

11807

CAUSE NO. \_\_\_\_\_

KELLY MARTIN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
WHITE DEER INDEPENDENT SCHOOL DISTRICT; BRADLEY DAIN HAIDUK, BLAINE BOLTON, TIMMY L. BICHSEL, RAY PIPES, SHANE GRANGE, KANE BARROW, and JOE DON BROWN, in their Official Capacities as Members of the Board of Trustees of White Deer Independent School District; KARL VAUGHN, in his Official Capacity as Superintendent of White Deer Independent School District; and JACKIE MOORE, in her Official Capacity as Tax Assessor-Collector of Carson County, Texas,	§	CARSON COUNTY, TEXAS
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION  
AND APPLICATION FOR TEMPORARY INJUNCTION**

Plaintiff KELLY MARTIN brings this lawsuit against Defendants WHITE DEER INDEPENDENT SCHOOL DISTRICT; BRADLEY DAIN HAIDUK, BLAINE BOLTON, TIMMY L. BICHSEL, RAY PIPES, SHANE GRANGE, KANE BARROW, and JOE DON BROWN, in their official capacities as members of the Board of Trustees of White Deer Independent School District; KARL VAUGHN, in his Official Capacity as Superintendent of White Deer Independent School District; and JACKIE MOORE, in her Official Capacity as Tax Assessor-Collector of Carson County, Texas. In support of her petition, Plaintiff shows as follows:

### **Discovery Level**

1. Discovery is intended to be conducted under Level 3 of Texas Rule of Civil Procedure 190.4.

### **Nature of Lawsuit**

2. In violation of Section 1-b(e), Article VIII, of the Texas Constitution and Section 11.13(n-1) of the Texas Tax Code, Defendants in 2015 repealed the local option homestead exemption that they had adopted under Section 11.13(n) of the Texas Tax Code for the 2014 tax year. They have also illegally assessed and collected taxes that are subject to this exemption. Plaintiff, whose residence homestead lies within the boundaries of the school district, is entitled to the same exemption for the 2015 and 2016 tax years. Plaintiff seeks declaratory relief that Defendants' actions were *ultra vires* and violate her due process and due course of law rights under the Texas Constitution. Plaintiff further requests a permanent injunction mandating that Defendants reinstate the exemption for application in the 2015 through 2019 tax years. Plaintiff also seeks a refund of illegally collected taxes which Plaintiff paid to the school district as a result of duress.

### **Parties**

3. Plaintiff KELLY MARTIN owns the real property located at 817 Texas, Box 722, White Deer, Carson County, Texas, which is Plaintiff's residence homestead.

4. Defendant WHITE DEER INDEPENDENT SCHOOL DISTRICT is an independent school district organized under the laws of the State of Texas. The school district is governed by its Board of Trustees, commonly referred to as the "school board." *See* Tex. Educ. Code §11.051. Pursuant to Section 17.024(c) of the Texas Civil Practice & Remedies Code, the

school district may be served through the President of the School Board, Shane Grange, at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

5. Defendant BRADLEY DAIN HAIDUK is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

6. Defendant BLAINE BOLTON is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

7. Defendant TIMMY L. BICHSEL is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

8. Defendant RAY PIPES is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

9. Defendant SHANE GRANGE is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

10. Defendant KANE BARROW is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

11. Defendant JOE DON BROWN is being sued in his official capacity as a member of the Board of Trustees of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

12. Defendant KARL VAUGHN is being sued in his official capacity as Superintendent of White Deer Independent School District. He may be served at 604 S. Doucette St., White Deer, Texas 79097 or wherever he may be found.

13. Defendant JACKIE MOORE is being sued in her official capacity as Tax-Assessor Collector of Carson County, Texas. She may be served at 501 Main Street, Panhandle, Texas 79068 or wherever she may be found.

### **Venue**

14. Venue is proper in Carson County pursuant to Section 15.002 of the Texas Civil Practice and Remedies Code as that is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred.

### **Factual Background**

15. Section 1-b, Article VIII, of the Texas Constitution, titled "Residence Homestead Exemption," provides certain limited exemptions from ad valorem taxation for residence homesteads. One such exemption, commonly known as the "local option homestead exemption," is found in Section 1-b(e). This section allows a governing body of a political subdivision to exempt from ad valorem taxation a percentage of the market value of the residence homestead of a married or unmarried adult, including one living alone. The amount of the exemption may not exceed twenty percent and may not be less than \$5,000 unless the Legislature by general law prescribes other monetary restrictions on the amount of the exemption. An eligible adult is entitled to receive other applicable exemptions provided by law, such as the homestead exemption with statewide application pertaining to ad valorem taxation for general elementary and secondary public school purposes.

