CASE NO. 11807

KELLY MARTIN, 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, Defendants.	§ § § § § § § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF CARSON COUNTY, TEXAS 100th JUDICIAL DISTRICT

PLEA IN INTERVENTION OF THE STATE OF TEXAS

The State of Texas intervenes in this cause under Rule 60 of the Texas Rules of Civil Procedure, section 37.006(b) of the Civil Practice and Remedies Code, and other applicable law, to protect Texas citizens and the 2015 property tax relief measures in Senate Bill 1 (signed by the Governor on June 15, 2015) (S.B. 1) and Senate Joint Resolution 1 (approved by the Texas electorate on November 3, 2015) (S.J.R. 1).

I. Background

Texans largely agree that property taxes are too high. Before S.B. 1, the

amount of the homestead exemption for school district taxation was $15,000,[1] but local governmental bodies could provide an additional homestead exemption, known as the "optional homestead exemption." TEX. TAX CODE § 11.13(n).

The Legislature, in response to the pleas of Texans, enacted property tax relief. S.B. 1 adopted several mechanisms to relieve the citizens of Texas from the heavy burden of property taxes, two of which are relevant here. *See* Exhibit A. First, S.B. 1 increased the homestead exemption to $25,000. TEX. TAX CODE § 11.13(n). Second, relevant to this litigation, S.B. 1 provided that the "governing body of a school district, municipality or county that adopted an [optional homestead exemption] for the 2014 tax year may not reduce the amount of or repeal the exemption. This subsection expires December 31, 2019." *Id.* § 11.13(n-1). In other words, S.B. 1 froze any existing optional homestead exemptions at the 2014 rates through 2019.

This relief to homeowners, however, did *not* come at the expense of funding for education or Texas schools. In addition to providing assistance to property owners, S.B. 1 also requires the State to contribute additional aid to those school districts that experience a loss in revenue as a result of the relevant changes to the homestead exemption. TEX. EDUC. CODE § 42.2518(a).

The final legislative action on S.B. 1 occurred on May 29, 2015. The bill was passed with near-universal support: 138 votes in the House (with no votes against)[2] and 25 in the Senate.[3] But the particular provisions of S.B. 1 required a constitutional amendment, and thus a vote of the people, to take effect. Unsurprisingly, on November 3, 2015, over 86% of voters approved the measure—one

[1] *See* Act of May 31, 1997, 75th Leg., R.S., ch. 592, § 2.0 I, sec. I 1.13(b), 1997 Tex. Gen. Laws 2061, 2067, *amended by* Act of May 29, 2015, 84th Leg., R.S., ch. 465, § I, 2015 Tex. Gen. Laws 1779.

[2] Tex. H.J., 84th Leg., R.S., May 29, 2015, at 5558.

[3] Tex. S.J., 84th Leg., R.S., May 29, 2015, at 3116.

of the highest amendment margins in recent history.[4] *See* Exhibit B.

But even before the citizens of Texas voted on S.J.R. 1, some in the state were scheming to circumvent S.J.R. 1, recognizing that it would surely be met with the support of the people and thus enacted into law.[5] Several school districts, including White Deer ISD, concluded that they wanted nothing to do with what the people of Texas wanted. They instead chose to reduce or repeal their local option homestead exemption. These school districts acted after S.B. 1 passed, but before the voters approved S.J.R. 1.

Make no mistake: White Deer ISD and their fellow scofflaws knew exactly what they were doing. Before this lawsuit was filed, these school districts (and the public at large) were repeatedly notified by officials and public figures about the obligation and opportunity to revert to 2014 optional homestead exemption rates. On September 9, 2015, the Attorney General shared this publicly with the Comptroller of Public Accounts (CPA). *See* Exhibit E. The Attorney General later explained in an official opinion that "Subsection 11.13(n-1) of the Tax Code prohibits a school district, municipality, or county from repealing or reducing the local option homestead exemption from the amount that was adopted for the 2014 tax year through the 2019 tax year." Tex. Att'y Gen. Op. KP-0072 at 6 (Mar. 17, 2016), attached as Exhibit F. Following that opinion, the Texas Association of School Boards notified all school boards of the AG's opinion, and encouraged compliance. *See* Exhibit G. The following

[4] The vote approving S.J.R. 1 exceeded even Proposition 6 on the same ballot, which recognized the right of the people to hunt and fish. *See* Office of the Secretary of State, Race Summary Report: 2015 Constitutional Amendment Election, Nov. 3, 2015. Proposition 6 passed by over 81%. *Id*.

