No. 12-____

IN THE

Supreme Court of the United States

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Petitioners

v.

HENDERSON COUNTY APPRAISAL DISTRICT,
Respondent

On Petition for Writ of Certiorari to the Twelfth Court of Appeals of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Does the Texas Twelfth Court of Appeals' holding on the valuation of United States coined gold dollars directly conflict with long-standing federal precedent, which was detailed by this Court in *Thompson v. Butler*, 95 U.S. 694 (1877) and which was recently relied upon by the Fifth Circuit Court of Appeals in deciding an analogous Texas tax case, *Crummey v. Klein Indep. School Dist.*, 2008 WL 4441957 (5th Cir. 2008)?

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OPINIONS BELOW

The orders and judgments of the 173rd Judicial District Court of Henderson County, Texas granting Defendant's Motion for Summary Judgment & For No-Evidence Summary Judgment are reprinted at App. 1a-4a, but are not otherwise published.

The Texas Twelfth Court of Appeals Memorandum Opinion and Judgment, affirming trial court's entry of Summary Judgments, is reprinted at App. 5a-22a, and is published at 2011 WL 5593138 (Tex. App. – Tyler 2011). The Texas court of appeals' order denying rehearing is reprinted at App. 30a-31a, but is not otherwise published.

The official notice from the Supreme Court of Texas denying Petitioners' Petition for Review is reprinted at App. 23a, but is not otherwise published.

STATEMENT OF JURISDICTION

Having granted an order to consolidate the appeals of Petitioner's two related district court cases, cause numbers 2008A-813 and 2008A-814, the Texas Twelfth Court of Appeals entered a Memorandum Opinion and Order on November 16, 2011. The court of appeals' order affirmed the 173rd District Court for Henderson County, Texas' grant of summary judgment in Petitioners' two cases. In affirming the district court's grant of summary judgment, the Texas Twelfth Court of Appeals decided the question presented herein adversely to petitioners. On January 4, 2012, the court of appeals denied Petitioners' Motion for Rehearing.

Seeking a review of the court of appeals' holding, Petitioners timely filed a Petition for Review with the Texas Supreme Court. On April 6, 2012, however, the Texas Supreme Court denied their Petition. Accordingly, under 28 U.S.C. §1257, this Court has jurisdiction to review the Texas Twelfth Court of Appeals decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST., art. I, § 8, cl. 5 states:

> [The Congress shall have Power] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

U.S. CONST., art. I, § 9, cl. 1 states:

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

U.S. CONST., art. I, § 10, cl. 1 states:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

U.S. CONST., art. VI, cl. 2 states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Seventh Amendment to the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Title 28, Section 1257 of the United States Code provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by 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.
>
> (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Title 31, Section 5101 of the United States Code provides:

> United States money is expressed in dollars, dimes or tenths, cents or hundreths [sic], and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar.

Title 31, Section 5103 of the United States Code provides:

> United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

Title 31, Section 5112(a)(9) of the United States Code provides:

> (9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.

Title 31, Section 5112(e) of the United States Code provides:

> (e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in quantities sufficient to meet public demand, coins which
>
> (1) are 40.6 millimeters in diameter and weigh 31.103 grams;
>
> (2) contain .999 fine silver;
>
> (3) have a design –
>
> (A) symbolic of Liberty on the obverse side;
>
> (B) of an eagle on the reverse side;
>
> (4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and
>
> (5) have reeded edges.

Title 31, Section 5112(h) of the United States Code provides:

> (h) The coins issued under this title shall be legal tender as provided in section 5103 of this title.

Title 31, Section 5112(i)(2)(A) of the United States Code provides:

> (2)(A) The Secretary shall sell the coins minted under this subsection to the public at a price

equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).

Title 31, Section 5118 of the United States Code provides:

(a) In this section –

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in –

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency (other than gold and silver coins) that may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

(c)(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim –

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect or validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars of public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

Title 31, Section 5119(a) of the United States Code provides:

(a) Except to the extent authorized in regulations the Secretary of the Treasury prescribes with the

> approval of the President, the Secretary may not redeem United States currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) in gold. However, the Secretary shall redeem gold certificates owned by the Federal reserve banks at times and in amounts the Secretary decides are necessary to maintain the equal purchasing power of each kind of United States currency. When redemption in gold is authorized, the redemption may be made only in gold bullion bearing the stamp of a United States mint or assay office in an amount equal at the time of redemption to the currency presented for redemption.

Texas Property Tax Code Sec. 42.21. Petition for Review.

> (a) A party who appeals as provided by this chapter must file a petition for review with the district court within 45 days after the party received notice that a final order has been entered from which an appeal may be had. Failure to timely file a petition bars any appeal under this chapter.
>
> (b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under Subdivision (2) or (3) of Section 42.01 or under Section 42.03 must be brought against the comptroller. Any other petition for review under this chapter must be brought against the appraisal

district. A petition for review is not required to be brought against the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate.

(c) If an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order. The amended petition must be filed with the court in the period provided by Subsection (a) for filing a petition for review of the subsequent order. A property owner may appeal the subsequent appraisal review board order under this subsection or may appeal the order independently of the pending appeal as otherwise provided by this section, but may not do both. A property owner may change the election of remedies provided by this subsection at any time before the end of the period provided by Subsection (a) for filing a petition for review.

(d) An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the appraisal office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. Citation of a party is

issued and served in the manner provided by law for civil suits generally.

(e) A petition that is timely filed under Subsection (a) or amended under Subsection (c) may be subsequently amended to:

(1) correct or change the name of the party; or

(2) not later than the 120th day before the date of trial, identify or describe the property originally involved in the appeal.

INTRODUCTION

The Texas Twelfth Court of Appeals held that the monetary value of a private "gold-clause contract," which required payment solely in currently minted United States legal-tender American Eagle gold coins, is not the aggregate face value in "dollars" of the coins actually tendered; but rather is measured by those coins aggregate value in Federal Reserve notes, which is many times the value assigned by Congress. If this decision is allowed to stand, State courts can randomly set the value assigned to such U.S. legal tender based on the perceived "market value" of gold on any given day. This would result in widely fluctuating valuations of U.S. legal tender in different jurisdictions throughout the United states, nullifying the protections authorized by the use of "gold-clause contracts" and triggering profoundly negative effects throughout the United States.

The decision of the Texas Twelfth Court of Appeals is flawed for at least the following four reasons:

1.) It usurps Congress' exclusive authority to assign "Value[s]" in "dollars" to the coins it causes to be minted under its power

"[t]o coin Money, [and] regulate the Value thereof". Compare U.S. Const. art. I, § 8, cl. 5 (emphasis supplied) with art. I, § 10, cl. 1.

2.) It purports to set aside this Court's ruling, never heretofore questioned, that

> "[o]ne owing a debt may pay it in gold coin or legal-tender notes of the United States * * * . A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than is a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them."

Thompson v. Butler, 95 U.S. 694, 696 (1877).

3.) It contradicts the statute which provides, even as against the United States, that the monetary value of an obligation payable in United States gold coin is the aggregate face value of the money in "dollars" in which the obligation is actually paid, not some greater amount. *See* 31 U.S.C. § 5118(c).

4.) Further, by unconstitutionally licensing state courts to determine the monetary "Value[s]" of the "gold-clause contracts" specifically authorized by Congress, it will, in essence, nullify the use of such contracts. *See* 31 U.S.C. § 5118(a) and (d), *and* U.S. Const. art. VI, cl. 2. The resulting uncertainty regarding the monetary "Value[s]" of such contracts will most likely cause few, if any, individuals to enter into them, thereby thwarting the

> benefits congress intended by authorizing. The adverse impact on federally sanctioned "gold-clause contracts" will then undoubtedly affect the numerous State legislatures, acting under their reserved constitutional authority,[1] which have enacted or are considering statutes that explicitly recognize the legal-tender character of United States gold and silver coins in transactions within those States and provide for their use. *See* H.R. 157 Substitute, 2012 Sess. (Utah 2012) at App 294a[2]; *see also See* Jullian Rayfield, *At Least Ten States Have Introduced Gold Coins-As-Currency Bills*, Talking Points Memo (January 5, 2011), discussing how legislators in at least ten states have introduced bills over the past few years that would allow state commerce to be conducted with gold and silver[3].

By authorizing "gold-clause contracts", Congress intended to enable and encourage Americans to protect themselves, and therefore the country, against depreciation in the purchasing power of printed currency.[4] Recent actions by State legislatures only

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[1] *See* U.S. Const. art. I, § 10, cl. 1.1 ("No State shall … make any Thing but gold and silver Coin a Tender of Payment of Debts ….").

[2] http://pamria.com/wp-content/uploads/2012/04/UTAH-Silver-Legal-Tender-Article-PAM1.pdf

[3] http://tpmdc.talkingpointsmemo.com/2011/01/at-least-10-states-have-introduced-gold-coins-as-currency-bills.php.

[4] For cases discussing the justification for and validity of gold clause contracts as they are authorized today, see *216 Jamaica Ave. v. S & R Playhouse Realty Co.*, 540 F.3d 433 (6th Cir. 2008); *Nebel, Inc. v. Mid-City National Bank*, 329 Ill. App.3d

emphasize the urgent necessity of having such protection in the wake of America's banking system undergoing one crisis after another. Indeed, if this Court does not intervene to set aside the decision of the Twelfth Court of Appeals in this case, Americans will lose their heretofore guaranteed ability to protect themselves against depreciation of money by using "gold-clause contracts", making everyone vulnerable and powerless to the rapidly escalating depreciation of paper currency.

STATEMENT OF RELEVANT FACTS

A. Petitioners Purchased Property for $16,670.

On or about January 30, 2008, JoAnn and Richard Bryant conveyed to Petitioners Thomas D. Selgas and Michelle L. Selgas 36.428 acres hereafter "the property", which was comprised of AB 538, RV Morrel Sur, TR 3F 23.059 (Parcel A) and AB 538, RV Morell Sur, TR 3F 23.369 minus a defined 10 acre tract (Parcel B). *Farm & Ranch Sales Contract*, Section 2: Property. App. 32a (hereinafter "Sales Contract"). The agreed consideration was sixteen thousand six hundred and seventy dollars of coined gold ($16,670). *Id*. App. 34a-35a, 39a-42a. In satisfaction of the agreement, Petitioners tendered one thousand six hundred and sixty-seven (1,667) American Eagle ten dollar gold coins. General Warranty

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957, 769 N.E.2d 45 (2002); *Trostel v. American Life & Casualty Insurance Company*, 133 F.3d 679 (8th Cir. 1998); *Wells Fargo Bank v. Bank of America*, 32 Cal.App.4th 424, 38 Cal.Rptr.2d 521 (1995); and *Fay Corp. v. BAT Holdings I, Inc.*, 646 F. Supp. 946 (W.D.Wash. 1986), affirmed at *Fay Corp. v. Frederick & Nelson Seattle, Inc.*, 896 F.2d 1227 (9th Cir. 1990).

Deed, dated February 27, 2008. App. 43a-44a. Thus, according to the aggregate face value of the coins as set by Congress, the undisputed consideration given for the property was sixteen thousand six hundred and seventy dollars ($16,670).

B. HCAD Appraised the Property at Multiple Times the Amount Tendered by Petitioners for the Property.

1. HCAD appraised property at 17.5 times its purchase price in 2008.

Despite the fact that Petitioners acquired the property for $16,670 in 2008, Henderson County Appraisal District ("HCAD") set its 2008 taxable market value at seventeen and a half times the amount that Petitioners had actually tendered. Under the category of "Value O Sale", HCAD collectively valued the two parcels at 291,870. *2008 Notices of Appraisal*, at App. 50a-51a. While Petitioners filed timely protests, the Appraisal Review Board for Henderson County summarily overruled them on June 16, 2008, setting the appraised collective value at $291,870. *See Orders Determining Protest*, dated June 16, 2008, at App. 54a and 57a.

2. The 2009 appraised value of the property was almost 25 times the 2008 purchase price.

In 2009, HCAD raised the appraised values of the property yet again. Appraising the property at 407,520, HCAD had now established its value at almost twenty-five times the amount that Petitioners had tendered for the property a year earlier. *2009 Notices of Appraised Value*, at App. 59a and 63a. Petitioners once again filed timely protests; but the

Appraisal Review Board simply overruled them. *2009 Orders Determining Protest*, dated July 17, 2009 at App. 66a and 69a. As a result, the property had a 2009 appraised market value of $407,520, rather than the $16,670 the petitioners had tendered in consideration a year earlier. *Id*.

C. Petitioners Appealed Inflated Appraisals to State District Court.

After receiving the Appraisal Board's 2008 Orders, which overruled their protests, Petitioners filed suit in the 173rd Judicial District Court in Henderson County, Texas, seeking a review of the appraised values pursuant to Section 42.21 of the Texas Property Tax Code. *Plaintiffs' Original Petitions*, Cause Nos. 2008A-813 & 814, in the 173rd Judicial District Court in Henderson County, Texas, at App. 72a. and 96a., respectively. A year later, when the Appraisal Board once again overruled their protests, Petitioners amended their petitions to request a review of HCAD's 2009 appraisals as well. *Plaintiffs' First Amended Petitions*, Cause Nos. 2008A-813 & 814, in the 173rd Judicial District Court in Henderson County, Texas, at App. 118a. and 124a., respectively.

D. HCAD Moved for Summary Judgment, Contending American Eagle Gold Legal Tender Coins Are Valued at their Intrinsic, Not Face, Value.

HCAD filed identical motions for summary judgment in both cases. HCAD argued that the face value of the United States legal-tender gold coins tendered by Petitioners for the property in accordance with the terms of the Sales Contract, is of no consequence in determining an appraised market

value for the property. *See Defendant's Motions for Summary Judgment & No-Evidence Summary Judgment*, at App. 131a-134a. The American Eagle ten dollar gold coins tendered to acquire the property contain gold bullion that has a market value greater than the face value of the coins, when measured in Federal Reserve Notes. As a result, HCAD argued, the assessed appraisal value of the property should be evidenced by the intrinsic value of the gold coins as measured in Federal Reserve Note "dollars". *Id*. at App. 132a.

In support of its argument, HCAD relied upon 31 U.S.C. § 5112(i)(2)(A), which requires the United States Secretary of Treasury to sell minted gold coins at a price equal to the market value of the bullion contained therein plus a nominal charge to cover the cost of minting, marketing, and distribution rather than for their face value. Contrary to HCAD's assertion, however, Petitioner Thomas Selgas ('Selgas') did not concede that the market value of United States gold or silver coins is to be determined by the face value of Federal Reserve Notes required to obtain the coins in the marketplace, but rather by the face value stamped on the coins he tendered for the property. *Deposition of Thomas D. Selgas*, dated August 20, 2009, relevant excerpts attached at App. 284a-288a.

As of the date of his deposition, Selgas testified that an American Eagle ten dollar gold coin from the Treasury would exchange for about 250 "dollars" in Federal Reserve Notes. *Id*. At App. 285a-286a. On the basis of this exchange rate HCAD argued that equity dictated that the appraisal of the property must be expressed in terms of the market value of the gold in the tendered coins as measured in Federal Reserve Note "dollars" rather than upon the face

value of the coins set by Congress. *Defendants' Motions for Summary Judgment*, at App. 133a-134a. Under its theory, HCAD argued the appraisals of the property were more than appropriate because the gold contained in 1,667 American Eagle ten dollar gold coins was worth roughly 416,750 "dollars" in Federal Reserve Notes. *See id*. at p. 132a-133a.

E. HCAD's Argument Contradicts the U.S. Monetary System.

1. Constitutional origins of the U.S. monetary system.

As used in this country, the term 'dollar' originated in the Constitution. *See Plaintiffs' Response to Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment*, at App. 156a-157a, (citing U.S. CONST., art. I, § 9, cl. 1 and Amend. VII), at App. 146a (hereinafter "Plaintiffs' Response"). Indeed, Congress still holds the 'dollar' as the base unit of our current monetary system. *See id*. at App. 156a-158a (citing 31 U.S.C. § 5101). Only Congress has the power "[t]o coin Money, regulate the Value thereof, and of foreign Coin, and fix the standard of weights and measures." *Plaintiffs' Response*, at App. 156a-157a (citing U.S. CONST., art. I, § 8, cl. 5).

2. As designed the U.S. monetary system is based upon silver and gold coins.

Shortly after the U.S. Constitution went into effect, our first Secretary of the Treasury Alexander Hamilton presented a "Report on the Subject of the Mint" to the first Congress. H.R. Doc. No. 24, 1st Cong., 3d Sess. (1791) ("Hamilton's Mint Report") in the March and April 1791 editions of "The Universal Asylum and Columbian Magazine", printed in Philadelphia

by William Young; at p. 189-201 (March) and p. 263-269 (April), attached at App 362a. Hamilton had considered what the nature of our monetary unit (*i.e.*, the dollar) should be; and if the unit was going to be based upon gold and/or silver, like foreign nations, in what proportions of those metals should the U.S. dollar be minted. *Id*. at App. 362a. His conclusion advocated for a monetary system of silver and gold coins. *Id*. at App. 362a-363a.

On the basis of his report, the Congress passed An Act Establishing a Mint, Act of April 2, 1792, ch. 16, 1 Stat. 246, at App.356a-361a (hereinafter "Coinage Act"). In the Coinage Act, in keeping with its constitutional power to coin money and fix the standards of weights and measure, Congress fixed the proper measure for a U.S. 'dollar' at 371 ¼ grains of fine silver. *Plaintiffs' Response*, at App. 157a (citing to Coinage Act, § 20, 1 Stat. 250 (App. 361a); § 9, 1 Stat. 248 App. 356a-359a). Not wanting to mint a gold dollar coin, however, that had the potential to be confused with silver dollars, Congress further directed that gold be used only to mint "Eagle" coinage, and each such coin was to be valued at ten dollars. *Id*. at § 9, 1 Stat. 248 (App. 357a). An Eagle coin would contain two hundred and forty-seven grains and four eights of a grain of pure gold, a metallic value thought to be equivalent to that of 3,712 ½ grains of fine silver or ten U.S. silver dollar coins. *See id*. Having fixed the proportional value of gold to silver by weight in all coins issued as lawful money within the United States (*Id*. at § 11, 1 Stat. at 248-49 (App. 359a)), Congress had flexed its constitutional power to coin and regulate money, thereby establishing our monetary system. U.S. CONST., art. I, § 8, cl. 5.

3. Congress still uses gold and silver dollar coins as a base unit of our money system.

Today, Congress still commands that the Secretary of the Treasury mint the silver dollar and Eagle ten dollar coins originally established by the first U.S. Congress. *See* 31 U.S.C. § 5112(a)(9) and (e); *Plaintiffs' Response*, at App. 156a-162a. Petitioners chose to use the Eagle ten dollar gold coin, which is still a base unit of measurement in the U.S. monetary system, to acquire their property in 2008. *Plaintiffs' Response*, at App. 156a-158a.

Indeed, the Sales Contract specifically required them to tender consideration in American Eagle ten dollar gold coins as authorized by law. *See Sales Contract*, at App. 32a-34a, 39a-42a. Citing this Court, Petitioners' Sales Contract reiterated long-standing federal law that U.S. gold coins are to be valued at no more than their face monetary value:

> [o]ne owing a debt may pay it in gold coin or legal-tender notes of the United States, as he chooses, unless there is something to the contrary in the obligation out of which the debt arises. A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other, but as money, that is to say, as a medium of exchange, the law knows no difference between them.

Id. at App. 40a (citing *Thompson v. Butler*, 95 U.S. 694, 696 (1877). Accordingly, Petitioners' decision to

acquire the property using American Eagle ten dollar gold coins as the monetary 'dollar' unit tendered for the property, could not legally bestow any value greater than the face value of the number of 'dollars' paid. *Plaintiffs' Response*, at App. 156a-157a.

In addition to identifying the pertinent legal standard on the value of the consideration tendered in the Sales Contract, when responding in opposition to HCAD's motions for summary judgment, Petitioners offered the testimony of Dr. Edwin Vieira, who chronicled the history of the U.S. monetary system and the laws governing the use of precious metal coins as 'dollars', as it related to the market value of the property being appraised. *Plaintiffs' Response*, at App. 159a-162a. HCAD objected, however, to this evidence:

> Dr. Vieira offers only legal opinions in his testimony. Dr. Vieira testifies *ad nauseam* in his deposition about what constitutes dollars, money, and the monetary policy of the United States. Dr. Vieira *does not speak* for the United States or the State of Texas but admits to offering only legal opinions regarding the matter.

Defendant's Objection to Plaintiffs' Summary Judgment Evidence, at App. 364a. Siding with Respondent's arguments, the state district court sustained HCAD's objection to Petitioners' summary judgment evidence offered through Dr. Edwin Vieira and summarily granted summary judgments. *Orders Granting Defendant's Objection to Summary Judgment Evidence*, attached at App 24a and 26a; *Orders Granting Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment*, at App. 1a and 3a, respectively.

F. Petitioners Unsuccessfully Appealed Court's Grant of Summary Judgments.

Petitioners timely appealed the state district court's grant of summary judgments for the Respondent. Petitioners stated that under the law, HCAD had failed to conclusively negate that as stated in the Sales Contract and general warranty deed, Petitioners' consideration tendered for the property did not evidence the appropriate market value of the property. *Appellants' Brief*, at App. 194a. Petitioners also argued that the court's decision to strike their summary judgment evidence, which developed and explained how the history of the U.S. monetary system, particularly what is meant by a 'dollar', reflected on the market price of the subject property, was in error. *Id*. at App. 195a-196a. In short, Petitioners contended the district court refusal to recognize that the Sales Contract's stated purchase price of $16,670 cannot be legally valued at any amount greater than the stated face value of the coins in U.S. dollars, was in error

After oral argument on the issues, Petitioners understood that the Twelfth Court of Appeals truly did not understand the law or arguments as it relates to the monetary policy of the United States. Instead, the court of appeals fixated on the disparity of purchasing power between the various forms of legal tender in the United States. While Petitioners filed a motion to submit supplemental briefing on the issue, attaching the supplemental brief, the court of appeals denied their motion to submit it. *Order Denying Motion for Supplemental Briefing*, at App. 29a.

In the supplemental brief, Petitioners explained the holding of *Thompson v. Butler*, which had been cited in the Sales Contract. *Appellants' Supple-*

mental Brief, at App. 229a-230a. They also cited an analogous Fifth Circuit Court of Appeals' decision that reiterated the *Thompson* holding, thereby evidencing that it is still the law. *Id*. at App. 229a-230a (citing *Crummey v. Klein Indep. School Dist*., 2008 WL 4441957 (5th Cir. 2008). They then detailed how current statutory provision 31 U.S.C. § 5103 proclaims: "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues." *Id*. As a result, Petitioners argued that in light of *Thompson* and as specifically held in *Crummey*, any form of U.S. coin or currency is acceptable for payment of debts; but regardless of the form utilized, the law provides that it cannot be valued beyond the face value of the coin or currency tendered. *Id*.

Unable to ignore the existing disparity in actual market values associated with the various forms of U.S. Currency, the court of appeals chose to ignore long-standing federal law on this issue, and affirmed the state district court's grant of summary judgments. *Order Affirming Trial Court's Entry of Summary Judgments* at App. 21a. In its Memorandum Opinion, the court of appeals relied on dicta from an earlier case and ignored this Court's *Thompson* decision. *Memorandum Opinion*, at App. 17a-18a (citing *Bronson v. Rodes*, 74 U.S. (7 Wall.) 229 (1869). Citing *Bronson*, the court of appeals stated "[a] gold coined dollar and a Federal Reserve Note dollar are not the actual equivalent of each other." *Id*. at App. 18a. Never mentioning this Court's subsequent *Thompson* decision that required a gold coin to be valued at no more than a paper dollar, the court of appeals concluded that HCAD properly recognized the disparity in market values of the different forms

of authorized U.S. dollars, and properly appraised the subject parcels of property accordingly. *See id*. at App. 18a-19a.

G. Since the Appellate Decision Misconstrued the Law on Valuing Different Forms of U.S. dollars, Petitioners Filed for Review.

Petitioners submitted two issues for review to the Texas Supreme Court, one of which was whether the court of appeals misconstrued the applicable federal law. *Petition for Review*, at App. 259a. Petitioners once again explained that gold and silver U.S. dollar coins legally have the same value as Federal Reserve Notes (paper dollars) of the same denomination. *Id*. at App. 273a-276a (citing both *Bronson & Thompson*). They also noted that a Texas municipality had recently asserted this exact principle in a tax matter before the Fifth Circuit Court of Appeals for the United States, and the Fifth Circuit confirmed the principle as set forth by this Court in *Thompson*, ruling in favor of the Texas municipality. *Id*. at App. 274a-277a.

Since HCAD's argument mirrored the unsuccessful argument asserted by Crummey and specifically rejected by the Fifth Circuit, Petitioners argued that the court of appeals was legally bound to reject HCAD's argument. *Id*. at App. 275a-276a. Finally, Petitioners explained that by allowing the lower court's decisions to stand, the Texas Supreme Court would be sanctioning a violation of the supremacy clause in the U.S. Constitution. *Id*. at App. 276a-279a. Regardless of the important implications of the erroneous rulings made by the courts below it, the Texas Supreme Court denied review. *Notice of Denial Regarding Review*, at App. 23a.

Because the Texas courts' rulings in this case have disregarded long-standing federal law as expressed by this Court in *Thompson*, they violate the supremacy clause of the U.S. Constitution. U.S. CONST., art. VI, cl. 2. Accordingly, Petitioners file this Petition for Writ of Certiorari. They respectfully request this Court to reiterate the long-standing federal legal principle that U.S. money, regardless of its form, when used as legal tender in payment of a debt, can have no value greater than its face value; and therefore, require the state courts' to reconsider their rulings in light of this federal mandate.

ARGUMENT & AUTHORITIES

A. Valuing Various Types of Legal Tender Differently Violates Federal Law.

1. United States American Eagle ten dollar gold coins are legal tender.

In challenging HCAD's appraisal of their property, Petitioners relied upon the federal laws governing monetary policy. Specifically, Petitioners incorporated and cited the relevant provisions of these laws in the Sales Contract. *Sales Contract*, Section 3: Sales Price, at App. 34a-35 and 39a-42a. For instance, contracts containing gold clauses are authorized by federal statute. *Id*. at App. 39a (citing 31 U.S.C. § 5118(d)(2)). A gold clause requires that payment under the contract will be tendered in a specifically identified form of U.S. coin or currency. 31 U.S.C. § 5118(a)(1). Per the gold clause in the Sales Contract, Petitioners had agreed to tender of one-thousand six hundred and sixty-seven (1667) American Eagle ten dollar coins in satisfaction of the required consideration of $16,670. *Sales Contract*,

at App. 39a-42a. Such coins are recognized as legal tender. 31 U.S.C. § 5112(a)(9) & (h).

2. As legal tender, such coins must be valued by their denomination.

As legal tender, these coins can be exchanged to discharge debts, such as Petitioners did to acquire their property. 31 U.S.C. § 5103.

> "The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, *as a medium of exchange, the law knows no difference between them*."

Thompson v. Butler, 95 U.S. 694, 696 (1877) (emphasis added).

This long-standing federal principle mandates that when settling a debt with U.S. coin or currency (*i.e.*, notes, including Federal Reserve notes) (31 U.S.C. § 5103), the value shall be determined by the face value of the money received and that the law cannot distinguish between them even if a true disparity of purchasing power exists. *Thompson*, 95 U.S. at 696.

3. Texas cannot be allowed to use this long-standing precedence inconsistently to suit its needs.

In an analogous case, recently decided by the Fifth Circuit Court of Appeals for the United States, a Texas municipality challenged a citizen's right to be credited in an amount in excess of the face value of the American Eagle fifty dollar gold coins that he had tendered in satisfaction of taxes he owed. Texas resident Brent E. Crummey sued the Klein Independent

School District ("KISD") in federal court because its tax office refused to accept his proffered United States American Eagle fifty dollar gold coins for any more than their face value ($50). In ruling in favor of KISD, the Fifth Circuit stated:

> "We reject Crummey's suggestion that the 'dollar' has multiple meanings or values within the United States system of currency. [cite omitted]. As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency.
>
> *The legal monetary value of Crummey's fifty dollar American Gold Eagle coin is equivalent to that of a fifty dollar Federal Reserve Note*. Crummey's argument to the contrary, on which the bulk of his appeal rests, fails."

Crummey v. Klein Indep. School Dist., 2008 WL 4441957, *2 (5th Cir. (Tex) 2008) (emphasis added), at App. 293a. The Fifth Circuit specifically relied upon this Court's *Thompson* decision, which as previously noted, held a coin dollar was worth no more than a paper dollar, in reaching its decision. *Id.* at App. 292a-293a (citing *Thomspon*, 95 U.S. at 696).

Just like HCAD's argument to the courts below, Crummey argued gold coins inherently have a different intrinsic value than their face value as evidenced by the fact that the U.S. Mint sells such coins into circulation at an amount that is often different than the face value of the coin. *Compare Defendant's Motions for Summary Judgment & No-Evidence Summary Judgment*, at App. 134a and Appellee's Brief, at App. 212a *with Crummey*, 2008 WL at *1, at App. 291a-292a. Finding Crummey's argument impermissibly conflated the market value

of such coins with their face value as legal tender, the Fifth Circuit rejected it. *Id*. at App. Ex. 292a.

4. The state courts' holdings reflect an abdication of their responsibilities and a violation of the supremacy clause.

If the state courts had properly applied federal law in this case, summary judgments would have been inappropriate on the evidentiary record. As previously discussed, federal law dictates that it is impermissible to value American Eagle ten dollar gold coins at anything other than their face value as set by Congress (*i.e*., ten dollars) when used as legal tender. Since HCAD had no evidence in record to support the validity of its appraisals on the property, as they far exceeded the dollar value actually tendered to acquire it by Petitioners, summary judgment was inappropriate in both cases.

Any judicial ruling, which allows the valuation of U.S. coin and currency (including Federal Reserve Note) differently, ignores its obligation to enforce the laws as they are written:

> The law has impressed them [treasury notes] with a legal value equal with that of gold or silver coin of the same denominations for the purposes of paying individual debts with them, and it cannot permit a discrimination against them, …. the laws have declared them to be of equal value. *Where those laws are supreme, that value must be observed and secured by the courts of justice, for such courts are required to execute and carry the laws into effect as they are found, without endeavoring to accommodate them to the accidental or premeditated depreciations*

> *produced in the currency of the country by the tricks and devices of brokers*.

Bronson v. Rodes, 74 U.S. (7 Wall.) 229, 240 (1869) (emphasis added).