16. The Legislature codified the local option homestead exemption in Section 11.13(n) of the Texas Tax Code. This provision states:

In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent.

As does Section 1-b(e), Article VIII, of the Texas Constitution, Section 11.13(n) of the Texas Tax Code makes the local option homestead exemption an entitlement.

17. Senate Joint Resolution No. 1 (“S.J.R. 1”), adopted by the 84th Legislature, proposed an amendment to, among other things, Section 1-b(e), Article VIII, of the Texas Constitution. (Exhibit 1: S.J.R. 1). Concerning local option homestead exemptions, S.J.R. 1 proposed an amendment stating, “The legislature by general law may prohibit the governing body of a political subdivision that adopts an exemption under this subsection from reducing the amount of or repealing the exemption.” (S.J.R. 1 §1). S.J.R. 1 further states, “The amendments to Sections 1-b(c), (d), and (e), Article VIII, of this constitution take effect for the tax year beginning January 1, 2015.” (S.J.R. 1 §3(b)). On November 3, 2015, Texas voters approved the constitutional amendment.

18. Relatedly, Senate Bill 1 (“S.B. 1”), enacted by the 84th Legislature, amended Section 11.13 of the Texas Tax Code. (Exhibit 2: S.B. 1). S.B. 1 added Section 11.13(n-1) to the Texas Tax Code, which provides that the “governing body of a school district, municipality, or county that adopted an exemption under Subsection (n) for the 2014 tax year may not reduce the amount of or repeal the exemption. This subsection expires December 31, 2019.” S.B. 1 makes clear that this “Act applies beginning with the 2015 tax year.” (S.B. 1 §26). It further

states that “this Act takes effect on the date on which the constitutional amendment proposed by S.J.R. 1, 84th Legislature, Regular Session, 2015, takes effect.” (S.B. 1 §27(a)). **S.J.R. 1 makes such date January 1, 2015. (S.J.R. 1 §3(b)).**

19. In adopting S.B. 1, the Legislature intended to prevent school districts, municipalities, and counties from reducing the amount of or repealing local option homestead exemptions that they had adopted for the 2014 tax year for use in subsequent years. This is shown in the plain language of newly adopted Section 11.13(n-1), which effectuates the Legislature’s intent to set a floor for local option homestead exemption rates at the level they were in 2014 until the end of the 2019 tax year. It is further shown in S.B. 1, which states that this “Act applies beginning with the 2015 tax year,” and in S.J.R. 1, which states that the “amendments to Sections 1-b(c), (d), and (e), Article VIII, of this constitution take effect for the tax year beginning January 1, 2015.” Under the amendment to Section 1-b(e), Article VIII, of the Texas Constitution and the new Section 11.13(n-1) of the Texas Tax Code, school districts, municipalities, and counties cannot reduce the amount of or repeal the local option homestead exemption at any time from January 1, 2015 through December 31, 2019.

20. This legislative intent is further shown in S.B. 1’s Bill Analysis, which states that “[a]ny local taxing units that currently offer the optional homestead exemption must maintain the current exemptions offered for 10 years.” (Exhibit 3: S.B. 1 Bill Analysis). It is also shown in S.B. 1’s Fiscal Note, which states that “[t]he bill would prohibit a school district, municipality, or county that has adopted an optional percentage homestead exemption for the 2014 tax year under Section 11.13(n) Tax Code from reducing or repealing the exemption for a period extending through the end of tax year 2019.” (Exhibit 4: S.B. 1 Fiscal Note).

21. Through a letter to the Attorney General of Texas dated December 15, 2015, Senator Jane Nelson, Senate District 12, Chair of the Senate Finance Committee, confirmed this legislative intent. (Exhibit 5: 12/15/2015 Letter from Senator Nelson to Texas OAG). Senator Nelson explained:

The Legislature passed Senate Bill 1 (84R), and the voters approved the related Proposition 1, increasing the homestead exemption for school district taxes. In addition, Senate Bill 1 prohibits school districts, municipalities, and counties from reducing or repealing the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year. The Legislature clearly intended that no taxpayers may have their local option homestead exemption reduced or eliminated from the 2014 tax year through the 2019 tax year. On September 9, 2015, First Assistant Attorney General Charles E. Roy sent a letter to Comptroller Hegar stating that a local government may not repeal or reduce a local option homestead exemption from the level it was in tax year 2014 through tax year 2019 and any repeal or reduction in the local option homestead exemption has no effect. This interpretation is consistent with the intent of Senate Bill 1.