[5] *See, e.g.*, Exhibit C, *available at* http://equitycenter.org/wp-content/uploads/2014/12/06.11.15-Local-Option-Homestead-Exemption-Considerations.pdf; Exhibit D ("S.B. 1, however does not become effective until S.J.R. 1 passes in November. Presently there is no prohibition on a school district from reducing or eliminating its local option exemption for year 2015–16. This should be done by July 1, 2015 but it is possible that could be done any time before November."), *available at* http://equitycenter.org/wp-content/uploads/2015/03/06.05.15-SB-1-Memo-Buck-Wood.pdf.

month, the Office of the CPA asked 24 school districts "whether you are considering reinstating your 2014 local option homestead percentage for the 2016 tax year in light of Attorney General's Opinion KP-0072." *See* Exhibit H. Lastly, on June 15, 2016, the Attorney General and Texas Education Commissioner sent a joint letter to the 21 school districts that had confirmed their violations of S.B. 1 advising them of the Attorney General's opinion, and urging them to come into compliance with S.B. 1. *See* Exhibit I.

And yet, here we are. The methodology employed by Defendants, and others, to collect excess taxes cannot be allowed to prevail for a simple reason: 2015 occurred after 2014. When the voters approved S.J.R. 1 on November 3, 2015, the law changed to lock in 2014 optional homestead exemption rates. Any change of the rate in 2015 is wholly ineffective. And by certifying and assessing their non-2014 rates, Defendants are violating the law.

II. Standard for Intervention

Texas Rule of Civil Procedure 60 provides that "[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party." TEX. R. CIV. P. 60. "Rule 60 . . . provides . . . that any party may intervene" in litigation in which they have a sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). An intervenor is not required to secure a court's permission to intervene in a cause of action or prove that it has standing. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). Further, Texas Courts recognize the Attorney General's right to intervene in suits challenging the constitutionality of laws, *Motor Vehicle Bd. of Tex. v. El Paso Indep. Auto. Dealers Ass'n*, 1 S.W.3d 108, 110–11 (Tex. 1999).

III. Texas Has Interests in Ensuring Its Laws Are Not Ignored and Upholding the Validity of Those Laws

Texas's intervention is proper because Texas—through the Attorney General—

has an interest in defending the proper interpretation and application of its laws. *See, e.g.*, *Motor Vehicle Bd. of Tex.*, 1 S.W.3d at 110–11; *Terrazas v. Ramirez*, 829 S.W.2d 712, 721–22 (Tex. 1991) (recognizing the Attorney General's legitimate role in a case challenging the constitutionality of a Texas statute); *see also* TEX. CIV. PRAC. & REM. CODE § 37.006. As the chief legal officer, the Attorney General has broad power in representing Texas. *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001) (citing TEX. CONST. art. IV, §§ 1, 22; TEX. GOV'T CODE § 402.021). Indeed, even attorneys that helped provoke the actions of the 21 school districts, understanding the Attorney General's interest in the subject, participated in the public process that resulted in the Attorney General's opinion KP-0072 on the subject. *See*, *e.g.*, Exhibit J at 2. Thus, it cannot be disputed that Texas has an interest in ensuring that local governmental bodies do not defy governing law, and particularly constitutional provisions approved by the electorate. Moreover, the Attorney General has an interest in defending the validity of Opinion KP-0072 regarding the subject matter of this dispute.

Finally, the Attorney General has an interest in defending S.B. 1 against any constitutional challenge. In the briefing process for Opinion KP-0072, the lawyer who dispensed the advice that has become the subject of this suit contended that S.B. 1 is unconstitutionally retroactive because it impairs vested rights. But in 2010, the Texas Supreme Court abandoned that standard for measuring whether retroactive laws are unconstitutional. The Court instead established a three-part test:

> the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings; the nature of the prior right impaired by the statute; and the extent of the impairment.

Robinson v. Crown Cork & Seal Co., 335 S.W.3d 126, 145 (Tex. 2010). The Court summarized the test as being that laws are impermissibly retroactive only if they "take[] away what should not be taken away." *Id*. at 143.