Interestingly, the Twelfth Court of Appeals' entire evaluation of the appraisal issue focused on the disparity in value between the American Eagle ten dollar gold coin tendered and the Federal Reserve Note often tendered by the majority of American citizens. Twelfth Court of Appeals' Memorandum Opinion, at App. Ex. 18a-19a. Citing dicta from *Bronson*, the very case that admonishes courts not to try to act as arbiters charged with equalizing the value of coins and notes, the Texas Twelfth court of appeals nevertheless held that a gold coin and a Federal Reserve Note are not equal in value. *Id*. at App. 18a (citing *Bronson*, 74 U.S. at 252). The court of appeals then concluded it was totally acceptable for HCAD to consider the disparity in value between the two forms of legal tender when appraising the fair cash market value of the property. *Id*. at App. 17a-19a.

To reach a conclusion it deemed fair, the Texas Twelfth court of appeals simply ignored this Court's *Thompson* decision. The *Thompson* decision clearly held that while parties could designate a specific form of money required to be tendered when entering into contracts, a coin dollar could not be valued as any more than its paper 'dollar' counterpart. *Thompson*, 95 U.S. at 696-97. When deciding the jurisdictional issue before it, whether the amount in controversy in the case exceeded five thousand dollars, the *Thompson* Court held it did not have jurisdiction even though the judgment on appeal was for five thousand dollar payable only in gold coin. *Id*.

at 697. The Court reasoned that it could only "determine the amount of money to be paid, and not the kind." *Id*. Specifically, the *Thompson* Court stated that money, as a medium of exchange, was required to be valued the same [*i.e*., one coin dollar shall equal one paper 'dollar']. *Id*.

Like the *Thompson* Court, neither HCAD nor the state courts below have any power to consider the type of money used, but rather can only review the amount of money paid. Nevertheless, it is precisely what they did. Accordingly, to allow the state courts' holdings in this case to stand would, in essence, sanction a violation of the supremacy clause of the United States Constitution.

B. Laws Governing the Valuation of U.S. Money Directly Impact the Economy.

It is no secret that the economic state of affairs in the United States today is tenuous. Debt is at an all-time high and continues to escalate seemingly unchecked. Having experienced these types of problems in conjunction with our fledgling nation's first experiment with paper currency, the Continental Currency, they did their best to design a system that would avoid such pitfalls. *See* 30 Journals of the Continental Congress 1774-1789, at 364 (Lib. of Cong. ed. 1904-1937). Unfortunately, their plans could only compensate for the failures of any of the three branches of government by creating a system of checks and balances to attempt structure a system to compel the government to exercise its power and enforce its laws as required to insure for the "public good". *See United States v. Marigold*, 50 U.S. (9 How.) 560, 566, 567-568 (1850) (discussing Congressional acts to regulate commerce with foreign nations and associated judicial review of such laws under

their respective Constitutional powers, and declaring that when the public good requires Congress to exercise its Constitutional powers, they are "bound to perform").

United States money has to have intrinsic value. *See id.* at 567. Without an intrinsic value, common sense indicates the associated economic system will eventually collapse. *See* Turk & Rubino, THE COMING COLLAPS OF THE DOLLAR AND HOW TO PROFIT FROM IT, 47-48 (1st ed. 2004) (describing how excessive printing of Continentals, backed only by anticipated future revenues, led to them being worthless). Having thought through the various monetary scenarios, our forefathers called for a monetary system built solely upon gold and silver coins. U.S. CONST., art. I, § 10, cl. 1; H.R. Doc. No. 24, 1st Cong., 3d Sess. (1791) ("Hamilton's Mint Report") (reprinted in *The Universal Asylum and Columbian Magazine*, March 1791, at 189-201 and April 1791, at 263-269). at App 362a; Coinage Act, at App. 356a. While they had debated using paper currency, they had just experienced the demise of the Continental and associated unrest.[5] As a result, they did not favor any system using paper currency. *See* 30 Journals of the Continental Congress, at 364. Eventually, however, Congress acquiesced and provided for the issuance of paper notes, claiming it was a necessity caused by the civil war. *See e.g.*, Cong. Globe, 37th Cong., 2d Sess. 523, 615, 659, & 692 (1862).

As explained by this Court, a paper dollar merely represents an obligation of the United States to pay

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[5] Benjamin Franklin, "To Our Brethren, the Citizens of New Jersey", No. 3107, 213, Pennsylvania Gazette, December 16, 1789.

the holder with gold or silver coin(s) of the same face value:

> "The same power is used, though it may be differently derived, which declares and impresses treasury notes with the value they purport to have upon their face. These notes are not deprived of intrinsic value, for they were issued upon the credit of the government, and have the good faith responsibility of all the people pledged for their redemption. The conviction of that being the case, though not perhaps one quite as tangible to the senses, should be an assurance of *actual value for them* [e.g., Federal Reserve Note], *equal to that created by the intrinsic value of gold and silver*. It was not a mere arbitrary value, therefore, which Congress provided these notes with, but one of an actual value, which at no remote day will extinguish the obligations they create with gold and silver coin."

Bronson v. Rodes, 74 U.S. (7 Wall.) 229, 239 (1868) (emphasis added). Thus, a treasury note, like the Federal Reserve Note, was meant to be nothing more than an 'IOU' from the federal government.

Congress has crafted provisions intending to secure the value of our money. For instance, by law, the Secretary of Treasury is required to maintain the equal purchasing power of each kind of United States currency. 31 U.S.C. § 5119(a). Over the last 26 years, however, the various secretaries have neglected this responsibility, resulting in the huge disparity that currently exists in the purchasing power of the currently minted American Eagle ten dollar gold coin and an equivalent ten dollar Federal Reserve Note (a/k/a/ "a $10 bill"). Interestingly, in the same legislative act, Congress also released the federal govern-

ment from any obligation to pay out gold or silver coin in exchange for its other forms of currency, which had previously been the case. 31 U.S.C. § 5118(b).

These failures have had an enormous impact on our economy, and are clearly being felt today as the finger pointing has already begun. Only recently, Federal Reserve Chairman Ben Bernanke called out the Congress for failing to take action to stave off the looming fiscal disaster. "Monetary policy is not a panacea," he said in testimony to the Joint Economic Committee. Martha C. White, *Bernanke to Congress: It's your turn to act*, MSNBC.msn.com, (June 7, 2012)[6], at App. 353a. He further stated: "I'd be much more comfortable if, in fact, Congress would take some of this burden from us." *Id*. In point of fact, the entire nation would be better off if Congress resumed its obligation in this area.

Citizens and states are waking up to the fact that Congress has failed to fulfill its obligations in this regard, and the resulting economic reality is that the Federal Reserve Note may go the way of the Continental and become worthless. As a result, more and more people are requiring payment to be tendered in US gold and silver coins to insure not only their economic security, but that of our country as well. Even states, such as Utah,[7] are enacting gold

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[6] http://economywatch.msnbc.msn.com/_news/2012/06/07/12107344-bernanke-to-congress-its-your-turn-to-act?lite

[7] H.B. 157 Substitute, 2012 Sess. (Utah 2012), (for Utah Code sections affected by enacted legislation access http://pamria.com/wp-content/uploads/2012/04/UTAH-Silver-Legal-Tender-Article-PAM1.pdf.)

and silver coinage laws per its Constitutional prerogative. U.S. CONST., art. I, § 10, cl. 1.

If courts do not act to fulfill their responsibilities to enforce and interpret the laws as they are written, it's just one more branch of the government not adhering to original Constitutional plan of fore-fathers. The failures of Congress creating this economic nightmare must be duly noted by the courts, and not continually swept under the carpet, punting the issue to a later date. For these important and compelling reasons, this Court must take up this writ of certiorari.

CONCLUSION

For the foregoing reasons, this Court should grant this petition for writ of certiorari, or may also wish to consider summary reversal.

Respectfully submitted,

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July 5, 2012

APPENDIX

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APPENDIX A

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

On December 14, 2009, the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the Motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment is in all respects GRANTED. The Plaintiffs are ordered to take nothing hereby. All costs are assessed against the Plaintiffs. All relief not expressly granted is denied. This judgment is final and appealable and disposes of all parties and issues herein.

Signed January 4, ~~2000~~ 2010

/s/ [Illegible]
Judge Presiding

APPROVED AS TO FORM:

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APPENDIX B

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

On December 14, 2009, the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the Motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment is in all respects GRANTED. The Plaintiffs are ordered to take nothing hereby. All costs are assessed against the Plaintiffs. All relief not expressly granted is denied. This judgment is final and appealable and disposes of all parties and issues herein.

Signed January 25, ~~2009~~ 2010

/s/ [Illegible]
Judge Presiding

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APPENDIX C

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

No. 12-10-00021-CV
No. 12-10-00050-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Appellee

APPEAL FROM THE
173RD JUDICIAL DISTRICT COURT
HENDERSON COUNTY, TEXAS

MEMORANDUM OPINION

Thomas D. Selgas and Michelle L. Selgas appeal from summary judgments granted in favor of the Henderson County Appraisal District (HCAD) in their suits contesting the valuation of their real property.[1] In two issues, the Selgases contend they raised a fact question regarding the market value of their property, the trial court abused its discretion by striking their expert's testimony, and HCAD failed to

[1] The Selgases filed a separate case for each of two tracts of land. The two cases were disposed of simultaneously at trial and consolidated for briefing on appeal.

prove that the purchase price of the real property was not the price shown in the sales contract. We affirm.

BACKGROUND

On January 31, 2008, the Selgases purchased two tracts of land in Henderson County, totaling about thirty-six and one-half acres. Paragraph 11 of the contract, entitled "Special Provisions," provides that "Buyer shall tender purchase price in gold coin as described in Exhibit 'A.'" That exhibit is entitled "Property Payment in Lawful Money $10 American Gold Eagle Coins." Below the title are the words "PAYMENT CLAUSE." Section (b) provides that

> [p]ayment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist of twenty-five one-thousandths (0025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE.

Pursuant to section (c), [p]ayment for the sale and purchase of the Subject Property shall consist only . . . of one thousand six hundred sixty-seven (1,667) American Eagle 'ten dollar gold coin[s],'" each of which contains one-quarter troy ounce of fine gold. Section (e) provides the disclaimer that the payment clause is not to be construed for the purpose of an abusive tax shelter or other unlawful means to avoid any lawful tax.

After receiving notice of the 2008 appraised value of their property, the Selgases filed a protest with HCAD. The Henderson County Appraisal Review Board refused to change the valuations and determined that the 2008 total market value of tract 3F was $251,630.00 and the total market value of tract 3

was $40,240.00. Again, in 2009, the Selgases protested the valuation of their property and again the review board refused to change the valuations. The 2009 valuation for tract 3F was $354,040.00 and for tract 3, it was $53,480.00. The Selgases filed suit against HCAD complaining of the valuations and asking the district court to fix the market value of tract 3F at $14,370.00 and fix the market value of tract 3 at $2,300.00. They also asked the court to render judgment compelling imposition of these assessed values and correlating taxes.

HCAD filed a combination no evidence and traditional motion for summary judgment with supporting evidence in each case. It contends there is no evidence that the two tracts have been over appraised in United States dollars as represented by Federal Reserve Notes. HCAD further argues that, because the Selgases admit that the gold dollars which they paid for the property exchange for Federal Reserve Notes at about twenty-five to one, there is no material issue of fact as to the valuation of the property. The Selgases filed a response, with supporting evidence, arguing that HCAD failed to provide evidence negating their evidence of market value and that they have provided evidence to show a material fact question regarding determination of market value. HCAD objected to the testimony of the Selgases' expert, Dr. Edwin Vieira, asserting that the testimony is an inadmissible legal opinion and he is unqualified to offer any opinion on the value of the property. The trial court granted the objection. The trial court also granted both of HCAD's motions for summary judgment and rendered judgment that the Selgases take nothing in their suits against HCAD.

STANDARD OF REVIEW

We review the trial court's decision to grant summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 253 S.W.3d 184, 192 (Tex. 2007). After adequate time for discovery, a party without the burden of proof at trial may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense. TEX. R. CIV. P. 166a(i). Once a no evidence motion has been filed in accordance with Rule 166a(i), the burden shifts to the nonmovant to bring forth evidence that raises a fact issue on the challenged element. *See Macias v. Fiesta Mart, Inc.,* 988 S.W.2d 316, 317 (Tex. App.–Houston [1st Dist.] 1999, no pet.). A no evidence summary judgment is essentially a pretrial directed verdict, which may be supported by evidence. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009).

When reviewing a no evidence summary judgment, we "review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Id*. (quoting *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006)). An appellate court reviewing a no evidence summary judgment must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact concerning one or more essential elements of the plaintiff's claims and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678-79 (Tex. 1979). Review of a summary judgment under either a traditional standard or no evidence standard requires that the evidence be viewed in the light most favorable to the nonmovant disregarding all contrary evidence and inferences. *Walmart Stores, Inc. v. Rodriquez*, 92 S.W.3d 502, 506 (Tex. 2002); *Nixon*, 690 S.W.2d at 548-49.

When a party moves for both a no evidence and a traditional summary judgment, we first review the trial court's summary judgment under the no evidence standard of Rule 166a(i). *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the no evidence summary judgment was properly granted, we need not reach arguments under the traditional motion for summary judgment. *See id.*

APPLICABLE LAW

The Texas constitution mandates that no property in this state shall be assessed for ad valorem taxes at a greater value than its fair cash market value. TEX. CONST. art. VIII, § 20. "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if (a) exposed for sale in the open market with a

reasonable time for the seller to find a purchaser; (b) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (c) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other. TEX. TAX CODE ANN. § 1.04(7) (West 2008). The market value of the property shall be determined by the application of generally accepted appraisal methods and techniques. TEX. TAX CODE ANN. § 23.01(b) (West Supp. 2010). A property owner is entitled to protest before the appraisal review board the determination of the appraised value of the owner's property. TEX. TAX CODE ANN. § 41.41(a)(1) (West 2008). A property owner is entitled to appeal an order of the appraisal review board determining his protest. TEX. TAX CODE ANN. § 42.01 (West 2008). Review is by trial de novo in the district court. TEX. TAX CODE ANN. § 42.23 (West 2008). The district court may fix the appraised value of property in accordance with the requirements of law. TEX. TAX CODE ANN. § 42.24(1) (West 2008). If the court determines that the appraised value of the property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court. TEX. TAX CODE ANN. § 42.25 (West 2008).

SUMMARY JUDGMENT

In their first issue, the Selgases contend the trial court erred in granting HCAD's no evidence motion for summary judgment. They assert that they presented more than a scintilla of evidence raising a fact question on the market value of their property. They

contend that the purchase price shown on the sales contract is the market value. They assert that they paid $16,670.00 for both tracts. Additionally, they contend the trial court abused its discretion by striking the deposition testimony of their expert witness, Dr. Edwin Vieira, Jr. They argue that Dr. Vieira's qualifications were properly proven by the Selgases, but not properly challenged by HCAD. Further, they assert that Dr. Vieira's testimony is critical on the issue of "the standard of measure" used by the Selgases in assessing the market value of their property and "his opinions are not merely opinions of law, but rather of fact." They argue that his testimony presents a mixed question of law and fact and the trial court should have required a hearing before striking his testimony.

In their second issue, the Selgases contend the trial court erred in granting HCAD's traditional motion for summary judgment. They argue that HCAD did not "prove that the purchase price of the real property was not the purchase price shown on the real property sales contract, [and] the recorded warranty deed, and attested to by both the Seller and Appellants."

HCAD's Combined No Evidence
and Traditional Motion

In its motion for no evidence summary judgment, HCAD asserted that, after discovery, the Selgases identified "no evidence that their property . . . is over appraised in United States dollars as represented by Federal Reserve Notes." HCAD interpreted the Selgases' allegations as a claim that HCAD should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. In its traditional motion for summary judgment, HCAD asserted that it properly appraised the property in Federal Reserve Notes and that the

evidence shows, as a matter of law, that the real value of the property is in excess of that at which HCAD assessed the property. In support of the motion, HCAD presented the affidavit of Bill Jackson, Chief Appraiser of HCAD, deposition testimony of Thomas Selgas and Michelle Selgas, and the Selgases' discovery responses.

Jackson stated that HCAD appraises property in United States dollars as represented by Federal Reserve Notes. He affirmed that the 2008 market value of tract 3F was $251,630.00, but it received an open space appraisal and was therefore assessed at $187,890.00. He also explained that the 2008 market value of tract 3 was $40,240.00, but assessed at $1,600.00 due to application of the open space appraisal.

In his deposition testimony, Thomas Selgas testified that he paid $16,670.00 total for the two tracts of land. Specifically, he stated that he and the seller agreed that he would pay 1,667 ten dollar gold coins, each containing one-quarter troy ounce of gold. He explained that both the Federal Reserve Bank and the Department of Treasury are required by law to redeem Federal Reserve Notes for lawful money, including gold coins. For example, ten one dollar Federal Reserve Notes should be given for one ten dollar coin or ten one dollar coins as equivalents to maintain equal purchasing value. Thus, if he is redeeming a coin or a note, the face of the coin or note should indicate what he is redeeming it for.

On the other hand, he explained, the Department of Treasury will redeem gold coins through a national dealer at an exchange rate. Thus, he said a purchase and an exchange are two different things. He further explained that if a person exchanged a ten dollar gold

coin for Federal Reserve Notes, he would probably receive "25 Federal Reserve Notes for each dollar unit of lawful money," or, in other words, 250 Federal Reserve Notes for one ten dollar gold coin. He opined that there is no "profit motive" associated with an exchange, whereas there is a "profit motive" associated with a purchase. Selgas said that the unit of value he used was the ten dollar coin as defined by Title 31, Section 5112(a)(9) of the United States Code. He stated that the purchase price of his property was $16,670.00, which he considered to be market value. The farm and ranch contract was attached as an exhibit to Seigas's deposition.

HCAD also presented Michelle Selgas's deposition in which she explained that they sued HCAD because it appraised their property in Federal Reserve Notes, and they did not pay for it in Federal Reserve Notes. She also said the sellers were asking "approximately 400-something-thousand Federal Reserve Notes."

In their response to interrogatories, the Selgases said the total value of their property is $16,670.00, and they paid 1,667 American Eagle ten dollar gold coins, each one containing one-quarter troy ounce of fine gold.

The Selgases' Response

In their response to HCAD's motion, the Selgases asserted that HCAD failed to provide evidence negating their evidence of market value and that they provided evidence showing an issue of material fact regarding the determination of market value. They submitted the following exhibits: the general warranty deed to their property, the purchase contract, property tax notice of protest for 2008 and 2009, the affidavit and deposition of Bill Jackson,

HCAD's supplemental responses to their request for admissions, the deposition and resume' of their expert, Dr. Edwin Vieira, and affidavits of Thomas Selgas and JoAnn Bryant.

The warranty deed provides that Richard and JoAnn Bryant sold the property in consideration for 1,667 American Eagle ten dollar gold coins, "which collectively shall constitute the sole and exclusive medium of exchange, lawful money, currency, and legal tender, and other good and valuable consideration." Pursuant to the contract for the sale of the property, payment "shall be valued at sixteen thousand six-hundred seventy (16,670) 'dollars' of coined gold, each such 'dollar' to consist of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold" to be paid through physical delivery of one thousand six hundred sixty-seven American Eagle ten dollar gold coins, each containing one-quarter troy ounce of gold. The contract specifies that this constitutes "the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE."

The Selgases filed a notice of protest in 2008 asserting that they paid "$16,670.00 in lawful (current) money," and therefore that is the current fair market value of the property. In 2009, they filed another notice of protest explaining that they paid $16,670.00 and have made $2,500.00 in improvements. Therefore, they argued, the market value of their property is $19,170.00. They also argued that Federal Reserve Notes are legal tender, but not current lawful money, and cannot be used in payment of debts. They also explained that the Owen-Glass Act, which created the Federal Reserve System, is uncon-

stitutional and they are not required to participate in it.

The Selgases offered the deposition testimony of Bill Jackson, HCAD's Chief Appraiser. Jackson testified that HCAD appraises property at market value. It looks at similar properties that have sold. HCAD uses the dollar as the unit of measure of value and "depend(s) on the dollar being fixed as we know it to be." In its responses to the Selgases' request for admissions, HCAD admitted only that it lacks any legal power to set or otherwise regulate the value in "dollars" of any United States money, currency, or coin.

Deposition testimony of Dr. Edwin Vieira, the Selgases expert, was offered, but the trial court sustained HCAD's objection to the testimony.

The Selgases presented Thomas Selgas's December 4, 2009 affidavit in which he stated that he and his wife purchased the property based on prevailing market conditions, paying cash in the amount of "$16,670 dollars," which he stated was the fair market value of the property. Likewise, JoAnn L. Bryant stated in her affidavit of the same date that she and her husband sold the property to the Selgases for "$16,670 dollars, in American Eagle Gold Coin, lawful money of the United States," She claimed this was the fair market value of the property.

Vieira's Testimony

Dr. Edwin Vieira, an attorney who focuses on constitutional law issues in the fields of money, banking, and homeland security, testified by deposition. HCAD objected to Vieira's testimony in its entirety, contending that he offered only legal testimony, is unqualified to offer an opinion on the ultimate issue in

the case, and his opinions are irrelevant. The trial court granted the objection.

An appellate court reviews a trial court's ruling that sustains an objection to summary judgment evidence for an abuse of discretion. *Cantu v. Horaney*, 195 S.W.3d 867, 871 (Tex. App.-Dallas 2006, no pet.). An appellant has the burden to bring forth a record that is sufficient to show the trial court abused its discretion when it sustained the objections to the summary judgment evidence. *Cruikshank v. Consumer Direct Mortg., Inc.*, 138 S.W.3d 497, 499 (Tex. App.–Houston [14th Dist.] 2004, pet. denied). As a prerequisite to presenting a complaint for appellate review, the record must show the complaint was made to the trial court by a timely request, objection, or motion. *See* TEX. R. App. P. 33.1(a). When a party fails to object to the trial court's ruling that sustains an objection to his summary judgment evidence, he has not preserved the right to complain on appeal about the trial court's ruling. *Cantu*, 195 S.W.3d at 871.

The record shows that the objections were filed December 11, 2009, and they were considered at the hearing on HCAD's motions for summary judgment on December 14. The trial court did not sign the orders granting the objections until January 4, 2011. The Selgases have not identified where, in this record, it is shown that they objected to the trial court's ruling. Our review of the record revealed no such objection. We conclude that the Selgases have waived their right to complain that the trial court sustained HCAD's objections to Vieira's testimony. *See id*. Accordingly, we do not consider Dr. Vieira's testimony for any reason.

Analysis - Evidence of Valuation

HCAD argued that it was entitled to summary judgment because there is no evidence that the Selgases' property is over appraised in United States dollars as represented by Federal Reserve Notes. The burden then shifted to the Selgases to raise a fact issue on the element of over appraisal. *See Macias*, 988 S.W.2d at 317. Selgas, in his deposition, stated that he paid fair market value for the property, that is, he paid "$16,670 dollars" in one-quarter troy ounce gold eagle coins. The Selgases assert that Congress established the value of the "1/4 ounce gold eagle coins" at "ten dollars" pursuant to 31 U.S.C. §§ 5101, 5102, 5103, and 5112(a)(9).

Ten dollar gold coins are legally a form of currency. 31 U.S.C.S. §§ 5103, 5112(a)(9) (Matthew Bender & Co., LEXIS through 2010 legislation). A gold coin has intangible value based on its representative value as currency, its face value. *Sanders v. Freeman*, 221 F.3d 846, 856 (6th Cir. 2000). The face value of currency in circulation is prima facie evidence of its value. *Burton v. Commonwealth*, 708 S.E.2d 444, 448 (Va. Ct. App. 2011). Moreover, value is inherent in the precious metals. *Bronson v. Bodes*, 74 U.S. (7 Wall.) 229, 249 (1869). Thus, a gold coin also has intrinsic value based on its metal content, that is, its market value. *Sanders*, 221 F.3d at 856. This intrinsic value is determined by weight and purity. *Bronson*, 74 U.S. at 249. Evidence can be presented to prove that money has a value different than its redeemable value as legal tender. *Burton*, 708 S.E.2d at 449 n.3. The true value of coins is affected by their market value to numismatics and the intrinsic value of the coins' precious metal content. *Id*. Notably, the United States Secretary of the Treasury is required

by statute to sell gold coins minted by the federal government at market value. 31 U.S.C.S. § 5112(i)(2)(A) (Mathew Bender & Co., LEXIS through 2010 legislation).

A gold coined dollar and a Federal Reserve Note dollar are not the actual equivalent of each other. *Bronson*, 74 U.S. at 252. Coined dollars are worth more than note dollars. *Id*. Therefore, for example, an amount due in coin dollars pursuant to a contract cannot be satisfied by an offer to pay their nominal equivalent in Federal Reserve Note dollars. *Id*. at 253. The contract would have to be paid in an amount equal to the actual value of the gold demanded in the contract. *Id*. at 250.

The contract pursuant to which the Selgases purchased the property from the Bryants is prima facie evidence that they paid $16,670.00 for the land. *See Burton*, 708 S.E.2d at 448. However, there is evidence showing that the value of the 1,667 ten dollar gold coins paid to purchase the property is greater than face value. In his deposition, Selgas explained that one ten dollar gold coin is worth approximately $250.00 in Federal Reserve Notes. He stated that he paid 1,667 ten dollar gold coins for the property. Michelle Selgas explained that the sellers' asking price was "approximately 400-something-thousand Federal Reserve Notes."

Therefore, the record shows that 1,667 ten dollar gold coins are worth approximately $416,750.00, which happens to be consistent with the sellers' asking price. The number of ten dollar gold coins offered was clearly determined based on their intrinsic value according to their weights as precious metals, not their face value. A sales price of $416,750.00 is considerably more than the 2008 market value

assessed by HCAD, before application of the appraisal formula for open space land. Likewise, the 2008 sales price of $416,750.00 is even greater than the 2009 assessment of $407,520.00. Based on this record, reasonable jurors, knowing that the Selgases paid in gold, could disregard Selgas's testimony that he paid "$16,670 dollars." *See Tamez*, 206 S.W.3d at 582. Thus, the Selgases' evidence did not raise a fact question on whether the property was over appraised. The no evidence summary judgment was proper because the evidence establishes conclusively the opposite of the challenged element. *See Taylor-Made Hose, Inc. v. Wilkerson*, 21 S.W.3d 484, 488 (Tex. App.–San Antonio 2000, pet. denied). Accordingly, the trial court did not err in granting HCAD's no evidence motion for summary judgment. Likewise, the evidence establishes as a matter of law that there is no issue of fact regarding whether the assessed value of the property is higher than the market value of the property. Accordingly, the trial court did not err in granting HCAD's traditional motion for summary judgment. *See Nixon*, 690 S.W.2d at 548. We overrule the Selgases' first and second issues.

SANCTIONS

HCAD has asked this court to impose sanctions on the Selgases, contending that this appeal is frivolous. *See* TEX. R. APP. P. 45. Under Rule 45, this court may award just damages to a prevailing party if it determines that an appeal is frivolous. *Id*.; *Durham v. Zarcade*s, 270 S.W.3d 708, 720 (Tex. App.–Fort Worth 2008, no pet.). Whether to award damages is within this court's discretion. *Id*. Sanctions should be imposed only in egregious circumstances. *Id*. We do not believe that this case warrants sanctions; there-

fore, we decline to impose monetary sanctions under Rule 45.

DISPOSITION

As the trial court did not err in granting HCAD's combined no evidence and traditional motion for summary judgment, we affirm the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered November 16, 2011.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

APPENDIX D

[LOGO]

COURT OF APPEALS
TWELFTH COURT OF APPEALS
DISTRICT OF TEXAS

No. 12-10-00021-CV
No. 12-10-00050-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Appellee

Appeal From The 173rd Judicial District Court
of Henderson County, Texas
(Tr.Ct.Nos. 2008A-813; 2008A-814)

November 16, 2011

JUDGMENT

THESE CAUSES came to be heard on the oral arguments, appellate records and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgments.

It is therefore ORDERED, ADJUDGED and DECREED that the judgments of the court below be in all things affirmed, and that all costs of these appeals are hereby adjudged against the Appellants,

THOMAS D SELGAS AND MICHELLE L. SELGAS, for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

APPENDIX E

[LOGO] [Postage Stamp]

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

Date: 4/6/2012

Mail to: Ms. Eve L. Henson
145 Spring Grove Drive
Waxahachie, TX 751685

Re: Case No. 12-0140
COA #: 12-10-00021-cv; 12-10-00050-CV
TC#: 2008A-814

Style: *Thomas D. Selgas and Michelle L. Selgas v. The Henderson County Appraisal District*

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

APPENDIX F

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

ORDER GRANTING DEFENDANT'S
OBJECTION TO PLAINTIFF'S
SUMMARY JUDGEMENT EVIDENCE

On December 14, 2009, the Defendant's Objection to Plaintiffs Summary Judgment Evidence was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's objection to the testimony of Dr. Edwin Vieira for the Plaintiff is in all respects GRANTED.

Signed January 4, 2010

/s/ [Illegible]
Judge Presiding

APPROVED AS TO FORM:

LAW OFFICE OF JOHN O'NEILL GREEN
P. O. Box 451675
Garland, Texas 75045
Phone: (214) 989-4970
Fax: (800) 736-9462

By: _____
John O'Neill Green
State Bar No. 00785927

ATTORNEY FOR PLAINTIFFS

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78664
Phone (512) 323-3200
Fax (512) 323-3294

By: /s/ Kirk Swinney
Kirk Swinney
State Bar No. 19588100

ATTORNEYS FOR DEFENDANT

APPENDIX G

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

ORDER GRANTING DEFENDANT'S
OBJECTION TO PLAINTIFF'S
SUMMARY JUDGEMENT EVIDENCE

On December 14, 2009, the Defendant's Objection to Plaintiffs Summary Judgment Evidence was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's objection to the testimony of Dr. Edwin Vieira for the Plaintiff is in all respects GRANTED.

Signed January 4, 2010

/s/ [Illegible]
Judge Presiding

APPROVED AS TO FORM:

LAW OFFICE OF JOHN O'NEILL GREEN
P. O. Box 451675
Garland, Texas 75045
Phone: (214) 989-4970
Fax: (800) 736-9462

By: _____
John O'Neill Green
State Bar No. 00785927

ATTORNEY FOR PLAINTIFFS

MCCREARY, VESELKA, BRAGG & ALLEN, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78664
Phone (512) 323-3200
Fax (512) 323-3294

By: /s/ Kirk Swinney
Kirk Swinney
State Bar No. 19588100

ATTORNEYS FOR DEFENDANT

APPENDIX H

[LOGO]

TWELFTH COURT OF APPEALS

Tuesday, March 30, 2010

Mr. John O'Neill Green
P.O. Box 2757
Athens, TX 75751-2757

Mr. Kirk Swinney
700 Jeffery Way
Suite 100
Round Rock, TX 78664

RE: Case Number: 12-10-00021-CV &
12-10-00050-CV
Trial Court Case Number: 2008A-813 &
2008A-814

Style: *Thomas D. Selgas and Michelle L. Selgas*
v.
The Henderson County Appraisal District

You are hereby notified that in the above styled and numbered cases, the following order was this day made and entered by this Court:

"THIS DAY came on to be considered Appellant's Motion to Consolidate Appeals filed herein; and the same being inspected, it is ORDERED that said motion be, and hereby is, GRANTED and that the above-referenced appeals are hereby consolidated for purposes of filing a brief."