Senator Nelson subsequently requested a formal opinion “on whether a school district, municipality, and county may reduce or repeal the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year.” Her request was assigned request No. RQ-0082-KP.

22. Senator Nelson’s formal opinion request drew a response from an organization called “The Equity Center.” Through a letter from its counsel dated January 14, 2016, The Equity Center described itself as a group of more than 600 school districts that advocate for equitable school funding. (Exhibit 6: 01/14/2016 Letter from The Equity Center to Texas OAG). It stated, “The Equity Center contends that the new law codified at section 11.13(n-1) of the Texas Tax Code may not be retroactively applied to void the actions of any school districts that reduced or repealed their optional exemptions before July 1, 2015.” It further contended that “such a retroactive law would violate the Constitution,” specifically Section 16, Article I, and Section 55, Article III, of the Texas Constitution.

23. The Office of the Attorney General of Texas issued its formal opinion on March 17, 2016, assigned Opinion No. KP-0072. (Exhibit 7: 03/17/2016 Texas OAG Opinion KP-0072). The opinion held that “any repeal of or reduction in the amount of a local option homestead exemption by a school district, municipality, or county in 2015 would have no effect under subsection 11.13(n-1)’s express terms.” Rejecting The Equity Center’s position, the opinion explained that a court balancing the factors for considering challenges under Section 16, Article I, of the Texas Constitution, while also effectuating the presumption against unconstitutionality, “would likely conclude that subsection 11.13(n-1) is not unconstitutionally retroactive.”

24. White Deer Independent School District is a school district in Texas. Pursuant to Section 11.051(a) of the Texas Education Code, the school district is governed by its Board of Trustees. In violation of the plain terms of S.B. 1 (and Section 11.13(n-1) of the Texas Tax Code), Defendants have refused to certify its local option homestead exemption amount for subsequent tax years (including the 2015 and 2016 tax years). They have not reinstated the exemption. Furthermore, Defendants have illegally assessed and collected taxes that are subject to this exemption.

25. Defendants’ actions in repealing the exemption, refusing to grant Plaintiff the exemption, and assessing and collecting taxes that are subject to the exemption were *ultra vires*. In doing so, Defendants acted without legal authority or failed to perform a ministerial act. Defendants’ actions, furthermore, violate Plaintiff’s due process and due course of law rights under Section 19, Article I, of the Texas Constitution. Defendants have taken and deprived Plaintiff of a constitutionally protected right through their arbitrary and capricious use of power and failed to provide Plaintiff constitutionally sufficient notice and hearing. Upon information



and belief, Defendants take the position that Section 11.13(n-1) of the Texas Tax Code is unconstitutional.

26. Plaintiff has been personally aggrieved by Defendants' misconduct. Such actions have caused Plaintiff to suffer an actual, concrete, and particularized injury. Plaintiff's homestead residence lies within the school district's geographic boundaries. The school district imposes ad valorem taxes upon Plaintiff. Under Section 1-b(e), Article VIII, of the Texas Constitution and Sections 11.13(n) and 11.13(n-1) of the Texas Tax Code, Plaintiff is entitled to the local option homestead exemption for tax years 2015 through 2019 that the school district had adopted for tax year 2014. By unconstitutionally repealing the exemption and assessing and collecting taxes that are subject to the exemption, Defendants have illegally taken and deprived Plaintiff of her entitlement to the exemption and of her money, consequently increasing Plaintiff's personal ad valorem tax liability and causing Plaintiff to pay taxes under duress in order to avoid incurring penalties and interest imposed by the Texas Tax Code for nonpayment of such taxes. Defendants' illegal collection of taxes otherwise subject to the exemption unlawfully deprived Plaintiff of property. Plaintiff has lost the local option homestead exemption that she had for the 2014 tax year because of Defendants' misconduct. This has placed undue stress on Plaintiff's personal ability to conserve or apply her financial resources as she so needs or desires.

**Request for Declaratory Relief**

27. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Plaintiff seeks judgment declaring the following:

- a. Section 11.13(n-1) of the Texas Tax Code is constitutional as a matter of law.

