appraisal Practice.

Texas Tax Code § 41.41(a) authorizes a property owner to protest an appraised value, an unequal appraisal, and other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the owner. Sections 41.01 and 41.02 define the appraisal review board's determinations and authorize it to direct corrections to appraisal records or the appraisal roll.

Texas Tax Code § 42.09(a) provides that the procedures prescribed by the Tax Code for adjudication of authorized protest grounds are exclusive and restricts a property owner from raising those grounds in a suit to arrest or prevent tax collection or obtain a refund. The pertinent provisions are reproduced at Pet. App. 77a-81a.

STATEMENT OF THE CASE

A. Petitioners sought a prospective remedy distinct from an annual valuation correction.

Petitioners own property in Denton County, Texas. Their First Amended Petition alleged that the Denton Central Appraisal District and its Chief Appraiser used appraisal procedures inconsistent with mandatory Texas law. The pleading requested several forms of relief. The claim relevant here was prospective: Petitioners requested a permanent injunction requiring DCAD and Spencer to comply with the governing mass-appraisal standards going forward. First Am. Pet. ¶ 5.06, C.R. 140; Pet. App. 34a-38a.

The state action was therefore not limited to obtaining a different value for one parcel in one tax year. Petitioners alleged continuing conduct and requested future compliance. They also alleged ultra vires conduct by Spencer. Pet. App. 37a-38a. The merits of those allegations were never adjudicated; the case ended on pleas to the jurisdiction.

B. Petitioners preserved the remedial inadequacy in the trial court.

After the trial court granted the jurisdictional pleas, Petitioners moved for reconsideration and a new trial. The Motion for Reconsideration argued that § 42.09 concerns actions already taken and provides no mechanism for forward-looking relief. Mot. for Recons. 9-10; Pet. App. 73a-74a. It explained that forcing annual protests would require Petitioners to repeat the same appraisal, protest, and litigation cycle and would allow compliance with § 23.01 to evade judicial review. Id. at 10-11; Pet. App. 74a-75a.

The motion sought reconsideration of the May 2024 jurisdictional orders and again requested relief requiring Spencer and DCAD to comply with § 23.01 and USPAP in future mass appraisals. Mot. for Recons. 1-2; Pet. App. 65a-66a. The trial court entered a signed order denying Petitioners' motion for new trial on July 10, 2024. Pet. App. 29a.

C. Petitioners preserved the distinction in the court of appeals.

The opening appellate brief made prospective relief its first issue: whether a district court has jurisdiction to require an official of a political subdivision to follow the law. Appellants' Br. 3, 8-10; Pet. App. 39a-41a. It invoked *Ex parte Young* and Texas ultra vires authorities for the distinction between retrospective monetary relief and an injunction against continuing unlawful official action. Id. at 8-10; Pet. App. 40a-41a.

The opening brief also disputed the premise that § 42.09 supplied an adequate exclusive remedy. It argued that the challenged systemic conduct could not be meaningfully presented through the statutory protest process and that exhaustion extended only to grounds the Tax Code authorized the board to decide. Appellants' Br. 16-18; Pet. App. 43a-44a.

The reply brief sharpened the point. It explained that Petitioners alleged continuing conduct and sought prospective relief; that annual review of past action was not redundant of an injunction governing future conduct; and that, even if exclusivity applied to ordinary valuation disputes, it could not bar prospective ultra vires relief. Reply Br. 12-18; Pet. App. 45a-48a. Without prospective adjudication, the reply explained, owners would remain in a repeated cycle of appraisal, protest, expense, and litigation. Id. at 15-18; Pet. App. 46a-48a.

D. The court of appeals treated the annual process as exclusive.

The court of appeals affirmed. It held that § 41.41(a) was broad enough to encompass complaints about alleged noncompliance with the mass-appraisal requirements and that § 42.09 therefore supplied Petitioners' exclusive remedy. Pet. App. 12a-15a. It applied that holding to the requested prospective injunction, reasoning that Texas had abolished prior common-law remedies used to prevent unconstitutional taxation and that the trial court lacked jurisdiction over declaratory and injunctive relief outside the Tax Code. Pet. App. 16a-18a.

The opinion recognized that Petitioners requested future compliance with the governing standards. Pet. App. 16a-17a. But it identified no authority empowering an appraisal review board to issue that injunction. It treated the availability of annual protest grounds as sufficient to foreclose the separate judicial remedy.

The opinion also stated that Petitioners did not challenge on appeal the dismissal of the takings claim pleaded under Article I, § 17 of the Texas Constitution. Pet. App. 9a. This petition does not seek review of that disposition and does not depend on a claim under 42 U.S.C. § 1983, which was not pleaded in the state action.

E. Petitioners presented remedial incapacity and futility to the Supreme Court of Texas.

After panel and en banc rehearing were denied, Petitioners sought review in the Supreme Court of Texas. The Petition for Review framed its principal issue as whether agency exhaustion may bar an ultra vires suit when the agency cannot grant the relief requested. Pet. for Review 12; Pet. App. 49a-50a. It relied on *Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184 (Tex. 2024), which held that exhaustion is unnecessary when an administrative path cannot moot or fully resolve the claim.

The Petition for Review identified the precise remedial mismatch. Even assuming an appraisal review board could correct a past assessment, Petitioners argued that it had no authority to declare an entire countywide methodology unlawful, enjoin appraisal-district personnel, or require future appraisals to comply with law. Pet. for Review 16-18; Pet. App. 53a-55a. Its statutory power was limited to determinations and corrections concerning appraisal records and rolls. Id. Thus, Petitioners argued, making that process exclusive would require a futile procedure incapable of preventing repetition.

After review was denied, Petitioners' rehearing motion again argued that an apparently exclusive remedy is not exclusive when the administrative body lacks authority to grant the requested relief. Mot. for Reh'g 7-11; Pet. App. 56a-60a. Their combined reply repeated that a tribunal lacking power to provide the requested remedy cannot furnish a meaningful exclusive remedy. Combined Reply 3, 8-9; Pet. App. 61a-64a.

F. The record locations and federal-question presentation are disclosed directly.

For purposes of Rule 14.1(g)(i), the preserved premises appear in the First Amended Petition at paragraph 5.06 and C.R. 140; the Motion for Reconsideration at pages 1-2 and 9-11; the opening appellate brief at pages 3, 8-10, and 16-18; the reply brief at pages 12-18; the Petition for Review at pages 12-18; the rehearing motion at pages 7-11; and the combined reply at pages 3 and 8-9. The Court of Appeals passed on the remedial issue at Pet. App. 12a-18a, and the Supreme Court of Texas denied review and rehearing at Pet. App. 32a-33a.

Petitioners do not assert that the words "Fourteenth Amendment" or "federal due process" were used to label a separate count at each stage. The state courts were instead asked, repeatedly and specifically, whether a remedy could be exclusive when the designated tribunal could not grant the injunction sought. Question 2 asks whether the federal constitutional objection to the completed state-court foreclosure is reviewable when its final element did not occur until the State's last available tribunal denied rehearing.

G. The final denial completed the alleged foreclosure.

Before the state appellate process ended, the Court of Appeals or the Supreme Court of Texas could have reversed, applied *Hensley*, or remanded for adjudication. The Supreme Court of Texas denied rehearing on May 8, 2026, without opinion. Pet. App. 32a-33a. At that point, the state system had finally directed Petitioners to a tribunal that could not grant the injunction while closing the courts that could consider it.

The question is not whether Petitioners should receive a particular appraisal or refund. It is whether due process permits a State to make a procedure exclusive after the record repeatedly demonstrates that the designated tribunal lacks authority to grant the preserved prospective relief.

REASONS FOR GRANTING THE PETITION

I. THE COMPLETED FORECLOSURE *CONFLICTS WITH BRINKERHOFF-FARIS* AND THE REQUIREMENT OF A REAL OPPORTUNITY TO BE HEARD.

Brinkerhoff-Faris arose from a state property-tax dispute. Missouri law had previously recognized an equitable remedy to challenge an allegedly discriminatory assessment. The state court later held that the taxpayer should instead have pursued an administrative remedy that had not been available under the law then prevailing. By the time the court announced that requirement, the administrative path was closed. This Court held that the State could not withdraw all existing remedies without providing a real opportunity to be heard. 281 U.S. at 678-682.

The constitutional defect was not merely an erroneous interpretation of state law. It was the state judiciary's use of procedure to extinguish the available path to adjudication. Due process reaches judicial action. Id. at 679-680. When a State controls the avenue through which a claim may be heard, it must provide a meaningful opportunity rather than a formal route incapable of resolving the claim. See *Boddie v. Connecticut*, 401 U.S. 371, 377-380 (1971); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-437 (1982).

The same structural defect is alleged here. Texas law authorizes an appraisal review board to decide protests and direct corrections to appraisal records or rolls. Petitioners did not deny that such a board may decide ordinary valuation disputes. They demonstrated, however, that the board could not issue a prospective injunction governing future appraisal methodology. Pet. App. 45a-60a. The state courts nevertheless treated the annual process as exclusive and dismissed the action requesting that injunction. Pet. App. 12a-18a.

A remedy is not meaningful merely because it shares a subject matter with the claim. Correcting one parcel for one year does not adjudicate whether an official may continue a challenged methodology in later years. Nor does the theoretical availability of de novo review of an appraisal order answer the problem when the administrative body cannot enter the prospective order sought and the State treats claims outside the annual order as jurisdictionally barred.

Hensley underscores the remedial mismatch as a matter of Texas law. There, the Supreme Court of Texas explained that exhaustion is not required when an administrative remedy cannot moot the claim. 692 S.W.3d at 193-198. Petitioners placed *Hensley* and the board's limited authority before the Texas courts. Yet the prospective claim was never adjudicated. The final result is the procedural dead end *Brinkerhoff-Faris* condemns: one forum is treated as exclusive but lacks the requested power, while the forum with equitable authority is closed because the powerless forum is deemed exclusive.

This Court need not decide whether Petitioners will prove an unlawful appraisal method or satisfy the equitable standards for an injunction. It need decide only whether a State may prevent any tribunal from reaching those questions. A remand would restore adjudication without predetermining the merits.

II. THE FEDERAL OBJECTION PRESENTS A SUBSTANTIAL FIRST-OPPORTUNITY QUESTION UNDER SECTION 1257.

Section 1257 ordinarily requires that a federal right be specially set up or claimed in the state courts with sufficient clarity and at the proper time. *Adams*, 520 U.S. at 86-92; *Webb*, 451 U.S. at 496-501. That rule gives state courts an opportunity to address federal questions and prevents litigants from recasting state-law disputes after judgment. Petitioners identify that jurisdictional issue candidly rather than assuming it away.

Brinkerhoff-Faris recognizes a narrow first-opportunity principle. There, the federal due-process objection arose from the state supreme court's own decision eliminating the previously available remedy. The taxpayer raised the objection at the first opportunity, on rehearing, and this Court held it timely even though rehearing was denied without opinion. 281 U.S. at 677-678. *Reece v. Georgia* likewise recognizes that a federal objection is not forfeited when state procedure supplies no earlier meaningful opportunity to raise it. 350 U.S. 85, 89-90 (1955).

Here, Petitioners did not wait until certiorari to identify the operative remedial defect. At each appellate level they preserved the premises: the claim was prospective; annual review could not grant the injunction; exhaustion would be futile; and treating the process as exclusive would prevent adjudication. Pet. App. 39a-76a. The Court of Appeals rejected the position, but further state review remained possible. Petitioners therefore sought review and rehearing from the Supreme Court of Texas.

Petitioners submit that the alleged federal injury did not become complete until that court denied rehearing. Before May 8, 2026, a state tribunal still could have reopened the case and supplied the adjudicative forum requested. After the denial, none remained. The present objection is therefore not a new factual theory about appraisal. It is the federal characterization of the state process after that process finally foreclosed all adjudication.

Adams and *Webb* remain serious counterarguments, but they are distinguishable in the respect Question 2 asks the Court to decide. Those cases involved federal rights that could have been presented before the state judgments became final but were not fairly identified. Petitioners here continuously presented the remedial incapacity and the threatened non-adjudication; only the completed constitutional consequence depended on the final denial. Whether § 1257 permits review in that circumstance is an important threshold question warranting this Court's consideration.