Very truly yours,

CATHY S. LUSK, CLERK

By: Katrina McClenny
Katrina McClenny, Chief Deputy Clerk

APPENDIX I

[LOGO]

TWELFTH COURT OF APPEALS

Tuesday, February 8, 2011

Mr. John O'Neill Green
P.O. Box 2757
Athens, TX 75751-2757

Mr. Kirk Swinney
McCreary, Veselka,
Bragg & Allen, P.C.
700 Jeffery Way
Suite 100
Round Rock, TX 78664

RE: Case Number: 12-10-00021-CV
Trial Court Case Number: 2008A-813

Style: Thomas D. Selgas and Michelle L. Selgas
v.
The Henderson County Appraisal District

You are hereby notified that in the above-described case, the following decision and order was this day made and entered by this Court:

"THIS DAY came on to be considered Appellant's Motion for Leave to File Supplemental Brief herein; and the same being inspected, it is ORDERED that said motion be, and hereby is, OVERRULED."

Very truly yours,

CATHY S. LUSK, CLERK

By: Katrina McClenny
Katrina McClenny, Chief Deputy Clerk

APPENDIX J

[LOGO]

TWELFTH COURT OF APPEALS

Wednesday, January 4, 2012

Mr. John O'Neill Green
P.O. Box 2757
Athens, TX 75751-2757

Mr. Kirk Swinney
McCreary, Veselka,
Bragg & Allen, P.C.
700 Jeffery Way
Suite 100
Round Rock, TX 78664

RE: Case Number: 12-10-00021-CV
Trial Court Case Number: 2008A-813

Style: *Thomas D. Selgas and Michelle L. Selgas*
v.
The Henderson County Appraisal District

You are hereby notified that in the above-described cases, the following decision and order was this day made and entered by this Court:

"Appellants' Motion for Rehearing having been duly considered, it is ORDERED that said motion be, and hereby is, OVERRULED."

Very truly yours,

CATHY S. LUSK, CLERK

By: Katrina McClenny
Katrina McClenny, Chief Deputy Clerk

[LOGO]

TWELFTH COURT OF APPEALS

Wednesday, January 4, 2012

Mr. John O'Neill Green
P.O. Box 2757
Athens, TX 75751-2757

Mr. Kirk Swinney
McCreary, Veselka,
Bragg & Allen, P.C.
700 Jeffery Way
Suite 100
Round Rock, TX 78664

RE: Case Number: 12-10-00050-CV
Trial Court Case Number: 2008A-814

Style: *Thomas D. Selgas and Michelle L. Selgas*
v.
The Henderson County Appraisal District

You are hereby notified that in the above-described cases, the following decision and order was this day made and entered by this Court:

"Appellants' Motion for Rehearing having been duly considered, it is ORDERED that said motion be, and hereby is, OVERRULED."

Very truly yours,

CATHY S. LUSK, CLERK

By: Katrina McClenny
Katrina McClenny, Chief Deputy Clerk

APPENDIX K

[LOGO] 2-13-06

PROMULGATED BY THE
TEXAS REAL ESTATE COMMISSION (TREC)

FARM AND RANCH CONTRACT

1. PARTIES: Richard L. Bryant and JoAnn L Bryant (Seller) agrees to sell and convey to Thomas D. Selgas and Michelle L. Selgas (Buyer) and Buyer agrees to buy from Seller the Property described below.

2. PROPERTY: The land, improvements, accessories and crops are collectively referred to as the "Property".

   A. LAND: The land situated in the County of Henderson, Texas, described as follows: 46.428 acres, AB 538, RV Morrel Sur, SAVE AND EXCEPT 10.0 acres identified in Survey and Field Notes attached as EX C. 36.428 MOL to convey to Buyer. or as described on attached exhibit, also known as 5344 CR 3901, Athens. TX 75752

   (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.

B. IMPROVEMENTS:

(1) FARM and RANCH IMPROVEMENTS: The following permanently installed and built-In items, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.

(2) RESIDENTIAL IMPROVEMENTS: The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES:

(1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) ☐ portable buildings ☐ hunting blinds ☐ game feeders ☒ livestock feeders and troughs ☐ irrigation equipment ☒ fuel tanks ☒ submersible pumps ☒ pressure

tanks ☐ corrals ☒ gates ☐ chutes ☒ other: Propane Tank Remains

(2) RESIDENTIAL ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, controls for satellite dish system, controls for garage door openers, entry gate controls, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, and artificial fireplace logs.

D. CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.

E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and excluded: No timber may be harvested after acceptance of this contract.

F. RESERVATIONS: Seller reserves the following mineral, water, royalty, timber, or other interests: None.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing..... $ See Exhibit "A"

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)..... $ _____

C. Sales Price (Sum of A and B) [JB] [TDB] [MLS] ..... $ See Exhibit "A"

D. The Sales Price ☐ will ☐ will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of $____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in ☐ 3A ☐ 3B ☐ proportionately to 3A and 38.

Contract Concerning 5344 CR 3901
Athens, TX 75752
(Address of Property)

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):
☐ Third Party Financing Condition Addendum
☐ Seller Financing Addendum
☐ Loan Assumption Addendum
☐ Buyer's Temporary Residential Lease
☒ Seller's Temporary Residential Lease
☐ Addendum for Sale of Other Property by Buyer
☒ Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
☐ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
☐ Addendum for Coastal Area Property
☐ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
☐ Addendum for "Back Up" Contract
☒ Other (list): Exhibit A, Exhibit B, Exhibit C

23. TERMINATION OPTION: For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $ N/A (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within days after the effective date of this contract. If no dollar amount is

stated as the Option Fee or if Buyer fails to pay the Option Fee within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ☐ will ☐ will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

24. CONSULT AN ATTORNEY: Real estate licensees cannot give legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

Buyer's Attorney is: John O. Green, Attorney at
P.O. Box 451675
Garland, TX 75045
Telephone: (800) 736-9462
Facsimile: _____
E-mail: _____

Seller's Attorney is: _____
_____
Telephone: _____
Facsimile: _____
E-mail: _____

EXECUTED THE 31 DAY OF January, 2008 (EFFECTIVE DATE).

(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)

Thomas D. Selgas
Buyer Thomas D. Selgas

Michelle L. Selgas
Buyer Michelle L. Selgas

Richard L. Bryant
Seller Richard L. Bryant, by his duty

Authorized Agent and Attorney in fact,
JoAnn L. Bryant
Seller JoAnn L. Bryant

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188. 1-800-250-8732 or (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 25-5. This form replaces TREC NO. 25-4.

(Exhibit A)

PAYMENT CLAUSE

(a) AUTHORIZATION AND CONSTRUCTION. This PAYMENT CLAUSE is authorized by, relies upon, and must be construed and implemented according to:

(i) Section 4(c) of the Act of 28 October 1977, Public Law 95-147, 91 Statutes at Large 1227, 1229, *now codified in* 31 United States Code, Section 5118(d)(2);

(ii) Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112(a)(9);

(iii) Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Section 5112(h);

(iv) the decisions of the Supreme Court of the United States in *New York ex rel. Bunk of New York v. Board of Supervisors*, 74 U.S. (7 Wallace) 26 (1869); *Bronson v. Rodes*, 74 U.S. (7 Wallace) 229 (1869); *Butler v. Horowitz*, 74 U.S. (7 Wallace) 258 (1869); and *Thompson v. Butler*, 95 U.S. 694 (1878); and

(v) such other authorities as the SELLER, the BUYER, or both may invoke in the event of any challenge, by any third party and for any reason, to the propriety, sufficiency, or effect of any part of this PAYMENT CLAUSE.

(b) *VALUATION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist

of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE, as authorized pursuant to:

(i) the valuation of "ten dollar [s] in gold coin as "contain[ing] one quarter (¼) troy ounce of fine gold", established and implemented by the Congress of the United States in Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112 (a)(9), enacted under Congress's exclusive power" [t]o coin Money, [and] regulate the Value thereof in Article I, Section 8, Clause 5 of the Constitution of the United States; and

(ii) the rule set down by the Supreme Court of the United States in *Thompson v. Butler*, 95 U.S. 694,696 (1878). that:

> [o]ne owing a debt may pay it in gold coin or legal-tender notes of the United States, as he chooses, unless there is something to the contrary in the obligation out of which the debt arises. A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other, but as money, that is to say, as a medium of exchange, the law knows no difference between them.

(c) *DELIVERY AND SATISFACTION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall consist only, and be executed exclusively through physical delivery by the BUYER (or his

authorized agent) to the SELLER (or his authorized agent), of one thousand six hundred sixty-seven (1,667) American Eagle "ten dollar gold coin[s]" –

(i) each of which "contains one quarter (¼) troy ounce of fine gold, pursuant to Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United States Code, Section 5112(a)(9);

(ii) each of which has been designated "legal tender" by Congress under Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Sections 5112 (h) and 5103; and

(iii) which collectively shall constitute the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE.

(d) *SPECIFIC PERFORMANCE OF AND ARBITRATION REGARDING PAYMENT; IMPOSSIBILITY OF PERFORMANCE*. The SELLER and BUYER mutually agree that:

(i) no medium of payment, money, currency, or legal tender other than the one thousand six hundred sixty-seven (1,667) American Eagle gold coins heretofore specified in Section (c) of this PAYMENT CLAUSE may be tendered, accepted, or in any other way used for payment and satisfaction of this CLAUSE in whole or in any part;

(ii) in the event of any breach of this Agreement with respect to payment and satisfaction of this PAYMENT CLAUSE by the BUYER, the sole and exclusive remedy and relief which the SELLER shall seek, and to which the SELLER shall be entitled and the BUYER shall be liable, shall be specific perfor-

mance of this CLAUSE by the BUYER, in whole or in such part as may prove necessary; and

(iii) in the event of any alleged breach, disagreement as to performance, or other issue related to implementation of this PAYMENT CLAUSE, the matter shall be subject to binding arbitration, pursuant to the ARBITRATION CLAUSE of this Agreement, the arbitrator to be bound by and required to enforce the terms and conditions of this PAYMENT CLAUSE, to the exclusion of any other damages, remedy, or relief; but.

(iv) in the event that performance and satisfaction of this PAYMENT CLAUSE as specified herein shall be rendered impossible, because the ownership, possession, or use as a medium of exchange or legal tender of American Eagle gold coins has been declared illegal or otherwise prohibited by competent governmental authority prior to such performance and satisfaction, this Agreement shall be null and void *in toto*.

(e) *DISCLAIMER*. This PAYMENT CLAUSE is not intended to be, to operate as, or to be construed in any manner for the purpose of an "abusive tax shelter" or other unlawful means to defeat, evade, or avoid any lawful tax or other public charge arising out of the sale and purchase of the Subject Property.

Initialed for Identification by Buyer TDS MLS and Seller RB JB

APPENDIX L

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

THE STATE OF TEXAS
COUNTY OF HENDERSON

DATE: February 27, 2008

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, RICHARD BRYANT and wile, JOANN BRYANT, hereinafter referred to as "Grantor", whether one or more, for in consideration of One thousand six hundred sixty-seven (1,667) American Eagle "ten dollar gold coin[s] (*i*) each of which "contains one quarter (¼) troy ounce of fine gold, pursuant to Section 2(a)(9) of the Act of 17 December 1985, 'Public Law 99-185, 99 Statutes at Large 1177, 1177, stow coifed in Title 31, United States Cade, Section 511 (e)(9); (*ii*) each of which has been designated "legal tender" by Congress under Title D., Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, now codified in Title 31, United States Code, Sections 5112(h) and 5103, and "lawful money" pursuant to Article 1 Section 8 Clause 5 of the Constitution of the United States of America, Title 12, United States

Code, Section 411 and Public Law 96-3139; and (*iii*) which collectively shag constitute the sole and exclusive medium of exchange, lawful money, currency, and legal tender, and other good and valuable consideration in hand paid by the Grantee. herein named, the receipt and sufficiency of which is hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto THOMAS D. SELGAS and MICHELLE L. SELGAS, herein referred to as "Grantee", whether One or more, the real property described as follows:

> All that certain Lot, Tract or Parcel of land situated in Henderson County, Texas on the R.V. Morrell Survey, A-538 and being the 23.369 acre tract conveyed to Gerald W. Anthony and Teresa L. Anthony by Christian Oliver and and Carmen Oliver by Deed dated April 29, 2004 and recorded in Volume 2413, Page 346 of the Real Property Records of Henderson County, Texas and being the 23.059 acre tract conveyed to Gerald W. Anthony and Teresa L. Anthony by Edward Evans and Patricia Evans by Deed dated February 13, 2004 and recorded in Volume 2387, Page 832 of the Real Property Records of Henderson County, Texas. Said lot, tract or parcel of land being more particularly described by metes and bounds as follows:
>
> BEGINNING at a 5/8" boat spike found at the Southeast earner of the 23.059 acre tract, in the West line of the James Ball survey, A-96 and Aubrey Daniel 100.00 acre tract recorded in Volume 369, Page 637, and in the intersection of County roads 3901 and 3900; witness found 28" Post Oak South 61 degrees, East 33.0 feet;

THENCE West, along County road 3901 and line of directional control, at 968.98 feet pass a ½" iron rod fond at the Southwest corner of the 23.369 acre tract and the South east comer of the Terri L. Hudson 30.45 tract recorded in Volume 2181, Page 437; witness: found ½" iron rod North 9 degrees 31 minutes, West 24.1 feet;

THENCE along fence, North 9 degrees 31 minutes West 827.27 feet to a ½" iron rod foiled at an angle corner and North 13 degrees 55 minutes 43 seconds East 829.94 feet to a ½" iron rod found at fence corner;

THENCE South 84 degrees 17 minutes 08 seconds East, along fence 232.86 feet to a ½" Iron rod found at an angle corner of the John M. Runyan 17.141 acre tract recorded in volume 2098, Page 418;

THENCE South 61 degrees 32 minutes 39 seconds East 390.56 feet to a ½" iron rod found and South 8 degrees 13 minutes 17 seconds East 431.49 feet to a ½" iron rod found in a North line of the 23.059 acre tract;

THENCE North 61 degrees 30 minutes 49 seconds East 197.13 feet to a ½" iron rod found North 87 degrees 40 minutes 11 seconds East 565.95 feet to a ½" iron rod found at the South-east corner of the Runyon tract and Northeast corner of the 23.059 acre tract; Witness: found ½" Iron rod South 87 degrees 40 minutes 11 seconds West 9.78 feet;

THENCE South 2 degrees 18 minutes 06 seconds West, along County road 3900, 1160.58 feet to the place of BEGINNING and containing

46.428 acres of land of which approximately 1.17 acres lies in County roads 3901 and 3900.

SAVE AND EXCEPT FOR the 10.000 acre lot, tract or parcel of land retained by the Grantors out of said lot, tract or parcel of land described above, which said 10.000 acre lot, tract or parcel of land retained by the Grantors is described as follows:

All that certain lot, tract or parcel of land situated in Henderson County, State of Texas, on the R.V. Morrell Survey, A-538, and being a part of the called 46.428 acre tract conveyed to Richard Bryant and wife, Joann Bryant, by Gerald W. Anthony and Teresa L. Anthony, by Warranty Deed with Vendor's Lien dated August 29, 2005, and recorded in volume 2571, Page 347, of the Henderson County Real Property Records. Said lot, tract or parcel of land being more particularly described by metes and bounds as follows:

BEGINNING at a railroad spike found for corner in the centerline of County Road No. 3901, at the Southwest corner of the called 46.428 acre tract, at the Southeast comer of the Terri L. Hudson 30.45 acre tract recorded in Volume 2181, Page 437, of the Henderson County Real Property Records, and in the North line of The E.R. McLemore 43.00 acre first tract recorded in Velum 362, Page 133, of the Henderson County Deed Records, from WHENCE a ½" iron rod found in the North ROW line of the said county road beats North 09 degrees 14 minutes 58 seconds West 24.01 feet;

THENCE NORTH 09 degrees 31 minutes 00 seconds West 827.17 feet to a ½" iron rod found for corner at an angel corner in the West line of the called 46.428 acre tract and at an angle comet in the East line of the said 30.45 acre tract;

THENCE NORTH 62 degrees 39 minutes 52 seconds East 334.29 feet to 5/8" iron rod set for corner,

THENCE NORTH 43 degrees 53 minutes 47 seconds East 241.15 feet to a 5/8" iron rod act for comer;

THENCE NORTH 64 degrees 53 minutes 28 seconds East 225.31 feet to a 5/8" iron rod set for corner;

THENCE SOUTH 21 degrees 22 minutes 32 seconds West 374.33 feet to a 5/8" iron rod set for corner;

THENCE SOUTH 12 degrees 36 minutes 05 seconds West 716.14 feet to a railroad spike set for corner in the centerline of County Road No. 3901, in the South line of the called 46.428 acre tract and in the North line of the said E. R. McLemore 43.00 acre first tract, from WHENCE a 5/8" iron rod sat in the North ROW line of said county road bears North 12 degrees 36 minutes 05 seconds East 24.00 feet;

THENCE NORTH 89 degrees 59 minutes 55 seconds West along the centerline of the said county road, the South line of the called 46.428 acre tract and the North line of the said E.R. McLemore 43.00 we first tract 238.76 feet to

the place of beginning and containing 10.000 acres of land.

This conveyance, however, is made and accepted subject to any and all validly existing encumbrances, conditions and restrictions, relating to the hereinabove described property as now reflected by the records of the County Clerk of Henderson County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's hairs, executors, administrators, successors and/or assigns forever, and Grantor does hereby bind Grantor, Grantor's belts, executors, administrators, successors and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof.

Current ad valorem taxes on said property having been prorated, the payment thereof is assumed by Grantee.

EXECUTED this 26 day of Feb., 2008.

/s/ Richard Bryant by JoAnne Bryant agent and attorney in fact

RICHARD BRYANT, GRANTOR

/s/ Joanne Bryant

JOANNE BRYANT, GRANTOR

THE STATE OF TEXAS
COUNTY OF HENDERSON

The foregoing instrument was acknowledged before me on the 26 day of Feb., 2008, by RICHARD BRYANT and wife, JOANN BRYANT.

/s/ Carla O. Collins
NOTARY PUBLIC STATE OF TEXAS
PRINTED NAME OF NOTARY

MY COMMISSION EXPIRES

[Notary seal]

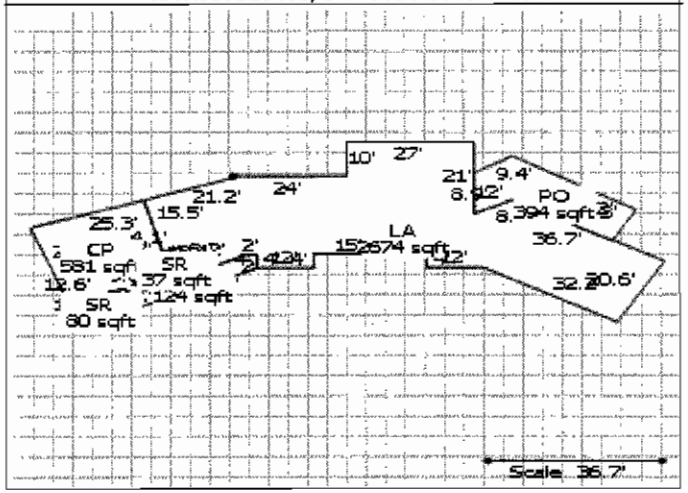
Grantee's Address
102 Rocky Pointe Ct.
Garland, TX 75044

APPENDIX M

[Insert Fold-In]

Ownership	Legal Information	Exemptions/Deed
SELGAS THOMAS D & MICHELLE L 102 ROCKY POINTE CT GARLAND, TX 75044 OWNER INTEREST 1.0	LEGAL: AB 538 R V MORRELL SUR, TR 3F SITUS: 5344 CR 3901 ACRES:23.059	HOMESTEAD INST: 004006 VOL: 2855 PAGE: 093 DATE: 2/26/2008

Identification ID:R000120450/GID:0538.0030.0F00.00



ALT:	
MIN:	
XREF:R000014912	

Sale Dt	Type	Vol	Page	Inst	Deed Dt	Price	Value@Sale	Grantee	Grantor
2/26/08	D-13	2855	093	004006	2/26/08		251,630	SELGAS THOMAS D &	BRYANT RICHARD &
8/29/05					1/1/00	299,000	52,960		
8/29/05					1/1/00	299,000	229,160		

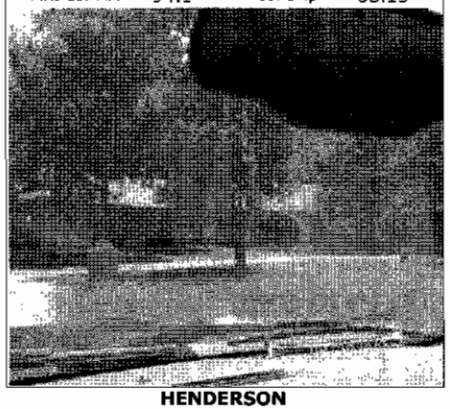
Geo Quad	Aerial	Map Id	Use	Agent	Mortgage
0		8X			

Grp#	Imp Cls	Year/Eff Yr	Sqft	Cpsf	Buildings	Features	Cn Cd	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Adjusted	Additional	Loc%	Total
1/1	10+	1974/NA	2,674.00	72.14	216,943					-.16			1	182,232			182,232

Code/Description	Hs	Year/Eff Yr	Class	Sqft	Cpsf	Buildings	Features	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Ptd	Value
LA-LIVING AREA				2,674	72.14	192,902							1		192,902
CP-				581	18.04	10,478							1		10,478
SR-STOREROOM				80	36.07	2,886							1		2,886
PO-PORCH/COV				124	18.04	2,236							1		2,236
SR-STOREROOM				37	36.07	1,335							1		1,335
PO-PORCH/COV				394	18.04	7,106							1		7,106

Features SL-SLAB,BR-BR VENEER,GB-GABLE,CS-COMP SHING,HA-CTRL HT/AR,F1-FG SIDING,

Mkt Csf MA : 94.1 Csf Impr : 68.15



HENDERSON

Appr By	Appr Dt	Chkd By	Chkd Dt
JB	12/2/91		1/1/00
User		Print Date / Time	
COUNTER		5/22/2008 3:57:31 PM	

Lnd Cd	Units / Alt Units	Cpu	Cpu Cd	Mkt Cpu	Adj Codes	Adj%	Adj Amt	Hs	Mkt Value	Ptd	Prd	Spec Value
RLATH	1 AC/43,560 SF	3,009.69		3,010	OIL,		3,010		3,010	D2		
RLATH	22.059 AC/960,890 SF	3,009.69		3,009.7	OIL,		66,391	N	66,391	D1	P	2,647

Prod Code / Prod Units / Prod Cpu

IP/22.059/120.00;

	2008	Ptd	Change +/-	Cert	2007	Ptd
Impr Hs	182,230	E1	0	182,230		E1
Impr Non Hs	0		0	0		
Land Hs	3,010	E1	460	2,550		E1
Land Non Hs	0		0	0		
Prod Mkt	66,390	D1	10,230	56,160		D1
Per / Min	0		0	0		
Total Market	251,630		10,690	240,940		
Prod Loss	63,740		10,230	53,510		
Cap Loss	0		0	0		
Assessed	187,890		460	187,430		

Entity / Description		Txbl Value	Tax Rate	Frz Yr	Ext. Tax Levy
HE HENDERSON		187,890	.004213		791.58
AT ATHENS ISD	15,000	172,890	.0115338		1,994.08
HR HENDERSON CO FM/FC	3,000	184,890	.0005787		106.99
TV TRINITY VALLEY COMM		187,890	.00068		127.77
** ESTIMATED TOTAL					3,020.42

Nbh	Misc
MULTI O 5 E	

Quick Link :

51a
[Insert Fold-In]

Ownership	Legal Information	Exemptions/Deed	Identification ID:R000014912/GID:0538.0030.0000.00
SELGAS THOMAS D & MICHELLE L 102 ROCKY POINTE CT GARLAND, TX 75044 OWNER INTEREST 1.0	LEGAL: AB 538 R V MORRELL SUR, TR 3 SITUS: 0 ACRES:13.369	INST: 004006 VOL: 2855 PAGE: 093 DATE: 2/26/2008	

ALT:
MIN:
XREF:

Sale Dt	Type	Vol	Page	Inst	Deed Dt	Price	Value@Sale	Grantee	Grantor
2/26/08	D-13	2855	093	004006	2/26/08		40,240	SELGAS THOMAS D &	BRYANT RICHARD &
8/29/05					1/1/00	299,000	229,160		
8/29/05					1/1/00	299,000	52,960		

Geo Quad	Aerial	Map Id	Use	Agent	Mortgage
0		8X			

Grp#	Imp Cls	Year/Eff Yr	Sqft	Cpsf	Buildings	Features	Cn Cd	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Adjusted	Additional	Loc%	Total
1/1		0	.00	.00									1				

Code/Description	Hs	Year/Eff Yr	Class	Sqft	Cpsf	Buildings	Features	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Ptd	Value
-													1		
-													1		
-													1		
-													1		
-													1		
-													1		

Features -,-,-,-,-,-,-

Csf Impr :

HENDERSON

Appr By	Appr Dt	Chkd By	Chkd Dt
JB	12/2/91		1/1/00
User		Print Date / Time	
COUNTER		5/22/2008 3:57:23 PM	

Lnd Cd	Units / Alt Units	Cpu	Cpu Cd	Mkt Cpu	Adj Codes	Adj%	Adj Amt	Hs	Mkt Value	Ptd	Prd	Spec Value
RLATH	13.369 AC/582,354 SF	3,009.69		3,009.72	OIL,		40,237	N	40,237	D1	P	1,604

Prod Code / Prod Units / Prod Cpu
IP/13.369/120.00;

	2008	Ptd	Change +/-	Cert	2007	Ptd
Impr Hs	0		0		0	
Impr Non Hs	0		0		0	
Land Hs	0		0		0	
Land Non Hs	0		0		0	
Prod Mkt	40,240	D1	-19,260		59,500	D1
Per / Min	0		0		0	
Total Market	40,240		-19,260		59,500	
Prod Loss	38,640		-18,060		56,700	
Cap Loss	0		0		0	
Assessed	1,600		-1,200		2,800	

Entity / Description	Txbl Value	Tax Rate	Frz Yr	Ext. Tax Levy
HE HENDERSON	1,600	.004213		6.74
AT ATHENS ISD	1,600	.0115338		18.45
HR HENDERSON CO FM/FC	1,600	.0005787		.93
TV TRINITY VALLEY COMM	1,600	.00068		1.09
** ESTIMATED TOTAL				27.21

Nbh	Misc
MULTI O 5	

Quick Link :

APPENDIX N

APPRAISAL REVIEW BOARD
HENDERSON COUNTY
P. O. BOX 430
ATHENS, TEXAS 75751
(903) 675-9296

TO: SELGAS THOMAS D & MICHELLE L
102 ROCKY POINTE CT
GARLAND, TX 75044

RE: Geo #0538.0030.0F00.00

The Appraisal Review Board has made a final decision on your protest. A copy of the ORDER DETERMINING PROTEST is enclosed with this notice.

You have a right to appeal this order to the District Court. As an alternative to filing an appeal to the district court, you may appeal this order through binding arbitration if your protest concerned the appraised or market value of real property; and 1) the appraised or market value, as applicable, of the property as determined by the order is $1 million or less; and 2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property. If you want to appeal, you should consult an attorney immediately. If the Appraisal Review Board's order exceeds $1,000,000, you must file a notice of your appeal with the chief appraiser at the above address within 15 days of the date you receive this notice. You should keep a copy of your notice and either mail the notice by certified mail or deliver it by hand and have your copy date stamped.

Additionally, *you must file a petition with the District Court, or you must file a request for binding arbitration with the appraisal district within 45 days of the date you receive this notice*. If you do appeal and your case is pending, *you must pay the amount of taxes not in dispute or last year's taxes, whichever is higher, to each taxing unit before taxes for the year become delinquent. You can use this form if you wish to appeal the order*.

Mail to: Bill Jackson, Chief Appraiser
Henderson County Appraisal District
P.O. Box 430
Athens, Texas 75751

NOTICE OF APPEAL OF
APPRAISAL REVIEW BOARD ORDER

This is formal notice that I intend to file an appeal concerning order of the Appraisal Review Board in Case No. _____ regarding my property.

Date:_____

Signed:_____

Address:_____

APPRAISAL REVIEW BOARD
HENDERSON COUNTY, TEXAS

Case No. 7153

ORDER DETERMINING PROTEST

On 6/9/2008 12:00:00 PM the Appraisal Review Board of Henderson County, Texas heard the protest of SELGAS THOMAS D & MICHELLE L concerning the appraisal records for tax year 2008.

The taxpayer and appraiser ROBERT appeared. A summary of the District's testimony, a list of witnesses, and a list of evidence submitted appear as part of the records of this case.

The taxpayer's notice of protest was filed in time. The Appraisal Review Board found that it had jurisdiction over the case. The Appraisal Review Board delivered written notice of the hearing in the manner required by law.

Having heard the evidence and arguments from both sides, the Appraisal Review Board with a quorum present determined that:

> NO CHANGES WILL BE MADE TO THE ACCOUNT. TOTAL MARKET VALUE $251,630.

June 16, 2008

/s/ Gary Bass
Gary Bass, Chairman
Appraisal Review Board

APPRAISAL REVIEW BOARD
HENDERSON COUNTY
P. O. BOX 430
ATHENS, TEXAS 75751
(903) 675-9296

TO: SELGAS THOMAS D & MICHELLE L
102 ROCKY POINTE CT
GARLAND, TX 75044

RE: Geo #0538.0030.0000.00

The Appraisal Review Board has made a final decision on your protest. A copy of the ORDER DETERMINING PROTEST is enclosed with this notice.

You have a right to appeal this order to the District Court. As an alternative to filing an appeal to the district court, you may appeal this order through binding arbitration if your protest concerned the appraised or market value of real property; and 1) the appraised or market value, as applicable, of the property as determined by the order is $1 million or less; and 2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property. If you want to appeal, you should consult an attorney immediately. *If the Appraisal Review Board's order exceeds $1,000,000, you must file a notice of your appeal with the chief appraiser at the above address within 15 days of the date you receive this notice*. You should keep a copy of your notice and either mail the notice by certified mail or deliver it by hand and have your copy date stamped.