- b. Section 1-b(e), Article VIII, of the Texas Constitution and Section 11.13(n-1) of the Texas Tax Code prohibit school districts from repealing or reducing a local option homestead exemption, at any time between January 1, 2015 through December 31, 2019, that was adopted for the 2014 tax year.
- c. Any repeal of or reduction in the amount of a local option homestead exemption by a school district at any time between January 1, 2015 through December 31, 2019 has no effect and is void as a matter of law.
- d. Defendants' repeal of the local option homestead exemption that White Deer Independent School District had adopted under Section 11.13(n) of the Texas Tax Code for the 2014 tax year was *ultra vires* and violates Plaintiff's rights under Article I, Section 19 of the Texas Constitution.
- e. Defendants' refusal to grant Plaintiff, for application in the 2015 and 2016 tax years, the local option homestead exemption that White Deer Independent School District had adopted under Section 11.13(n) of the Texas Tax Code for the 2014 tax year was *ultra vires* and violates Plaintiff's rights under Article I, Section 19 of the Texas Constitution.
- f. Defendants' assessment and collection of taxes subject to the local option homestead exemption that White Deer Independent School District had adopted under Section 11.13(n) of the Texas Tax Code for the 2014 tax year was *ultra vires* and violates Plaintiff's rights under Article I, Section 19 of the Texas Constitution.

### **Application for Injunctive Relief**

28. Plaintiff seeks a temporary injunction that orders Defendants: (a) to reinstate, for application in the 2015 through 2019 tax years, the local option homestead exemption that White Deer Independent School District adopted for the 2014 tax year pursuant to Section 11.13(n) of the Texas Tax Code, and (b) to stop assessing and collecting any property taxes that are subject to such exemption.

29. Plaintiff also seeks judgment granting a permanent injunction or mandamus relief that orders Defendants: (a) to reinstate, for application in the 2015 through 2019 tax years, the local option homestead exemption that White Deer Independent School District adopted for the 2014 tax year pursuant to Section 11.13(n) of the Texas Tax Code, (b) to grant Plaintiff the exemption for the 2015 and 2016 tax years and all other tax years in which Plaintiff is entitled to the exemption, and (c) to stop assessing and collecting any property taxes that are subject to such exemption.

30. Plaintiff is likely to succeed on the merits of her lawsuit. As established above, Defendants have engaged in *ultra vires* acts that have personally aggrieved Plaintiff and that violate Plaintiff's due process and due course of law rights under Section 19, Article I, of the Texas Constitution. Defendants repealed the local option homestead exemption in 2015 in violation of Section 1-b(e), Article VIII, of the Texas Constitution and Section 11.13(n-1) of the Texas Tax Code and in contravention of clear legislative intent expressed in S.B. 1 and its legislative history, S.J.R. 1, and in Senator Nelson's letter to the Office of the Attorney General dated December 15, 2015. Defendants have also illegally assessed and collected taxes that are subject to the local option homestead exemption. Plaintiff has suffered an imminent and irreparable injury and has no adequate remedy at law.

31. Plaintiff seeks injunctive relief pursuant to Section 65.001, 65.011(1) and 65.011(3) of the Texas Civil Practice and Remedies Code and other applicable law.

32. Plaintiff is willing to post bond in accordance with Texas Rule of Civil Procedure 684.

### **Request for Refund**

33. Plaintiff seeks judgment awarding her a refund of the taxes collected by Defendants that were subject to the local option homestead exemption that Defendants wrongfully repealed.

34. Plaintiff paid such taxes under duress in order to avoid incurring penalties and interest under the Texas Tax Code for nonpayment of such taxes.

35. Plaintiff's tax funds were illegally taken and collected by Defendants, thus entitling Plaintiff to a refund.

### **Request for Attorney's Fees and Costs**

36. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, Plaintiff seeks recovery of her costs and attorney's fees as are reasonable and just.

37. Plaintiff seeks monetary relief in the amount of \$100,000 or less and non-monetary relief in the form of a declaratory judgment and permanent injunction.

### **Conditions Precedent**

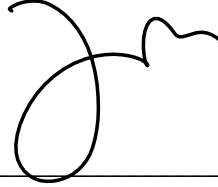
38. All conditions precedent to this action have been performed or have occurred.

### **Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer and that, upon final trial, the Court render judgment awarding Plaintiff the declaratory relief and injunctive and mandamus relief requested herein along with the requested

refund, Plaintiff's reasonable and necessary attorney's fees, and all other relief to which Plaintiff may be entitled.

Respectfully Submitted,



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