The Legislature took nothing away from White Deer ISD because it agreed to

cover the loss of revenue attributable to S.B. 1. Yet Defendants chose to take from their own constituents, without their vote or consent, what the Legislature gave to those constituents. Certainly, the nature of this action by Defendants could invoke the spirit of any number of Texas laws beyond those in the tax or education codes. Nonetheless, Texas intervenes to assist in restoring to its taxpayers what rightfully belongs to them—their own money.[6]

IV. Intervenors Seek Declaratory Relief

The Court has jurisdiction over requests for declaratory judgments pursuant to Article V, section 8 of the Texas Constitution, and Chapter 37 of the Texas Civil Practice and Remedies Code. Here, there is a real and substantial conflict of tangible interests concerning the rights and status of the parties. The actions of Defendants, in particular, as described in this pleading and in Plaintiff's Petition, violate Texas law and thus create a basis for the usage of the Court's declaratory powers.

V. Intervenors Seek a Writ of Mandamus

The Court has general jurisdiction to grant mandamus relief against public officials. TEX. CONST. art. V, § 8; TEX. GOV'T CODE § 24.011; *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 671–72 (Tex. 1995) (orig. proceeding). Texas courts may defend Texas law through the writ of mandamus where there is a mandatory duty placed upon elected officials to comply with Texas law.

"A writ of mandamus will issue to compel a public official to perform a ministerial act." *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). There is "no[] doubt that a public officer . . . may be guilty of . . . such an evasion of positive duty as to amount to a virtual refusal to perform the duty enjoined," and "in

[6] Indeed, the tax breaks and deductions resulting from S.B. 1 belong to the citizenry, not the Defendants. *Cf. Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011) ("Respondents' contrary position assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands.").

such a case a mandamus would afford a remedy where there was no other adequate remedy provided by law." *Arberry v. Beavers*, 6 Tex. 457, 1851 WL 4016, *11 (1851).

An act is ministerial when the duty is clearly defined by law with such certainty that nothing is left to the exercise of discretion. *Anderson*, 806 S.W.2d at 793; *see also Turner v. Pruitt*, 342 S.W.2d 422, 423 (Tex. 1961) ("Writs of mandamus issue to control the conduct of an officer of government . . . when the duty to do the act commanded is clear and definite and involves the exercise of no discretion—that is, when the act is ministerial.

Mandamus will lie when there is (1) a legal duty to perform a non-discretionary act, (2) a demand for performance, and (3) a refusal to perform. *O'Connor v. First Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (orig. proceeding)). All three elements exist in the present case.

Both the Texas Constitution and the duly enacted laws of the Legislature require Defendants to assess and collect only appropriate amounts of taxes. This duty is as ministerial as it is clear, precise, unambiguous, and does not require discretion. Therefore, in these circumstances, mandamus is available to compel the performance of the ministerial act. *See Jessen Assocs. v. Bullock*, 531 S.W.2d 593, 602 (Tex. 1975) (orig. proceeding) (holding that mandamus lies "where the duty to act is clear and there is no disputed question of fact").

VI. Conclusion and Prayer for Relief

Texas requests notice and appearance, and the opportunity to defend the rule of law before the Court. Texas also prays for the following:

(1) a declaratory judgment that the acts of the Defendants are in violation of S.B. 1 and S.J.R. 1;

(2) the issuance of a writ of mandamus to Defendants to require compliance with Texas law;

(3) an award for court costs, reasonable attorney's fees, investigative costs,

witness fees, and deposition costs, pursuant to section 37.009 of the Texas Civil Practice and Remedies Code, and other applicable provisions of Texas law; and

(3) any and all such other relief, both in law and in equity, to which Intervenor may be justly entitled.

Dated: September 15, 2016 Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

PRERAK SHAH
Senior Counsel to the Attorney General

ANDREW D. LEONIE
Associate Deputy Attorney General for the Office of Special Litigation

/s/ Austin R. Nimocks
AUSTIN R. NIMOCKS
Associate Deputy Attorney General for the Office of Special Litigation
Texas Bar No. 24002695

MICHAEL C. TOTH
Senior Counsel for the Office of Special Litigation

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548, Mail Code 009
Austin, Texas 78711-2548
Tel: 512-936-1414

ATTORNEYS FOR INTERVENOR

CERTIFICATE OF SERVICE

I, Austin R. Nimocks, hereby certify that on this the 15th day of September, 2016, a true and correct copy of the foregoing document was transmitted via certified mail, return receipt requested, to each Defendant at the addresses listed in the Plaintiff's Original Petition.

/s/ Austin R. Nimocks
Austin R. Nimocks