A State should not be able to insulate a completed deprivation from review merely because the last necessary act is an unreasoned denial entered after no further state procedure remains. *Brinkerhoff-*Faris supplies the governing principle; this case asks the Court to define its application to a final foreclosure completed by denial of discretionary review and rehearing.

III. THE QUESTION IS IMPORTANT, RECURRING, AND EXTENDS BEYOND PROPERTY TAXATION.

States commonly channel disputes through specialized administrative bodies. Those systems serve legitimate purposes, including factual development, consistency, expertise, and efficient correction of individual decisions. The constitutional problem arises when a State combines exclusivity with remedial incapacity and uses that combination to foreclose every judicial forum.

The pattern is readily replicable. A State may designate an administrative body as the exclusive forum, limit that body to correcting individual past orders, and bar courts from considering prospective challenges outside the administrative process. If due process is satisfied by the bare existence of that limited process, continuing official conduct may become effectively insulated from adjudication even though no tribunal can issue the relief sought.

That problem can arise in licensing, public benefits, professional discipline, land use, education, election administration, and other fields in which transaction-specific review cannot remedy a continuing policy or method. Review is warranted to clarify that exclusivity and exhaustion depend on the availability of a remedy capable of resolving the claim, not merely on a procedural path bearing the same general subject matter.

The decision below is a suitable vehicle because Petitioners repeatedly identified the remedial mismatch in the state record. The Court can address the constitutional boundary without disrupting ordinary appraisal protests or deciding the validity of Texas' annual review system as a whole.

IV. THIS CASE IS A FOCUSED VEHICLE FOR REVIEW OF THE NON-ADJUDICATION QUESTION.

First, the relevant issue is legal. Respondents' pleas challenged the pleadings, and the court of appeals reviewed jurisdiction de novo while construing the allegations under Texas standards. Pet. App. 7a-9a. Whether the State may make an administratively unavailable remedy exclusive does not require this Court to resolve disputed appraisal facts.

Second, Petitioners seek a limited disposition. They do not ask this Court to fix property values, order refunds, decide the Texas constitutional delegation challenge, or revive the takings claim that the court of appeals identified as abandoned. They request vacatur and remand so that a court with equitable authority may adjudicate the preserved prospective claim under the proper constitutional standard.

Third, the record demonstrates preservation of the remedial issue with unusual clarity. The trial postjudgment motion, opening brief, reply, Petition for Review, rehearing motion, and combined reply all distinguish the board's parcel-specific authority from the prospective injunction requested. Pet. App. 39a-76a. The issue was neither hidden nor incidental.

Fourth, the absence of a reasoned Supreme Court of Texas opinion does not obscure the operative state holding. The Court of Appeals opinion supplies the exclusivity rationale. Pet. App. 12a-18a. The certified Supreme Court of Texas orders supply finality. Pet. App. 32a-33a. The filings presented to that court establish the precise remedial objection it was asked to correct.

Finally, the three signed trial-court orders reproduced at Pet. App. 29a-31a are required appendix materials under Rule 14.1(i), not a gap in the preservation theory. They establish the May 2 dismissal of the claims against Spencer, the May 8 final judgment dismissing the remaining claims, and the July 10 denial of the motion for new trial.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court should vacate the judgment below and remand for further proceedings consistent with the Due Process Clause. In the alternative, the Court should grant review to resolve the Questions Presented.

Respectfully submitted,

MITCHELL VEXLER, Petitioner, Pro Se
1913 Justin Road, Suite 117, Flower Mound, TX 75028
214-725-9013 | mitch@mockingbirdprop.com

CATHERINE VEXLER, Petitioner, Pro Se
1913 Justin Road, Suite 117, Flower Mound, TX 75028
214-850-6999 | Catherine@mockingbirdprop.com

JIM SOLINSKI, Petitioner, Pro Se
4529 Mahogany Lane, Copper Canyon, TX 75077
210-825-2306 | Jesolinski@stoneglazing.com

GLORIA SOLINSKI, Petitioner, Pro Se
4529 Mahogany Lane, Copper Canyon, TX 75077
210-825-2306 | Jesolinski@stoneglazing.com

Designated correspondence contact: Mitchell Vexler

Dated: July 29, 2026

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APPENDIX A

In the

Court of Appeals

Second Appellate District of Texas

at Fort Worth

No. 02-24-00305-CV

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER

MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI, Appellants

V.

DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF DENTON

CENTRAL APPRAISAL DISTRICT, AND DENTON CENTRAL APPRAISAL

DISTRICT, Appellees

On Appeal from the 481st District Court Denton County, Texas Trial Court No. 23-9526-481

MEMORANDUM OPINION

Appellants Mitch Vexler, Catherine Vexler, Mavex Shops of Flower Mound, LP, Jim Solinski, and Gloria Solinski—a group of Denton County property owners[1]—sued Appellees Denton Central Appraisal District and its Chief Appraiser, Don Spencer, in his official capacity, under a variety of theories challenging their property taxes and more broadly attacking DCAD's and Spencer's implementing the Texas Tax Code. DCAD and Spencer filed separate pleas to the jurisdiction, raising the Property Owners' failure to sue under the legislatively

1 For ease and clarity, we refer to Appellants collectively as the "Property Owners."

mandated exclusive-remedies provision in the tax code, *see* Tex. Tax Code Ann. § 42.09, and DCAD also raised their lack of standing to challenge the constitutionality of Section 23.01(b) of the Texas Tax Code, *see id.* § 23.01(b). Because the trial court correctly granted both jurisdictional pleas, we affirm.

I. Background

The Property Owners initially sued DCAD, Spencer, Hope McClure (Spencer's predecessor, in her official capacity), and Michelle French (in her capacity as Denton County's Tax Assessor–Collector). The Property Owners challenged their assessed property-tax amounts, as well as the appraisal system as a whole, asserting claims for declaratory relief (including a declaration that Section 23.01 of the Texas Tax Code is unconstitutional), injunctive relief, relief for alleged ultra vires acts, and money had and received (including actual and exemplary damages). They also sought attorney's fees. Each defendant answered, filed a plea to the jurisdiction, and set the plea for a hearing on May 2, 2024.

Eight days before the hearing, the Property Owners amended their petition and, among other things, dropped their claims against McClure and French. Focusing solely on DCAD and Spencer, the Property Owners alleged that when DCAD sent out its 2023 notices of appraised values, DCAD had "brazenly," "recklessly," and "fraudulent[ly]" increased Denton County property values as it had done "for years, unchecked and without any accountability." The Property Owners alleged that DCAD was not following the law or any recognizable appraisal method in appraising Denton County property. They also alleged that DCAD had artificially and arbitrarily increased property values "so that the various taxing entities/units [could] collect illegal and inflated property taxes."

Among other things, the Property Owners alleged that in 2021, former DCAD Chief Appraiser McClure, and her then-deputy and later-successor, Spencer, had falsified the tax rolls to the Texas Comptroller's Office. DCAD's allegedly fraudulent property valuations had cost taxpayers their money, time, and effort in fighting against allegedly illegal taxation. The Property Owners alleged that DCAD's valuations were not uniform and equal as required by the Texas Constitution and that DCAD, Spencer, and his predecessor had been aware of a myriad of problems within DCAD for years, including staffing and management issues, a lack of policies and procedures, a lack of professionalism, a lack of training, and a lack of a compliance director.

The Property Owners sought declaratory relief, injunctive relief, and money damages to reimburse them for taxes they had paid.[2]

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2 They also expressly contemplated that additional Denton County property owners would join the lawsuit. The amended petition grouped the potential future litigants into three categories: "(1) those who accepted DCAD's fraudulent appraisals; (2) those who protested DCAD's appraisals to the ARB [appraisal review board] like the Solinskis; and (3) those who ha[d] appealed the ARB's appraisal to a district court, like the Vexlers and Mavex." Although DCAD's nonjurisdictional defenses are not before us, we observe that DCAD alleged in its Original Answer that Mavex Shops had previously sued DCAD in a separate lawsuit challenging Section 23.01's constitutionality, which resulted in a final agreed judgment that DCAD argued barred Mavex Shops from relitigating identical claims.

We outline the Property Owners' pleaded theories for requesting these remedies: **Declaratory Relief:**[3] The Property Owners sought declarations that DCAD had violated the Texas Tax Code by failing to comply with various provisions from the Uniform Standards of Professional Appraisal Practice (USPAP)[4] when conducting 2023's mass appraisal. They also sought a declaration that DCAD's valuation of their properties violated the Texas Constitution's equal-and-uniform requirement.

The Property Owners further alleged that Spencer had committed ultra vires acts. They sought a declaratory judgment (1) "that Spencer committed ultra vires acts in connection with the certification of the 2021 Denton County tax roll" and (2) "that Spencer committed an ultra vires act by authorizing and condoning appraisals to occur outside of the PACS [Appraisal] software DCAD use[d] to conduct mass appraisals."

Additionally, the Property Owners specifically challenged the constitutionality of the following provision in Section 23.01(b): "If the appraisal district determines the appraised value of a property using mass[-]appraisal standards, the mass[-]appraisal standards must comply with [USPAP]." *See* Tex. Tax Code Ann. § 23.01(b). Even though the Property Owners wanted declarations that DCAD and Spencer had failed to comply with the USPAP, their constitutional claim presented a "facial challenge" to the "unfettered legislative delegation" to the private

3 The Property Owners sought their attorneys' fees under the Declaratory Judgments Act.
See Tex. Civ. Prac. & Rem. Code Ann. § 37.009.

4 See generally Tex. Tax Code Ann. § 23.01(h)(3) (stating that the "[a]ppraisal methods and techniques included in the most recent version[] of the following are considered generally accepted appraisal methods and techniques for the purposes of this title: . . . the Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation").

entity that writes the USPAP standards and asked the trial court to determine that Section 23.01 violates (1) Article III, Section 36 of the Texas Constitution, (2) Article II, Section 1 of the Texas Constitution, and (3) Section 2001.021 of the Texas Government Code (within the Administrative Procedures Act).[5] **Injunctive Relief:** The Property Owners alternatively pleaded for prospective injunctive relief. Notably, this request was not made as part of their ultra vires claim against Spencer. Instead, the Property Owners pleaded that if the trial court determined that Section 23.01 was constitutional, the Property Owners requested a "permanent injunction against DCAD and Don Spencer to follow and adhere to the USPAP standards for mass appraisals going forward."

Takings Damages: The Property Owners asserted a takings claim under the Texas Constitution against DCAD. *See* Tex. Const. art. I, § 17. They claimed that DCAD had taken their property—that is, their money "for the fraudulently levied property taxes"—"in a fraudulent and illegal manner."

Tax Refund: Relabeling their money-had-and-received claim, the Property Owners claimed to be pursuing a "common[-]law reimbursement claim," in which they sought reimbursement from DCAD for their payments of "illegally levied taxes." They sought "a return of the illegal taxes collected by DCAD" and claimed that because their "injuries resulted from DCAD's gross negligence, malice, or actual fraud," they were also entitled to exemplary damages.

Three days before the hearing on the

[5]The Property Owners failed to notify the Attorney General of their constitutional challenge, but DCAD filed the requisite statutory notice. *See* Tex. Gov't Code Ann. § 402.010.

jurisdictional pleas, the Property Owners responded to the pleas, and DCAD replied. Upon hearing both pleas, the trial court granted them, dismissed the Property Owners' claims against DCAD and Spencer, and signed a final judgment. The Property Owners filed a motion for new trial and a motion to reconsider, to which Spencer and DCAD responded. The trial court heard and denied both motions.

II. Issues Presented

The Property Owners raise four issues on appeal. The first two concern their claims against Spencer and the latter two their claims against DCAD. First, they argue that the trial court should have exercised jurisdiction over their request for prospective injunctive relief to require Spencer to follow the law. Second, they assert that the trial court should have exercised jurisdiction over their declaratory-judgment claims against Spencer concerning his alleged prior violations of the law. Third, they argue that the trial court had jurisdiction to order a tax refund. Fourth, they dispute the trial court's determination that they did not have standing to challenge Section 23.01(b)'s constitutionality.

