

CAUSE NO. D-1-GN-15-003492

CITY OF AUSTIN	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	
	§	
TRAVIS CENTRAL APPRAISAL	§	
DISTRICT; INDIVIDUAL PROPERTY	§	TRAVIS COUNTY, TEXAS
OWNERS WHO OWN C1 VACANT	§	
LAND OR F1 COMMERCIAL REAL	§	
PROPERTY WITHIN TRAVIS COUNTY,	§	
TEXAS; and GLENN HEGAR, IN HIS	§	
OFFICIAL CAPACITY AS TEXAS	§	126th JUDICIAL DISTRICT
COMPTROLLER OF PUBLIC	§	
ACCOUNTS, et al.	§	
<i>Defendants</i>	§	<i>Specially assigned to 353rd Judicial District</i>

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**STATE OF TEXAS' PETITION IN INTERVENTION**

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TO THE HONORABLE TIM SULAK, JUDGE PRESIDING:

The State of Texas files this Petition in Intervention pursuant to Rule 60 of the Texas Rules of Civil Procedure and Section 37.006(b) of the Texas Civil Practice and Remedies Code. The State of Texas seeks to intervene in this case to defend against the City of Austin's invalid attempt to take control over Texas tax policy from the Legislature by challenging the constitutionality and validity of Texas Tax Code sections 41.43(b)(3) and 42.26(a)(3).

## I. INTRODUCTION

The City of Austin filed suit against the Travis Appraisal Review Board appealing what it characterized as the Board’s “undervaluation” of certain commercial real properties.(Petition at 1.) In addition, the City seeks to void Texas tax law and policy, arguing that the State’s tax appraisal system violates Article 8, Section 1 of the Texas Constitution. *Id.* Although the City limits the relief stemming from its appraisal appeal to commercial real properties, its claim challenging the constitutionality of the State’s tax appraisal system applies to all Texas property owners, residential and commercial alike. *Id.* at ¶38(b). Despite this broad claim and its implications on Texas taxpayers, the district court granted the City’s motion to strike homeowners’ intervention. Texas homeowner taxpayers have been deprived of a voice in the City’s attempt to rewrite Texas tax law.

Because the City challenges the constitutionality of Texas tax statute and policy, and because Texas homeowners are totally unrepresented in this suit, the State of Texas through Attorney General Ken Paxton seeks to intervene in this suit to defend against these claims.

## **II.** **THE STATE OF TEXAS SATISFIES THE REQUIREMENTS FOR** **INTERVENTION**

Texas Rule of Civil Procedure 60 plainly permits the State of Texas to intervene in this matter. *See* TEX. R. CIV. P. 60. “Rule 60. . . provides. . . that any party may intervene” in litigation in which it has a sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)).

This matter presents a textbook case for State intervention. The Attorney General has a justiciable, and indeed compelling, interest in this case in which the City of Austin has challenged the constitutionality of Texas Tax Code, sections 41.43(b)(3) and 42.26(a)(3). It is difficult to imagine a stronger State interest than defending the will of the people of Texas relating to tax law and policy manifested through the legislative process. The Attorney General has intervened in numerous instances to defend the constitutionality of State laws. *See, e.g., Wilson v. Andrews*, 10 S.W.3d 663, 666 (Tex. 1999) (“The Attorney General intervened to

defend [Texas Local Government Code § 143.057(d)]’s constitutionality.”); *Corpus Christi People’s Baptist Church, Inc. v. Nueces County Appraisal Dist.*, 904 S.W.2d 621, 624 (Tex. 1995) (“The Attorney General intervened for the limited purpose of defending the constitutionality of section 11.433 [of the Texas Tax Code].”). The Attorney General intervenes in this case for the same purpose.

In addition, Texas Civil Practice and Remedies Code § 37.006(b) requires that the Attorney General be notified about, and is “entitled to be heard” in, “any proceeding” in which a “statute, ordinance, or franchise is alleged to be unconstitutional.” TEX. CIV. PRAC. & REM. CODE § 37.006(b). Both the Supreme Court of Texas and courts of appeals have recognized that the Attorney General can intervene to defend State statutes against constitutional attack. *See, e.g., Motor Vehicle Bd. of the Tex. Dep’t of Transp. v. El Paso Indep. Auto Dealers Ass’n, Inc.*, 1 S.W.3d 108, 110 (Tex. 1999); *Mercer v. Phillips Natural Gas Co.*, 746 S.W.2d 933, 940 (Tex. App.—Austin 1988, writ denied) (under Section 37.006(b), “[t]he Attorney General is specifically authorized to be made a party to any litigation involving the constitutionality of a statute.”). Indeed, the City notified the Attorney General of its suit pursuant to section 37.006(b) and argued that the Attorney General was the proper party to

defend the constitutionality of the statutes at issue as the basis for its motion to strike homeowners from the suit. Accordingly, the Attorney General is permitted to intervene in this case pursuant to Texas Civil Practice and Remedies Code § 37.006(b) as well.

**III.**  
**CONCLUSION**

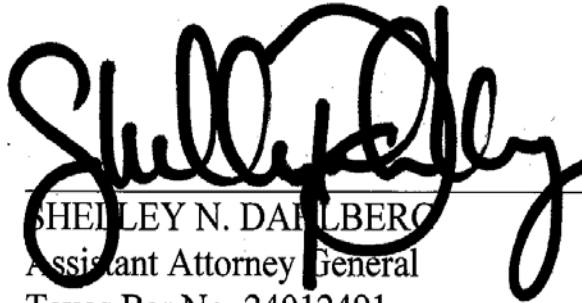
The State of Texas intervenes in this action pursuant to Texas Rule Civil Procedure 60 and Texas Civil Practice and Remedies Code § 37.006(b) for the purpose of defending the constitutionality of Texas Tax Code sections 41.43(b)(3) and 42.26(a)(3) and opposing the City's request for injunction and declaratory relief.

Respectfully submitted,

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***ATTORNEY FOR THE STATE OF TEXAS***

## CERTIFICATE OF SERVICE

I hereby certify that on this 29<sup>th</sup> day of October, 2015, the above and foregoing *State of Texas' Petition in Intervention* was served on the following parties electronically via EFileTexas.gov and/or as otherwise indicated below:

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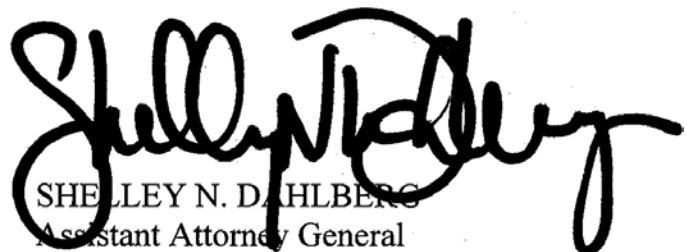
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