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SUPREME COURT OF TEXAS  
BLAKE A. HAWTHORNE, CLERK

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June 15, 2016

VIA E-FILING

Mr. Blake A. Hawthorne, Clerk  
Supreme Court of Texas  
201 West 14th St., Room 104  
Austin, Texas 78701

Re: No. 14-0743, *Southwest Royalties, Inc. v. Hegar*

Dear Mr. Hawthorne:

This letter responds to a letter brief filed by the Texas Oil & Gas Association on June 14, 2016, in the above-captioned cause. Please circulate this letter to the Court.

TO THE HONORABLE SUPREME COURT OF TEXAS:

Months after oral argument, the Texas Oil & Gas Association (TXOGA) now asks the Court to rely on a recently created, extra-record economic study to dispute record evidence that judicially expanding the manufacturing exemption would have grave fiscal consequences for Texas taxpayers. TXOGA Letter at 1 (June 14, 2016). The Court should disregard TXOGA's submission for three reasons.

*First*, the Court should not consider evidence submitted for the first time after briefing and submission. It is well established that extra-record evidence should not be considered on appeal. *See, e.g., Guajardo v. Conwell*, 46 S.W.3d 862, 864 (Tex. 2001) (declining to consider evidence because "it is not in the clerk's record"); *Tex. & N. O. R.R. Co. v. Hayes*, 293 S.W.2d 484, 487 (Tex. 1956) ("If this case is to be reversed, it must be upon some error disclosed by the record."); *Stephens Cnty. v. J.N. McCammon, Inc.*, 52 S.W.2d 53, 55 (Tex. 1932) ("When an appellate court is called upon to revise the ruling of a trial court, it must do so upon the record before that court when such ruling was made."); *see also Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481, 486 n.3 (1986) ("Nor is it appropriate . . . for us to consider claims that have not been the subject of factual development in earlier proceedings."); *New Haven Inclusion Cases*, 399 U.S. 392, 450 n.66 (1970) ("None of this is record evidence, and we do not consider it.").

The study makes factual assertions that dispute record evidence regarding the economic impact of a judicial expansion of the manufacturing exemption to cover mineral extraction. *See, e.g.*, Study at 4 n.9. However, Respondents did not have the opportunity to test or challenge the study's methods, assumptions, calculations, or conclusions through the adversarial process. Nor did the trial court consider the study. Consideration of such belated evidence would therefore raise serious due process concerns.

*Second*, the study is not an unbiased economic assessment; it is advocacy. Notably, the study concludes that "exempting items used in downhole processing from sales tax levies is both economically appropriate and a fiscally sound policy that will pay dividends to business activity and taxpayers for decades to come." Study at 15. The study concedes, however, that a tax exemption to cover onshore<sup>1</sup> mineral extraction equipment would have a negative economic impact until 2021, *see id.* at 14, thus confirming that judicial expansion of the manufacturing exemption would impose an immediate and severe economic penalty on Texas taxpayers.

*Third*, even if the economic benefit of expanding the manufacturing exemption would eventually exceed lost tax revenue, as the study speculates, *see id.*, weighing competing costs and benefits of tax exemptions is not within the purview of the judiciary; that is a job for the Legislature. The Court "must take the Legislature at its word, respect its policy choices, and resist revising a statute under the guise of interpreting it." *Christus Health Gulf Coast v. Aetna, Inc.*, 397 S.W.3d 651, 654 (Tex. 2013); *see also McIntyre v. Ramirez*, 109 S.W.3d 741, 748 (Tex. 2003) (explaining that a court's role "is not to second-guess the policy choices that inform our statutes or to weigh the effectiveness of their results"). And as Respondents explained in detail, the Legislature intended the manufacturing exemption to be applied narrowly and did not intend it to cover mineral extraction. *See Resp.* at 12-14, 22-24.

Respectfully,

/s/ Michael P. Murphy  
Michael P. Murphy  
*Counsel for Respondents*

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<sup>1</sup> The Legislature expressly exempted mineral-extraction equipment used offshore in a provision adjacent to the manufacturing exemption. Tex. Tax Code § 151.324.

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CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2016, a copy of the foregoing letter was served, via email and File & ServeXpress, upon the following:

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