III. Standard of Review

Unless the state consents to suit, sovereign immunity deprives a trial court of jurisdiction over lawsuits against the state or certain governmental units. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004) (op. on reh'g). Appraisal districts are political subdivisions of the state and, absent waiver, are similarly entitled to governmental immunity. Tex. Tax Code Ann. § 6.01(c) ("An appraisal district is a political subdivision of the state."); *Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57–58 (Tex. 2011).

A plea to the jurisdiction is a dilatory plea that seeks dismissal of a case for lack of subject-matter jurisdiction. *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). A jurisdictional plea may challenge the pleadings, the existence of jurisdictional facts, or both. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). Whether a court has subject-matter jurisdiction is a legal question, and we review de novo a trial court's ruling on a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 226, 228.

When, as here, a plea challenges the pleadings, we determine if the plaintiff has alleged facts that affirmatively demonstrate the trial court's jurisdiction. *Id.* at 226. We construe the pleadings liberally in the plaintiff's favor and look to the plaintiff's intent. *Id.* If the pleadings are insufficient to establish jurisdiction but do not affirmatively demonstrate an incurable defect in jurisdiction, the plaintiff should ordinarily be given the opportunity to amend. *See id.* at 226–27. But if the pleadings affirmatively negate the existence of jurisdiction altogether, then a jurisdictional plea may be granted without allowing a (necessarily futile) chance to amend. *See id.* at 227.

Overarching all these principles is that "the plea should be decided without delving into the merits of the case." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *see also Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015) ("When a jurisdictional issue is not intertwined with the merits of the claims, which is the case here, disputed fact issues are resolved by the court, not the jury.").

IV. Discussion

We first discuss the Property Owners' claims for declaratory, injunctive, and monetary relief (other than concerning Section 23.01(b)'s constitutionality)—the subject of their first three appellate issues—and next address their request to declare part of Section 23.01(b) unconstitutional—the subject of their fourth issue. As we explain, the trial court did not err in granting the jurisdictional pleas.[6] And because the Property Owners failed to cure the jurisdictional defects that were pointed out to them before they amended their petition, they are not entitled to a remand.

A. Tax Code Section 42.09's Exclusive Remedies

The Property Owners have described themselves as five of the approximately 500,000 Denton County taxpayers who are seeking to end the alleged "systematic[] miscalculat[ion]" of Denton County property taxes. They sought declarations "that [DCAD's and Spencer's] past behavior violated the law, an injunction against future violations, and a refund of the taxes [they] paid based on the illegal assessments." In their first three appellate issues, the Property Owners contend that the trial court should have exercised jurisdiction over their claims for declaratory and injunctive relief (unrelated to the Section 23.01(b)

6 The Property Owners do not challenge the trial court's

challenge) and for a tax refund. But we agree with Spencer and DCAD that Section 42.09 of the Texas Tax Code bars these claims.

1. Applicable Law

"Taxation shall be equal and uniform." Tex. Const. art. VIII, § 1(a). Before 1982's tax-code amendments, for any taxpayer resisting allegedly unconstitutional taxation, court-created common-law remedies left "a very unsatisfactory state of affairs." *Valero Transmission Co. v. Hays Consol. Indep. Sch. Dist.*, 704 S.W.2d 857, 861–62 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

A pre-1982 opinion from the Beaumont Court of Appeals outlined the then-extant situation: "An aggrieved taxpayer who assert[ed] that a taxing agency ha[d] adopted a fundamentally erroneous and arbitrary plan of taxation which increase[d] his share of the tax burden ha[d] two remedies available." *Owens-Illinois, Inc. v. Little Cypress-Mauriceville Indep. Sch. Dist.*, 481 S.W.2d 477, 482 (Tex. App.—Beaumont 1972, writ dism'd). First, the taxpayer could "allow the taxing agency to put the plan into effect and challenge the assessment in defense of a suit to collect the delinquent taxes based upon the assessment." *Id.* Second the taxpayer could act on a prospective basis and could "make a direct attack by availing himself of the remedies of mandamus and injunction to prevent a taxing authority from putting such a plan into effect." *Id.* Each option carried different burdens and risks for the taxpayer, but "[t]he chief characteristic of this

6 (continued)

dismissal of their takings claim. We therefore affirm the dismissal of that claim. *See Fossil Grp., Inc. v. Harris*, 691 S.W.3d 874, 880 n.11 (Tex. 2024) (concluding party waived any challenge to claim dismissed by trial court by not addressing it in its brief).

state of affairs was that the taxpayer normally lost." *Valero Transmission Co.*, 704 S.W.2d at 861 (citing Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 Tex. L. Rev. 885, 895–96 (1973)).

But after a legislative overhaul, the tax code "provides for a regular, systematic, certain, and effective remedy for a taxpayer who believes his tax to be erroneous for any reason." *Id.* at 860 n.1; *see Atascosa Cnty. Appraisal Dist. v. Tymrak*, 858 S.W.2d 335, 337 (Tex. 1993) (generally describing the tax code's "annual administrative process" and explaining that a property owner "must pursue the annual administrative process for each tax year that he wants to appeal to the trial court"). Every year, the appraisal district, through its chief appraiser, appraises taxable property generally at its market value as of January 1. Tex. Tax Code Ann. § 23.01. Each property owner is given notice and has the right to protest the appraised value before an ARB. *Id.* §§ 25.19(a), 41.41(a).

A property owner is entitled to protest, among other actions:

(1) [the] determination of the appraised value of the owner's property or, in the case of [certain land appraisals, the] determination of its appraised or market value;

(2) [the] unequal appraisal of the owner's property; [or] . . . .

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner. *Id.* § 41.41(a). When a property owner protests, the ARB hears the protest and determines value. *Id.* §§ 41.01(a)(1), 41.45, 41.47. An owner may appeal an ARB order to a district court. *Id.* §§ 42.01,

42.23(a).

The Texas Tax Code further provides that its remedies are exclusive, stating in pertinent part that 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. *Id.* § 42.09(a)(2). Through Section 42.09, the Legislature not only abolished previously existing common-law remedies to redress unconstitutional taxation but also created an exclusive statutory remedial scheme. *Id.*; *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006) (requiring taxpayers to adhere to the tax code's administrative framework before filing suit); *Matagorda Cnty. Appraisal Dist. v. Coastal Liquids Partners, L.P.*, 165 S.W.3d 329, 331 (Tex. 2005) ("[A] taxpayer's failure to pursue an [ARB] proceeding deprives the courts of jurisdiction to decide most matters relating to ad valorem taxes."); *SPX Corp. v. Altinger*, 614 S.W.3d 362, 378–80 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (collecting cases holding that the tax code's exclusive remedial scheme supplanted common-law claims, equitable remedies, and claims outside of Chapter 42 of the tax code); *Schneider v. Williamson Cent. Appraisal Dist.*, No. 03-16-00781-CV, 2017 WL 2417836, at *2 (Tex. App.—Austin May 31, 2017, pet. denied) (mem. op.) (same).

2. Analysis

The flaw in the Property Owners' lawsuit is that they have tried to sue DCAD and Spencer outside of the tax code's exclusive remedial scheme. The Property Owners complain about DCAD's and Spencer's prior conduct and how that alleged conduct has continued and will continue to adversely impact the appraised values of their respective properties—all of which are grounds for protest. *See* Tex. Tax Code Ann. § 41.41(a). But the Property Owners did not affirmatively allege that they are seeking judicial review of their respective ARB orders under the Texas Tax Code. *See id.* §§ 42.01, 42.23(a); *see also Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019) (requiring plaintiffs to allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim). Rather, they have tried to state claims outside of the Texas Tax Code's exclusive remedial process.

For instance, the Property Owners requested various declarations under the Declaratory Judgments Act concerning DCAD's and Spencer's past conduct— including for Spencer's alleged ultra vires acts. But the Declaratory Judgments Act does not create or enlarge a trial court's subject-matter jurisdiction. *Bauer v. Braxton Minerals III, LLC*, 689 S.W.3d 633, 640 n.4 (Tex. App.—Fort Worth 2024, pet. filed). It is only a procedural device for deciding cases already within the trial court's jurisdiction. *Id.* (first citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993); then citing *Devon Energy Prod. Co. v. KCS Res., LLC*, 450 S.W.3d 203, 210 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); and then citing Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a)).

Because Section 41.41(a) provides the exclusive method to protest the appraisal of their properties, the Property Owners cannot ignore their exclusive tax-code remedies and employ the Declaratory Judgments Act in a standalone fashion.[7] *See* Tex. Tax Code Ann. §§ 41.41(a), 42.09; *SPX Corp.*, 614 S.W.3d at 378–80 ("But where, as here, the Property

7 The Property Owners argue that the Texas Tax Code does not

Tax Code authorizes a particular ground of protest, then the Code's procedures are the property owner's exclusive means of adjudicating that ground as a basis for tax relief."). The trial court therefore correctly dismissed the Property Owners' declaratory-relief claims. *See Rourk*, 194 S.W.3d at 502; *SPX Corp.*, 614 S.W.3d at 378–80; *Schneider*, 2017 WL 2417836, at *2.

The same holds true for the Property Owners' request for judicial declarations that Spencer committed ultra vires acts in certifying "the 2021 Denton County tax roll" and "by authorizing and condoning appraisals to occur outside of the PACS software DCAD uses to conduct mass appraisals."[8] Because Section 41.41(a)(9) allows the Property Owners to protest "any other action of the chief appraiser . . . that applies to and adversely affects the property owner," the Texas Tax Code provided the Property Owners their exclusive remedy to raise the official-capacity complaints about Spencer's (or his predecessors') past conduct that are the subject of the

7 (continued) provide grounds for protesting DCAD's alleged failure to comply with Section 23.01(a)'s mass-appraisal requirements, but they are incorrect. Section 41.41(a) clearly states that a taxpayer may protest the "determination of the appraised value of the owner's property," the "unequal appraisal of the owner's property," and "any other action of the chief appraiser, appraisal district, or [ARB] that applies to and adversely affects the property owner." Tex. Tax Code Ann. § 41.41(a)(1), (2), (9). These broad grounds certainly encompass a protest arising out of an alleged failure to comply with Section 23.01(a)'s mass-appraisal requirements. Cf. Webb County Appraisal Dist. v. New Laredo Hotel, Inc., 792 S.W.2d 952, 954 (Tex. 1990) ("The intent of the administrative review process is to resolve the majority of tax protests at this level, thereby relieving the burden on the court system.").

8 Governmental immunity "does not bar a suit against a

Property Owners' ultra vires claims. *See* Tex. Tax Code Ann. §§ 41.41(a)(9), 42.09(a). Accordingly, the trial court properly refused to exercise subject-matter jurisdiction over the Property Owners' claim seeking "a declaratory judgment that Spencer committed ultra vires acts." *See id.* § 42.09(a); *Rourk*, 194 S.W.3d at 502; *SPX Corp.*, 614 S.W.3d at 378–80; *Schneider*, 2017 WL 2417836, at *2.

Similarly, the trial court properly dismissed the Property Owners' money-had-and-received claim that the Property Owners relabeled as a claim for "reimbursement of funds paid by illegally levied taxes." In their tax-refund claim, the Property Owners outlined the elements of a money-had-and-received claim and, in response to the jurisdictional pleas, added a paragraph trying to explain why their relabeled "common[-]law reimbursement claim" was not barred by governmental immunity.