Additionally, *you must file a petition with the District Court, or you must file a request for binding arbitration with the appraisal district within 45 days of the date you receive this notice*. If you do appeal and your case is pending, *you must pay the amount of taxes not in dispute or last year's taxes, whichever is higher, to each taxing unit before taxes for the year become delinquent. You can use this form if you wish to appeal the order*.

Mail to: Bill Jackson, Chief Appraiser
Henderson County Appraisal District
P.O. Box 430
Athens, Texas 75751

NOTICE OF APPEAL OF
APPRAISAL REVIEW BOARD ORDER

This is formal notice that I intend to file an appeal concerning order of the Appraisal Review Board in Case No. _____ regarding my property.

Date:_____

Signed:_____

Address:_____

APPRAISAL REVIEW BOARD
HENDERSON COUNTY, TEXAS

Case No. 7152

ORDER DETERMINING PROTEST

On 6/9/2008 12:00:00 PM the Appraisal Review Board of Henderson County, Texas heard the protest of SELGAS THOMAS D & MICHELLE L concerning the appraisal records for tax year 2008.

The taxpayer and appraiser ROBERT appeared. A summary of the District's testimony, a list of witnesses, and a list of evidence submitted appear as part of the records of this case.

The taxpayers notice of protest was filed in time. The Appraisal Review Board found that it had jurisdiction over the case. The Appraisal Review Board delivered written notice of the hearing in the manner required by law.

Having heard the evidence and arguments from both sides, the Appraisal Review Board with a quorum present determined that:

> NO CHANGES WILL BE MADE TO THE ACCOUNT. TOTAL MARKET VALUE $40,240.

June 16, 2008

/s/ Gary Bass
Gary Bass, Chairman
Appraisal Review Board

APPENDIX O

HENDERSON COUNTY APPRAISAL DISTRICT

Mailing Address:	Phone:	Physical Address:
Po Box 430	903-675-9296	1751 Enterprise
Athens, TX 75751	Fax:	Athens, TX 75751
	903-675-4223	

Notice of Appraised Value
Date Sensitive Material Please Read Carefully
Protest Deadline: 6/1/2009

May 01, 2009

SELGAS THOMAS D & MICHELLE L
PO BOX 2757
ATHENS, TX 75751

Dear SELGAS THOMAS D & MICHELLE L

We have appraised the property listed below for the 2009 tax year. Based on the appraisal date of January 1 of this year, this appraisal is for the following property:

Account Number: ID:	R000120450/ GEO ID: 0538.0030.0F00.00
Street Address:	5344 CR 3901
Legal Description:	AB 538 R V MORRELL SUR, TR 3F
Legal Acres'	23.059
Exemptions	General Homestead

Additional

Percent Market Change from 2004 is 64.55%

(Please refer to this number when inquiring about this property.)

Property Valuation	Last Year	Proposed This Year
Land Market	69,400	92,240
Structure Market	182,230	261,800
Total Appraised	251,630	354,040
Production Loss	-63,740	-85,590
Taxable Before Exemptions	187,890	268,450

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
He – Henderson	**187,890**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	268, 450	**0.4205720**	

Tax Estimate **1,129.03**

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
AT-Athens ISD	**172,890**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	268, 450	**0.4205720**	

Tax Estimate **2,923.24**

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
HR – Henderson Co FM/FC %	**184,890**	**3,000**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	265, 450	**0.0554440**	

Tax Estimate **147.18**

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
TV – Trinity Valley Comm	**187,890**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	268, 450	**0.0680000**	

Tax Estimate **182.55**

4,382.00

The above tax estimates use last year's tax rates for the taxing units. The governing body of each unit – school board, county commissioners, and so on – decides whether property taxes increase. The appraisal district only determines your property's value. The taxing units will set tax rates later this year.

The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials.

If you are 65 or older and received the $10,000 school tax exemption on your home last year from the school listed in the taxing entities above, your school taxes for this year will not be higher than when you first received the exemption on this home. If you improved your property (by adding rooms or buildings), your school tax ceiling may increase for improvements. If you are a surviving spouse age 55 or older, you may retain the school tax ceiling.

Contact the appraisal office if you disagree with this year's proposed value for your property, or if you have any problems with the property description or address information. If the problem cannot be resolved, you have a right to appeal to the appraisal review board (ARB). To appeal, you must file a WRITTEN protest with the ARB before 6/1/2009. Enclosed is a protest form to send the appraisal district office. Before you send this form to the appraisal district, please contact them to determine if your question can be answered first. After your protest has been processed, you will be notified of the date, time, and place of your scheduled ARB hearing. Enclosed also is information to help you in preparing your protest. You do not need to use the enclosed form to file your protest. You may protest by letter, if it includes your name, your property's description, and the facts surrounding your protest.

If you have any additional questions concerning the value of your property, please contact the appraisal office at the phone number or address listed above.

HENDERSON COUNTY APPRAISAL DISTRICT

Mailing Address:	Phone:	Physical Address:
Po Box 430	903-675-9296	1751 Enterprise
Athens, TX 75751	Fax:	Athens, TX 75751
	903-675-4223	

Notice of Appraised Value
Date Sensitive Material Please Read Carefully
Protest Deadline: 6/1/2009

May 01, 2009

SELGAS THOMAS D & MICHELLE L
PO BOX 2757
ATHENS, TX 75751

Dear SELGAS THOMAS D & MICHELLE L

We have appraised the property listed below for the 2009 tax year. Based on the appraisal date of January 1 of this year, this appraisal is for the following property:

Account Number: ID:	R000014912/ GEO ID: 0538.0030.0000.00
Street Address:	0
Legal Description:	AB 538 R V MORRELL SUR, TR 3
Legal Acres'	13.369
Exemptions	

Additional

Percent Market Change from 2004 is 0.98%

63a

(Please refer to this number when inquiring about this property.)

Property Valuation	Last Year	Proposed This Year
Land Market	40,240	53,480
Total Appraised	40,240	53,480
Production Loss	-38,640	-51,880
Taxable Before Exemptions	1,600	1,600

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
He – Henderson	**1,600**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	1,600	**0.4205720**	

Tax Estimate **6.73**

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
AT-Athens ISD	**1,600**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	1,600	**1.1533800**	

Tax Estimate **18.45**

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
HR – Henderson Co FM/FC %	**1,600**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	1,600	**0.0554440**	

Tax Estimate .89

Taxing Entities	Last Year's Taxable Value	This Year's Exemptions	
TV – Trinity Valley Comm	**1,600**	**0**	
	This Year Taxable Value	Last Year's Tax Rate	Freeze Year
	1,600	**0.0680000**	

Tax Estimate 1.09

27.16

The above tax estimates use last year's tax rates for the taxing units. The governing body of each unit – school board, county commissioners, and so on – decides whether property taxes increase. The appraisal district only determines your property's value. The taxing units will set tax rates later this year.

The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries

concerning your taxes should be directed to those officials.

If you are 65 or older and received the $10,000 school tax exemption on your home last year from the school listed in the taxing entities above, your school taxes for this year will not be higher than when you first received the exemption on this home. If you improved your property (by adding rooms or buildings), your school tax ceiling may increase for improvements. If you are a surviving spouse age 55 or older, you may retain the school tax ceiling.

Contact the appraisal office if you disagree with this year's proposed value for your property, or if you have any problems with the property description or address information. If the problem cannot be resolved, you have a right to appeal to the appraisal review board (ARB). To appeal, you must file a WRITTEN protest with the ARB before 6/1/2009. Enclosed is a protest form to send the appraisal district office. Before you send this form to the appraisal district, please contact them to determine if your question can be answered first. After your protest has been processed, you will be notified of the date, time, and place of your scheduled ARB hearing. Enclosed also is information to help you in preparing your protest. You do not need to use the enclosed form to file your protest. You may protest by letter, if it includes your name, your property's description, and the facts surrounding your protest.

If you have any additional questions concerning the value of your property, please contact the appraisal office at the phone number or address listed above.

APPENDIX P

APPRAISAL REVIEW BOARD
HENDERSON COUNTY, TEXAS

Case No. 9867

ORDER DETERMINING PROTEST

On 7/10/2009 8:00:00 AM the Appraisal Review Board of Henderson County, Texas heard the protest of SELGAS THOMAS D & MICHELLE L concerning the appraisal records for tax year 2009.

The taxpayer and appraiser ROBERT appeared. A summary of the District's testimony, a list of witnesses, and a list of evidence submitted appear as part of the records of this case.

The taxpayer's notice of protest was filed in time. The Appraisal Review Board found that it had jurisdiction over the case. The Appraisal Review Board delivered written notice of the hearing in the manner required by law.

Having heard the evidence and arguments from both sides, the Appraisal Review Board with a quorum present determined that:

THERE WAS NO CHANGE MADE TO YOUR ACCOUNT. YOUR TOTAL MARKET VALUE REMAINS $53,480.

July 17, 2009

/s/ Rick Ford

Rick Ford, Chairman
Appraisal Review Board

APPRAISAL REVIEW BOARD
HENDERSON COUNTY
P. O. BOX 430
ATHENS, TEXAS 75751
(903) 675-9296

TO: SELGAS THOMAS D & MICHELLE L
PO BOX 2757
ATHENS, TX 75751

RE: Geo #0538.0030.0000.00

The Appraisal Review Board has made a final decision on your protest. A copy of the **ORDER DETERMINING PROTEST** is enclosed with this notice.

You have a right to appeal this order to the District Court. As an alternative to filing an appeal to the district court, you may appeal this order through binding arbitration if your protest concerned the appraised or market value of real property; and 1) the appraised or market value, as applicable, of the property as determined by the order is $1 million or less; and 2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property. If you want to appeal, you should consult an attorney immediately. **If the Appraisal Review Board's order exceeds $1,000,000, you must file a notice of your appeal with the chief appraiser at the above address within 15 days of the date you receive this notice.** You should keep a copy of your notice and either mail the notice by certified mail or deliver it by hand and have your copy date stamped.

Additionally, you must file a petition with the District Court, or you must file a request for binding arbitration with the appraisal district within 45 days of the date you receive this

notice. If you do appeal and your case is pending, you must pay the amount of taxes not in dispute or last year's taxes, whichever is higher, to each taxing unit before taxes for the year become delinquent. You can use this form if you wish to appeal the order.

Mail to: Bill Jackson, Chief Appraiser
Henderson County Appraisal District
P.O. Box 430
Athens, Texas 75751

NOTICE OF APPEAL OF APPRAISAL REVIEW BOARD ORDER

This is formal notice that I intend to file an appeal concerning order of the Appraisal Review Board in Case No. _____regarding my property.

Date: _____

Signed: _____

Address: _____

APPRAISAL REVIEW BOARD
HENDERSON COUNTY, TEXAS

Case No. 9866

ORDER DETERMINING PROTEST

On 7/10/2009 8:00:00 AM the Appraisal Review Board of Henderson County, Texas heard the protest of SELGAS THOMAS D & MICHELLE L concerning the appraisal records for tax year 2009.

The taxpayer and appraiser ROBERT appeared. A summary of the District's testimony, a list of witnesses, and a list of evidence submitted appear as part of the records of this case.

The taxpayer's notice of protest was filed in time. The Appraisal Review Board found that it had jurisdiction over the case. The Appraisal Review Board delivered written notice of the hearing in the manner required by law.

Having heard the evidence and arguments from both sides, the Appraisal Review Board with a quorum present determined that:

THERE WAS NO CHANGE MADE TO YOUR ACCOUNT. YOUR TOTAL MARKET VALUE REMAINS $354,040.

July 17, 2009

/s/ Rick Ford

Rick Ford, Chairman
Appraisal Review Board

APPRAISAL REVIEW BOARD
HENDERSON COUNTY
P. O. BOX 430
ATHENS, TEXAS 75751
(903) 675-9296

TO: SELGAS THOMAS D & MICHELLE L
PO BOX 2757
ATHENS, TX 75751

RE: Geo #0538.0030.0F00.00

The Appraisal Review Board has made a final decision on your protest. A copy of the **ORDER DETERMINING PROTEST** is enclosed with this notice.

You have a right to appeal this order to the District Court. As an alternative to filing an appeal to the district court, you may appeal this order through binding arbitration if your protest concerned the appraised or market value of real property; and 1) the appraised or market value, as applicable, of the property as determined by the order is $1 million or less; and 2) the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property. If you want to appeal, you should consult an attorney immediately. **If the Appraisal Review Board's order exceeds $1,000,000, you must file a notice of your appeal with the chief appraiser at the above address within 15 days of the date you receive this notice.** You should keep a copy of your notice and either mail the notice by certified mail or deliver it by hand and have your copy date stamped.

Additionally, you must file a petition with the District Court, or you must file a request for binding arbitration with the appraisal district within 45 days of the date you receive this

notice. If you do appeal and your case is pending, you must pay the amount of taxes not in dispute or last years taxes, whichever is higher, to each taxing unit before taxes for the year become delinquent. You can use this form if you wish to appeal the order.

Mail to: Bill Jackson, Chief Appraiser
Henderson County Appraisal District
P.O. Box 430
Athens, Texas 75751

NOTICE OF APPEAL OF APPRAISAL REVIEW BOARD ORDER

This is formal notice that I intend to file an appeal concerning order of the Appraisal Review Board in Case No. _____regarding my property.

Date: _____

Signed: _____

Address: _____

APPENDIX Q

IN THE DISTRICT COURT
173RD JUDICIAL DISTRICT
OF HENDERSON COUNTY, TEXAS

[Filed August 1, 2008]

No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Defendant.

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Thomas D. Selgas and Michelle L. Selgas, herein after called Plaintiff' s, complaining of and about The Henderson County Appraisal District, hereinafter called Defendant, and for cause of action shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiffs affirmatively plead that they seek only monetary relief of $50,000.00 or less, excluding costs, prejudgment interest and attorneys fees, and intend that discovery be conducted under Discovery Level 1.

PARTIES AND SERVICE,

2. Plaintiff's Thomas D. Selgas and Michelle L. Selgas, are individuals whose address is 5344 County Road 3901, Athens, Texas 75752.

3. Defendant Henderson County Appraisal District, located in Henderson County, Texas, duly organized and acting pursuant to the laws of Texas, upon whom service may be had by serving Mr. Bill Jackson, Chief Appraiser, at 1751 Enterprise, Athens, Texas 75751.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this Court.

5. This Court has jurisdiction over the parties because Plaintiff's and Defendant are domiciled in Texas.

6. Venue in Henderson County is proper in this cause because the property that is the subject of this suit is located therein.

FACTS

7. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059.

8. On May 22, 2008, Plaintiffs were notified that the valuation of the above-described property would be 187,890.

9. On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the

notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $251,630. The board mailed its determination to Plaintiffs on June 18, 2008. All conditions precedent to the Plaintiff's right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

10. Plaintiff's purchased the property that is the subject of this suit for $14,370.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

11. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

12. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

13. The fair market value of Plaintiffs property, as described above is $14,370.00 dollars. The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

PRAYER

WHEREFORE, the Plaintiffs request the Defendant be cited to appear and answer, and that on final trial, the Court render judgment:

1. Fixing the value of the Plaintiffs property as of January 1, 2008 at $14,370.00 dollars.
2. Compelling imposition of the proper assessed value of the Plaintiff's property, correction of the tax rolls to show the proper assessed value of the Plaintiffs property, and acceptance and receipt of taxes due for the year 2008 based on application of the approved rates to the proper assessment.
3. Awarding Plaintiffs all costs incurred, reasonable attorney's fees, and all other relief to which plaintiff may he entitled.

Respectfully submitted,

/s/ John O' Neill Green
John O' Neill Green
Texas Bar No. 00785927
P.O. Box 451675
Garland, TX 75045
Tel. (214)989-4970
Fax. (800)736-9462
Attorney for Plaintiffs
Thomas D. Selgas and
Michelle L. Selgas

Exhibit A 1 of 10

PROPERTY TAX – NOTICE OF PROTEST

Appraisal district name	Phone (Area code and number)
Henderson County Appraisal District	903-675-9296
Address P.O. Box 430, Athens, TX 75751	

Instructions: If you want the appraisal review board to hear and decide your case, you must file a written notice of protest with the appraisal review board (ARB) for the appraisal district that took the action you want to protest. If you are leasing the property subject to the protest, you must have a contract requiring you to pay the property taxes on the property.

Filing Deadlines: the usual deadline for filing your notice (*having it postmarked if you mail it)* is midnight, May 31.

A different deadline will apply to you if:

- your notice of appraised value was delivered to you after May 2;
- your protest concerns a change in the use of agricultural, open-space or timber land;
- the ARB made a change to the appraisal records that adversely affects you and you received notice of the change;

- the appraisal district or the ARB was required by law to send you notice about a property and did not; or
- you had good cause for missing the May 31 protest filing deadline.

Contact the appraisal district for your specific deadline. The ARB will determine if good cause exists for missing a deadline. Good cause means that something beyond your control, such as a medical emergency, prevented you from meeting the deadline.

Weekends, Holidays: If your deadline falls on a Saturday, Sunday or other legal holiday, it is postponed until midnight of the next working day.

<table>
<tr><td rowspan="4">Step 1: Owner's or lessee's name and address</td><td>Owner's of lessee's first name and initial
Thomas D.</td><td>Last Name
Selgas</td></tr>
<tr><td colspan="2">Owner's or lessee's present mailing address (number and street)
P.O. Box 451675</td></tr>
<tr><td>City, town, or post office, state, Zip code
Garland, TX 75045-1675</td><td>Phone (area code and number)
972 333 3817</td></tr>
<tr><td colspan="2"></td></tr>
<tr><td>Step 2: Describe property under protest</td><td colspan="2">Give street address and city if different from above, or legal description if not street address
5344 County Road 3901, Athens, TX 75752</td></tr>
</table>

	Appraisal district account number (*optional*) 0538.0030.0F00.00
	Mobile homes: (*Give make, model and identification number*)
Step 3: Check reasons for your protest	☐ Value is over market value. ☐ Value is unequal compared with other properties. ☐ Property should not be taxed in _____. Name of taxing unit ☐ Failure to send required notice. _____. (*type*) ☑ Other: Amended Protest ☐ Exemption was denied, modified or cancelled. ☐ Change in use of land appraised as ag-use, open-space or timber land ☐ Ag-use, open-space or other special appraisal was denied, modified or cancelled. ☐ Owner's name is incorrect. ☐ Property description is incorrect. ☐ Property should not be taxed in this appraisal district or in one or more taxing units.

Step 4: Give facts that may help resolve your case (continue on additional page if needed)	See Attached Exhibits: A, B, C, D, E & F _____ _____ What do you think your property's value is? (*Optional*) $ _____	
Step 5: Check to receive ARB hearing procedures	I want the ARB to send me a copy of its hearing procedures. ☐ Yes ☐ No* * If your protest foes to a hearing, you will automatically receive a copy to the ARB's hearing procedures.	
Step 6: Sign the application	Signature Sign here /s/ Thomas Selgas	Date 5/28/2008

Exhibit A 2 of 10

AMENDED NOTICE OF PROTEST

Ref: Appraisal District Account #s
0538.0030.0000.00 and 0538.0030.0F00.00

On or about February 27, 2008, Thomas D. Selgas, hereafter "Owner", purchased, in an arms-length transaction, two adjoining tracts of property, hereafter the "Property" for $16,670.00 in the lawful money of the United States of America pursuant to:

(i) Section 4(c) of the Act of 28 October 1977, Public Law 95-147, 91 Statutes at Large 1227, 1229, now codified in 31 United States Code, Section 5118(d)(2);

(ii) Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99Statutes at Large 1177, 1177, now codified in Title 31, United State Code, Section 5112(a)(9);

(iii) Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, now codified in Title 31, United States Code, Section 5112(h);

(iv) the decisions of the Supreme Court of the United States in *New York ex rel. Bunk of New York v. Board of Supervisors*, 74 U.S. (7 Wallace) 26 (1869); *Bronson v. Rodes*, 74 U.S. (7 Wallace) 229 (1869); *Butler v. Horowitz*, 74 U.S. (7 Wallace) 258 (1869); and *Thompson v. Butler*, 95 U.S. 694 (1878); and

(v) such other authorities as the Owner may invoke in the event of any challenge for any reason, to the propriety, sufficiency, or effect of any part of this Protest

Said lawful money also referred to as current money pursuant to:

(i) Article 11, Section 4 of the Texas Constitution

(ii) Article 1, Section 10, Clause 1 of the Constitution of the United States of America;

(iii) *United States v. Marigold*, 50 U.S. (9 How.) 560, 567-68 (1850):

(iv) June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147, now codified in Title 18, United States Code, Section 486.

On or about May 16, 2008 the Owner received two letters from Bill Jackson, RPA, Chief Appraiser Henderson County Appraisal District, Henderson County Texas stating: "2008 Notices of Appraised Value were mailed April 4, 2008, and therefore sent to the previous owner."

On May 17, 2008 the Owner mailed two completed Property Tax - Notice of Protest forms, downloaded from the Henderson County, Texas web site, notifying the Henderson County Appraisal Review Board that it failed to provide the Owner with copies of the proposed appraised value documents for the Property.

On May 22, 2008 the Owner drove to the Henderson County Appraisal District Office and obtained copies of the appraised value documents for each tract of property, which the Appraisal District failed to send the Owner. Said appraised value documents do not clearly identify the unit of measure, which based upon the Owner' s arms-length Property purchase transaction, are obviously not based on lawful money units of Dollars pursuant to citations of law and

Supreme Court decisions noted above since the Henderson County Appraisal Districts proposed market value numbers are more than an order of magnitude greater than the lawful money value the Owner paid not more than 3-months ago for the Property.

On May 27, 2008 the Owner received a scheduling notice from the Henderson County Appraisal Review Board in response to the Owner's May 17, 2008 protests.

On May 28, 2008 the Owner submitted this document attached to a Notice of Protest, together The Amended Notice of Protest.

Based upon the afore described items and citations, the Owner formally objects to the Henderson County Appraisal District proposed property appraisal for, but not limited to, the following reasons:

1) The Owner purchased the Property in an Arms Length Transaction for $16,670.00 in lawful (current) money of the United States on February 27, 2008 and therefore the fair market value of the property in the current and lawful money of the United States;

2) The numbers listed under the column heading of "Value" on the appraisal form do not identify the units of measure, such as Inches, Hours, Pounds, Dollars, Pennies or grains of sand and therefore are meaningless;

3) The term Dollar, by its use in Article 1 Section 9, Clause 1 of the Constitution of the United States of America, and Amendment 7 of said Constitution is defined as a unit of measure defined as a minted coin containing

at least 371 ¼ grains of fine (pure) silver. Said definition upheld in *United States v. Marigold*, 50 U.S. (9 How.) 560, 567-68 (1850); reiterated in the March 31, 1982 report made pursuant to Public Law 96-389; and reinstated by Congress pursuant to Title II, Section 202(e) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 115-116, now codified in Title 31, United States Code, Section 5112(e); and Sections 2(a)(7) through 2(a)(10) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, now codified in Title 31, United State Code, Section 5112(a)(7) through (a)(10);

4) Although Federal Reserve Notes are legal tender, they are not current lawful money (see Title 12 United State Code, Section 411) of the United States and thus cannot be used in the payment of debts pursuant to Article 1, Section 10, Clause 1 of the Constitution of the United States of America and Article 11, Section 4 of the Texas Constitution.

(Exhibit A)

PAYMENT CLAUSE

(a) AUTHORIZATION AND CONSTRUCTION. This PAYMENT CLAUSE is authorized by, relies upon, and must be construed and implemented according to:

(i) Section 4(c) of the Act of 28 October 1977, Public Law 95-147, 91 Statutes at Large 1227, 1229, *now codified in* 31 United States Code, Section 5118(d)(2);

(ii) Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112(a)(9);

(iii) Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Section 5112(h);

(iv) the decisions of the Supreme Court of the United States in *New York ex rel. Bunk of New York v. Board of Supervisors*, 74 U.S. (7 Wallace) 26 (1869); *Bronson v. Rodes*, 74 U.S. (7 Wallace) 229 (1869); *Butler v. Horowitz*, 74 U.S. (7 Wallace) 258 (1869); and *Thompson v. Butler*, 95 U.S. 694 (1878); and

(v) such other authorities as the SELLER, the BUYER, or both may invoke in the event of any challenge, by any third party and for any reason, to the propriety, sufficiency, or effect of any part of this PAYMENT CLAUSE.

(b) *VALUATION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist

of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE, as authorized pursuant to:

(i) the valuation of "ten dollar [s] in gold coin as "contain[ing] one quarter (¼) troy ounce of fine gold", established and implemented by the Congress of the United States in Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112 (a)(9), enacted under Congress's exclusive power" [t]o coin Money, [and] regulate the Value thereof in Article I, Section 8, Clause 5 of the Constitution of the United States; and

(ii) the rule set down by the Supreme Court of the United States in *Thompson v. Butler*, 95 U.S. 694,696 (1878). that:

> [o]ne owing a debt may pay it in gold coin or legal-tender notes of the United States, as he chooses, unless there is something to the contrary in the obligation out of which the debt arises. A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other, but as money, that is to say, as a medium of exchange, the law knows no difference between them.

(c) *DELIVERY AND SATISFACTION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall consist only, and be executed exclusively through physical delivery by the BUYER (or his

authorized agent) to the SELLER (or his authorized agent), of one thousand six hundred sixty-seven (1,667) American Eagle "ten dollar gold coin[s]" –

(i) each of which "contains one quarter (¼) troy ounce of fine gold, pursuant to Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United States Code, Section 5112(a)(9);

(ii) each of which has been designated "legal tender" by Congress under Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Sections 5112 (h) and 5103; and

(iii) which collectively shall constitute the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE.

(d) *SPECIFIC PERFORMANCE OF AND ARBITRATION REGARDING PAYMENT; IMPOSSIBILITY OF PERFORMANCE*. The SELLER and BUYER mutually agree that:

(i) no medium of payment, money, currency, or legal tender other than the one thousand six hundred sixty-seven (1,667) American Eagle gold coins heretofore specified in Section (c) of this PAYMENT CLAUSE may be tendered, accepted, or in any other way used for payment and satisfaction of this CLAUSE in whole or in any part;

(ii) in the event of any breach of this Agreement with respect to payment and satisfaction of this PAYMENT CLAUSE by the BUYER, the sole and exclusive remedy and relief which the SELLER shall seek, and to which the SELLER shall be entitled and the BUYER shall be liable, shall be specific perfor-

mance of this CLAUSE by the BUYER, in whole or in such part as may prove necessary; and

(iii) in the event of any alleged breach, disagreement as to performance, or other issue related to implementation of this PAYMENT CLAUSE, the matter shall be subject to binding arbitration, pursuant to the ARBITRATION CLAUSE of this Agreement, the arbitrator to be bound by and required to enforce the terms and conditions of this PAYMENT CLAUSE, to the exclusion of any other damages, remedy, or relief; but.

(iv) in the event that performance and satisfaction of this PAYMENT CLAUSE as specified herein shall be rendered impossible, because the ownership, possession, or use as a medium of exchange or legal tender of American Eagle gold coins has been declared illegal or otherwise prohibited by competent governmental authority prior to such performance and satisfaction, this Agreement shall be null and void *in toto*.

(e) *DISCLAIMER*. This PAYMENT CLAUSE is not intended to be, to operate as, or to be construed in any manner for the purpose of an "abusive tax shelter" or other unlawful means to defeat, evade, or avoid any lawful tax or other public charge arising out of the sale and purchase of the Subject Property.

Initialed for Identification by Buyer TDS MLS and Seller RB JB

Exhibit B: Adjoining Property Restrictions

The Buyer and Seller of the property described as "AB 538; R V Morrell Survey; 23.059 acres: 13.00 acres mol R V Morrell Survey", agree to the following permanent deed restrictions shall be placed upon the approximate 10 acre parcel of land described in Exhibit C. Said restrictions in general shall include:

1. The farming of cows, horses, goats and sheep are permitted, but no more than six (6) chicken per acre are allowed on the property at any one time, and no more than one (1) pig or hog per each 5 acres is allowed on the property at any one time; all other farming of animals generally associated with noxious odors shall be prohibited from the property.
2. No manufactured housing, including, but not limited to, mobile homes or trailer homes, shall be placed or maintained or the property, with the following exception: manufactured home or trailer home may be placed on the property for a maximum period of 24 months, to be used as a temporary residence during the period of construction of a permanent single family residence.
3. A prohibition of the property being used as a disposal, waste or junkyard site for any objects whether in operable condition or not. No vehicle, equipment, machinery or other item shall be stored on the property if it is inoperable, unless such item is concealed with a garage or other permanent and permissible structure.

Initialed for Identification by Buyer ____ ____ and seller ____ ____

Exhibit A 7 of 10

PROPERTY TAX – NOTICE OF PROTEST

Appraisal district name	Phone (Area code and number)
Henderson County Appraisal District	903-675-9296
Address P.O. Box 430, Athens, TX 75751	

Instructions: If you want the appraisal review board to hear and decide your case, you must file a written notice of protest with the appraisal review board (ARB) for the appraisal district that took the action you want to protest. If you are leasing the property subject to the protest, you must have a contract requiring you to pay the property taxes on the property.

Filing Deadlines: the usual deadline for filing your notice (*having it postmarked if you mail it)* is midnight, May 31.

A different deadline will apply to you if:

- your notice of appraised value was delivered to you after May 2;
- your protest concerns a change in the use of agricultural, open-space or timber land;
- the ARB made a change to the appraisal records that adversely affects you and you received notice of the change;

- the appraisal district or the ARB was required by law to send you notice about a property and did not; or
- you had good cause for missing the May 31 protest filing deadline.

Contact the appraisal district for your specific deadline. The ARB will determine if good cause exists for missing a deadline. Good cause means that something beyond your control, such as a medical emergency, prevented you from meeting the deadline.

Weekends, Holidays: If your deadline falls on a Saturday, Sunday or other legal holiday, it is postponed until midnight of the next working day.