But the Property Owners' explanation falters because, among other reasons, the 1982 tax-code amendments abolished common-law reimbursement claims and provided the exclusive means to obtain a tax refund. *See* Tex. Tax. Code Ann. § 42.43 (providing method to obtain a tax refund from a taxing unit—not from an appraisal district or its chief appraiser), § 42.09(a); *Valero Transmission Co.*, 704 S.W.2d at 862 ("The

8 (continued) government officer for acting outside his authority—i.e., an ultra vires suit." See Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 161 (Tex. 2016). "To fall within this ultra vires exception . . . a suit . . . must allege . . . that the officer acted without legal authority or failed to perform a purely ministerial act." City of El Paso v. Heinrich, 284 S.W.3d 366, 372 (Tex. 2009). Such "ultra vires claims" may seek only prospective injunctive remedies. Id. at 376.

necessary consequence of making the Code provisions exclusive . . . is to abolish the previously existing common[-]law actions created to prevent unconstitutional taxation." (citing *Tex. Architectural Aggregate, Inc. v. Adams*, 690 S.W.2d 640, 642–43 (Tex. App.—Austin 1985, no writ))). Therefore, the trial court properly refused to exercise jurisdiction over the Property Owners' tax-refund claim.[9] *See* Tex. Tax Code Ann. § 42.09; *Rourk*, 194 S.W.3d at 502; *SPX Corp.*, 614 S.W.3d at 378–80; *Schneider*, 2017 WL 2417836, at *2.

Likewise, the trial court properly dismissed the Property Owners' claims for injunctive relief, in which they sought to prospectively require "DCAD and Don Spencer to follow and adhere to the USPAP standards for mass appraisal going forward." The Property Owners argue that they ought to be able to enjoin DCAD and Spencer into compliance with the Texas Tax Code outside of the statutory process, which they characterize as "border[ing] on the Byzantine."[10] *See Herrera v. Mata*, 702 S.W.3d 538, 540 (Tex. 2024) (discussing generally when ultra vires claims for prospective relief may be brought but without discussing Section 42.09's application); *see also Heinrich*, 284 S.W.3d at

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[9]The Property Owners sprinkled "fraud" allegations throughout their amended complaint and specifically in their relabeled money-had-and-received claim. But nowhere did they allege or identify a legislative waiver enabling them to obtain a tax refund premised on allegedly fraudulent conduct. *See City of Fort Worth v. Pastusek Indus., Inc.*, 48 S.W.3d 366, 372 (Tex. App.—Fort Worth 2001, no pet.) (dismissing fraud claims against appellants, including Tarrant Appraisal District, for lack of jurisdiction).

[10]As we pointed out above, under the pre-1982 system, taxpayers could prospectively seek injunctive relief to prevent an alleged illegal or fraudulent tax scheme from being implemented. *See Owens-Illinois, Inc.*, 481 S.W.2d at 482.

374 ("The law of remedies against governments and government officials is a vast and complex body of doctrine, full of technical distinctions, fictional explanations, and contested compromises." (quoting Douglas Laycock, *Modern American Remedies* 482 (3d ed. 2002))). But the Legislature has prescribed the exclusive remedies that taxpayers must use for tax protests, *see* Tex. Tax Code Ann. §§ 41.41(a), 42.09, and "[t]he Legislature intends courts to follow its instructions[,]" *Rodriguez v. Safeco Ins. Co. of Indiana*, 684 S.W.3d 789, 795 (Tex. 2024) ("[I]t is not for courts to decide if legislative enactments are wise or if particular provisions of statutes could be more effectively worded to reach what courts or litigants might believe to be better or more equitable results.").

Because the Legislature abolished the common-law remedies created to prevent unconstitutional taxation, including claims seeking prospective injunctive relief like the Property Owners pleaded, the trial court properly dismissed their claim for injunctive relief. *See Rourk*, 194 S.W.3d at 502; *SPX Corp.*, 614 S.W.3d at 378–80; *Schneider*, 2017 WL 2417836, at *2 ("[T]rial courts do not have jurisdiction over claims for declaratory and injunctive relief in ad valorem tax disputes, including those based on alleged constitutional violations."); *Parra Furniture & Appliance Ctr., Inc. v. Cameron Appraisal Dist.*, No. 13-09-00211-CV, 2010 WL 672882, at *4 (Tex. App.—Corpus Christi–Edinburg Feb. 25, 2010, no pet.) (mem. op.) (holding that claims for injunctive relief fall outside of the Texas Tax Code and are barred by immunity).

In sum, the Property Owners' first three appellate issues complain about the trial court's dismissing their claims for injunctive relief, for declaratory relief (other than the facial challenge to Section 23.01(b)), and for a tax refund. Because the tax code jurisdictionally bars the Property Owners from raising these three claims outside of the Texas Tax Code's exclusive remedial scheme, and because the Property Owners otherwise failed to affirmatively demonstrate the trial court's subject-matter jurisdiction by alleging a valid waiver of immunity, the trial court properly granted DCAD's and Spencer's pleas to the jurisdiction on these claims, and we overrule the Property Owners' first three issues. *See Kamy Investments, LLC v. Denton Cnty. Appraisal Review Bd.*, No. 02-23-00487-CV, 2024 WL 3611451, at *13 (Tex. App.—Fort Worth Aug. 1, 2024, no pet.) (mem. op.).

B. Standing

> In their fourth issue, the Property Owners argue that the trial court erred by determining that they lacked standing to seek a declaration that part of Section 23.01(b) is facially unconstitutional. We disagree.

1. Applicable Law

"Generally, a citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts." *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 5 (Tex. 2011). This concept reflects "the rule that neither citizens nor taxpayers can appear in court simply to insist that the government and its officials adhere to the requirements of law." *Id.* (cleaned up).

The government may challenge a party's standing by a plea to the jurisdiction. *Busbee v. County of Medina*, 681 S.W.3d 391, 395 (Tex. 2023). As the supreme court has stated, Standing consists of some interest peculiar to the person individually and not just as a member of the public. A plaintiff has standing to seek prospective relief only if he [or she] pleads facts establishing an injury that is concrete and particularized, actual or imminent, not hypothetical.

> An opinion issued in a case brought by a party without standing is advisory because rather than remedying an actual or imminent harm, the judgment addresses only a hypothetical injury.

Garcia v. City of Willis, 593 S.W.3d 201, 206 (Tex. 2019) (cleaned up). "Standing to sue may be predicated upon either statutory or common law authority." *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 850 (Tex. App.—Fort Worth 2005, no pet.) (citing *Williams v. Lara*, 52 S.W.3d 171, 178–79 (Tex. 2001)).

2. Analysis

Here, the Property Owners pleaded a facial challenge to the constitutionality of this part of Section 23.01(b): "If the appraisal district determines the appraised value of a property using mass[-]appraisal standards, the mass[-]appraisal standards must comply with [USPAP]." *See* Tex. Tax Code Ann. § 23.01(b). DCAD challenged the Property Owners' standing to assert their facial challenge to Section 23.01(b), arguing that they had failed to allege a particularized injury and had failed to identify an "'actual or threatened restriction' they are suffering by [DCAD's] compliance with Section 23.01(b)." *See Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995) ("[T]o satisfy the requirements of standing, [the parties facially challenging a statute] must demonstrate that they are suffering some actual or threatened restriction under the [statute]."). The Property Owners claim to have standing because they "are five of the approximately 500,000" Denton County property taxpayers.

On appeal, the Property Owners make two standing arguments. First, they claim to "possess taxpayer standing." As the supreme court stated in *Perez v. Turner*, "Properly construed, taxpayer standing provides important protection to the public from the illegal expenditure of public funds without hampering too severely the workings of the government." 653 S.W.3d 191, 199 (Tex. 2022) (cleaned up). Taxpayer standing is generally limited to a plaintiff who can show "(1) that the plaintiff is a taxpayer; and (2) that the public funds are being expended on an allegedly illegal activity." *Id.* (cleaned up). But the Property Owners' argument about taxpayer standing—and their reliance on cases like *Perez* concerning taxpayer standing—is misplaced.

Here, even after DCAD raised the Property Owners' lack of standing and the Property Owners amended their petition, they failed to plead that DCAD is expending public funds on an allegedly illegal activity. Nor did the Property Owners seek an injunction against such an expenditure. *See id.* (concluding that a plaintiff had taxpayer standing who had alleged that a tax was "altogether illegal and [sought] an injunction against expenditure of the proceeds."). Instead, the Property Owners alleged merely that their property taxes had increased too much. Such an allegation is insufficient to establish taxpayer standing. *See id.*

The Property Owners' second argument—at first blush—seemingly elaborates on their first argument. The introductory header to the second argument states that the Property Owners "possess standing because they suffered a particularized injury when property they own was improperly assessed and they paid property taxes based on that illegal assessment." In arguing this issue, they claim to be on "equal footing" with the plaintiffs in *Perez*, 653 S.W.3d at 199, and in *Jones v. Turner*, 646 S.W.3d 319, 323 (Tex. 2022). But *Perez* and *Jones* are both taxpayer-standing cases in which the plaintiffs alleged not only that they were taxpayers but also that the defendant was expending public funds on allegedly illegal activity: The threshold dispute . . . was whether the challenged activity involved the expenditure of public funds at all. We required the plaintiffs to show that measurable, significant public funds that would not otherwise have been spent were truly at stake in order to assert taxpayer standing. *Perez*, 653 S.W.3d at 199; *see Jones*, 646 S.W.3d at

323. Because the Property Owners' facial challenge to Section 23.01(b) does not challenge an allegedly illegal expenditure of public funds, the Property Owners do not stand in the same shoes as the taxpayers in *Perez* and *Jones*.

Although the Property Owners' second standing argument cites only taxpayer-standing cases, it appears that they are raising citizen standing in a more general sense—that is, whether the Property Owners have "some interest peculiar to [them] and not just as [members] of the public."[11] *See Garcia*, 593 S.W.3d at 206. We have addressed a similar standing question in the context of a group of citizens challenging the constitutionality of Parker County's use of an electronic voting system. *Ramsey v. Miller*, No. 02-22-00412-CV, 2023 WL 3645468, at *1 (Tex. App.—Fort Worth May 25, 2023, pet. denied) (mem. op.).

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11 In the summary of their argument, the Property Owners argue that they "allege[d] an injury that is particular to them" because they "challenged the illegal valuation of the property they own and pay taxes on." DCAD responds that the Property Owners have not identified a particularized injury fairly traceable to DCAD that the underlying lawsuit could address. We are mindful of the supreme court's admonition that intermediate courts should hesitate to resolve appeals on a determination of inadequate briefing. *See Bertucci v. Watkins*, No. 23-0329, 2025 WL 807355, at *4–5 (Tex. Mar. 14, 2025). Given that DCAD's brief interpreted the Property Owners' brief as raising citizen standing and responded to that argument—even though the Property Owners cite no authorities other than taxpayer-standing cases—we will analyze the issue.

In *Ramsey*, we determined that the citizens had not alleged a "concrete and particularized" injury but had "merely assert[ed] a generalized grievance." *Id.* at *3. The citizens' petition revealed that "far from asserting disparate treatment or a particularized injury, [they] actually impl[ied] that they [were] in the same situation as 'all Texas citizens.'" *Id.* at *4.

Similarly, the Property Owners' amended petition alleges the following:

- "DCAD is not following the law or any recognizable appraisal methods when appraising Denton County properties, but instead are artificially and arbitrarily increasing property values so that the various taxing entities/units can collect illegal and inflated property taxes."
- "DCAD's fraudulent property valuations costs the taxpayers money, time, and effort."