<table>
<tr><td rowspan="4">Step 1: Owner's or lessee's name and address</td><td>Owner's of lessee's first name and initial
Thomas D.</td><td>Last Name
Selgas</td></tr>
<tr><td colspan="2">Owner's or lessee's present mailing address (number and street)
P.O. Box 451675</td></tr>
<tr><td>City, town, or post office, state, Zip code
Garland, TX 75045-1675</td><td>Phone (area code and number)
972 333 3817</td></tr>
<tr><td></td></tr>
<tr><td>Step 2: Describe property under protest</td><td colspan="2">Give street address and city if different from above, or legal description if not street address
<u>5344 County Road 3901, Athens, TX 75752</u></td></tr>
</table>

	Appraisal district account number (*optional*) 0538.0030.0F00.00
	Mobile homes: (*Give make, model and identification number*)
Step 3: Check reasons for your protest	☐ Value is over market value. ☐ Value is unequal compared with other properties. ☐ Property should not be taxed in _____. Name of taxing unit ☑ Failure to send required notice. 2008 Notice of Appraised Value. (*type*) ☐ Other: Amended Protest ☐ Exemption was denied, modified or cancelled. ☐ Change in use of land appraised as ag-use, open-space or timber land ☐ Ag-use, open-space or other special appraisal was denied, modified or cancelled. ☐ Owner's name is incorrect. ☐ Property description is incorrect. ☐ Property should not be taxed in this appraisal district or in one or more taxing units.

Step 4: Give facts that may help resolve your case (continue on addi-tional page if needed)	I received a letter stating that the 2008 Notice of Appraised value was sent to the prior property owner. I received no copy of the Notice; thus I have no idea what the [Illegible] Appraised value is or what unit of measure was used. What do you think your property's value is? (*Optional*) $ (What I paid for it)	
Step 5: Check to receive ARB hearing procedures	I want the ARB to send me a copy of its hearing procedures. ☐ Yes ☐ No* * If your protest foes to a hearing, you will automatically receive a copy to the ARB's hearing procedures.	
Step 6: Sign the application	Signature Sign here /s/ Thomas Selgas	Date 5/17/2008

Exhibit A 8 of 10

HENDERSON COUNTY APPRAISAL DISTRICT
P. O. BOX 430
ATHENS, TX 75751
(903) 875-9296

April 18, 2008

SELGAS THOMAS D & MICHELLE L
102 ROCKY POINTE CT
GARLAND, TX 75044

RE: 0533.0030.0F00.00
AB 538 R V MORRELL SUR, TR3 13.369

We have recently received the documentation transferring ownership of the referenced property as addressed above. 2008 Notices of Appraised Value were mailed April 4, 2008, and therefore sent to the previous owner.

You may contact our office at the above number or you may go online at www.myswdata.com to see the proposed value. Should you have questions regarding the 2008 valuation of this property, or should you with to protest your value, you will need to file a protest form no later than May 5, 2008. If we have not received a protest form by this date, the current value will be certified and no further changes can be made for the current year.

If you have any questions in this regard, please do not hesitate to contact our office.

Sincerely,

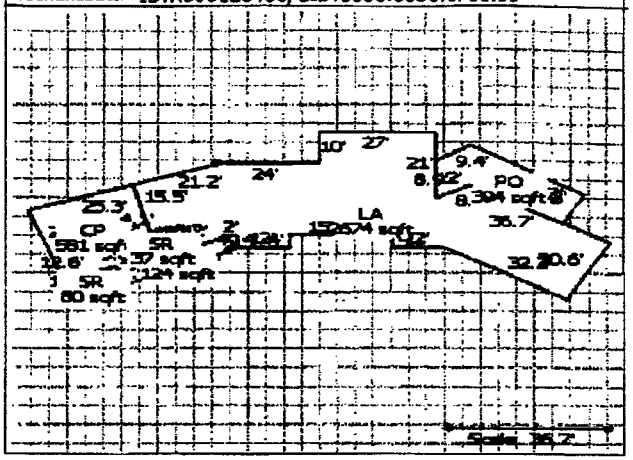
Bill Jackson, RPA
Chief Appraiser

Fold-in p. 94a

Ownership	Legal Information	Exemptions/Deed
SELGAS THOMAS D & MICHELLE L 102 ROCKY POINTE CT GARLAND, TX 75044 OWNER INTEREST 1.0	LEGAL: AB 538 R V MORRELL SUR, TR 3F SITUS: 5344 CR 3901 ACRES:23.059	HOMESTEAD INST: 004006 VOL: 2855 PAGE: 093 DATE: 2/26/2008

ALT:
MIN:
XREF:R000014912

Identification ID:R000120450/GID:0538.0030.0F00.00



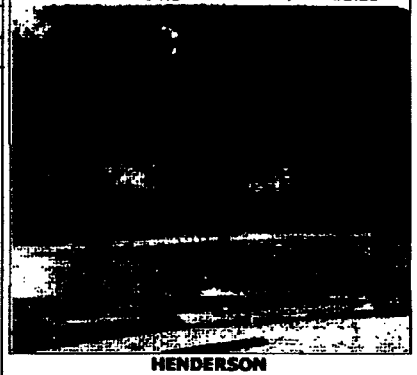
Sale Dt	Type	Vol	Page	Inst	Deed Dt	Price	Value@Sale	Grantee	Grantor
2/26/08	D-13	2855	093	004006	2/26/08		251,630	SELGAS THOMAS D &	BRYANT RICHARD &
8/29/05					1/1/00	299,000	52,960		
8/29/05					1/1/00	299,000	229,160		

Geo Quad	Aerial	Map Id	Use	Agent	Mortgage
0		8X			

Grp#	Imp Cls	Year/Eff Yr	Sqft	Cpsf	Buildings	Features	Cn Cd	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Adjusted	Additional	Loc%	Total
1/1	10+	1974/NA	2,674.00	72.14	216,943					-.16			1	182,232			182,232

Code/Description	Hs	Year/Eff Yr	Class	Sqft	Cpsf	Buildings	Features	Cn%	Dp Cd	Dp%	Fn%	Ec%	Cpl%	Ptd	Value
LA-LIVING AREA				2,674	72.14	192,902							1		192,902
CP-				581	18.04	10,478							1		10,478
SR-STOREROOM				80	36.07	2,886							1		2,886
PO-PORCH/COV				124	18.04	2,236							1		2,236
SR-STOREROOM				37	36.07	1,335							1		1,335
PO-PORCH/COV				394	18.04	7,106							1		7,106

Mkt Csf MA : 94.1 Csf Impr : 68.15



HENDERSON

Appr By	Appr Dt	Chkd By	Chkd Dt
JB	12/2/91		1/1/00
User		Print Date / Time	
COUNTER		5/22/2008 3:57:31 PM	

Features SL-SLAB,BR-BR VENEER,GB-GABLE,CS-COMP SHING,HA-CTRL HT/AR,F1-FG SIDING,

Lnd Cd	Units / Alt Units	Cpu	Cpu Cd	Mkt Cpu	Adj Codes	Adj%	Adj Amt	Hs	Mkt Value	Ptd	Prd	Spec Value
RLATH	1 AC/43,560 SF	3,009.69		3,010	OIL,		3,010		3,010	D2		
RLATH	22.059 AC/960,890 SF	3,009.69		3,009.7	OIL,		66,391	N	66,391	D1	P	2,647

Prod Code / Prod Units / Prod Cpu
IP/22.059/120.00;

	2008	Ptd	Change +/-	Cert 2007	Ptd
Impr Hs	182,230	E1	0	182,230	E1
Impr Non Hs	0		0	0	
Land Hs	3,010	E1	460	2,550	E1
Land Non Hs	0		0	0	
Prod Mkt	66,390	D1	10,230	56,160	D1
Par / Min	0		0	0	
Total Market	251,630		10,690	240,940	
Prod Loss	63,740		10,230	53,510	
Cap Loss	0		0	0	
Assessed	187,890		460	187,430	

Entity / Description		Txbl Value	Tax Rate	Frz Yr	Ext. Tax Levy
HE HENDERSON		187,890	.004213		791.58
AT ATHENS ISD	15,000	172,890	.0115338		1,994.08
HR HENDERSON CO FM/FC	3,000	184,890	.0005787		106.99
TV TRINITY VALLEY COMM		187,890	.00068		127.77
** ESTIMATED TOTAL					3,020.42

Nbh	Misc
MULTI O 5 E	

Quick Unit :

Exhibit A 9 of 10

00013

APPRAISAL REVIEW BOARD
HENDERSON COUNTY, TEXAS

Case No. 7153

ORDER DETERMINING PROTEST

On 6/9/2008 12:00:00 PM the Appraisal Review Board of Henderson County, Texas heard the protest of SELGAS THOMAS D & MICHELLE L concerning the appraisal records for tax year 2008.

The taxpayer and appraiser ROBERT appeared. A summary of the District's testimony, a list of witnesses, and a list of evidence submitted appear as part of the records of this case.

The taxpayer's notice of protest was filed in time. The Appraisal Review Board found that it had jurisdiction over the case. The Appraisal Review Board delivered written notice of the hearing in the manner required by law.

Having heard the evidence and arguments from both sides, the Appraisal Review Board with a quorum present determined that:

> NO CHANGES WILL BE MADE TO THE ACCOUNT. TOTAL MARKET VALUE $251,630.

June 16, 2008

/s/ Gary Bass
Gary Bass, Chairman
Appraisal Review Board

APPENDIX R

IN THE DISTRICT COURT
173RD JUDICIAL DISTRICT
OF HENDERSON COUNTY, TEXAS

[Filed August 1, 2008]

No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Defendant.

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Thomas D. Selgas and Michelle L. Selgas, herein after called Plaintiff's, complaining of and about The Henderson County Appraisal District, hereinafter called Defendant, and for cause of action shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiffs affirmatively plead that they seek only monetary relief of $50,000.00 or less, excluding costs, prejudgment interest and attorneys fees, and intend that discovery be conducted under Discovery Level 1.

PARTIES AND SERVICE,

2. Plaintiff's Thomas D. Selgas and Michelle L. Selgas, are individuals whose address is 5344 County Road 3901, Athens, Texas 75752.

3. Defendant Henderson County Appraisal District, located in Henderson County, Texas, duly organized and acting pursuant to the laws of Texas, upon whom service may be had by serving Mr. Bill Jackson, Chief Appraiser, at 1751 Enterprise, Athens, Texas 75751.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this Court.

5. This Court has jurisdiction over the parties because Plaintiff's and Defendant are domiciled in Texas.

6. Venue in Henderson County is proper in this cause because the property that is the subject of this suit is located therein.

FACTS

7. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059.

8. On May 22, 2008, Plaintiffs were notified that the valuation of the above-described property would be 187,890.

9. On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the

notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $251,630. The board mailed its determination to Plaintiffs on June 18, 2008. All conditions precedent to the Plaintiff's right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

10. Plaintiff's purchased the property that is the subject of this suit for $14,370.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

11. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

12. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

13. The fair market value of Plaintiffs property, as described above is $14,370.00 dollars. The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

PRAYER

WHEREFORE, the Plaintiffs request the Defendant be cited to appear and answer, and that on final trial, the Court render judgment:

1. Fixing the value of the Plaintiffs property as of January 1, 2008 at $14,370.00 dollars.
2. Compelling imposition of the proper assessed value of the Plaintiff's property, correction of the tax rolls to show the proper assessed value of the Plaintiffs property, and acceptance and receipt of taxes due for the year 2008 based on application of the approved rates to the proper assessment.
3. Awarding Plaintiffs all costs incurred, reasonable attorney's fees, and all other relief to which plaintiff may he entitled.

Respectfully submitted,

/s/ John O' Neill Green
John O' Neill Green
Texas Bar No. 00785927
P.O. Box 451675
Garland, TX 75045
Tel. (214)989-4970
Fax. (800)736-9462
Attorney for Plaintiffs
Thomas D. Selgas and
Michelle L. Selgas

Exhibit A 1 of 10

PROPERTY TAX – NOTICE OF PROTEST

Appraisal district name	Phone (Area code and number)
Henderson County Appraisal District	903-675-9296
Address P.O. Box 430, Athens, TX 75751	

Instructions: If you want the appraisal review board to hear and decide your case, you must file a written notice of protest with the appraisal review board (ARB) for the appraisal district that took the action you want to protest. If you are leasing the property subject to the protest, you must have a contract requiring you to pay the property taxes on the property.

Filing Deadlines: the usual deadline for filing your notice (*having it postmarked if you mail it)* is midnight, May 31.

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- the ARB made a change to the appraisal records that adversely affects you and you received notice of the change;

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Weekends, Holidays: If your deadline falls on a Saturday, Sunday or other legal holiday, it is postponed until midnight of the next working day.

<table>
<tr><td rowspan="4">Step 1: Owner's or lessee's name and address</td><td>Owner's of lessee's first name and initial
Thomas D.</td><td>Last Name
Selgas</td></tr>
<tr><td colspan="2">Owner's or lessee's present mailing address (number and street)
P.O. Box 451675</td></tr>
<tr><td>City, town, or post office, state, Zip code
Garland, TX 75045-1675</td><td>Phone (area code and number)
972 333 3817</td></tr>
<tr><td colspan="2"></td></tr>
<tr><td>Step 2: Describe property under protest</td><td colspan="2">Give street address and city if different from above, or legal description if not street address
5344 County Road 3901, Athens, TX 75752</td></tr>
</table>

	Appraisal district account number (*optional*) 0538.0030.0000.00
	Mobile homes: (*Give make, model and identification number*)
Step 3: Check reasons for your protest	☐ Value is over market value. ☐ Value is unequal compared with other properties. ☐ Property should not be taxed in _____. Name of taxing unit ☐ Failure to send required notice. _____. (*type*) ☑ Other: Amended Protest ☐ Exemption was denied, modified or cancelled. ☐ Change in use of land appraised as ag-use, open-space or timber land ☐ Ag-use, open-space or other special appraisal was denied, modified or cancelled. ☐ Owner's name is incorrect. ☐ Property description is incorrect. ☐ Property should not be taxed in this appraisal district or in one or more taxing units.

Step 4: Give facts that may help resolve your case (continue on additional page if needed)	See Attached Exhibits: A, B, C, D, E & F _____ _____ What do you think your property's value is? (*Optional*) $ _____	
Step 5: Check to receive ARB hearing procedures	I want the ARB to send me a copy of its hearing procedures. ☐ Yes ☐ No* * If your protest foes to a hearing, you will automatically receive a copy to the ARB's hearing procedures.	
Step 6: Sign the application	Signature Sign here /s/ Thomas Selgas	Date 5/28/2008

Exhibit A 2 of 10

AMENDED NOTICE OF PROTEST

Ref: Appraisal District Account #s
0538.0030.0000.00 and 0538.0030.0F00.00

On or about February 27, 2008, Thomas D. Selgas, hereafter "Owner", purchased, in an arms-length transaction, two adjoining tracts of property, hereafter the "Property" for $16,670.00 in the lawful money of the United States of America pursuant to:

(i) Section 4(c) of the Act of 28 October 1977, Public Law 95-147, 91 Statutes at Large 1227, 1229, now codified in 31 United States Code, Section 5118(d)(2);

(ii) Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99Statutes at Large 1177, 1177, now codified in Title 31, United State Code, Section 5112(a)(9);

(iii) Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, now codified in Title 31, United States Code, Section 5112(h);

(iv) the decisions of the Supreme Court of the United States in *New York ex rel. Bunk of New York v. Board of Supervisors*, 74 U.S. (7 Wallace) 26 (1869); *Bronson v. Rodes*, 74 U.S. (7 Wallace) 229 (1869); *Butler v. Horowitz*, 74 U.S. (7 Wallace) 258 (1869); and *Thompson v. Butler*, 95 U.S. 694 (1878); and

(v) such other authorities as the Owner may invoke in the event of any challenge for any reason, to the propriety, sufficiency, or effect of any part of this Protest

Said lawful money also referred to as current money pursuant to:

(i) Article 11, Section 4 of the Texas Constitution

(ii) Article 1, Section 10, Clause 1 of the Constitution of the United States of America;

(iii) *United States v. Marigold*, 50 U.S. (9 How.) 560, 567-68 (1850):

(iv) June 25, 1948, ch. 645, 62 Stat. 709; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147, now codified in Title 18, United States Code, Section 486.

On or about May 16, 2008 the Owner received two letters from Bill Jackson, RPA, Chief Appraiser Henderson County Appraisal District, Henderson County Texas stating: "2008 Notices of Appraised Value were mailed April 4, 2008, and therefore sent to the previous owner."

On May 17, 2008 the Owner mailed two completed Property Tax - Notice of Protest forms, downloaded from the Henderson County, Texas web site, notifying the Henderson County Appraisal Review Board that it failed to provide the Owner with copies of the proposed appraised value documents for the Property.

On May 22, 2008 the Owner drove to the Henderson County Appraisal District Office and obtained copies of the appraised value documents for each tract of property, which the Appraisal District failed to send the Owner. Said appraised value documents do not clearly identify the unit of measure, which based upon the Owner's arms-length Property purchase transaction, are obviously not based on lawful money units of Dollars pursuant to citations of law and

Supreme Court decisions noted above since the Henderson County Appraisal Districts proposed market value numbers are more than an order of magnitude greater than the lawful money value the Owner paid not more than 3-months ago for the Property.

On May 27, 2008 the Owner received a scheduling notice from the Henderson County Appraisal Review Board in response to the Owner's May 17, 2008 protests.

On May 28, 2008 the Owner submitted this document attached to a Notice of Protest, together The Amended Notice of Protest.

Based upon the afore described items and citations, the Owner formally objects to the Henderson County Appraisal District proposed property appraisal for, but not limited to, the following reasons:

1) The Owner purchased the Property in an Arms Length Transaction for $16,670.00 in lawful (current) money of the United States on February 27, 2008 and therefore the fair market value of the property in the current and lawful money of the United States;

2) The numbers listed under the column heading of "Value" on the appraisal form do not identify the units of measure, such as Inches, Hours, Pounds, Dollars, Pennies or grains of sand and therefore are meaningless;

3) The term Dollar, by its use in Article 1 Section 9, Clause 1 of the Constitution of the United States of America, and Amendment 7 of said Constitution is defined as a unit of measure defined as a minted coin containing

at least 371 ¼ grains of fine (pure) silver. Said definition upheld in *United States v. Marigold*, 50 U.S. (9 How.) 560, 567-68 (1850); reiterated in the March 31, 1982 report made pursuant to Public Law 96-389; and reinstated by Congress pursuant to Title II, Section 202(e) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 115-116, now codified in Title 31, United States Code, Section 5112(e); and Sections 2(a)(7) through 2(a)(10) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, now codified in Title 31, United State Code, Section 5112(a)(7) through (a)(10);

4) Although Federal Reserve Notes are legal tender, they are not current lawful money (see Title 12 United State Code, Section 411) of the United States and thus cannot be used in the payment of debts pursuant to Article 1, Section 10, Clause 1 of the Constitution of the United States of America and Article 11, Section 4 of the Texas Constitution.

(Exhibit A)

PAYMENT CLAUSE

(a) AUTHORIZATION AND CONSTRUCTION. This PAYMENT CLAUSE is authorized by, relies upon, and must be construed and implemented according to:

(i) Section 4(c) of the Act of 28 October 1977, Public Law 95-147, 91 Statutes at Large 1227, 1229, *now codified in* 31 United States Code, Section 5118(d)(2);

(ii) Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112(a)(9);

(iii) Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Section 5112(h);

(iv) the decisions of the Supreme Court of the United States in *New York ex rel. Bunk of New York v. Board of Supervisors*, 74 U.S. (7 Wallace) 26 (1869); *Bronson v. Rodes*, 74 U.S. (7 Wallace) 229 (1869); *Butler v. Horowitz*, 74 U.S. (7 Wallace) 258 (1869); and *Thompson v. Butler*, 95 U.S. 694 (1878); and

(v) such other authorities as the SELLER, the BUYER, or both may invoke in the event of any challenge, by any third party and for any reason, to the propriety, sufficiency, or effect of any part of this PAYMENT CLAUSE.

(b) *VALUATION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist

of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE, as authorized pursuant to:

(i) the valuation of "ten dollar [s] in gold coin as "contain[ing] one quarter (¼) troy ounce of fine gold", established and implemented by the Congress of the United States in Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United State Code, Section 5112 (a)(9), enacted under Congress's exclusive power" [t]o coin Money, [and] regulate the Value thereof in Article I, Section 8, Clause 5 of the Constitution of the United States; and

(ii) the rule set down by the Supreme Court of the United States in *Thompson v. Butler*, 95 U.S. 694,696 (1878). that:

> [o]ne owing a debt may pay it in gold coin or legal-tender notes of the United States, as he chooses, unless there is something to the contrary in the obligation out of which the debt arises. A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other, but as money, that is to say, as a medium of exchange, the law knows no difference between them.

(c) *DELIVERY AND SATISFACTION OF PAYMENT*. Payment for the sale and purchase of the Subject Property shall consist only, and be executed exclusively through physical delivery by the BUYER (or his

authorized agent) to the SELLER (or his authorized agent), of one thousand six hundred sixty-seven (1,667) American Eagle "ten dollar gold coin[s]" –

(i) each of which "contains one quarter (¼) troy ounce of fine gold, pursuant to Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, *now codified in* Title 31, United States Code, Section 5112(a)(9);

(ii) each of which has been designated "legal tender" by Congress under Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, *now codified in* Title 31, United States Code, Sections 5112 (h) and 5103; and

(iii) which collectively shall constitute the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE.

(d) *SPECIFIC PERFORMANCE OF AND ARBITRATION REGARDING PAYMENT; IMPOSSIBILITY OF PERFORMANCE*. The SELLER and BUYER mutually agree that:

(i) no medium of payment, money, currency, or legal tender other than the one thousand six hundred sixty-seven (1,667) American Eagle gold coins heretofore specified in Section (c) of this PAYMENT CLAUSE may be tendered, accepted, or in any other way used for payment and satisfaction of this CLAUSE in whole or in any part;

(ii) in the event of any breach of this Agreement with respect to payment and satisfaction of this PAYMENT CLAUSE by the BUYER, the sole and exclusive remedy and relief which the SELLER shall seek, and to which the SELLER shall be entitled and the BUYER shall be liable, shall be specific perfor-

mance of this CLAUSE by the BUYER, in whole or in such part as may prove necessary; and

(iii) in the event of any alleged breach, disagreement as to performance, or other issue related to implementation of this PAYMENT CLAUSE, the matter shall be subject to binding arbitration, pursuant to the ARBITRATION CLAUSE of this Agreement, the arbitrator to be bound by and required to enforce the terms and conditions of this PAYMENT CLAUSE, to the exclusion of any other damages, remedy, or relief; but.

(iv) in the event that performance and satisfaction of this PAYMENT CLAUSE as specified herein shall be rendered impossible, because the ownership, possession, or use as a medium of exchange or legal tender of American Eagle gold coins has been declared illegal or otherwise prohibited by competent governmental authority prior to such performance and satisfaction, this Agreement shall be null and void *in toto*.

(e) *DISCLAIMER*. This PAYMENT CLAUSE is not intended to be, to operate as, or to be construed in any manner for the purpose of an "abusive tax shelter" or other unlawful means to defeat, evade, or avoid any lawful tax or other public charge arising out of the sale and purchase of the Subject Property.

Initialed for Identification by Buyer TDS MLS and Seller RB JB

Exhibit B: Adjoining Property Restrictions

The Buyer and Seller of the property described as "AB 538; R V Morrell Survey; 23.059 acres: 13.00 acres mol R V Morrell Survey", agree to the following permanent deed restrictions shall be placed upon the approximate 10 acre parcel of land described in Exhibit C. Said restrictions in general shall include:

1. The farming of cows, horses, goats and sheep are permitted, but no more than six (6) chicken per acre are allowed on the property at any one time, and no more than one (1) pig or hog per each 5 acres is allowed on the property at any one time; all other farming of animals generally associated with noxious odors shall be prohibited from the property.
2. No manufactured housing, including, but not limited to, mobile homes or trailer homes, shall be placed or maintained or the property, with the following exception: manufactured home or trailer home may be placed on the property for a maximum period of 24 months, to be used as a temporary residence during the period of construction of a permanent single family residence.
3. A prohibition of the property being used as a disposal, waste or junkyard site for any objects whether in operable condition or not. No vehicle, equipment, machinery or other item shall be stored on the property if it is inoperable, unless such item is concealed with a garage or other permanent and permissible structure.

Initialed for Identification by Buyer ____ ____ and seller ____ ____

Exhibit A 7 of 10

PROPERTY TAX – NOTICE OF PROTEST

Appraisal district name	Phone (Area code and number)
Henderson County Appraisal District	903-675-9296
Address P.O. Box 430, Athens, TX 75751	

Instructions: If you want the appraisal review board to hear and decide your case, you must file a written notice of protest with the appraisal review board (ARB) for the appraisal district that took the action you want to protest. If you are leasing the property subject to the protest, you must have a contract requiring you to pay the property taxes on the property.

Filing Deadlines: the usual deadline for filing your notice (*having it postmarked if you mail it)* is midnight, May 31.

A different deadline will apply to you if:

- your notice of appraised value was delivered to you after May 2;
- your protest concerns a change in the use of agricultural, open-space or timber land;
- the ARB made a change to the appraisal records that adversely affects you and you received notice of the change;

- the appraisal district or the ARB was required by law to send you notice about a property and did not; or
- you had good cause for missing the May 31 protest filing deadline.

Contact the appraisal district for your specific deadline. The ARB will determine if good cause exists for missing a deadline. Good cause means that something beyond your control, such as a medical emergency, prevented you from meeting the deadline.

Weekends, Holidays: If your deadline falls on a Saturday, Sunday or other legal holiday, it is postponed until midnight of the next working day.

<table>
<tr><td rowspan="4">Step 1: Owner's or lessee's name and address</td><td>Owner's of lessee's first name and initial
Thomas D.</td><td>Last Name
Selgas</td></tr>
<tr><td colspan="2">Owner's or lessee's present mailing address (number and street)
P.O. Box 451675</td></tr>
<tr><td>City, town, or post office, state, Zip code
Garland, TX 75045-1675</td><td>Phone (area code and number)
972 333 3817</td></tr>
<tr><td colspan="2"></td></tr>
<tr><td>Step 2: Describe property under protest</td><td colspan="2">Give street address and city if different from above, or legal description if not street address
5344 County Road 3901, Athens, TX 75752</td></tr>
</table>

	Appraisal district account number (*optional*) 0538.0030.0000.00
	Mobile homes: (*Give make, model and identification number*)
Step 3: Check reasons for your protest	☐ Value is over market value. ☐ Value is unequal compared with other properties. ☐ Property should not be taxed in _____. Name of taxing unit ☑ Failure to send required notice. 2008 Notice of Appraised Value. (*type*) ☐ Other: Amended Protest ☐ Exemption was denied, modified or cancelled. ☐ Change in use of land appraised as ag-use, open-space or timber land ☐ Ag-use, open-space or other special appraisal was denied, modified or cancelled. ☐ Owner's name is incorrect. ☐ Property description is incorrect. ☐ Property should not be taxed in this appraisal district or in one or more taxing units.

Step 4: Give facts that may help resolve your case (continue on additional page if needed)	I received a letter stating that the 2008 Notice of Appraised value was sent to the prior property owner. I received no copy of the Notice; thus I have no idea what the [Illegible] Appraised value is or what unit of measure was used. What do you think your property's value is? (*Optional*) $ (What I paid for it)	
Step 5: Check to receive ARB hearing procedures	I want the ARB to send me a copy of its hearing procedures. ☐ Yes ☐ No* * If your protest foes to a hearing, you will automatically receive a copy to the ARB's hearing procedures.	
Step 6: Sign the application	Signature Sign here /s/ Thomas Selgas	Date 5/17/2008

Exhibit A 8 of 10

HENDERSON COUNTY APPRAISAL DISTRICT
P. O. BOX 430
ATHENS, TX 75751
(903) 875-9296

April 18, 2008

SELGAS THOMAS D & MICHELLE L
102 ROCKY POINTE CT
GARLAND, TX 75044

RE: 0533.0030.0F00.00
AB 538 R V MORRELL SUR, TR3 13.369

We have recently received the documentation transferring ownership of the referenced property as addressed above. 2008 Notices of Appraised Value were mailed April 4, 2008, and therefore sent to the previous owner.

You may contact our office at the above number or you may go online at www.myswdata.com to see the proposed value. Should you have questions regarding the 2008 valuation of this property, or should you with to protest your value, you will need to file a protest form no later than May 5, 2008. If we have not received a protest form by this date, the current value will be certified and no further changes can be made for the current year.

If you have any questions in this regard, please do not hesitate to contact our office.

Sincerely,

Bill Jackson, RPA
Chief Appraiser

APPENDIX S

IN THE DISTRICT COURT
173RD JUDICIAL DISTRICT
OF HENDERSON COUNTY, TEXAS

[Filed Aug 31, 2009]

No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Defendant.

PLAINTIFFS' FIRST AMENDED
ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Thomas D. Selgas and Michelle L. Selgas, herein after called Plaintiff's, complaining of and about The Henderson County Appraisal District, hereinafter called Defendant, and for cause of action shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiffs affirmatively plead that they seek only monetary relief of $50,000.00 or less, excluding costs, prejudgment interest and attorneys fees, and intend that discovery be conducted under Discovery Level 1.

PARTIES AND SERVICE,

2. Plaintiff's Thomas D. Selgas and Michelle L. Selgas, are individuals whose address is 5344 County Road 3901, Athens, Texas 75752.

3. Defendant Henderson County Appraisal District, located in Henderson County, Texas, duly organized and acting pursuant to the laws of Texas, upon whom service may be had by serving Mr. Bill Jackson, Chief Appraiser, at 1751 Enterprise, Athens, Texas 75751.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this Court.

5. This Court has jurisdiction over the parties because Plaintiff's and Defendant are domiciled in Texas.

6. Venue in Henderson County is proper in this cause because the property that is the subject of this suit is located therein.

FACTS 2008 JUDICIAL REVIEW

7. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059.

8. On May 22, 2008, Plaintiffs were notified that the valuation of the above-described property would be 251,630.

9. On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the

notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $251,630. The board mailed its determination to Plaintiffs on June 18, 2008. All conditions precedent to the Plaintiff's right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

10. Plaintiff's purchased the property that is the subject of this suit for $14,370.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

11. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

12. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

13. The fair market value of Plaintiffs property, as described above is $14,370.00 dollars. The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

FACTS 2009 JUDICIAL REVIEW

14. Pursuant to Texas Property Tax Code § 42.21(c) Petitioner amends and further alleges the following:

15. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059.

16. On May 1, 2009, Plaintiffs were notified that the valuation of the above-described property would be 354,040.

17. On May 22, 2009, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on July 10, 2009 the board made its order in which the value of plaintiff's property was determined to be $354,040. The board mailed its determination to Plaintiffs on July 17, 2009. All conditions precedent to the Plaintiffs right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

18. Plaintiff's purchased the property that is the subject of this suit for $14,370.00 (lawful money dollars), pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

19. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

20. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

21. The only material change potentially affecting market value of the subject property since its purchase, are improvements made by Plaintiffs valued at approximately $2,500 (lawful money dollars), as defined in 31 U.S.C. § 5112(a)(9).