- “On [their] face, DCAD’s valuations are not uniform and equal as required by the Texas Constitution as such an increase far exceeds the present fair market cash value of those properties as a whole. This has been the case at DCAD for years, yet every chief appraiser has either outright ignored this problem at best, or willingly violated the constitutional rights of property owners in Denton County at worst. Property owners are entitled to appraisals that comply with constitutional and statutory requirements.”
- “Plaintiffs assert that the entire mass appraisal system utilized by DCAD is unconstitutional and resulted in overvaluations across the board and collection of an illegal tax.” Similar to the allegations in *Ramsey*, the Property Owners’ allegations here reveal the generalized nature of the Property Owners’ claims and indicate that they stand in the same position as all Denton County property-owning taxpayers. *See id.* The Property Owners therefore did not allege a concrete and particularized injury. *See id.* (citing *Garcia*, 593 S.W.3d at 206–08 (holding that appellant lacked standing to bring prospective claims regarding the constitutionality of red-light traffic cameras because he “st[ood] in the same shoes as any other citizen who might potentially be fined for running a red light” and therefore “lack[ed] the particularized interest for standing that prospective relief requires”)). Additionally, the Property Owners have not alleged an “actual or imminent” injury from DCAD’s abiding by USPAP when conducting future mass appraisals, which Section 23.01(b) requires. *See Tex. Tax*

Code Ann. § 23.01(b). In fact, the Property Owners have not alleged any specific injury arising from Section 23.01(b)'s alleged unconstitutionality.[12] The amended petition contained no allegations of how the "delegation of legislative authority to a private entity" that promulgates USPAP has caused the Property Owners any injuries. Nor have the Property Owners—in generally complaining about "across the board" "illegal and inflated property taxes" in Denton County—pleaded an injury that is redressable by DCAD, which does not set the tax rate or collect property taxes. *See* Tex. Tax Code Ann. §§ 26.01–.18 (providing the procedures for a taxing unit and its assessor–collector to calculate and assess taxes); § 41.01(a)(1) (stating that the ARB decides taxpayer protests); *see also id.* § 1.04(12) (defining "taxing unit"). Because our opining on Section 23.01(b)'s constitutionality would address only a hypothetical, non-redressable injury, such an opinion would be an impermissible advisory one. *See Garcia*, 593 S.W.3d at 206; *see also In re Hotze*, 627 S.W.3d 642, 648 (Tex. 2020) (orig. proceeding) (Blacklock, J., concurring) ("Although all citizens share a general interest in lawful government action, 'recognizing standing based on . . . an undifferentiated injury is fundamentally inconsistent with the exercise of the judicial power.'" (quoting *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 731 (7th Cir. 2020))).

[12]Pleading in the alternative, the Property Owners requested that if Section 23.01(b) was not ruled unconstitutional as an improper legislative delegation to the entity that promulgates USPAP, then they wanted a permanent injunction ensuring that DCAD follows USPAP.

Accordingly, because the Property Owners did not plead standing's requisite elements, the trial court properly dismissed their facial challenge to Section 23.01(b). We overrule the Property Owners' fourth issue.

C. Repleading

The Property Owners have requested a remand to replead their claims if we determine that the trial court properly granted the jurisdictional pleas. Ordinarily, "Texas courts allow parties to replead unless their pleadings demonstrate incurable defects." *Dohlen v. City of San Antonio*, 643 S.W.3d 387, 397 (Tex. 2022).

But the supreme court has also stated that "[i]f a plaintiff has been provided a reasonable opportunity to amend after a governmental entity files its plea to the jurisdiction, and the plaintiff's amended pleading still does not allege facts that would constitute a waiver of immunity, then the trial court should dismiss the plaintiff's action." *Harris County*, 136 S.W.3d at 639; *see also Fraley v. Tex. A&M Univ. Sys.*, 664 S.W.3d 91, 101 (Tex. 2023) ("Once the defendant's jurisdictional plea gives notice of the jurisdictional defect, however, and the plaintiff responds with an amended pleading that 'still does not allege facts that would constitute a waiver of immunity,' then the trial court should order the case dismissed with prejudice.").

Here, on November 13, 2023, DCAD filed its plea to the jurisdiction—raising both Section 42.09's exclusive remedial scheme and the Property Owners' lack of standing. The hearing on DCAD's and the other defendants' pleas was scheduled for May 2, 2024, and the Property Owners knew of the hearing as of January 18, 2024.

Eight days before the hearing—on April 24—and over five months after DCAD pointed out the jurisdictional defects, the Property Owners filed an amended petition that did not fix any of those defects. Accordingly, the Property Owners are not entitled to a remand. *See Fraley*, 664 S.W.3d at 101; *Matzen v. McLane*, 659 S.W.3d 381, 395–96 (Tex. 2021) (denying remand for opportunity to amend when a party "has already been permitted to amend his petition to no avail"); *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 559 (Tex. 2016) (noting that plaintiffs were not entitled to another opportunity to replead when they "had the opportunity to, and did in fact, amend their pleadings in the trial court after the district filed its plea to the jurisdiction and motion to dismiss"); *Harris County*, 136 S.W.3d at 639.

V. Conclusion

Having overruled the Property Owners' four issues, we affirm the trial court's final judgment.

Delivered: May 1, 2025 /s/ *Elizabeth Kerr*

Elizabeth Kerr, Justice

APPENDIX B

IN THE COURT OF APPEALS
SECOND APPELLATE DISTRICT OF TEXAS
AT FORT WORTH

No. 02-24-00305-CV

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI,
Appellants

v.

DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF DENTON CENTRAL APPRAISAL DISTRICT, AND DENTON CENTRAL APPRAISAL DISTRICT,
Appellees

On Appeal from the 481st District Court of Denton County
(Trial Court No. 23-9526-481)

May 1, 2025
Memorandum Opinion by Justice Kerr

JUDGMENT

This court has considered the record on appeal in this case and holds that there was no error in the trial court's judgment. It is ordered that the trial court's judgment is affirmed.

It is further ordered that Appellants Mitch Vexler, Catherine Vexler, Mavex Shops of Flower Mound, LP, Jim Solinski, and Gloria Solinski must pay all costs of this appeal.

SECOND DISTRICT COURT OF APPEALS

By /s/ Elizabeth Kerr, Justice Elizabeth Kerr

APPENDIX C
CAUSE NO. DC-23-9526-481

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI,
Plaintiffs

v.

DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF THE DENTON CENTRAL APPRAISAL DISTRICT; MICHELLE FRENCH, IN HER CAPACITY AS TAX ASSESSOR COLLECTOR FOR DENTON COUNTY; HOPE MCCLURE, IN HER CAPACITY AS FORMER CHIEF APPRAISER OF THE DENTON CENTRAL APPRAISAL DISTRICT; AND DENTON CENTRAL APPRAISAL DISTRICT,
Defendants

IN THE DISTRICT COURT
DENTON COUNTY, TEXAS
481ST JUDICIAL DISTRICT

ORDER DENYING MOTION FOR NEW TRIAL

On 10th day of July, 2024, came on to be heard Plaintiffs' Motion for New Trial.

After consideration of the pleadings and papers on file, and arguments of counsel, the Court finds that Plaintiffs' Motion for New Trial should be and hereby is DENIED.

SIGNED this the 10th day of July, 2024.

s/ Crystal Levonius
JUDGE PRESIDING

APPENDIX D

FILED: MAY 8, 2024, 11:01 A.M.
DAVID TRANTHAM, DENTON COUNTY DISTRICT CLERK; BY JADE KENEMORE, DEPUTY
CAUSE NO. 23-9526-481

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI,

v.

DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF DENTON CENTRAL APPRAISAL DISTRICT, AND DENTON CENTRAL APPRAISAL DISTRICT,

IN THE DISTRICT COURT OF DENTON COUNTY, TEXAS 481ST JUDICIAL DISTRICT

FINAL JUDGMENT

Defendant, the Denton Central Appraisal District, filed a plea to the jurisdiction. After having reviewed the plea, the response, the reply and having heard the arguments of counsel, the Court determines that the plea is well taken and should be GRANTED.

It is therefore ordered that the Defendant's, Denton Appraisal District, Plea to the Jurisdiction is granted and all claims brought by Plaintiffs against Defendant, Denton Central Appraisal District, are hereby dismissed for want of subject matter jurisdiction. It is further ordered that all costs are taxed to Plaintiffs.

The Court has previously dismissed Plaintiffs' claims against Defendant, Don Spencer. This judgment disposes of the remaining parties and claims and is therefore final and appealable.

Signed and ordered on May 8, 2024.

s/ Crystal Levonius
JUDGE PRESIDING

APPENDIX E
CAUSE NO. 23-9526-481
MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI,
v.
DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF THE DENTON CENTRAL APPRAISAL DISTRICT; MICHELLE FRENCH, IN HER CAPACITY AS TAX ASSESSOR-COLLECTOR FOR DENTON COUNTY; HOPE MCCLURE, IN HER CAPACITY AS FORMER CHIEF APPRAISER; AND DENTON CENTRAL APPRAISAL DISTRICT,
IN THE DISTRICT COURT
DENTON COUNTY, TEXAS
481ST JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT DON SPENCER'S PLEA TO THE JURISDICTION

On the 2nd day of May, 2024, came on to be heard Defendant Don Spencer's Plea to the Jurisdiction. The Court, after reviewing the evidence and hearing the arguments of counsel, finds that the Plea should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Don Spencer's Plea to the Jurisdiction is hereby GRANTED and that all claims brought by Plaintiffs against Defendant Don Spencer are hereby dismissed for want of subject matter jurisdiction.

Costs to be taxed against Plaintiffs.	SIGNED this the 2nd day of May, 2024.	*s/ Crystal Levonius* JUDGE PRESIDING

APPENDIX F

FILE COPY

IN THE SUPREME COURT OF TEXAS

NO. 25-0615

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI,
Petitioners

v.

DON SPENCER, IN HIS CAPACITY AS CHIEF APPRAISER OF DENTON CENTRAL APPRAISAL DISTRICT, AND DENTON CENTRAL APPRAISAL DISTRICT,
Respondents

Denton County
No. 02-24-00305-CV
Second District

October 24, 2025

Petitioners' petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

May 8, 2026

Petitioners' motion for rehearing of petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

[Seal of the Supreme Court of Texas]

I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme

Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

It is further ordered that petitioners, MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI, pay all costs incurred on this petition.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 8th day of May, 2026.

Blake A. Hawthorne, Clerk
By Monica Zamarripa, Deputy Clerk

APPENDIX G

4.08 Section 23.01(b) of the Tax Code requires that the "same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property." DCAD's 2022 and 2023 appraisal records are replete with disparate valuations of similarly situated and comparable properties.

* * *

Don Spencer had full knowledge of these systematic problems with the appraisal software, which he discussed at length in an October 12, 2023, DCAD board meeting. Indeed, Spencer recognized that DCAD has to work around and run valuation processes outside of the software, admitting that DCAD has to "pull data out of the system, manipulate the data, and then put it back into the system."

* * *

According to Spencer, instead of contacting the PACS vendor, DCAD has instead chosen to run the valuation process outside of the PACS Appraisal software.

V. SUIT FOR DECLARATORY RELIEF AND PROSPECTIVE INJUNCTION RELIEF

5.02 Pursuant to § 23.01(b) of the Texas Tax Code, if an "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." See Tex. Tax Code § 23.01(b).

Thus, the standards used by DCAD related to the use of the PACS Appraisal software to perform a mass appraisal for the years 2022 and 2023 must comply with the Uniform Standards of Professional Appraisal Practice ("USPAP").

5.03 These requests for declaratory relief are brought under:

(a) Tex. Civ. Prac. & Rem. Code Ann. § 37.003 (Power of Courts to Render Judgment; Form and Effect) empowers a court to declare rights, status, and other legal relations either affirmative or negative in form and effect.

(b) Tex. Civ. Prac. & Rem. Code Ann. § 37.004 (Subject Matter of Relief) empowers a court to determine Plaintiffs' rights, status, or other legal relations affected by a statute.

5.04 Plaintiffs request this Court to determine that DCAD has violated Section 23.01(b) of the Texas Tax Code by failing to comply with USPAP provisions when conducting the mass appraisal for 2023 by failing to act with statutory authority when making these appraisals, and, in fact, acting outside the scope of this statutory authority. Plaintiffs seek the following judgments:

Judgment No. 1: DCAD has failed to comply with the USPAP Records Keeping Rule when conducting the 2023 mass appraisal.

Judgment No. 2: DCAD has failed to comply with the USPAP Ethics Rule by willfully or knowingly violating the Records Keeping Rule.

Judgment No. 3: DCAD has failed to comply with USPAP Standards Rule 5-1(b) by committing substantial errors of omission and commission that significantly affected the mass appraisal conducted by DCAD in 2023.

Judgment No. 4: DCAD has failed to comply with USPAP Standards Rule 5-1(c) by rendering the 2023 mass appraisal in a careless or negligent manner.