22. The market value of Plaintiff's property, as described above is $14,370.00 (dollars). The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

PRAYER

WHEREFORE, the Plaintiffs request the Defendant be cited to appear and answer, and that on final trial, the Court render judgment:

1. Fixing the value of the Plaintiffs property as of January 1, 2008 at $14,370.00 dollars.

2. Compelling imposition of the proper assessed value of the Plaintiff's property, correction of the tax rolls to show the proper assessed value of the Plaintiffs property, and acceptance and receipt of taxes due for the year

2008 based on application of the approved rates to the proper assessment.

3. Awarding Plaintiffs all costs incurred, reasonable attorney's fees, and all other relief to which plaintiff may he entitled.

Respectfully submitted,

/s/ John O' Neill Green
John O' Neill Green
Texas Bar No. 00785927
P.O. Box 451675
Garland, TX 75045
Tel. (214)989-4970
Fax. (800)736-9462
Attorney for Plaintiffs
Thomas D. Selgas and
Michelle L. Selgas

APPENDIX T

IN THE DISTRICT COURT
173RD JUDICIAL DISTRICT
OF HENDERSON COUNTY, TEXAS

[Filed Aug 31, 2009]

No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Defendant.

PLAINTIFFS' FIRST AMENDED
ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Thomas D. Selgas and Michelle L. Selgas, herein after called Plaintiff's, complaining of and about The Henderson County Appraisal District, hereinafter called Defendant, and for cause of action shows the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiffs affirmatively plead that they seek only monetary relief of $50,000.00 or less, excluding costs, prejudgment interest and attorneys fees, and intend that discovery be conducted under Discovery Level 1.

PARTIES AND SERVICE,

2. Plaintiff's Thomas D. Selgas and Michelle L. Selgas, are individuals whose address is 5344 County Road 3901, Athens, Texas 75752.

3. Defendant Henderson County Appraisal District, located in Henderson County, Texas, duly organized and acting pursuant to the laws of Texas, upon whom service may be had by serving Mr. Bill Jackson, Chief Appraiser, at 1751 Enterprise, Athens, Texas 75751.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this Court.

5. This Court has jurisdiction over the parties because Plaintiff's and Defendant are domiciled in Texas.

6. Venue in Henderson County is proper in this cause because the property that is the subject of this suit is located therein.

FACTS 2008 JUDICIAL REVIEW

7. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059.

8. On May 22, 2008, Plaintiffs were notified that the valuation of the above-described property would be 40,240.

9. On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the

notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $40,240. The board mailed its determination to Plaintiffs on June 18, 2008. All conditions precedent to the Plaintiff's right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

10. Plaintiff's purchased the property that is the subject of this suit for $2,300.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

11. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

12. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

13. The fair market value of Plaintiffs property, as described above is $2,300.00 (dollars). The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

FACTS 2009 JUDICIAL REVIEW

14. Pursuant to Texas Property Tax Code § 42.21(c) Petitioner amends and further alleges the following:

15. The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 13.369.

16. On May 1, 2009, Plaintiffs were notified that the valuation of the above-described property would be 53,480.

17. On May 22, 2009, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the notice of protest, board determination and taxable valuation notice are attached as Exhibit A and incorporated by reference. Thereafter, on July 10, 2009 the board made its order in which the value of plaintiff's property was determined to be $53,480. The board mailed its determination to Plaintiffs on July 17, 2009. All conditions precedent to the Plaintiffs right of judicial review of the board's decision having been performed or having occurred, Plaintiffs are entitled to a trial de novo review of the board's order.

18. Plaintiff's purchased the property that is the subject of this suit for $2,300.00 (lawful money dollars), pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser.

19. Both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

20. Both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other.

21. There was no material change potentially affecting market value of the subject property since its purchase.

22. The market value of Plaintiff's property, as described above is $2,300.00 (dollars). The levying of a tax on plaintiffs property based on a higher valuation is an unlawful levy, creates an illegal lien on the Plaintiffs property, and is a cloud on the title thereof.

PRAYER

WHEREFORE, the Plaintiffs request the Defendant be cited to appear and answer, and that on final trial, the Court render judgment:

1. Fixing the value of the Plaintiffs property as of January 1, 2008 at $2,300.00 (dollars).

2. Compelling imposition of the proper assessed value of the Plaintiff's property, correction of the tax rolls to show the proper assessed value of the Plaintiffs property, and acceptance and receipt of taxes due for the year 2008 based on application of the approved rates to the proper assessment.

3. Awarding Plaintiffs all costs incurred, reasonable attorney's fees, and all other relief to which plaintiff may he entitled.

Respectfully submitted,

/s/ John O' Neill Green
John O' Neill Green
Texas Bar No. 00785927
P.O. Box 451675
Garland, TX 75045
Tel. (214)989-4970
Fax. (800)736-9462

Attorney for Plaintiffs
Thomas D. Selgas and
Michelle L. Selgas

APPENDIX U

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND FOR
NO-EVIDENCE SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES the Defendant, the Henderson County Appraisal District, and moves for summary judgment and no-evidence summary judgment dismissing the whole of the cause of action brought by the Plaintiffs herein. For cause of such, the Defendant would show the court as follows:

Motion for Summary Judgment

I.

A summary judgment movant has the burden of showing no genuine issue of any material fact exists and that it is entitled to a judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Sysco Food Services, Inc.*

v. Trapnell, 890 S.W.2d 796, 800 (Tex. 1994). In deciding whether a material fact issue exists precluding summary judgment evidence available to the non-movant is taken as truth. *Sysco* at 800.

II.

The evidence on which the Defendant relies in bringing this motion for summary judgment is as follows:

A. Affidavit of Bill Jackson.

B. Deposition of Plaintiff, Thomas Selgas.

C. Deposition of Michelle Selgas.

D. Plaintiffs' Original Petition.

E. Plaintiffs' responses to Defendant's interrogatories.

F. Plaintiffs' response to Defendant's request for disclosure.

G. Plaintiffs' response to Defendant's request for production of documents.

III.

The Plaintiffs herein have alleged that their property, Abstract 538, R. V. Morrell survey, Tract 3F 23.059 acres, account number R0000120450, is overvalued for 2008 and 2009. See Exhibit D, Plaintiffs' Petition, page 3. Thus, they have attempted to invoke the jurisdiction of the court arising from TEX. PROP. TAX CODE ANN. §§ 42.25, 42.24 (Vernon 2009). As between the property at issue in this suit and the property at issue in cause number 2008A-814, the Plaintiffs allege that they paid $16,670.00 in gold ten dollar coins. See Exhibit B, deposition of Thomas Selgas, p. 10. The Plaintiffs have prorated that

purchase price all on the same percentages as the appraisal district has valued the two accounts at issue in the two causes of action and alleged that they paid $14,370.00 for the property this cause number and $2,300.00 for the property in cause number 2008A-814. Again, those quantities are in gold dollar coins. Exhibit B, deposition of Thomas Selgas, pp. 10-11; Exhibit E, Plaintiffs' responses to Defendant's interrogatories, Interrogatory 2. What the Plaintiffs fail to mention is that each one of those ten dollar gold coins trades for Federal Reserve Note dollars at approximately 25 to 1. Exhibit B, deposition of Thomas Selgas, p. 39. At least according to the Plaintiffs, each of those ten dollar gold coins ought to be worth around $250.00. The Defendant does not admit that that states the totality of the value but asserts the value is not less than $250.00 per ten dollar gold coin.

IV.

The whole of the Plaintiffs cause of action concerns the refusal of the Defendant to value its property in units of dollar gold coins or other gold bullion of the United States. They refuse to recognize Federal Reserve Notes as being legitimate currency. Exhibit B, deposition of Thomas Selgas, p. 25-26, 52-54. Furthermore, neither Plaintiff has any opinion or idea of what the property is worth as valued in Federal Reserve Notes. Exhibit B, pp. 45-47, Exhibit C, p. 8. Furthermore, other than expressing their desire to have the property valued in ten dollar gold coins for a total value of $16, 670.00, the Plaintiffs have articulated no position nor responded with any facts, nor designated any expert willing to testify what the value of the subject property is in United States dollars as denominated by Federal Reserve Notes.

See Exhibits B - G. In fact, the Plaintiffs have essentially stipulated away their case be admitting that the gold dollars which they paid for the property, and which they admit the property is worth, exchange for Federal Reserve Notes at about 25 to one. That being the case, the Plaintiffs have admitted a value of their property in excess of that at which the Defendant has appraised the property. See the affidavit of Bill Jackson, exhibit A.

V.

Exhibit A, the affidavit of Bill Jackson, establishes that the values placed on properties such as the subject by the Henderson County Appraisal District are in units of United States dollars, Federal Reserve Notes. Indeed, as Mr. Jackson establishes, all properties in Henderson County are appraised by the Henderson County Appraisal District by Federal Reserve Note U.S. dollar units.

Pursuant to 31 U.S.C. § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as legal tender for all debts public and private. An example of one of those Federal Reserve notes is found at Exhibit 4 to the deposition of Thomas Selgas, Exhibit B. (Similar examples can probably be found in wallets, money clips, purses, or other means of carrying currency by any person examining this pleading.) The Congress of the United States is authorized to issue currency pursuant to the United States Constitution at Article I, § 8, cl. 5. The authority of Congress to issue currency and state its value has been affirmed by the United States Supreme Court in *Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247, 59 S.Ct. 847 (1939). Furthermore, in a case remarkably similar to this one, a Colorado Appellate Court held that

Federal Reserve Notes, and not gold coins, are the proper unit for assessment and payment of taxes. *Walton v. Keim*, 694 P.2d 1287 (Colo. App. 1984).

While the Defendant is flattered by the Plaintiffs' assessment of the Defendant's ubiquitous influence over the monetary policy of the United States, the Defendant disclaims that influence. See the affidavit of Bill Jackson, Exhibit A. If these Plaintiffs have a quarrel with the United States authorizing the Federal Reserve to issue notes as legal tender for all debts public and private, they need to take that up with the United States government. The Defendant herein, the Henderson County Appraisal District, is in poor position to influence that policy. Furthermore, any judgment in favor of the Plaintiffs herein on that point would not likely have significant influence with the United States government. The Plaintiffs also failed to note that the same section of the federal code that authorizes minting of the ten dollar gold coins to which they are so affected also directs that they be sold, not for ten dollars in Federal Reserve Notes, but at their market value. 31 U.S.C. § 5112(i)(2)(A).

Furthermore, as is established in Exhibit A, affidavit of Bill Jackson, were Henderson County Appraisal District to value only the subject property in units of gold coins, as opposed to units of Federal Reserve Notes, or the court order such appraisal of this property in question, an inherent inequity of appraisal would result violative of TEX. CONST. Art. VIII, § 2. That section requires all properties to be appraised equally and uniformly. Valuing the Plaintiffs' property in units that are worth at least 25 times what everyone else's property is valued at would hardly be equitable.

Motion for No-evidence Summary Judgment

VI.

The Defendant now moves for a no-evidence summary judgment pursuant to TEX. R. CIV. P. 166a(i). The Plaintiffs have no evidence to support their cause of action. There being no genuine issue of material fact for trial, summary judgment in favor of the Defendant is appropriate.

VII.

No evidence summary judgment is proper when the plaintiff can provide no evidence of one or more essential elements of a claim on which it would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). Under Rule 166a(i), a defendant's no-evidence motion for summary judgment shifts the burden to the plaintiffs to raise a triable issue on each element essential to the plaintiffs case against the defendant. *Esco Oil & Gas, Inc. v. Sooner Pipe & Supply Co*, 962 S.W.2d 193, 197, fn. 3 (Tex. App. – Houston [15t Dist.] 1998, pet. denied).

Once the defendant has established a right to a summary judgment, the burden shifts to the plaintiff. The plaintiff must respond to the motion for summary judgment and present to the trial court any issues that would preclude summary judgment. *City of Houston v. Clear Creek Basin Auth*., 589 S.W.2d 671, 678 (Tex.1979); *Marchal v. Webb*, 859 S.W.2d 408, 412 (Tex. App. – Houston [1st Dist.] 1993, no petition). A plaintiff's conclusory statements of belief, however, are not enough to overcome summary judgment. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex.1984). A plaintiff must produce evidence that its allegations are true, as mere conclusory statements do not constitute effective summary judgment proof

and need not be given the same presumptive force as allegations of fact. *Abbott Laboratories, Inc. v. Segura*, 907 S.W.2d 503, 508 (Tex.1995).

VIII.

In this case, as alleged above, the Plaintiffs have alleged that the Defendant has over appraised their property, Abstract 538, R. V. Morrell survey, Tract 3F 23.059 acres, account number R0000120450. Being the plaintiffs in such a cause, they have the burden of proof of establishing that over appraisal. A sufficient time for the conduct of discovery has passed and discovery has, in fact, been conducted. Note exhibits B, C, E, F, and G. In response to that discovery, the Plaintiffs have identified no evidence that their property described above is over appraised in United States dollars as represented by Federal Reserve Notes. Indeed, their only allegations concern their claims that the Defendant should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. See exhibits E, interrogatories 2, 3, 10, and 13. Neither have the Plaintiffs identified any document showing the subject property to be over appraised in Federal Reserve Notes. See exhibit G. Neither have the Plaintiffs identified any expert with an opinion of value of the subject property in Federal Reserve Notes. See exhibit F. Indeed, the Plaintiffs have no opinion of the value of the subject property in Federal Reserve Notes. Their only quarrel with the Defendant appears to be the claim that the Defendant should be utilizing using gold dollars instead of Federal Reserve Notes. See exhibit B, pp. 43-44, 49-50, and exhibit C, p. 6. That issue is non-justiciable, at least as regard to this Defendant.

Respectfully submitted,

McCREARY, VESELKA,
BRAGG & ALLEN, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665-2425
Phone (512) 323-3200
Fax (51 323-3294

/s/ Kirk Swinney
Kirk Swinney
State Bar No. 24043460

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded to the below party via certified mail, return receipt requested, on the 21th day of September, 2009, properly addressed as follows:

John O'Neill Green
P. O. Box 757
Athens, Texas 75751
CM/RRR # 7112 4369 4680 1289 9424

/s/ Kirk Swinney
Kirk Swinney

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES the Defendant, the Henderson County Appraisal District, and moves for summary judgment and no-evidence summary judgment dismissing the whole of the cause of action brought by the Plaintiffs herein. For cause of such, the Defendant would show the court as follows:

Motion for Summary Judgment

I.

A summary judgment movant has the burden of showing no genuine issue of any material fact exists and that it is entitled to a judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Sysco Food Services, Inc. v. Trapnell*, 890 S.W.2d 796, 800 (Tex. 1994). In deciding whether a material fact issue exists pre-

cluding summary judgment evidence available to the non-movant is taken as truth. *Sysco* at 800.

II.

The evidence on which the Defendant relies in bringing this motion for summary judgment is as follows:

A. Affidavit of Bill Jackson.

B. Deposition of Plaintiff, Thomas Selgas.

C. Deposition of Michelle Selgas.

D. Plaintiffs' Original Petition.

E. Plaintiffs' responses to Defendant's interrogatories.

F. Plaintiffs' response to Defendant's request for disclosure.

G. Plaintiffs' response to Defendant's request for production of documents.

III.

The Plaintiffs herein have alleged that their property, Abstract 538, R. V. Morrell survey, Tract 3, 13.369 acres, account number 0538.0030.0000.00, is over-valued for 2008 and 2009. See Exhibit D, Plaintiffs' Petition, page 3. Thus, they have attempted to invoke the jurisdiction of the court arising from TEX. PROP. TAX CODE ANN. §§ 42.25, 42.24 (Vernon 2009). As between the property at issue in this suit and the property at issue in cause number 2008A-813, the Plaintiffs allege that they paid $16,670.00 in gold ten dollar coins. See Exhibit B, deposition of Thomas Selgas, p. 10. The Plaintiffs have prorated that purchase price all on the same percentages as the appraisal district has valued the two accounts at

issue in the two causes of action and alleged that they paid $2,300.00 for the property this cause number and $14,370.00 for the property in cause number 2008A-813. Again, those quantities are in gold dollar coins. Exhibit B, deposition of Thomas Selgas, pp. 10-11; Exhibit E, Plaintiffs' responses to Defendant's interrogatories, Interrogatory 2. What the Plaintiffs fail to mention is that each one of those ten dollar gold coins trades for Federal Reserve Note dollars at approximately 25 to 1. Exhibit B, deposition of Thomas Selgas, p. 39. At least according to the Plaintiffs, each of those ten dollar gold coins ought to be worth around $250.00. The Defendant does not admit that that states the totality of the value but asserts the value is not less than $250.00 per ten dollar gold coin.

IV.

The whole of the Plaintiffs cause of action concerns the refusal of the Defendant to value its property in units of dollar gold coins or other gold bullion of the United States. They refuse to recognize Federal Reserve Notes as being legitimate currency. Exhibit B, deposition of Thomas Selgas, p. 25-26, 52-54. Furthermore, neither Plaintiff has any opinion or idea of what the property is worth as valued in Federal Reserve Notes. Exhibit B, pp. 45-47, Exhibit C, p. 8. Furthermore, other than expressing their desire to have the property valued in ten dollar gold coins for a total value of $16, 670.00, the Plaintiffs have articulated no position nor responded with any facts, nor designated any expert willing to testify what the value of the subject property is in United States dollars as denominated by Federal Reserve Notes. See Exhibits B - G. In fact, the Plaintiffs have essentially stipulated away their case be admitting that

the gold dollars which they paid for the property, and which they admit the property is worth, exchange for Federal Reserve Notes at about 25 to one. That being the case, the Plaintiffs have admitted a value of their property in excess of that at which the Defendant has appraised the property. See the affidavit of Bill Jackson, exhibit A.

V.

Exhibit A, the affidavit of Bill Jackson, establishes that the values placed on properties such as the subject by the Henderson County Appraisal District are in units of United States dollars, Federal Reserve Notes. Indeed, as Mr. Jackson establishes, all properties in Henderson County are appraised by the Henderson County Appraisal District by Federal Reserve Note U.S. dollar units.

Pursuant to 31 U.S.C. § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as legal tender for all debts public and private. An example of one of those Federal Reserve notes is found at Exhibit 4 to the deposition of Thomas Selgas, Exhibit B. (Similar examples can probably be found in wallets, money clips, purses, or other means of carrying currency by any person examining this pleading.) The Congress of the United States is authorized to issue currency pursuant to the United States Constitution at Article I, § 8, cl. 5. The authority of Congress to issue currency and state its value has been affirmed by the United States Supreme Court in *Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247, 59 S.Ct. 847 (1939). Furthermore, in a case remarkably similar to this one, a Colorado Appellate Court held that Federal Reserve Notes, and not gold coins, are the

proper unit for assessment and payment of taxes. *Walton v. Keim*, 694 P.2d 1287 (Colo. App. 1984).

While the Defendant is flattered by the Plaintiffs' assessment of the Defendant's ubiquitous influence over the monetary policy of the United States, the Defendant disclaims that influence. See the affidavit of Bill Jackson, Exhibit A. If these Plaintiffs have a quarrel with the United States authorizing the Federal Reserve to issue notes as legal tender for all debts public and private, they need to take that up with the United States government. The Defendant herein, the Henderson County Appraisal District, is in poor position to influence that policy. Furthermore, any judgment in favor of the Plaintiffs herein on that point would not likely have significant influence with the United States government. The Plaintiffs also failed to note that the same section of the federal code that authorizes minting of the ten dollar gold coins to which they are so affected also directs that they be sold, not for ten dollars in Federal Reserve Notes, but at their market value. 31 U.S.C. § 5112(i)(2)(A).

Furthermore, as is established in Exhibit A, affidavit of Bill Jackson, were Henderson County Appraisal District to value only the subject property in units of gold coins, as opposed to units of Federal Reserve Notes, or the court order such appraisal of this property in question, an inherent inequity of appraisal would result violative of TEX. CONST. Art. VIII, § 2. That section requires all properties to be appraised equally and uniformly. Valuing the Plaintiffs' property in units that are worth at least 25 times what everyone else's property is valued at would hardly be equitable.

Motion for No-evidence Summary Judgment

VI.

The Defendant now moves for a no-evidence summary judgment pursuant to TEX. R. CIV. P. 166a(i). The Plaintiffs have no evidence to support their cause of action. There being no genuine issue of material fact for trial, summary judgment in favor of the Defendant is appropriate.

VII.

No evidence summary judgment is proper when the plaintiff can provide no evidence of one or more essential elements of a claim on which it would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). Under Rule 166a(i), a defendant's no-evidence motion for summary judgment shifts the burden to the plaintiffs to raise a triable issue on each element essential to the plaintiffs case against the defendant. *Esco Oil & Gas, Inc. v. Sooner Pipe & Supply Co*, 962 S.W.2d 193, 197, fn. 3 (Tex. App. - Houston [1st Dist.] 1998, pet. denied).

Once the defendant has established a right to a summary judgment, the burden shifts to the plaintiff. The plaintiff must respond to the motion for summary judgment and present to the trial court any issues that would preclude summary judgment. *City of Houston v. Clear Creek Basin Auth*., 589 S.W.2d 671, 678 (Tex.1979); *Marchal v. Webb*, 859 S.W.2d 408, 412 (Tex. App. – Houston [1st Dist.] 1993, no petition). A plaintiff's conclusory statements of belief, however, are not enough to overcome summary judgment. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex.1984). A plaintiff must produce evidence that its allegations are true, as mere conclusory statements do not constitute effective summary judgment proof

and need not be given the same presumptive force as allegations of fact. *Abbott Laboratories, Inc. v. Segura*, 907 S.W.2d 503, 508 (Tex.1995).

VIII.

In this case, as alleged above, the Plaintiffs have alleged that the Defendant has over appraised their property, Abstract 538, R. V. Morrell survey, Tract 3, 13.369 acres, account number 0538.0030.0000.00. Being the plaintiffs in such a cause, they have the burden of proof of establishing that over appraisal. A sufficient time for the conduct of discovery has passed and discovery has, in fact, been conducted. Note exhibits B, C, E, F, and G. In response to that discovery, the Plaintiffs have identified no evidence that their property described above is over appraised in United States dollars as represented by Federal Reserve Notes. Indeed, their only allegations concern their claims that the Defendant should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. See exhibits E, interrogatories 2, 3, 10, and 13. Neither have the Plaintiffs identified any document showing the subject property to be over appraised in Federal Reserve Notes. See exhibit G. Neither have the Plaintiffs identified any expert with an opinion of value of the subject property in Federal Reserve Notes. See exhibit F. Indeed, the Plaintiffs have no opinion of the value of the subject property in Federal Reserve Notes. Their only quarrel with the Defendant appears to be the claim that the Defendant should be utilizing using gold dollars instead of Federal Reserve Notes. See exhibit B, pp. 43-44, 49-50, and exhibit C, p. 6. That issue is non-justiciable, at least as regard to this Defendant.

Respectfully submitted,

McCREARY, VESELKA,
BRAGG & ALLEN, P.C.
700 Jeffrey Way, Suite 100
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Phone (512) 323-3200
Fax (51 323-3294

/s/ Kirk Swinney
Kirk Swinney
State Bar No. 24043460

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded to the below party via certified mail, return receipt requested, on the 21th day of September, 2009, properly addressed as follows:

John O'Neill Green
P. O. Box 757
Athens, Texas 75751
CM/RRR # 7112 4369 4680 1289 9424

/s/ Kirk Swinney
Kirk Swinney

APPENDIX V

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

[Filed Dec 7, 2009]

Cause No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, Thomas D. Selgas and Michelle L. Selgas, Plaintiffs in the above and numbered cause, and files this, their Response to Defendant's, The Henderson County Appraisal District, Motion for Summary Judgment and for No-Evidence Summary Judgment, and in support of the same would respectfully show unto the Court the following:

I.
JUDICIAL BACKGROUND

Suit was brought in this matter on August 1, 2008, as all conditions precedent to the Plaintiffs' right of judicial review of the Appraisal Review Board's deci-

sion having been performed or having occurred, Plaintiffs were entitled to a trial de novo review of the board's order. Plaintiffs contend that the Board's decision constitutes a levying of a tax on Plaintiffs' property based on a higher valuation, which is an unlawful levy, and it creates an illegal lien on the Plaintiffs property, and is therefore a cloud on the title.

Written discovery was propounded by Defendant and answered by Plaintiffs. Written Discovery was propounded to Defendant by Plaintiffs and has been answered by Defendant. Depositions of Plaintiffs were taken. Defendant presented Bill Jackson, Chief Appraiser, as its witness in deposition. In addition, the deposition of Plaintiffs' expert, Dr. Edwin Vieira, Jr., PhD, J.D. was taken.

Plaintiffs filed their First Amended Original Petition on August 31, 2009. Defendant thereafter filed its Motion for Summary Judgment and for No-Evidence Summary Judgment on September 21, 2009.

II.
EVIDENCE

The evidence on which the Plaintiffs rely in filing this response to the Defendant's Motion for Summary Judgment and For No-Evidence Summary Judgment is as follows:

Exhibit A: General Warranty Deed as recorded in Henderson County

Exhibit B: Farm Ranch Contract

Exhibit C: Property Tax – Notice of Protest with its exhibits for 2008

Exhibit D: Property Tax – Notice of Protest with its exhibits for 2009

Exhibit E: Deposition of Bill Jackson

Exhibit F: Affidavit of Bill Jackson

Exhibit G: Defendant's First Supplemental Responses to Plaintiffs' Request for Admissions

Exhibit H: Deposition of Edwin Vieira, Jr., PhD, J.D.

Exhibit I: Affidavit of Thomas D. Selgas

Exhibit J: Affidavit of JoAnn L. Bryant

Exhibit K: Resume' of Dr. Edwin Vieira, Jr. PhD, J.D.

III.
FACTUAL BACKGROUND

The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059. A true and correct copy of the warranty deed vesting property to the Plaintiffs is attached hereto as Exhibit "A" and incorporated herein as if set forth at length.

Plaintiffs purchased the property that is the subject of this suit for $14,370.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser. A true and correct copy of the FARM AND RANCH Contract is attached hereto as Exhibit "B" and incorporated herein as set forth at length.

At the time of the purchase of the property by Plaintiffs, both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and both the seller and Plaintiffs sought to maximize their gains and neither was in a position to take advantage of the exigencies of the other. Therefore, at the time of purchase, and based on the facts delineated above, the market value of Plaintiffs' property, that is the subject of this suit, is $14,370.00 dollars.

However, on May 22, 2008, Defendant notified Plaintiffs that the valuation of the above-described property would be 251,630.

On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the notice of protest, board determination and taxable valuation notice are attached as Exhibit C and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $251,630. The board mailed its determination to Plaintiffs on June 18, 2008, and at this point, all conditions precedent to the Plaintiffs' right of judicial review of the board's decision had been performed or had occurred.

Thereafter, in 2009, a similar pattern occurred where on May 1, 2009, Plaintiffs were notified that the valuation of the above-described property would be 354,040 by Defendant.

Accordingly, Plaintiffs again timely filed a notice of protest of the valuation given the property by the appraiser on May 22, 2009. A true copy of the notice of protest, board determination and taxable valuation

notice are attached as Exhibit D and incorporated by reference. Thereafter, on July 10, 2009 the board made its order in which the value of plaintiff's property was determined to be $354,040. The board mailed its determination to Plaintiffs on July 17, 2009. Therefore, all conditions precedent to the Plaintiffs' right of judicial review of the board's decision having been performed or having occurred, Plaintiffs were again entitled to a trial de novo review of the board's order. Therefore, Plaintiffs duly amended their Original Petition to include the 2009 valuation issue and filed their First Amended Original Petition which is the current live pleading on file with the court.

IV.
ARGUMENT AND AUTHORITIES

A. SUMMARY JUDGMENT STANDARD

On a motion for summary judgment, the moving party bears the burden of proving that there exists no genuine issue of material fact and that they are entitled to judgment as a matter of law. *Gosami v. Metropolitan Say. & Loan Ass'n*, 751 S.W.2d 487, 491 (Tex. 1988); Nixon v. Mr. Property Management Co., 690 S.W.2d 546, 548-49 (Tex. 1985). In making this proof, the evidence must be viewed in the light most favorable to the non-movant, with all conflicts in evidence disregarded and evidence supporting the position of non-movant accepted as true. *Gosami*, 751 S.W.2d at 491; *Nixon*, 690 S.W.2d at 548-49. All doubts as to the existence of a genuine issue of material fact are resolved against the non-movant and every reasonable inference must be indulged in favor of the non-movant. *Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990); *Nixon*, 690 S.W.2d at 548-49. To be entitled to summary judgment,

Defendant has the burden of conclusively negating each and every element of Plaintiffs cause of action.

A summary judgment for the defendant disposing of the entire case is proper only if, as a matter of law, Plaintiff could not succeed upon any of the theories pled. *Delgada v. Burns*, 656 S.W.2d 428, 429 (Tex. 1983); *Gibbs v. General Motors Corp*., 450 S.W.2d 827, 828 (Tex. 1970). Since Defendant's Motion for Summary Judgment fails to address the crux of the matter, the market value of Plaintiffs' property, and also fails to provide any evidence in its motion to negate Plaintiffs' evidence of market value, its Motion for Summary Judgment should fail.

Further, Defendant's No-Evidence Motion for Summary Judgment should fail because Plaintiffs have provided sufficient credible evidence to show that there is a triable genuine issue of material fact regarding the determination of market value as evidenced by the expert testimony of Dr. Edwin Vieira, Jr., PhD, J.D., as discussed at length below, and also the affidavits of Thomas D. Selgas and JoAnn L. Bryant, attached as Exhibits I and J.

In order to defeat a No-Evidence motion for summary judgment, Plaintiffs are not required to marshal all of the evidence that will be introduced at trial, but simply to provide a scintilla of evidence, a mere smidgeon of evidence, regarding material facts which must be provided to the trier of facts so that justice may be done. Plaintiffs have met this standard and far exceeded it with the evidence attached to this response.

B. SPECIFIC AUTHORITIES WHICH SUPPORT PLAINTIFFS' CAUSE OF ACTION AND GENUINE ISSUES OF MATERIAL FACT

The Texas Supreme Court has held that when conflicting inferences can be drawn from a party's deposition testimony and an affidavit filed in response to a motion for summary judgment, a fact issue is presented that precludes summary judgment. *Randall v. Dallas Power & Light Co*., 752 S.W.2d 4, 5 (Tex. 1988). Bill Jackson, the defendant's only witness has made conflicting statements and/or inferences between his deposition testimony and his filed affidavit, which further conflict with the Defendant's Responses to Plaintiff's Requests for Admissions, which precludes summary judgment. Said conflicting statements and/or inferences include:

In response to Plaintiffs' First Set of Requests for Admissions, the Defendant denies that it uses the "dollar" as the unit of measure for valuation of the subject property (see Defendants First Supplemental Response to Plaintiffs' Request for Admissions attached as Exhibit G). However, Mr. Jackson admits in his deposition that the dollar is always the unit of measure of value in Henderson County Appraisal District (see Deposition of Bill Jackson, Exhibit E, Page 30, Line 24 through Page 31 Line 2), Furthermore, in his deposition, Mr. Jackson admits he does not know what a dollar or a federal reserve note are, (see Exhibit E, Page 31 Lines 10 through 12 and Page 36 Lines 13 through 15). Now, interestingly, in his affidavit, Mr. Jackson claims that all properties in Henderson County are appraised in something he calls "Federal Reserve Note dollars"

(Affidavit of Bill Jackson, Exhibit F)[1] However, he fails to define what that is, or more importantly, cite any authority which establishes it as a legal unit of monetary measurement, or approves of it as a measure of value.