Judgment No. 5: DCAD has failed to comply with USPAP Standards Rule 5-2(e)(iii) by failing to consider location when conducting the mass appraisal in 2023.

Judgment No. 6: DCAD has failed to comply with USPAP Standards Rule 5-4(b) by failing to develop mathematical models that, with reasonable certainty, represent the relationship between property value and supply and demand factors, as represented by quantitative and qualitative approaches to value for the 2023 mass appraisal.

Judgment No. 7: DCAD has failed to comply with USPAP Standards Rule 5-4(c) by failing to employ recognized techniques for calibrating the mass appraisal models used in 2023.

Judgment No. 8: DCAD has failed to comply with USPAP Standards Rule 5-7(a) by failing to reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability and relevance of the approaches, methods, and techniques used in the 2023 DCAD mass appraisal.

Judgment No. 9: DCAD has failed to comply with USPAP Standards Rule 5-7(b) by failing to use or implement appraisal testing procedures and techniques to ensure that standards of accuracy are maintained for the 2023 DCAD mass appraisal.

Judgment No. 10: DCAD has failed to comply with USPAP Standards Rule 6 by reporting the results of the 2023 DCAD mass appraisal in a manner that is misleading.

Judgment No. 11: DCAD and Don Spencer worked in concert to falsify the Denton County tax roll in July 2021.

5.05 The flawed methods used by DCAD to determine the 2023 appraised values of Denton County properties are not uniform and equal as required by Article 8, Section 1(a) of the Texas Constitution.

Those methods do not comply with Texas statutory mandates set forth in the Tax Code.

* * *

Plaintiffs assert that the entire mass appraisal system utilized by DCAD is unconstitutional and resulted in overvaluations across the board and collection of an illegal tax.

5.06 Plaintiffs also seek prospective injunction relief from the Court. In the event that section 23.01 of the Texas Tax Code is held to be constitutional, Plaintiffs ask the Court to enter a permanent injunction against DCAD and Don Spencer to follow and adhere to the USPAP standards for mass appraisals going forward.

VI. ULTRA VIRES ACTS OF DON SPENCER

6.02 Appraisal districts are required to certify their tax rolls to the Texas Comptroller's Office that the value for 95% of the respective district's tax base has been fully resolved by July 25. In 2021, DCAD, through its chief appraiser at the time, Hope McClure, and her deputy, Spencer, falsified the tax rolls to the Comptroller's Office.

* * *

Instead of sending amended or updated property values, McClure and Spencer, chose to falsify the tax roll certification by moving the status of anywhere between 8,000 and 10,000 unresolved properties to resolved. After falsifying the tax rolls to the Comptroller's Office, McClure and Spencer then redesignated those properties as unresolved.

In falsifying the tax roll certification, McClure and Spencer acted without legal authority.

* * *

Further, Spencer has admitted that DCAD is working around the computerized mass appraisal software, which is a violation of appraisal standards and Texas law.

6.03 Plaintiffs seek a declaratory judgment that Spencer committed ultra vires acts in connection with the certification of the 2021 Denton County tax roll. Plaintiffs further seek a declaratory judgment that Spencer committed an ultra vires act by authorizing and condoning appraisals to occur outside of the PACS software DCAD uses to conduct mass appraisals.

* * *

APPENDIX H

I. A pleading states a valid cause of action against an employee of a political subdivision when it seeks prospective injunctive relief to require the employee to follow the law.

All citizens must obey the laws of the State of Texas. *See e.g. City of El Paso v. Heinrich*, 284 S.W.3d 366, 374 (Tex. 2009). The fact that a citizen is an employee of a political subdivision does not change this well-established fact. *Id.* While a legislative waiver of governmental immunity is usually required for suit against a governmental entity, "an action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that [immunity] bars." *Id.* at 368. Indeed, government employees – as a result of the position they hold – must often follow laws that specifically apply to their work-related conduct. *Id.* When a government employee acts outside the scope of the law, his or her conduct is said to be "ultra vires." *Id.* This concept has existed in Federal law for more than a century. *See* Douglas Laycock, *Modern American Remedies*, 482 (3d ed. 2002) (discussing *Ex Parte Young*, 209 U.S. 123 (1908) and its progeny). Texas law has likewise recognized that the actions of individual government employees may be undertaken without authority since at least 1927. *See City of Arlington v. Lillard*, 294 S.W. 829, 830 (Tex. 1927). In short, there is no doubt that Texas has long recognized a cause of action to prevent the continued ultra vires action of a government employee and continues to do so to this day. *See e.g. Image API, LLC v. Young*, 691 S.W.3d 831, 835 n.15 (Tex. 2024).

To properly maintain an ultra vires action, a plaintiff must allege that one or more government officials "acted without legal authority or failed to perform a purely ministerial act." *Jones v. Turner*, 646 S.W.3d 319, 325 (Tex. 2022) quoting *Heinrich*, 284 S.W.3d at 368–69, 372. Again, this Court must keep in mind that because no evidence was submitted, the only issue to be reviewed entails whether the Appellants here made such an *allegation*. *See Tex. Dep't of Crim. Justice v. Rangel*, 595 S.W.3d 198, 205 (Tex. 2020); see also *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).

In this case, the Appellants easily meet this burden. The Appellants First Amended Petition specifies: (i) what the law requires (that DCAD and Spencer utilize a mass appraisal method that conforms to both the Uniform Standards of Professional Appraisal Practice ("USPAP") and the uniform and equal requirement of the Texas Constitution); (ii) the legal basis for that requirement (Section 23.01 of the Tax Code and Article 8, Section 1 of the Constitution); and (iii) how Spencer has failed to adhere to the law in the past and will, in all likelihood, continue to do so in the future. [*See* Appellants' First Amended Petition, C.R. 132–37]. The First Amended Petition then clearly requests "[Appellants] ask the Court to enter a permanent injunction against [ ] Don Spencer to follow and adhere to the USPAP standards for mass appraisals going forward." [C.R. 140, at para. 5.06]. The above pleading language meets the requirements to properly allege an ultra vires claim. *Perez*, 653 S.W.3d at 201; *Jones*, 646 S.W.3d at 325; *Heinrich*, 284 S.W.3d at 368–69 (holding that governmental immunity "does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions"). Because Appellants alleged all of the necessary elements of an ultra vires action and expressly sought prospective injunctive relief against Don Spencer, the trial court erred in dismissing the Appellants suit for want of jurisdiction. As such, reversal and remand is both necessary and required.

II. Appellants' Declaratory Judgment Claims

A. A District Court has jurisdiction to consider a claim for declaratory relief against an employee of a political subdivision when the plaintiff seeks a declaration that the employee's past conduct violated the law.

In addition to the ultra vires claim described above, Appellants sought numerous declarations regarding the past conduct of Spencer. Importantly, and as discussed in greater detail in the following section, a government employee – as opposed to the government itself – is not entitled to either sovereign or governmental immunity. Thus, the trial court again erred in dismissing the Appellants' declaratory judgment claims against Spencer. [*See* Order, C.R. 190 (holding "Defendant Don Spencer's Plea to the Jurisdiction is hereby GRANTED and that all claims bought by [Appellants] against Defendant Don Spencer are hereby dismissed for want of jurisdiction") (emphasis original)].

* * *

Furthermore, even if the Appellants are not entitled to a refund, there is simply no basis for the trial court to declare that the ultimate viability of the Appellants' claims meets the level of a "jurisdictional" defect. Indeed, DCAD does not even make any argument – in its Plea to the Jurisdiction or Reply that there is a jurisdictional bar to this claim. [*See generally* DCAD's Plea to the Jurisdiction C.R. 46–53; DCAD's Reply C.R. 172–82]. Because Appellants have pleaded a viable claim for a refund and, even if not, any defect in such claim would not defeat jurisdiction, the trial court's dismissal must be reversed.

B. Section 42.09 of the Texas Tax Code does not provide Appellants' an "exclusive remedy," because the challenged action is not one for which the Property Tax Code provides a grounds of protest but instead challenges an issue out of the grounds provided in the protest under said Code for fraudulent action undertaken by the Appraisal District itself.

In its Plea to the Jurisdiction, DCAD asserted that Section 42.09 of the Texas Tax Code provides the "exclusive remedy" through which the Appellants can challenge their property assessment. As with the refund claim, no mention is made of why this purported defect – which clearly goes to the substance – is jurisdictional in nature. However, to guide both this court and the trial court after remand, it is helpful to explain why DCAD once again misses the mark.

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).

DCAD asserts that Section 42.09(a) of the Texas Tax Code provides the exclusive remedy for the Appellants claims. 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 DCAD fails to mention is that nowhere within the Property Tax Code[6] (*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,[7] letting alone

6 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.

7 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).

obtaining a favorable value adjustment from the ARB. 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. 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.

IV. Appellants have standing to challenge the constitutionality of Section 23.01 of the Texas Tax Code.

A. Appellants possess taxpayer standing.

Generally, parties do not have standing to sue unless they can show, among other things, that they have "suffered a particularized injury distinct from that suffered by the general public." See Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 555-56 (Tex. 2000). However, Texas law recognizes a "long-established exception" for taxpayers, who may sue "to enjoin the illegal expenditure of public funds" without showing a particularized injury. Jones v. Turner, 646 S.W.3d 319, 323 (Tex. 2022) citing Blue, 34 S.W. 3d at 556. To have standing as a taxpayer to challenge government expenditures, a plaintiff must show that (i) the plaintiff is a taxpayer; and (ii) that public funds are expended on . . . allegedly illegal activity." Jones, 646 S.W.3d at 323 quoting Williams v. Lara, 52 S.W.3d 171, 179 (2001). Here, the Appellants alleged that they are Denton County taxpayers, and thus, the first prong is easily met. [See e.g. C.R. 131, para. 2.01].

APPENDIX I

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 (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.

* * *

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).

APPENDIX J

SUMMARY OF THE ARGUMENT

This Court has long recognized that *ultra vires* suits are not subject to dismissal on sovereign immunity grounds. Likewise, in *Hensley v. State Comm'n on Judicial Conduct*, this Court expressly held that exhaustion of remedies is not necessarily required to pursue an *ultra vires* claim, particularly when, as here, the agency cannot grant the relief requested by the complainant. 692 S.W.3d 184, 190 (Tex. 2024).

This Court has also recognized taxpayer standing as a valid basis to bring a lawsuit to set aside an illegally collected tax. In the case at bar, the Petitioners expressly argued that the property tax – as calculated by DCAD and Spencer – was illegally calculated, and thus, any collection thereof was also illegal. For these reasons, the Court should reverse the District Court and the Court of Appeals, find that the Petitioners have standing, hold that sovereign immunity does not apply to these claims, and allow the case to move forward in the trial court.

ARGUMENT I. An ultra vires action is proper when it seeks to force a government employee to comply with the law, and agency exhaustion does not prohibit such a suit when the agency cannot grant the requested relief.

It is only natural that lawyers employed or retained by the State seek to dismiss lawsuits against the State, State agencies, State employees, and other government actors. However, the Courts still play an important role in providing necessary oversight on government actions, and not every claim against a government employee is necessarily barred *ab initio*.

The important role that the co-equal judicial branch plays in regulating the actions of the executive branch is more important today than ever. After all, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). As United States Supreme Court Chief Justice John Roberts recently noted: The judiciary is a coequal branch of government, separate from the others with the authority to interpret the Constitution as law, and strike down, obviously, acts of Congress or acts of the [executive]. The judiciary's role is to decide cases but, in the course of that, check the excesses of Congress or the executive. Fritze, John, *Chief Justice John Roberts Stresses Judicial Independence Amid Tensions with Trump*, CNN, (May 7, 2025), https://www.cnn.com/2025/05/07/politics/john-roberts-event-judicial-independence (accessed August 15, 2025 7:24 PM). Despite the fundamental nature of the judiciary's role in maintaining ordered liberty, the judiciary is under attack now more than ever. Maher, Kit, *Vance says Roberts is 'profoundly wrong' about judiciary's role to check executive branch*, CNN, (May 21, 2025), https://www.cnn.com/2025/05/21/politics/jd-vance-john-roberts-judiciary-role (accessed August 15, 2025 7:24 PM).[2] Against this politically charged backdrop, it is perhaps unsurprising – but no less troubling – that this case presents another example

[2] Vice President JD Vance called Chief Justice John Roberts' comments earlier this month that the judiciary's role is to check the executive branch a "profoundly wrong sentiment" and said the courts should be "deferential" to the [executive].

of the executive branch essentially arguing that it can do what-ever it wants, even if that means disobeying the law and that “mere” citizens are powerless to challenge those actions. This Court must put an end to the madness and retake its long-established oversight authority. Last term, this Court considered the case of McLennan County Justice of the Peace Dianne Hensley. *See Hensley v. State Comm’n on Judicial Conduct*, 692 S.W.3d 184, 190 (Tex. 2024). Justice Hensley claims a sincere religious objection to officiating same sex weddings. *Id.* After the United States Supreme Court ruled that a state’s refusal to grant same sex couples the same marital recognition it grants opposite sex couples was a violation of both Equal Protection and Due Process rights (*see Obergefell v. Hodges*, 576 U.S. 644, 680 (2015), Justice Hensley initially stopped performing weddings entirely.[3] *Hensley*, 692 S.W.3d at 190. Later, upon learning that no other Justices of the Peace in McLennan County were performing weddings, Hensley resumed performing ceremonies for opposite sex couples but declined to do so for same sex couples. *Id.* In lieu of officiating same sex weddings, Justice Hensley directed her staff to provide a written statement to same sex couples seeking such services. *Id.* This handout discussed Justice Hensley’s religious objection to same sex marriages and provided a list of other local officials willing to perform same sex ceremonies for the same $100 fee as she charged. *Id.*

Upon learning of Justice Hensley’s marriage policy and after an investigation and a hearing at

[3] It is important to note that Texas law *permits* a Justice of the Peace to perform wedding ceremonies, but no law requires them to do so. *Hensley*, 692 S.W.3d at 189.

which Justice Hensley testified, the State Commission on Judicial Conduct issued a public warning to Justice Hensley. *Id.* at 191. This public warning stated that Justice Hensley's non-judicial conduct cast doubt on her capacity to act impartially as a judge. *Id.* Although entitled to directly appeal the Commission's action to a Special Court of Review, Justice Hensley did not do so. *Id.*

Instead, Justice Hensley sued the Commission and its members and sought declarations that the Commission's action were unlawful and the individual Commissioners had acted ultra vires in issuing the public warning and threatening further sanctions for the same conduct. *Id.* at 192. Justice Hensley also alleged that the Commission's actions – as applied to her – were unconstitutional. *Id.* Much like the case at bar, the government's lawyers asserted that Hensley's claims were barred by the exclusive remedy doctrine and that the Commission and the individual Commissioners were protected by government immunity. *Id.* Both the trial court and the Austin Court of Appeals agreed with the Government and supported dismissal of her claims. *Id.* at 193. This Court granted review of these lower court decisions and reversed. *Id.* at 193, 201.

As the *Hensley* Court recognized, 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 does not do so when the purported exclusive remedy would not fully resolve the plaintiff's claim. *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.*

In Justice Hensley's case, she did not seek a reversal of the public reprimand from a Special Court of Review but instead filed a lawsuit in District Court seeking a judicial declaration that the Commission got the law wrong and that the individual Commissioners acted ultra vires. *Id.* The same is true here. Even assuming that an ARB does have jurisdiction to reverse a past years' erroneous tax assessments based on flawed mass appraisal methodology,[4] the ARB has no authority to declare the entire system of property appraisals countywide erroneous or to enjoin the individuals employed by a county appraisal district to comply with the laws mandating the use of accepted mass appraisal standards. *See* TEX. TAX CODE § 41.01.[5] Tellingly, it is beyond reasonable dispute that an ARB has no authority to issue an injunction mandating that future appraisals be conducted in a legally compliant manner. *See* TEX. CIV. PRAC. & REM. CODE § 65.021, *et seq.* (describing which judicial officers have authority to issue injunctive relief). Thus, just like the Special Court of Review could reverse the past action sanction against Justice Hensley, it was powerless to address repetition of the issue. *Hensley*,

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[4] In reality, an ARB will only change the appraised value when presented with evidence that the property is in a materially different condition than that asserted by the appraisal district.

[5] An ARB may: (1) determine protests (but only after taxes for a particular year have been assessed (see § 41.41)) initiated by property owners; (2) determine challenges initiated by taxing units; (3) correct clerical errors in the appraisal records and the appraisal rolls; (4) act on motions to correct appraisal rolls under Section 25.25; and (5) determine the applicability of certain exemptions. However, the ARB's remedy is limited to "direct(ing) the chief appraiser to correct or change the appraisal records or the appraisal roll to conform the appraisal records or the appraisal roll to the board's determination or decision. *See* TEX. TAX CODE § 41.02.

692 S.W.3d at 198 (holding "[i]n sum, Hensley's requested declarations are not barred by the exhaustion requirement . . ."). The exact same scenario is presented here. The ARB had no power to grant future injunctive relief against either the Denton County Appraisal District or its Chief Appraiser to prevent future appraisals from continuing to violate the mass appraisal standards required under the Tax Code. *See* TEX. TAX CODE § 23.01 (requiring that an appraisal district follow USPAP standards). Thus, finding that the ARB process provides an "exclusive remedy," would be nothing more than "a pointless waste of time and resources." *See id.* at 194; see also *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). The Court can – indeed, must – reverse the lower courts and allow this case to be tried on its merits so that the Petitioners' request to enjoin future[6] ultra vires acts can actually be addressed, rather than swept aside.

Despite different briefs from each of the Respondents and a 26-page opinion by the Second Court of Appeals, not one case is cited for the proposition that the existence of a purported "exclusive remedy" bars a claim seeking to enjoin future illegal behavior. Indeed, when one considers the issue, the nature of an ultra vires claim, and the

6 The First Amended Petition expressly sought prospective injunctive relief requiring DCAD and Don Spencer to follow USPAP standards for mass appraisals going forward. C.R. 140.

fact that, in almost every context, the exclusive remedies doctrine applies only to a body reviewing the action of another person or group, this is not surprising. In a typical scenario, a body – be it a Commission, a Board, or some other group – makes a decision which a person effected thereby seeks to challenge.

APPENDIX K

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.

B. Governmental immunity is not available to

[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).

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

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[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.

[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).

Constitutional challenges cannot be dismissed on sovereign immunity grounds, 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 States 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.

APPENDIX L

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 this Combined Reply to Defendants' Response to their 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:

INTRODUCTION

Three lines of cases resolve this Appeal, at least in its current procedural posture,[1] and mandate that the case be remanded to the District Court.

A. A valid ultra vires claim exists when a government employee

acts in a manner contrary to his or her governing statute. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009) (recognizing that "it is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity, even if

1 Because the Defendants only challenged the pleadings, the Court may only consider what the Plaintiffs have alleged to be true. Neither this Court nor the trial court may consider if the facts as alleged are correct. See Tex. Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 226 (Tex. 2004).

a declaration to that effect compels the payment of money");

B. A taxpayer possesses Constitutionally-based standing to

challenge an illegally calculated or collected tax. *See e.g. Perez v. Turner*, 653 S.W.3d 191, 198 (Tex. 2022) ("holding that to establish standing, a plaintiff must plead a particularized, concrete injury, distinct from that of the public, which courts have the power to redress"); and

C. A claimed "exclusive remedy" is, in fact, not exclusive when the

tribunal authorized to enforce that remedy lacks the power to do so. *Hensley v. State*, 692 S.W.3d 184, 194 (Tex. 2022) (noting that "[w]e have held repeatedly that a claim is barred when administrative remedies that could have mooted the claim were not exhausted[; b]ut we have never held that administrative remedies must be exhausted when they *cannot* moot the claim – when exhaustion would be a pointless waste of time and resources."

I. This is a textbook ultra vires claim against Don Spencer.

A viable *ultra vires* claim may be raised when a government actor, acting under the cloak of his government employment, takes an action in contravention to a statute set forth by the Legislature. *City of El Paso*, 284 S.W.3d at 372. The most common *ultra vires* claim[2] involves a government employee acting in a manner that

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2 Plaintiff's Petition in the trial court – perhaps inartfully – refers to this claim both as an "ultra vires" claim and a "Suit for Declaratory Relief and Prospective Injunction Relief." [*See* Plaintiffs' First Amended Petition at pages 8–12]. Regardless of labels, however, the facts remain the same.

directly contradicts the very statute that allows him or her to take the action in question. *See e.g. Southwestern Bell Telephone, L.P. v. Emmett*, 459 S.W.3d 578, 589 (Tex. 2015). Stated another way, "an action to determine or protect private party's rights against a state official who has acted

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.[8]

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 and that taxation may occur without representation, 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.

Respectfully submitted,

NOWAK & STAUCH, PLLC

By: /s/ Ryan C. Gentry Matthew A. Nowak State Bar No. 00794382 MNowak@ns-law.net Ryan C. Gentry State Bar No. 24067962 RGentry@ns-law.net 10000 North Central Expressway, Suite 1040 Dallas, Texas 75231 Telephone: (214) 823-2006 Facsimile: (214) 823-2007

ATTORNEYS FOR PETITIONERS

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8 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.

APPENDIX M

FILED: June 7, 2024, 2:36 p.m.
David Trantham, Denton County District Clerk
By: Jaimie Ransom, Deputy

CAUSE NO. 23-9526-481

MITCH VEXLER, CATHERINE VEXLER, MAVEX SHOPS OF FLOWER MOUND, LP, JIM SOLINSKI, AND GLORIA SOLINSKI, Plaintiffs

v.

DON SPENCER, in his capacity as Chief Appraiser of the Denton Central Appraisal District, and DENTON CENTRAL APPRAISAL DISTRICT, Defendants

PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE COURT'S MAY 2024 ORDERS GRANTING DON SPENCER'S AND DENTON COUNTY APPRAISAL DISTRICT'S PLEA TO THE JURISDICTION

I. RELIEF SOUGHT

1. Plaintiffs request the Court reconsider and grant a new trial on its' May 8, 2024 order granting Don Spencer, in his capacity as the Chief Appraiser of the Denton County Appraisal District, and Denton County Appraisal District's Plea to the Jurisdiction, insofar as Plaintiffs seek relief against

Mr. Spencer that he, as the head of the Denton County Appraisal District ("DCAD") and DCAD itself:

a. Comply with Texas Property Tax Code § 23.01 and that if DCAD utilizes a mass appraisal standard, DCAD must comply with the Uniform Standards of Professional Appraisal Practice (hereinafter, the "USPAP") in performing such mass appraisals.

b. Specifically, that Mr. Spencer and DCAD comply with the following Uniform Standards of Professional Appraisal Practice:

i. USPAP Standards Rule 5-1(b);

ii. USPAP Ethics Rule;

iii. USPAP Records Keeping Rule when conducting the future mass appraisals

iv. USPAP Standards Rule 5-2(e)(iii);

v. USPAP Standards Rule 5-4(b);

vi. USPAP Standards Rule 5-4(c);

vii. USPAP Standards Rule 5-7(a); and

viii. USPAP Standards Rule 5-7(b).

* * *

B) The Role of Appraisal Districts in the Property Tax System

7. At its most simple, a property tax equals the assessed value of the property multiplied by the tax rate for each taxing entity. See Tex. Prop. Tax. Code § 26.03 et seq. Appraisal districts such as DCAD are entirely responsible for the first half of the equation, the property's assessed value. A higher assessed value results in a higher overall tax bill. Property taxes are to be for the fair market value of the taxed property. See Tex. Prop. Tax. Code § 26.03.

8. The 1979 reforms were made for the purpose of fulfilling Article VIII's mandate: taxation shall be equal and uniform. Tex. Const. art. VIII, § 1(a) (emphasis added). The Texas Legislature mandates DCAD: (1) appraise taxable property at its January 1 market value; and (2) determine the market value by application of generally accepted appraisal methods and techniques. See Tex. Prop. Tax Code § 23.01. DCAD is also responsible for reviewing and approving exemptions on property.