This Court has jurisdiction over this Cause by virtue of TEX. PROP. TAX CODE §§42,25, 42.24 (Vernon 2009). As is clearly stated in Plaintiffs' First Amended Original Petition, Plaintiff's allege that their property as described above and as shown in Exhibits "A" and "B" attached hereto has been "overvalued" for 2008 and 2009.

Plaintiffs as Buyers and Richard & JoAnn Bryant, as Sellers, entered into a written contract for sale of the subject property and the property described in Cause 2008A-814 (see Exhibit B), wherein, Plaintiffs agreed to buy, and Sellers agreed to sell, the subject properties for $16,670 "dollars".[2]

The Texas Constitution provides that *"No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair market value nor shall any Board of equalization of any governmental or political subdivision or taxing district within the State fix the value of any property for tax purposes at more than its fair market value ..."* TEX. CONST. ART. VIII, §20.

---

[1] We know from the deposition of Dr. Edwin Vieira that there is no such thing as a "Federal Reserve Note dollar" (Deposition of Dr. Edwin Vieira at Page . . . 62, 1 Lines . . . 19 through . . . 25).

[2] The contract for sale of the subject property was part of an undivided sale of two separate parcels the other of which is described in cause 2008A-814.

Market value is defined as the price at which a property would transfer for cash . . . under prevailing market conditions if (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other. TEX. PROPERTY TAX CODE §1.04(7); *see also Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824-25 (Tex. App.-Amarillo 1993, no writ) (noting fair market value results from willing purchaser, willing seller, and no pressure to buy or sell property).

The Plaintiffs bought and The Sellers sold the property at issue in this matter for the fair market value of $14,370.00 "dollars"[3] (see affidavits of Thomas D. Selgas and JoAnn Bryant at Exhibits I and J respectively).

Defendant has no competent witness to testify to any fact regarding fair market value. Their attempt to use Bill Jackson, in that regard fails for two reasons:

1. Bill Jackson is not a Competent Witness. He has no personal knowledge of any fact that is relevant to the determination of the fair market value of the subject property, as that value is determined under law (see TEX. PROPERTY TAX CODE §1.04(7)) While admitting he understands the legal requirements for determining market value (See Deposition

[3] See footnote 2.

of Bill Jackson attached as Exhibit E Page 17 Line 12 through Page 18 Line 21) , Jackson candidly admits he has no personal knowledge regarding the negotiations or sale transaction. (Deposition of Bill Jackson Page 37, Lines 7 through 18.) Therefore, his testimony fails to address and provide any evidence regarding market value.

2. Bill Jackson is not a credible witness, owing entirely to his lack of knowledge of the monetary system of the United States of America and his inconsistent testimony. In response to Plaintiffs' First Set of Requests for Admissions, the Defendant denies that it uses the "dollar" as the unit of measure for valuation of the subject property (see Defendants First Supplemental Response to Plaintiffs' Request for Admissions attached as Exhibit G). However, Mr. Jackson admits in his deposition that the dollar is always the unit of measure of value in Henderson County Appraisal District (see Deposition of Bill Jackson, Exhibit E, Page 30, Line 24 through Page 31 Line 2), Furthermore, in his deposition, Mr. Jackson admits he does not know what a dollar or a federal reserve note are, (see Exhibit E, Page 31 Lines 10 through 12 and Page 36 Lines 13 through 15). Now, interestingly, in his affidavit, Mr. Jackson claims that all properties in Henderson County are appraised in something he calls "Federal Reserve Note dollars" (Affidavit of Bill Jackson, Exhibit F)[4] However, he fails to define what that is, or more importantly, cite any

[4] See footnote 1

> authority which establishes it as a legal unit of monetary measurement, or approves of it as a measure of value.

While Defendant correctly points out that, pursuant to 31 U.S.C. § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as "legal tender for all debts public and private," the relevance of that fact is totally misunderstood by Defendant.

A Federal Reserve Note is merely a method of payment, a "token" if you will of purported transfer of title to some undifferentiated unit of measure known as a "dollar". It is not a "dollar" and it is not a unit of measure in and of itself anymore that a check (a type of "note") is a unit of measure. In fact, there is no such thing as a "Federal Reserve Note Dollar" anymore than there is such a thing as a "Check Dollar" or a "Bank Draft Dollar".

The United States Department of the Treasury readily admits that:

> "*Federal Reserve notes are not redeemable in gold, silver or any other commodity, and receive no backing by anything This has been the case since 1933. The notes have no value for themselves . . .*" but for what they will buy. [Emphasis added] (see http://www.ustreas.gov/education/faq/currency/legaltender.shtml#q2)

Further, the Constitutional unit of measure of money in the United States is the "dollar", appearing in the Constitution twice at: 1) Article I Section 9, Clause 1 . . . *"a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person"*; and 2) Amendment VII, *"In Suits at common law, where the value in controversy shall exceed*

twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." The Supreme Court of the United States has held that: *"Congress . . . cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."* EISNER V. MACOMBER, 252 U.S. 189 (1920). It remains then to know what the unit of measure is for any transaction and logic tells us that without a fixed unit of measure for our economic transactions, chaos would surely ensue. Therefore, in their wisdom, the founding fathers indeed established a fixed measure for the "dollar" being a minted coin containing at least 371 ¼, gains of fine silver (see also 31 USC 5116(b)(2), An Act establishing a Mint, Act of 2 April 1792, ch. 16, 1 Stat. 246; § 20, 1 Stat. at 250; § 9, 1 Stat. at 248. Because it contained 480 grains, a troy ounce of coined silver was worth 1.2929+ "dollars"—a number that has appeared repeatedly in American monetary history.).

This, then, is the very same unit of measure that the Plaintiffs have used, and indeed have a right to use, in the fixing of value of their economic transactions. The Defendant, Mr. Bill Jackson, The State of Texas, nor The Congress of the United States have the authority to change this unit of measure. To allow otherwise would wreak havoc on our economic and monetary system and eviscerate the Constitutional guarantee of the value of our wealth and money that is the "dollar". Since the Constitution prohibits the use of any commodity other than gold or silver from being used as a "tender in payment of debt" and since the dollar is fixed as a measure of silver in the form of a coin, Congress then as author-

ized and implemented a system of coinage for gold that is directly related to and the value of which is set according to the measure and value of the dollar coin.

Only Congress has authority to coin money and set the value thereof pursuant to Article I Section 8, Clause 5 [The Congress shall have Power] *"To coin Money regulate the Value thereof and of foreign Coin, and fix the Standard of Weights and Measures;"* and they have indeed established the value of the ¼ ounce gold eagle coins that were paid as consideration for the contract for sale of the subject property at "ten dollars" pursuant to 31 USC §§ 5112(a)(9), 5101, 5102 and 5103. Defendant has No-Evidence to the contrary and can produce no competent witness to testify otherwise.

The method of determining fair "market value" is fixed by statute. The only competent witnesses in this matter are the Plaintiff's and the Bryant's. Market Value is established by their testimony and no other.

Having already marshaled enough evidence to clearly overcome Defendants Motion For Summary Judgment and For No-Evidence Summary Judgment, no further support would be necessary. However, Plaintiff's have gone "above and beyond" the evidence required by obtaining the testimony of Dr. Edwin Vieira, Jr., J.D., PhD, lawyer, constitutional scholar (see resume at Exhibit K) and quite possible the most recognized monetary legal authority in the country. Dr. Vieira is author of the quintessential treatise on constitutional money and law, *Pieces of Eight*.

Dr. Vieira enthralling testimony is most enlightening when read in its entirety, but more importantly it provides further evidence that overcomes Defendants motion to wit:

1. There is no such thing as a "Federal Reserve Note dollar". See Exhibit H, Vieira's Deposition at Page 62, lines 19-25, which states:

   [Q. . . .] So, the first question is, is there such a thing as a Federal Reserve note dollar?

   A. Not to my knowledge. I don't know of any statute that's ever declared a Federal Reserve note to be a dollar. They have dollar denominations, they have dollar values, but that's what they're promising to pay. They are not, themselves, the dollars.

and at Page 87, line 21 through Page 88 line 3, in which Vieira states:

   Q. So, in regard to those transactions, then, did that . . . does that, your testimony regarding the hypothetical, conform to your testimony earlier that there is no one thing that Congress has designated as a Federal Reserve dollar . . . Federal Reserve note dollar?

   A. There is no . . . as far as I know, there is no such thing that has ever been declared to be a Federal Reserve note dollar.

2. The market value of the property is the value stated in the contract. See Exhibit H, Vieira's Deposition at Page 84, lines 4-8, which states:

   Q. And have you developed any opinion of the market value of the subject property?

A. Well, yes, the market value of the property is the price in the contract expressed in the money that the parties decided to use.

3. The contract between the parties was a "Gold Clause Contract", subject to legislative control of the Congress and the Defendant cannot change its terms or set the monetary standard utilized there in. See Exhibit H, Vieira's Deposition, at Page 51, line 19 through Page 53 line 8, which states:

Q. So, the valuation in terms of payment for these gold clause contracts would be protected or reserved to the jurisdiction of Congress based on the supremacy clause?

A. Well, that's right. Congress has authorized the making of gold clause contracts, and in fact, the definition of gold clause contracts is what kind of ties that point together.

If you go to Title 31 of the United States Code, Section 5118, it says 5118, subsection (a), in this section, subsection (1), gold clause means a provision in or related to an obligation alleging to give the obligee a right to require payment in a) gold, b) a particular United States coin or currency, or c) United States money measured in gold or a particular United States coin or currency. So, you take 5118(a)(1)(b) as the kind of gold clause you're talking about, a provision and obligation that requires that they have a right to require payment in a particular United States coin or currency. So, Congress has allowed that kind of

> obligation to be made in a particular kind of United States coin or currency.
>
> It's pretty clear that a state does not have the power to say such contracts can't be made. Congress has authorized those to be made. And the particular coin or currency we're talking about in this example would be United States coin or currency, and then a state has to accept whatever the Con . . . whatever Congress has denominated as a particular United States coin or currency in terms of its composition, in terms of its weight, in terms of its nominal dollar value.
>
> Those are all within the prerogatives of Congress, and under the supremacy clause, a state cannot interfere with that.
>
> So, a state cannot say, for instance, that this $10 gold coin is really worth only $5 or is really worth $1000. Congress has said it's worth $10, and that's the end of the matter. [Emphasis added]

and at Page 55, line 19 through Page 56 line 6, in which Vieira states:

> Q. Now, the Defendant in this case is the Henderson County Appraisal Board which is, I guess, at least a quasi-government, a subdivision of the state government of the State of Texas as any other municipal or subdivision would be. Would . . . is there anything, any exception in the law, that would allow some lower subdivision, political subdivision of a state to put similar restrictions on it?

A. Well, the political subdivision certainly wouldn't have any more authority than the state itself would have, and if the state couldn't exercise that authority on its own behalf, it couldn't delegate such authority to a political subdivision.

Because the only competent testimony and relevant evidence before the Court is the Plaintiffs evidence detailed herein, Defendant's motions fail.

V.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court deny Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment, and that the Plaintiffs be provided any additional relief in law or equity to which they may be justly entitled.

Respectfully submitted,

/s/ John O'Neill Green
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Athens, TX 75751-2757
Tel. (214)989-4970, Fax. (800)736-9462

Attorney for Plaintiffs
Thomas D. Selgas and Michelle L. Selgas

CERTIFICATE OF SERVICE

I certify that on December 7, 2009, a true and correct copy of Plaintiffs' Response and Objection to Defendant, The Henderson County Appraisal District's Motion for Summary Judgment and for No-Evidence Summary Judgment was served by USPS Delivery Confirmation Priority Mail on Kirk Swinney

at McCREARY, VESELKA, BRAGG & ALLEN, P.C.,
700 Jeffrey Way, Suite 100, Round Rock, TX 78665.

/s/ John O'Neill Green
John O'Neill Green

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

[Filed Dec 7, 2009]

Cause No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME, Thomas D. Selgas and Michelle L. Selgas, Plaintiffs in the above and numbered cause, and files this, their Response to Defendant's, The Henderson County Appraisal District, Motion for Summary Judgment and for No-Evidence Summary Judgment, and in support of the same would respectfully show unto the Court the following:

I.
JUDICIAL BACKGROUND,

Suit was brought in this matter on August 1, 2008, as all conditions precedent to the Plaintiffs' right of judicial review of the Appraisal Review Board's decision having been performed or having occurred, Plaintiffs were entitled to a trial de novo review of the board's order. Plaintiffs contend that the Board's

decision constitutes a levying of a tax on Plaintiffs' property based on a higher valuation, which is an unlawful levy, and it creates an illegal lien on the Plaintiff's property, and is therefore a cloud on the title.

Written discovery was propounded by Defendant and answered by Plaintiffs. Written Discovery was propounded to Defendant by Plaintiffs and has been answered by Defendant. Depositions of Plaintiffs were taken. Defendant presented Bill Jackson, Chief Appraiser, as its witness in deposition. In addition, the deposition of Plaintiffs' expert, Dr. Edwin Vieira, Jr., PhD, J.D. was taken.

Plaintiffs filed their First Amended Original Petition on August 31, 2009. Defendant thereafter filed its Motion for Summary Judgment and for No-Evidence Summary Judgment on September 21, 2009.

II.
EVIDENCE

The evidence on which the Plaintiffs rely in filing this response to the Defendant's Motion for Summary Judgment and For No-Evidence Summary Judgment is as follows:

Exhibit A: General Warranty Deed as recorded in Henderson County

Exhibit B: Farm Ranch Contract

Exhibit C: Property Tax – Notice of Protest with its exhibits for 2008

Exhibit D: Property Tax – Notice of Protest with its exhibits for 2009

Exhibit E: Deposition of Bill Jackson

Exhibit F: Affidavit of Bill Jackson

Exhibit G: Defendant's First Supplemental Responses to Plaintiffs' Request for Admissions

Exhibit H: Deposition of Edwin Vieira, Jr., PhD, J.D.

Exhibit I: Affidavit of Thomas D. Selgas

Exhibit J: Affidavit of JoAnn L. Bryant

Exhibit K: Resume' of Dr. Edwin Vieira, Jr. PhD, J.D.

III.
FACTUAL BACKGROUND

The real property owned by Plaintiffs that is the subject of this cause is accurately described as AB 538 R V MORRELL SUR, TR 3F 23.059. A true and correct copy of the warranty deed vesting property to the Plaintiffs is attached hereto as Exhibit "A" and incorporated herein as if set forth at length.

Plaintiffs purchased the property that is the subject of this suit for $2,300.00 lawful money dollars, pursuant to 31 U.S.C. § 5112(a)(9), after it had been exposed for sale in the open market with a reasonable time for the seller to find a purchaser. A true and correct copy of the FARM AND RANCH Contract is attached hereto as Exhibit "B" and incorporated herein as set forth at length.

At the time of the purchase of the property by Plaintiffs, both the seller and the Plaintiffs knew of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and both the seller and Plaintiffs sought to maximize their gains

and neither was in a position to take advantage of the exigencies of the other. Therefore, at the time of purchase, and based on the facts delineated above, the market value of Plaintiffs' property, that is the subject of this suit, is $2,300.00 dollars.

However, on May 22, 2008, Defendant notified Plaintiffs that the valuation of the above-described property would be 40,240.

On May 28, 2008, Plaintiffs timely filed a notice of protest of the valuation given the property by the appraiser. A true copy of the notice of protest, board determination and taxable valuation notice are attached as Exhibit C and incorporated by reference. Thereafter, on June 16, 2008 the board made its order in which the value of plaintiff's property was determined to be $40,240. The board mailed its determination to Plaintiffs on June 18, 2008, and at this point, all conditions precedent to the Plaintiffs' right of judicial review of the board's decision had been performed or had occurred.

Thereafter, in 2009, a similar pattern occurred where on May 1, 2009, Plaintiffs were notified that the valuation of the above-described property would be 53,480 by Defendant.

Accordingly, Plaintiffs again timely filed a notice of protest of the valuation given the property by the appraiser on May 22, 2009. A true copy of the notice of protest, board determination and taxable valuation notice are attached as Exhibit D and incorporated by reference. Thereafter, on July 10, 2009 the board made its order in which the value of plaintiff's property was determined to be $53,480. The board mailed its determination to Plaintiffs on July 17, 2009. Therefore, all conditions precedent to the Plaintiffs'

right of judicial review of the board's decision having been performed or having occurred, Plaintiffs were again entitled to a trial de novo review of the board's order. Therefore, Plaintiffs duly amended their Original Petition to include the 2009 valuation issue and filed their First Amended Original Petition which is the current live pleading on file with the court.

IV.
ARGUMENT AND AUTHORITIES

A. SUMMARY JUDGMENT STANDARD

On a motion for summary judgment, the moving party bears the burden of proving that there exists no genuine issue of material fact and that they are entitled to judgment as a matter of law. *Gosami v. Metropolitan Say. & Loan Ass'n*, 751 S.W.2d 487, 491 (Tex. 1988); *Nixon v. Mr. Property Management Co*., 690 S.W.2d 546, 548-49 (Tex. 1985). In making this proof, the evidence must be viewed in the light most favorable to the non-movant, with all conflicts in evidence disregarded and evidence supporting the position of non-movant accepted as true. *Gosami*, 751 S.W.2d at 491; *Nixon*, 690 S.W.2d at 548-49. All doubts as to the existence of a genuine issue of material fact are resolved against the non-movant and every reasonable inference must be indulged in favor of the non-movant. *Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990); *Nixon*, 690 S.W.2d at 548-49. To be entitled to summary judgment, Defendant has the burden of conclusively negating each and every element of Plaintiffs cause of action.

A summary judgment for the defendant disposing of the entire case is proper only if as a matter of law, Plaintiff could not succeed upon any of the theories

pled. *Delgada v. Burns*, 656 S.W.2d 428, 429 (Tex. 1983); *Gibbs v. General Motors Corp*., 450 S.W.2d 827, 828 (Tex. 1970). Since Defendant's Motion for Summary Judgment fails to address the crux of the matter, the market value of Plaintiffs' property, and also fails to provide any evidence in its motion to negate Plaintiffs' evidence of market value, its Motion for Summary Judgment should fail.

Further, Defendant's No-Evidence Motion for Summary Judgment should fail because Plaintiffs have provided sufficient credible evidence to show that there is a triable genuine issue of material fact regarding the determination of market value as evidenced by the expert testimony of Dr. Edwin Vieira, Jr., PhD, J.D., as discussed at length below, and also the affidavits of Thomas D. Selgas and JoAnn L. Bryant, attached as Exhibits I and J.

In order to defeat a No-Evidence motion for summary judgment, Plaintiffs are not required to marshal all of the evidence that will be introduced at trial, but simply to provide a scintilla of evidence, a mere smidgeon of evidence, regarding material facts which must be provided to the trier of facts so that justice may be done. Plaintiffs have met this standard and far exceeded it with the evidence attached to this response.

B. SPECIFIC AUTHORITIES WHICH SUPPORT PLAINTIFFS' CAUSE OF ACTION AND GENUINE ISSUES OF MATERIAL FACT

The Texas Supreme Court has held that when conflicting inferences can be drawn from a party's deposition testimony and an affidavit filed in response to a motion for summary judgment, a fact issue is presented that precludes summary judgment.

Randall v. Dallas Power & Light Co., 752 S.W.2d 4, 5 (Tex. 1988). Bill Jackson, the defendant's only witness has made conflicting statements and/or inferences between his deposition testimony and his filed affidavit, which further conflict with the Defendant's Responses to Plaintiff's Requests for Admissions, which precludes summary judgment. Said conflicting statements and/or inferences include:

In response to Plaintiffs' First Set of Requests for Admissions, the Defendant denies that it uses the "dollar" as the unit of measure for valuation of the subject property (see Defendants First Supplemental Response to Plaintiffs' Request for Admissions attached as Exhibit G) . However, Mr. Jackson admits in his deposition that the dollar is always the unit of measure of value in Henderson County Appraisal District (see Deposition of Bill Jackson, Exhibit E, Page 30, Line 24 through Page 31 Line 2), Furthermore, in his deposition, Mr. Jackson admits he does not know what a dollar or a federal reserve note are, (see Exhibit E, Page 31 Lines 10 through 12 and Page 36 Lines 13 through 15). Now, interestingly, in his affidavit, Mr. Jackson claims that all properties in Henderson County are appraised in something he calls "Federal Reserve Note dollars" (Affidavit of Bill Jackson, Exhibit F)[1] However, he fails to define what that is, or more importantly, cite any authority which establishes it as a legal unit of monetary measurement, or approves of it as a measure of value.

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[1] We know from the deposition of Dr. Edwin Vieira that there is no such thing as a "Federal Reserve Note dollar" (Deposition of Dr. Edwin Vieira at Page . . . 62, 1 Lines . . . 19 through . . . 25).

This Court has jurisdiction over this Cause by virtue of TEX. PROP. TAX CODE §§ 42,25, 42.24 (Vernon 2009). As is clearly stated in Plaintiffs' First Amended Original Petition, Plaintiffs allege that their property as described above and as shown in Exhibits "A" and "B" attached hereto has been "over-valued" for 2008 and 2009.

Plaintiffs as Buyers and Richard & JoAnn Bryant, as Sellers, entered into a written contract for sale of the subject property and the property described in Cause 2008A-813 (see Exhibit B), wherein, Plaintiffs agreed to buy, and Sellers agreed to sell, the subject properties for $16,670 "dollars".[2]

The Texas Constitution provides that "No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair market value nor shall any Board of equalization of any governmental or political subdivision or taxing district within the State fix the value of any property for tax purposes at more than its fair market value . . ." TEX. CONST. ART. VIII, § 20.

Market value is defined as the price at which a property would transfer for cash . . . under prevailing market conditions if (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (C) both the seller and purchaser seek to maximize their gains and neither is in a position to

[2] The contract for sale of the subject property was part of an undivided sale of two separate parcels the other of which is described in cause 2008A-813.

take advantage of the exigencies of the other. TEX. PROPERTY TAX CODE § 1.04(7); *see also Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824-25 (Tex. App.–Amarillo 1993, no writ) (noting fair market value results from willing purchaser, willing seller, and no pressure to buy or sell property).

The Plaintiffs bought and The Sellers sold the property at issue in this matter for the fair market value of $2,300.00 "dollars"[3] (see affidavits of Thomas D. Selgas and JoAnn Bryant at Exhibits I and J respectively).

Defendant has no competent witness to testify to any fact regarding fair market value. Their attempt to use Bill Jackson, in that regard fails for two reasons:

1. Bill Jackson is not a Competent Witness. He has no personal knowledge of any fact that is relevant to the determination of the fair market value of the subject property, as that value is determined under law (see TEX. PROPERTY TAX CODE §1.04(7)) While admitting he understands the legal requirements for determining market value (See Deposition of Bill Jackson attached as Exhibit E Page 17 Line 12 through Page 18 Line 21) , Jackson candidly admits he has no personal knowledge regarding the negotiations or sale transaction. (Deposition of Bill Jackson Page 37, Lines 7 through 18.) Therefore, his testimony fails to address and provide any evidence regarding market value.

[3] See footnote 2

2. Bill Jackson is not a credible witness, owing entirely to his lack of knowledge of the monetary system of the United States of America and his inconsistent testimony. In response to Plaintiffs' First Set of Requests for Admissions, the Defendant denies that it uses the "dollar" as the unit of measure for valuation of the subject property (see Defendants First Supplemental Response to Plaintiffs' Request for Admissions attached as Exhibit G). However, Mr. Jackson admits in his deposition that the dollar is always the unit of measure of value in Henderson County Appraisal District (see Deposition of Bill Jackson, Exhibit E, Page 30, Line 24 through Page 31 Line 2), Furthermore, in his deposition, Mr. Jackson admits he does not know what a dollar or a federal reserve note are, (see Exhibit E, Page 31 Lines 10 through 12 and Page 36 Lines 13 through 15). Now, interestingly, in his affidavit, Mr. Jackson claims that all properties in Henderson County are appraised in something he calls "Federal Reserve Note dollars" (Affidavit of Bill Jackson, Exhibit F)[4] However, he fails to define what that is, or more importantly, cite any authority which establishes it as a legal unit of monetary measurement, or approves of it as a measure of value.

While Defendant correctly points out that, pursuant to 31 U.S.0 § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as "legal tender for all debts

[4] See footnote 1

public and private," the relevance of that fact is totally misunderstood by Defendant.

A Federal Reserve Note is merely a method of payment, a "token" if you will of purported transfer of title to some undifferentiated unit of measure known as a "dollar". It is not a "dollar" and it is not a unit of measure in and of itself anymore that a check (a type of "note") is a unit of measure. In fact, there is no such thing as a "Federal Reserve Note Dollar" anymore than there is such a thing as a "Check Dollar" or a "Bank Draft Dollar".

The United States Department of the Treasury readily admits that:

> "*Federal Reserve notes are not redeemable in gold, silver or any other commodity, and receive no backing by anything This has been the case since 1933. The notes have no value for themselves* . . ." but for what they will buy. [Emphasis added] (see http://www.ustreas.gov/education/faq/currency/legaltender.shtml#q2)

Further, the Constitutional unit of measure of money in the United States is the "dollar", appearing in the Constitution twice at: 1) Article I Section 9, Clause 1 . . . *"a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person"*; and 2) Amendment VII, *"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."* The Supreme Court of the United States has held that: *"Congress . . . cannot by legislation alter the Constitution, from which alone it derives its power to legislate,*

and within whose limitations alone that power can be lawfully exercised" Eisner v. Macomber, 252 U.S. 189 (1920). It remains then to know what the unit of measure is for any transaction and logic tells us that without a fixed unit of measure for our economic transactions, chaos would surely ensue. Therefore, in their wisdom, the founding fathers indeed established a fixed measure for the "dollar" being a minted coin containing at least 371 ¼, gains of fine silver (see also 31 USC 5116(b)(2), An Act establishing a Mint, Act of 2 April 1792, ch. 16, 1 Stat. 246; § 20, 1 Stat. at 250; § 9, 1 Stat. at 248. Because it contained 480 grains, a troy ounce of coined silver was worth 1.2929+ "dollars"—a number that has appeared repeatedly in American monetary history.).

This, then, is the very same unit of measure that the Plaintiffs have used, and indeed have a right to use, in the fixing of value of their economic transactions. The Defendant, Mr. Bill Jackson, The State of Texas, nor The Congress of the United States have the authority to change this unit of measure. To allow otherwise would wreak havoc on our economic and monetary system and eviscerate the Constitutional guarantee of the value of our wealth and money that is the "dollar". Since the Constitution prohibits the use of any commodity other than gold or silver from being used as a "tender in payment of debt" and since the dollar is fixed as a measure of silver in the form of a coin, Congress then as authorized and implemented a system of coinage for gold that is directly related to and the value of which is set according to the measure and value of the dollar coin.

Only Congress has authority to coin money and set the value thereof pursuant to Article I Section 8, Clause 5 [The Congress shall have Power] *"To coin Money regulate the Value thereof and of foreign Coin, and fix the Standard of Weights and Measures*;" and they have indeed established the value of the ¼ ounce gold eagle coins that were paid as consideration for the contract for sale of the subject property at "ten dollars" pursuant to 31 U.S.C. §§ 5112(a)(9), 5101, 5102 and 5103. Defendant has No-Evidence to the contrary and can produce no competent witness to testify otherwise.

The method of determining fair "market value" is fixed by statute. The only competent witnesses in this matter are the Plaintiff's and the Bryant's. Market Value is established by their testimony and no other.

Having already marshaled enough evidence to clearly overcome Defendants Motion For Summary Judgment and For No-Evidence Summary Judgment, no further support would be necessary. However, Plaintiff's have gone "above and beyond" the evidence required by obtaining the testimony of Dr. Edwin Vieira, Jr., J.D., PhD, lawyer, constitutional scholar (see resume at Exhibit K) and quite possible the most recognized monetary legal authority in the country. Dr. Vieira is author of the quintessential treatise on constitutional money and law, Pieces of Eight.

Dr. Vieira enthralling testimony is most enlightening when read in its entirety, but more importantly it provides further evidence that overcomes Defendants motion to wit:

1. There is no such thing as a "Federal Reserve Note dollar". See Exhibit H, Vieira's Deposition at Page 62, lines 19-25, which states:

[Q. . . .] So, the first question is, is there such a thing as a Federal Reserve note dollar?

A. Not to my knowledge. I don't know of any statute that's ever declared a Federal Reserve note to be a dollar. They have dollar denominations, they have dollar values, but that's what they're promising to pay. They are not, themselves, the dollars.

and at Page 87, line 21 through Page 88 line 3, in which Vieira states:

Q. So, in regard to those transactions, then, did that . . . does that, your testimony regarding the hypothetical, conform to your testimony earlier that there is no one thing that Congress has designated as a Federal Reserve dollar . . . Federal Reserve note dollar?

A. There is no . . . as far as I know, there is no such thing that has ever been declared to be a Federal Reserve note dollar.

2. The market value of the property is the value stated in the contract. See Exhibit H, Vieira's Deposition at Page 84, lines 4-8, which states:

Q. And have you developed any opinion of the market value of the subject property?

A. Well, yes, the market value of the property is the price in the contract expressed in the money that the parties decided to use.

3. The contract between the parties was a "Gold Clause Contract", subject to legislative control of the Congress and the Defendant cannot change its terms or set the monetary stand-

ard utilized there in. See Exhibit H, Vieira's Deposition, at Page 51, line 19 through Page 53 line 8, which states:

Q. So, the valuation in terms of payment for these gold clause contracts would be protected or reserved to the jurisdiction of Congress based on the supremacy clause?

A. Well, that's right. Congress has authorized the making of gold clause contracts, and in fact, the definition of gold clause contracts is what kind of ties that point together.

If you go to Title 31 of the United States Code, Section 5118, it says 5118, subsection (a), in this section, subsection (1), gold clause means a provision in or related to an obligation alleging to give the obligee a right to require payment in a) gold, b) a particular United States coin or currency, or c) United States money measured in gold or a particular United States coin or currency. So, you take 5118(a)(1)(b) as the kind of gold clause you're talking about, a provision and obligation that requires that they have a right to require payment in a particular United States coin or currency. So, Congress has allowed that kind of obligation to be made in a particular kind of United States coin or currency.