* * *

D) Use of Mass Appraisal Systems

10. Given the number of properties appraisal districts must evaluate every year, the Texas Legislature does authorize an appraisal office and appraisal district to use a mass appraisal system. A mass appraisal system is:

> taking data from a large quantity of properties and processing a value, deriving that from income data, sales data of a group of similar properties, taking all of that data and then applying that across a large span of properties.

Ex. B 17:17-23. However, if DCAD uses a mass appraisal method, the Texas Legislature requires it:

> 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. Prop. Tax Code § 23.01(b) (emphasis added).

11. Against this backdrop, Plaintiffs brought this lawsuit to require Mr. Spencer and DCAD to follow their mandated duties under the Texas Property Tax Code and to recover illegally collected taxes. Plaintiffs First Amended Petition alleges that DCAD is not complying with Section 23.01. See Plf. 1st Am. Pet. ¶ 4.08. For the purposes of this plea to the jurisdiction, the Court is required to take that allegation as true.

12. Despite that requirement, DCAD itself admits that it has not fully followed its statutory duties. DCAD's then chief appraiser Hope McClure admitted that DCAD used a mass appraisal system. See Ex. A 31:7-21. DCAD uses a third-party vendor (Harris Govern) called PACS. Id. 66:16-19. DCAD has used Harris Govern since 2021. Id. 44:21-23.

Furthermore, Ms. McClure admitted that the data input into the mass appraisal system must be accurately and consistently collected. See id. 165:21-24. Despite this, Ms. McClure was unaware what testing or calibration of this system was subjected to. See id. 69:1-12; see also Ex. B 29:14 to 30:12. She was likewise unaware of if DCAD's previous system was calibrated or tested. See id. 240:4 to 241:8.

13. DCAD's corporate representative Charles Saling admitted that DCAD operates a mass appraisal system. Ex. B 34:20-22. In 2020, 130 of the 140 commercial properties challenged were reduced. See Ex. A 232:10-18. This applies to specific property reviews as well. See Ex. B. 192:9-24. These flaws are not some hypothetical harms to Plaintiffs, DCAD's failures consistently and repeatedly place Plaintiffs in the position of incurring protest and lawsuits to avoid improper liens attaching to their property.

IV. ARGUMENT

14. Mr. Spencer's oral argument before the Court was that unless a statute specifically identified the chief appraiser, then it could not form the basis of an ultra vires claim. Mr. Spencer's argument misconstrues Brennan's holding and more importantly, is absurd on its face. Using the plain and unambiguous language of Section 23.01(b), DCAD has no discretion in using the Uniform Standards of Professional Appraisal Practice.

15. The cases relied on by Mr. Spencer and DCAD do not support the contention that a statute must specifically designate the chief appraiser in a statute to assert an ultra vires claim against him. Furthermore, such a ruling (at the plea to the jurisdiction stage), would deny any Denton County taxpayer a right to ensure that DCAD and its' officers and employees comply with the Texas Property Tax Code and condemn them to having to incur the costs and time every year to reduce their values that were created by DCAD's improper appraisals.

A) Ultra Vires Claims do not Require a Statute to Name a Specific Agent.

16. To qualify as an ultra vires act, the lawsuit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act. See Dallas Cnty. Hosp. Dist. v. Sosa, No. 05-19-01164-CV, 2020 WL 4581666, at *2 (Tex. App.-Dallas Aug. 10, 2020, pet. denied) (mem. op.) (citing Heinrich, 284 S.W.3d at 372). Ministerial acts are those where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment. Id. (quoting City of Lancaster v. Chambers, 883 S.W.2d 650, 654 (Tex. 1994); Sw. Bell Tel., L.P. v. Emmett, 459 S.W.3d 578, 587 (Tex. 2015)).

* * *

17. Applying Sosa's ultra vires elements to this case, it is undisputed that Section 23.01(b) does not grant Mr. Spencer (as the head of DCAD) any discretion in using Uniform Standards of Professional Appraisal Practice because of the plain language of Section 23.01(b) uses the term "must comply." Tex. Prop. Tax. Code § 23.01(b). The common definition of must is "to be obliged or bound to by an imperative requirement" Must: Dictionary.com (accessed Jun. 4, 2024). Accordingly, the Texas Legislature left no doubt that its intent was that DCAD apply Uniform Standards of Professional Appraisal Practice when conducting a mass appraisal. Its' failure to do so gives rise to an ultra vires claim against the chief appraiser responsible for enacting that legislative mandate, Don Spencer. Accordingly, the Court should reconsider granting Mr. Spencer's plea to the jurisdiction and enter an order denying the plea to the jurisdiction.

4 Even if there was some ambiguity in Section 23.01, that ambiguity must be ruled against Mr. Spencer and DCAD because taxing statutes are construed strictly against the taxing authority. See Solaris Oilfield Site Services Oper LLC v. Brown Cnty. Appraisal Dist., No. 11-22-00206-CV, 2024 WL 1661759, at *8 (Tex. App.-Eastland Apr. 18, 2024, no pet. h.), reh'g denied (May 23, 2024) (quoting Morris v. Houston Indep. Sch. Dist., 388 S.W.3d 310, 313 (Tex. 2012)).

B) The Appraisal Review Board Members Were Named Parties in Brennan.

18. Even Brennan included parties other than the chief appraiser, despite Section 25.21 only specifically stating the duties of a chief appraiser is required to appraise a property omitted from the appraisal rolls. See Brennan v. City of Willow Park, 376 S.W.3d 910, 918 (Tex. App.-Fort Worth 2012, pet. denied); see also Tex. Prop. Tax. Code § 25.21(a). What DCAD failed to argue to the Court is that the chief appraiser was not the only party to the Brennan case. Also named were the members of the appraisal review board See Brennan, 376 S.W.3d at 914-15. Despite the appraisal review board members not being named in Section 25.21 or specifically named in any of the statutes referenced in Brennan, the Fort Worth Court of Appeals never separated out the appraisal review board members and allowed the lawsuit to proceed against the chief appraiser and the board members. See e.g. id. at 925.

19. Notably, despite claiming that Mr. Spencer is not the correct person to sue for an ultra vires act, he never stated who the proper person might be. In fact, his argument allows government actors to play a shell game of pointing the finger at other officials to avoid liability for overstepping their bounds. Texas precedent does not allow such games.

C) Section 42.09 Is Irrelevant to the Ultra Vires Claim

20. Mr. Spencer's argument to the Court that Section 42.09 is an exclusive remedy has no bearing on this plea to the jurisdiction and violates established Texas Supreme Court precedent. Insofar as Mr. Spencer relies on the redundant claims doctrine, he mischaracterizes Plaintiffs' claims and more importantly, allows Mr. Spencer, as the head of DCAD, to permanently evade any court supervision of his mandated duties under Section 23.01. Mr. Spencer cited no authority that allows a taxpayer to use a Section 42.09 claim to seek prospective forward reaching relief. The plain language of Section 42.09 does not indeed reference such relief.

The protest and appeal sections of the Texas Property Tax Code only address actions that have already occurred, nothing in the plain language of those statutes state a taxpayer can seek forward-reaching relief.

21. Every right withheld, must have a remedy, and every injury a proper redress. See Marbury v. Madison, 5 U.S. 137, 163, 2 L. Ed. 60 (1803). It is not a remedy to condemn Plaintiffs and the taxpayers of Denton County to every year challenge Mr. Spencer's failure to follow a legislative mandate.

DCAD's position and the Court's ruling turns the appraisal protest system on its' head. The Texas Legislature and the Texas Constitution clearly impose rules that mandate Mr. Spencer, his predecessors, and his successors are required to follow as the head of DCAD's appraisal office. Yet, if the Court accepts Mr. Spencer's view that his ultra vires failure to follow Section 23.01 can only be addressed in a protest, it requires Plaintiffs to every year challenge the appraisal and whether Mr. Spencer is complying with a mandatory law will forever evade judicial review.

22. Under DCAD's position, Mr. Spencer is free to allow DCAD to continue to ignore its' legislatively mandated duties and that Plaintiffs must every year they own a property, to incur the costs to appeal the improper valuation to an Appraisal Review Board ("ARB") and if necessary (as it has been for several years), file a lawsuit against DCAD. The Texas Supreme Court has repeated today the long standing rule that "if an otherwise complete and adequate remedy will lead to a multiplicity of suits, that very fact, that very fact prevents it [the relief] from being complete and adequate." Huyhn v. Blanchard, No. 21-0676, slip op. 53. (Tex. Jun. 7, 2024), available at https://www.txcourts.gov/media/1458702/210676.pdf (emphasis in original) (quoting Campbell v. Wilder, 487 S.W.3d 146, 152 (Tex. 2016)).

In Huyhn, the Court held that forcing an adjacent property owner to file additional suits every time the same nuisance occurred (as opposed to seeking a permanent injunction) was not an adequate remedy. See id. Equity assumes jurisdiction for the purpose of preventing a multiplicity of lawsuits. See id. at 54 (quoting Repka v. Am. Nat'l Ins. Co., 186 S.W.2d 977, 979 (Tex. 1945); Rogers v. Daniel Oil & Royalty Co., 110 S.W.2d 891, 896 (Tex. 1937)). While Huyhn is a nuisance case, the same underlying principles apply in this case. Requiring Plaintiffs to repeat the same waltz of improper appraisal, assessment, and protest every year is not an adequate remedy and does not provide them a proper redress.

23. Given the relief sought directly affects DCAD itself as well, judicial efficiency requires that DCAD stay a party to this lawsuit as it itself will ultimately be required to correct the ultra vires acts of its' chief appraisers.

24. Insofar as this Motion requires Plaintiffs to amend their petition to correctly conform the relief sought against Mr. Spencer, Plaintiffs request leave to do so.

IV. PRAYER

Based on the foregoing, Plaintiffs Mitch Vexler, Catherine Vexler, Mavex Shops of Flower Mound, LP, Jim Solinski, and Gloria Solinski pray this Motion for Reconsideration of the Court's May 2024 Order Granting Don Spencer's and Denton County Appraisal District's Plea to the Jurisdiction in all things be granted and that the Court enter an order denying Don Spencer's and Denton County Appraisal District's Plea to the Jurisdiction.

Plaintiffs pray for any further relief, whether arising at law or equity, to which they show themselves justly entitled.

Respectfully submitted,

NOWAK & STAUCH, PLLC

By: /s/ Matthew A. Nowak
Matthew A. Nowak
State Bar No. 00794382
mnowak@ns-law.net

ATTORNEYS FOR PLAINTIFFS

* * *

APPENDIX N

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Texas Tax Code § 23.01(b)

The market value of property shall be determined by the application of generally accepted appraisal methods and techniques. 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. The same or similar appraisal methods and techniques shall be used in appraising the same or similar kinds of property. However, each property shall be appraised based upon the individual characteristics that affect the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value.

Texas Tax Code § 41.01(a) (relevant portions)

The appraisal review board shall:

(1) determine protests initiated by property owners;

(2) determine challenges initiated by taxing units;

(3) correct clerical errors in the appraisal records and the appraisal rolls;

(4) act on motions to correct appraisal rolls under Section 25.25; and

(5) determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, E, or H, Chapter 23.

Texas Tax Code § 41.02

The appraisal review board may direct the chief appraiser to correct or change the appraisal records or the appraisal roll to conform the appraisal records or the appraisal roll to the board's determination or decision.

Texas Tax Code § 41.41(a) (relevant portions)

A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H, Chapter 23, determination of its appraised or market value;

(2) unequal appraisal of the owner's property;

* * *

(9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner.

Texas Tax Code § 42.09(a)

Except as provided by Subsection (b), 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:

(1) in defense to a suit to enforce collection of delinquent taxes; or

(2) 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.

Texas Civil Practice and Remedies Code § 65.021

(a) The judge of a district or county court in term or vacation shall hear and determine applications for writs of injunction.

(b) This section does not limit injunction jurisdiction granted by law to other courts.