It's pretty clear that a state does not have the power to say such contracts can't be made. Congress has authorized those to be made. And the particular coin or currency we're talking about in this example would be United States coin or currency, and

> then a state has to accept whatever the Con . . . whatever Congress has denominated as a particular United States coin or currency in terms of its composition, in terms of its weight, in terms of its nominal dollar value.
>
> Those are all within the prerogatives of Congress, and under the supremacy clause, a state cannot interfere with that.
>
> So, a state cannot say, for instance, that this $10 gold coin is really worth only $5 or is really worth $1000. Congress has said it's worth $10, and that's the end of the matter. [Emphasis added]

and at Page 55, line 19 through Page 56 line 6, in which Vieira states:

> Q. Now, the Defendant in this case is the Henderson County Appraisal Board which is, I guess, at least a quasi-government, a subdivision of the state government of the State of Texas as any other municipal or subdivision would be. Would . . . is there anything, any exception in the law, that would allow some lower subdivision, political subdivision of a state to put similar restrictions on it?
>
> A. Well, the political subdivision certainly wouldn't have any more authority than the state itself would have, and if the state couldn't exercise that authority on its own behalf, it couldn't delegate such authority to a political subdivision.

Because the only competent testimony and relevant evidence before the Court is the Plaintiffs evidence detailed herein, Defendant's motions fail.

V.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court deny Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment, and that the Plaintiffs be provided any additional relief in law or equity to which they may be justly entitled.

Respectfully submitted,

/s/ John O'Neill Green
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Tel. (214)989-4970, Fax. (800)736-9462

Attorney for Plaintiffs
Thomas D. Selgas and Michelle L. Selgas

CERTIFICATE OF SERVICE

I certify that on December 7, 2009, a true and correct copy of Plaintiffs' Response and Objection to Defendant, The Henderson County Appraisal District's Motion for Summary Judgment and for No-Evidence Summary Judgment was served by USPS Delivery Confirmation Priority Mail on Kirk Swinney at McCREARY, VESELKA, BRAGG & ALLEN, P.C., 700 Jeffrey Way, Suite 100, Round Rock, TX 78665.

/s/ John O'Neill Green
John O'Neill Green

APPENDIX W

No. 12-10-00021-CV and 12-10-00050-CV

In the Court of Appeals
for the Twelfth District of Texas
at Tyler

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appelleee

Brief of Appellants

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Attorneys for Appellant

ORAL ARGUMENT REQUESTED

[i] LIST OF PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellants	Counsel
Thomas D. Selgas Michelle L. Selgas	John O'Neill Green State Bar No. 00785927 Post Office Box 2757 Athens, TX 75751-2757 Judith Street State Bar No. 03149480 5904 S. Cooper, Suite 104 #189 Arlington, Texas 76017
Appellee	**Counsel**
The Henderson County Appraisal District	Kirk Swinney McCreary, Veselka, Bragg & Allen, P.C. 700 Jeffrey Way, Suite 100 Round Rock, TX 78665

[ii] TABLE OF CONTENTS

[iii] INDEX OF AUTHORITIES

Cases

[1] STATEMENT OF THE CASE

Nature of the Case	This is a case brought to construe whether the price paid for a piece of real-property in an arms-length transaction is the "Market Value", as that term is defined in the Texas Property Tax Code §1.04(7), and thus its appraised value as required by law pursuant to the Texas Constitution at Article 8 Sec. 20, the Texas Property Tax Code §23.01(b), and *Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822. (C.R. 20)
Course of Proceedings	The Appellants timely protested the Henderson County Appraisal Districts property appraisal and petitioned the 173rd Judicial District Court of Henderson County, under §42.25 – Remedy for Excessive Appraisal – of the Texas Property Tax Code, to determine whether the appraised value of property according to the appraisal roll exceeds the appraised value required by law – the purchase price paid. Testimony from both sides was elicited. The testimony elicited from the Appellee – the Henderson County Appraisal District – contradicts itself; whereas the Testimony and supporting affidavits of the Appellants and the third-party property Seller are

	consistent with the sales contract and the recorded deed. The Appellee filed a motion titled "Appellee's Motion for Summary Judgment and for No-Evidence Summary Judgment (C.R. 200-201, 215, 31; 36, 301, 304 and 22-30).
Trial Court Disposition	The 173rd Judicial District Court of Henderson County, the Hon. Dan Moore presiding, granted Appellee's Motion For Summary Judgment and For No-Evidence Summary Judgment. Judge Moore's order states: "the Appellee's Motion for Summary Judgment and for No-Evidence Summary Judgment is in all respects GRANTED. And further granted the Appellee's Objection to Plaintiffs' Summary Judgment Evidence [excluding Dr. Edwin Vieira's deposition] (C.R. 321 and 323).
Party References	The Henderson County Appraisal District, Appellee, will generally be referred to as "Appellee". JoAnn Bryant, the seller of the property, will generally be referred to as "Seller". Thomas D. and/or Michelle L. Selgas, Appellants, will generally be referred to as "Appellants".

	Dr. Edwin Vieira Jr., expert witness, will generally be referred to as "Dr. Vieira" Bill Jackson, Appellee's witness, will generally be referred to as "Jackson"

* * *

[10] ARGUMENT AND AUTHORITIES

This Court has jurisdiction over this Cause by virtue of TEX. PROP. TAX CODE §§42.24, 42.25 (Vernon 2009). As is clearly stated in Appellant's First Amended Original Petition, Plaintiff's allege that their property as described above and as shown in Exhibits "A" and "B" attached hereto has been "over-valued" for 2008 and 2009.

Appellants as Buyers and Richard & JoAnn Bryant, as Sellers, entered into a written contract for sale of the subject property and the property described in Cause[s] 2008A-813 & 2008A-814 (see C.R. 151-169), wherein, Appellants agreed to buy, and Sellers agreed to sell, the subject properties for $16,670 "dollars".

The Texas Constitution provides that "No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair market value nor shall any Board of equalization of any governmental or political subdivision or taxing district within the State fix the value of any property for tax purposes at more than its fair market value …" TEX. CONST. ART. VIII, §20.

Market value is defined as the price at which a property would transfer for cash … under prevailing

market conditions if (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other. TEX. Property TAX CODE 1.04(7*)§; see also Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824-25 (Tex. App. – Amarillo 1993, no writ) (noting fair market value results from willing purchaser, willing seller, and no pressure to buy or sell property).

The Appellants bought and the sellers sold the property at issue in this matter for the fair market value of $16,670.00 "dollars" (see affidavits of Thomas D. Selgas and JoAnn Bryant at Exhibits I and J respectively).

The appellate court's standard of review of a summary judgment is de novo to determine whether a party's right to prevail is established as a matter of law. Tex. R. Civ. P. 166a(c); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). When, as here, a trial court's order granting summary judgment does not specify the grounds relied upon, the reviewing court must affirm summary judgment if any of the summary judgment grounds are meritorious. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872-73 (Tex. 2000); *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995).

When a party moves for summary judgment under both rules 166a(c) and 166a(i), the appellate court should first review the trial court's judgment under the standards of rule 166a(i) governing no evidence

motions for summary judgment. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

I. Did the Trial Court err in granting Appellee's No Evidence Motion for Summary Judgment?

When reviewing a no-evidence summary judgment, the court examines the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion. *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006). If the non-Movant brings forward more than a scintilla of probative evidence that raises a genuine issue of material fact, then a no-evidence summary judgment is not proper. *Moore v. K Mart Corp*., 981 S.W.2d 266, 269 (Tex. App. – San Antonio 1998, pet. denied). Therefore, the court should review a no evidence summary judgment for evidence that would enable reasonable and fair minded jurors to differ in their conclusions. *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005)).

a. Was Appellants' summary judgment evidence, the affidavits of property owner, Thomas Selgas, and the Seller, JoAnn Bryant, some evidence of the market value of the property?

Affidavits supporting and opposing a motion for summary judgment must set forth facts, not legal conclusions. *See Mercer v. Daoran Corp*., 676 S.W.2d 580, 583 (Tex. 1984); *AMS Constr. Co. v. Warm Springs Rehab. Found., Inc*., 94 S.W.3d 152, 157 (Tex. App. – Corpus Christi 2002, no pet.). A conclusory statement is one that does not provide the underlying facts to support the conclusion, and it is insufficient to create a question of material fact to defeat summary judgment. *IHS Cedars Treatment*

Ctr. of Desoto, Tex., Inc. v. Mason, 143 S.W.3d 794, 803 (Tex. 2004); *McIntyre v. Ramirez*, 109 S.W.3d 741, 749-50 (Tex. 2003). To constitute competent summary judgment evidence, the testimony must provide an explanation linking the basis of the conclusion to the facts. *Windsor v. Maxwell*, 121 S.W.3d 42, 49 (Tex. App. – Fort Worth 2003, pet. denied).

In this case, Appellants provided factual affidavits, which state the market value of the property, providing adequate evidence or at least raising a triable issue of material fact. This testimony is factual, not conclusory, and is entitled to be given consideration by the trier of fact, as it is well settled law in Texas that property owners may testify as to the market value of their property.

The Supreme Court of Texas has held that property owners who are familiar with the market value of their property, including real property, may testify as to their opinions regarding this value, even though they do not qualify as expert witnesses and even though they would not be allowed to testify regarding the market value of property they do not own. *See Redman Homes, Inc. v. Ivy*, 920 S.W.2d 664, 669 (Tex. 1996); *Porras v. Craig*, 675 S.W.2d 503, 504-05 (Tex. 1984). The Property Owner Rule is based on the premise that property owners ordinarily know the market value of their property and therefore have a sound basis for testifying as to its value. *See Porras*, 675 S.W.2d at 504; *State v. Berger*, 430 S.W.2d 557, 559 (Tex. Civ. App. – Waco 1968, writ ref'd n.r.e.). For a property owner to qualify as a witness, his testimony "must show that it refers to market, rather than intrinsic or some other value of the property." *Porras*, 675 S.W.2d at 504-05 (Tex. 1984). This requirement is usually met if the owner testifies that

he is familiar with the market value of his property. "Market value" is the price property would bring if offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no obligation to buy. *Exxon Corp. v. Middleton*, 613 S.W.2d 240, 246 (Tex. 1981). This well settled principle has become known as "The Property Owner's Rule."

In the instant case, Appellant introduced the affidavit testimony of the property owner, Thomas Selgas and the Seller, JoAnn Bryant, who testified that the market value of the property was $16,670. The property was purchased/sold on prevailing market conditions at the time of sale. The property was listed by the Seller on the open market through a MLS listing by a licensed Texas Real Estate Broker. Seller and Appellant (buyer) were aware of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and by buying/selling the property both parties sought to maximize their gains. Neither party [Seller and Appellants (buyers)] was in a position to take advantage of the exigencies of the other party.

The Seller accepted cash from the Appellants (buyers) for the property in the amount of $16,670 dollars, in American Eagle Gold Coin, lawful money of the United States. Although the property is recorded as two parcels the sale of the property was treated as a single parcel of land and thus made no independent determination of the value of each parcel.

The total amount tendered by the Appellants (buyers) and accepted by the Seller was the fair market value of the property sold. C.R. 300-305.

Therefore, the trial court erred in granting the no evidence motion for summary judgment as Appellants provided more than a scintilla of evidence establishing the genuine issue of material fact regarding the market value of this property, and the court's decision should be reversed, with the case remanded to the trial court for trial on the merits.

b. Did the trial court abuse its discretion by striking the affidavit testimony of Appellants' expert witness, Dr. Edwin Vieira, Jr., as his qualifications as an expert were established by Appellants and were not properly challenged by Appellee?

The appropriate standard of review of a trial court's evidentiary rulings are for an abuse of discretion. *In re J.P.B.*, 180 S.W.3d 570, 575 (Tex. 2005) (per curiam). The trial court abuses its discretion if it acts without reference to guiding rules or principles, or in an arbitrary or unreasonable manner. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985).

In this case, the trial court excluded the testimony of Appellants' expert witness, Dr. Edwin Vieira, although his qualifications were proven up by Appellants, and were not properly challenged by Appellees, as Appellees did not make a Daubert challenge as to Dr. Vieira's qualifications as an expert and likewise, the court issued its order striking Dr. Vieira's testimony without conducting an evaluation as to his qualifications as required by Daubert. Therefore, the court acted without reference to guiding rules or principles, or in an arbitrary or unreasonable manner, and Dr. Vieira's testimony should be allowed to be considered by a trier of fact, giving Appellants

additional credible evidence in support of their position on the market value of their property.

Dr. Vieira's testimony is critical on the factual issue of the standard of measure used by Appellants in assessing the market value of their property and his opinions are not merely opinions of law, but rather of fact. Accordingly, his testimony should not have been stricken by the trial court.

Appellee's Objection to Appellants' Summary Judgment Evidence on the basis that Dr. Vieira's testimony was not factual, but was rather purely on the interpretation of the law ignores and/or misconstrues his testimony because Dr. Vieira did not testify on a pure question of law, but rather a mixed question of law and fact. At the very least, the trial court should have required a hearing on a Daubert challenge before arbitrarily throwing out his testimony in its entirety which would have given Appellants the opportunity to respond to any challenge as to this expert's qualifications and the characterizations of his testimony, an opportunity the court's actions prevented Appellants from having. Therefore, the trial court abused its discretion, creating harmful error, which requires that this Court reverse the trial court's ruling on the admissibility of Dr. Vieira's testimony, and reversal of the trial court's granting of summary judgment.

II. Did the trial court err by granting the Appellee's Motion for Summary Judgment?

Appellee's did not present evidence that would negate the elements of Appellant's Cause of Action and did not introduce any competent evidence to satisfy its burden of proof that it did not inequitably value Appellants' property for tax purposes.

Any purchase of real property in an arms-length transaction, no matter how unreasonable it may seem on its face is its Market Value (see: Bailey County Appraisal Dist. v. Smallwood, 848 S.W.2d 822), as that term is defined in §1.04(7) of the Texas Property Tax Code to wit:

> "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:
>
> (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
>
> (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
>
> (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

Further, Appellants have shown that the entire real estate transaction for the purchase and sale of this property met the requirements of contract and real estate law, making the underpinnings of the testimony Appellants provide on market value footed on a solid and uncontroverted base as delineated below:

> a. The sales contract for the real property is an enforceable contract
>
> The Seller and Appellants prior to engaging in the sales process of the subject property had never met, did not have any friends or acquaintances in common, nor were of any close or know

familial relationship. Thus the sales transaction of the subject property was at arms-length.

1. There was an offer

As indicated on the FARM AND RANCH Contract, there was an offer to purchase the subject property for $16,670.00 by the Appellants.

2. There was acceptance

As indicated on the FARM AND RANCH Contract, there was acceptance of the Appellants' offer to purchase the subject property for $16,670.00 by the Seller.

3. There was a meeting of the minds

As indicated on the FARM AND RANCH Contract, the recorded Warrant Deed, and as testified to by deposition and affidavits of the Appellants and Seller, there was a meeting of the minds as to the terms and performance of the contract.

4. Each party (the Seller and Appellant) consented to the terms

As indicated on the FARM AND RANCH Contract, the recorded Warrant Deed, and as testified to by deposition and affidavits of the Appellants and Seller each party consented to and fulfilled the term of the contract.

5. There was intent that the contract be mutual and binding

As indicated on the FARM AND RANCH Contract, the recorded Warrant Deed, and as testified to by deposition and affidavits of the Appellants and Seller, each party consented to

and fulfilled the term of the contract; thus making it mutual and binding.

6. The contract does not fall within the Statute of Frauds

The FARM AND RANCH Contract signed by the Appellants and Seller is of the form promulgated by the Texas Real Estate Commission and does not violate the Statute of Frauds, which states that a "contract for the sale of real estate" is unenforceable unless it is in writing and "signed by the person to be charged with the promise or agreement …" Tex. Bus. & Comm. Code Ann. §26.01 (Vernon Supp. 2008). Further the FARM AND RANCH Contract does "furnish within itself or by reference to another existing writing the means or data to identify the particular land with reasonable certainty." *Fears v. Texas Bank*, 247 S.W. 3d 729, 735-736 (Tex. App. – Texarkana 2008, pet. denied), citing *Pick v. Bartel*, 659 S.W. 2d 636, 637 (Tex. 1983)

Accordingly, it was Appellee's burden to prove that the purchase price of the real property was not the purchase price shown on the real property sales contract, the recorded warranty deed, and attested to by both the Seller and Appellants, which it failed to do.

CONCLUSION

The Appellants, Thomas and Michelle Selgas, purchased property in Henderson County Texas for $16,670.00 from the Sellers, Richard and JoAnn Bryant, in February 2008. Appellants introduced competent evidence as to the market value of this property, and said sale and subsequent purchase met

all the "Market Value" requirements defined in §1.04(7) of the Texas Property Tax Code to wit:

> (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
>
> (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
>
> (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

Therefore the Market Value of the property was its purchase price of $16,670.00, Appellants introduced affidavit testimony to establish market value under the well settled principle of the Property Owners Rule, and also established through expert testimony the basis for their designation of said market value, which said expert testimony was stricken by the trial court's abuse of discretion. Accordingly, satisfactory evidence exists and was presented by Appellants sufficient to prevent summary judgment, and this Court should reverse the trial court's decision and remand this matter for a trial on the merits, as Appellants should be afforded the opportunity to have a trial on the merits of their cause of action, as there exists genuine issues of material fact required to be submitted to the trier of fact and not capable of being decided by summary judgment.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants respectfully request that this Court:

1) Reverse the judgment of the trial court that granted the Appellee's Motion For Summary Judg-

ment and For No-Evidence Summary Judgment and remand this case back for trial with instructions,

2) Reverse the trial court's order to exclude the deposition testimony of Dr. Edwin Vieira, Jr., and

3) Appellants be provided any additional relief in law or equity to which they may be justly entitled.

Respectfully submitted,

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Michelle L. Selgas

APPENDIX X

IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
AT TYLER

———

No. 12-10-00021-CV and No. 12-10-00050-CV

———

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Appellants,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT,
Appellee.

———

From the 173rd Judicial District Court,
Henderson County, Texas
Trial Court Cause Nos. 2008A-813, 2008A-814
The Honorable Dan Moore Presiding

———

APPELLEE'S BRIEF

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STATEMENT OF THE CASE

The statement of the case as phrased by the Appellants (Selgases) is, as is most of Selgases' brief, misleading. This case is not brought "to construe whether the price paid for a piece of real property in an arms-length transaction is the 'Market Value'." It is brought to attempt to establish that the United States, and presumably derivatively the Henderson County Appraisal District, should be using gold dollars as opposed to Federal Reserve Notes for all economic transactions and standards of value. The Selgases phrase the argument as a challenge to the appraised value of this property under Chapter 42 of the Texas Property Tax Code. The trial court granted summary judgment and no evidence summary judgment in favor of HCAD.

ISSUES PRESENTED

1. Did the trial court properly grant summary judgment in favor of HCAD?

2. Did the trial court properly grant no evidence summary judgment in favor of HCAD?

3. Is the proper standard for units of appraisal and other economic transactions in this country the Federal Reserve Note?

4. Did the trial court properly exclude the testimony of Dr. Edwin Vieira?

5. Should this court impose sanctions on the Selgases?

STATEMENT OF FACTS

The Selgases purchased a property from Bryant for a designated purchase price of 1660 ten-dollar gold coins. C.R. 64-84. HCAD appraised the property for

2008 and 2009 in units of Federal Reserve Notes. C.R. 31-32. The Selgases protested that value to the Henderson County Appraisal Review Board, and ultimately brought the suit that leads to this appeal for the sole purpose of establishing that HCAD should have valued his property in units of ten-dollar gold coins instead of Federal Reserve Notes. C.R. 39-40, 46-47.

All record references herein are to the record in appeal no. 12-10-00021-CV. Exhibit references are to HCAD's motion for summary judgment unless otherwise stated.

SUMMARY OF ARGUMENT

The Selgases have no quarrel with the appraisal on the property in question by HCAD other than the fact it was not phrased in units of gold dollar coins as opposed to units of Federal Reserve Notes. There was no evidence introduced to controvert the appraisal established on the subject property by HCAD. Federal Reserve Notes are the lawful money of the United States which HCAD was required to use to appraise the subject property.

The trial court properly excluded Dr. Vieira's testimony which was purely legal in nature.

This appeal is frivolous.

ARGUMENT

I. Summary Judgment was appropriate: gold is not the coin of the realm

A summary judgment movant has the burden of showing that no genuine issue of any material fact exists and that it is entitled to a judgment as a matter of law. TEX. R. CRV. P. 166a(c); *Sysco Food Services, Inc. v. Trapnell*, 890 S.W.2d 796, 800 (Tex.

1994). In deciding whether a material fact issue exists precluding summary judgment evidence available to the non-movant is taken as truth. On page 9 of the Selgases brief they argue that the movant must negate "each and every element" of the non-movant's cause of action. Actually, the movant need only negate any necessary element of the cause of action. *Sysco* at 800.

The Selgases have alleged that their property is over-valued for 2008 and 2009. See Exhibit D, C.R. 98-102, Plaintiffs' Petition, C.R. 3. Thus, they have attempted to invoke the jurisdiction of the court arising from TEX. PROP. TAX CODE ANN. §§ 42.24, 42.25 (Vernon 2009). For the two tracts, the Selgases allege that they paid $16,670.00 in gold ten dollar coins, or, more exactly, 1667 ten dollar gold coins. See Exhibit B, deposition of Thomas Selgas, p. 10-11, C.R. 36; Exhibit E, Plaintiffs' responses to Defendant's interrogatories, Interrogatory 2, C.R. 105. What the Selgases fail to mention is that each one of those gold dollars trades for Federal Reserve Note dollars at approximately 25 to I. Exhibit B, deposition of Thomas Selgas, p. 39, C.R. 43. At least according to the Selgases, each of those ten dollar gold coins ought to be worth around $250.00. HCAD does not admit that that states the totality of the value but asserts the value is not less than $250.00 per ten dollar gold coin.

The Selgases' brief so mischaracterizes the issue before the court as to be deceptive to the court. The whole of the Selgases' cause of action concerns the refusal of HCAD to value their property in units of gold dollar coins or other gold or silver coins of the United States. They refuse to recognize Federal Reserve Notes as being legitimate currency. Exhibit

B, deposition of Thomas Selgas, p. 25-26, 52-54, C.R. 39-40, 46-47. Furthermore, neither Selgas expressed any opinion or idea of what the property is worth as valued in Federal Reserve Notes. Exhibit B, pp. 45-47, C.R. 44-45:

> Q. . . . Do you have any reason to believe that any general member of the public who is not as convicted as you are regarding the efficacy of gold coinage would not be willing to pay as much in Federal Reserve Notes as what the Henderson county Appraisal district has appraised this properties?
>
> A. I don't understand the – I don't understand the question.
>
> Q. Let's assume that I don't know about gold coinage –
>
> A. Ignorance of the law is no excuse.
>
> Q. Okay, well, that's not where I'm going. Let's just assume for a minute that I have no clue that gold coinage is the legal money of the United States and that I only know about Federal Reserve Notes. Do you have any reason to believe that I would not be willing to give as many Federal Reserve Notes for the property that we're here to talk about today as what the Henderson County Appraisal District as it appraised at?
>
> MR. GREEN: Objection. Calls for speculation and totally irrelevant.
>
> If you know the answer, go ahead and tell him.
>
> A. I really don't know the answer.

> Q. (By Mr. Swinney) Okay. And let's broaden that question to – let's assume hypothetically, every citizen in Henderson County doesn't know about gold coinage and every one of them are potential buyers for the properties in question, the two tracts.
>
> A. Okay.
>
> Q. Do you have any reason to believe that we couldn't find some citizen in Henderson County willing to give the number of Federal Reserve Notes for those properties as what the Henderson County Appraisal District has it appraised at?
>
> Q. Okay. But I'm just asking you to assume for the purposes of this hypothetical that regardless how wrong all these people might be, all the potential purchasers in Henderson County are dealing in Federal Reserve Notes and the Henderson County Appraisal District is appraising in Federal Reserve Notes. Would the property in question sell – or could it sell for the number of Federal Reserve Notes that the Henderson County Appraisal District has it appraised on?
>
> A. I have no idea. . . .

See also Exhibit C, p. 8, C.R. 92. Furthermore, other than expressing their desire to have the property valued in ten dollar gold coins for a total value of $16,670.00, the Selgases articulated no position nor responded with any facts, nor designated any expert willing to testify what the value of the subject property is in United States dollars as denominated by Federal Reserve Notes. See Exhibits 13 – G, C.R. 33-129. In fact, the Selgases essentially stipulated away

their case by admitting that the gold dollars which they paid for the property, and which they admit the property is worth, exchange for Federal Reserve Notes at about 25 to one. That being the case, the Selgases admitted a value of their property in excess of that at which HCAD appraised the property. See the affidavit of Bill Jackson, Exhibit A, C.R. 31-32.

The Selgases' affidavits attached to their response to HCAD's motion for summary judgment and no-evidence motion for summary judgment, Exhibits I and J to their response, C.R. 300-305, do nothing more than reiterate that they purchased the property in question for $16,670 in "American Eagle Gold Coin." That fact is undisputed. For the reasons stated above and below, it simply raises no issue of material disputed fact.

Exhibit A, the affidavit of Bill Jackson, C.R. 31-32, establishes that the values placed on properties such as the subject by HCAD are in units of United States dollars, Federal Reserve Notes. Indeed, as Mr. Jackson established, all properties in Henderson County are appraised by HCAD in Federal Reserve Note U.S. dollar units.

Pursuant to 31 U.S.C. § 5103, the United States Congress has authorized the Federal Reserve to issue Federal Reserve Notes as legal tender for all debts public and private. An example of one of those Federal Reserve notes is found at Exhibit 4 to the deposition of Thomas Selgas, Exhibit B, C.R. 86. (Similar examples can probably be found in wallets, money clips, purses, or other means of carrying currency by any person examining this brief.)[1] The

[1] A lawyer with the Appellee's law firm once handled a property-tax case before the esteemed Harlan Martin, former judge

Congress of the United States is authorized to issue currency pursuant to the United States Constitution at Article I, § 8, cl. 5. The authority of Congress to issue currency and state its value has been affirmed by the United States Supreme Court in *Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247, 59 S.Ct. 847 (1939). Furthermore, in a case remarkably similar to this one, a Colorado Appellate Court held that Federal Reserve Notes, and not gold coins, are the proper unit for assessment and payment of taxes. *Walton v. Keim*, 694 P.2d 1287 (Colo. App. 1984).

While HCAD is flattered by the Selgases' assessment of HCAD's ubiquitous influence over the monetary policy of the United States, HCAD disclaims that influence. See the affidavit of Bill Jackson, Exhibit A, C.R. 31-32. If the Selgases have a quarrel with the United States authorizing the Federal Reserve to issue notes as legal tender for all debts public and private, they need to take that up with the United States government. HCAD is in poor position to influence that policy. Furthermore, any judgment in favor of the Selgases herein on that point would not likely have significant influence with the United States government. The Selgases also failed to note that the same section of the federal code that authorizes minting of the ten dollar gold coins to which they are so affected also directs that

---

of the 192nd District Court in Dallas County. The *pro se* property owner made the same argument that the Selgases make now, that property must be appraised for taxation in gold dollars. Judge Martin responded by removing a one-dollar Federal Reserve Note from his pocket, stapling it to a piece of paper and placing it in the court's file. "The court takes judicial notice that this is a dollar," he explained; "It will be in the file if you want to look at it." Judge Martin proceeded to issue a summary judgment in favor of the appraisal district.

they be sold, not for ten dollars in Federal Reserve Notes, but at their market value. 31 U.S.C. § 5112(i)(2)(A).

Furthermore, as is established in Exhibit A, affidavit of Bill Jackson, C.R. 31-32, were HCAD to value only the subject property in units of gold coins, as opposed to units of Federal Reserve Notes, or the court order such appraisal of this property in question, an inherent inequity of appraisal would result violate of TEx. CONST. Art. VIII, § 2. That section requires all properties to be appraised equally and uniformly. Valuing the Selgases' property in units that are worth at least 25 times what everyone else's property is valued at would hardly be equitable.

II. No-evidence Summary Judgment was appropriate: We left the gold standard in the 1930s.

HCAD also prevailed on a no-evidence summary judgment pursuant to TEx. R. Civ. P. 166a(i). The Selgases presented no evidence to support their cause of action. There being no genuine issue of material fact for trial, summary judgment in favor of HCAD was appropriate.

No evidence summary judgment is proper when the party with the burden of proof can provide no evidence of one or more essential elements of a claim on which it would have the burden of proof at trial. TEX. R. CIV. P. 166a(i). Under Rule 166a(i), a defendant's no-evidence motion for summary judgment shifts the burden to the plaintiffs to raise a triable issue on each element essential to the plaintiffs case against the defendant. *Esco Oil & Gas, Inc. v. Sooner Pipe & Supply Co*, 962 S.W.2d 193, 197, fn. 3 (Tex. App. - Houston [1st Dist.] 1998, pet. denied).

Once the defendant has established a right to a summary judgment, the burden shifts to the plaintiff. The plaintiff must respond to the motion for summary judgment and present to the trial court any issues that would preclude summary judgment. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex.1979); *Marchal v. Webb*, 859 S.W.2d 408, 412 (Tex. App. - Houston [1st Dist.] 1993, no petition). A plaintiff's conclusory statements of belief, however, are not enough to overcome summary judgment. *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984). A plaintiff must produce evidence that its allegations are true, as mere conclusory statements do not constitute effective summary judgment proof and need not be given the same presumptive force as allegations of fact. *Abbott Laboratories, Inc. v. Segura*, 907 S.W.2d 503, 508 (Tex. 1995).

In this case, as alleged above, the Selgases have alleged that HCAD over appraised their property. Being the plaintiffs in such a cause, they had the burden of proof of establishing that over appraisal. A sufficient time for the conduct of discovery passed and discovery was, in fact, conducted. Note exhibits B, C, E, F, and G, C.R. 33- 97, 103-129. In response to that discovery, the Selgases identified no evidence that their property was over appraised in United States dollars as represented by Federal Reserve Notes. Indeed, their only allegations concern their claims that HCAD should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. See exhibits E, interrogatories 2, 3, 10, and 13, C.R. 105-6, 109-111. Neither did the Selgases identify any document showing the subject property to be over appraised in Federal Reserve Notes. See Exhibit G, C.R. 118-129. Neither did the Selgases identify any expert with an opinion of value of the subject prop-

erty in Federal Reserve Notes. See exhibit F, C.R. 114-117. Indeed, the Selgases have no opinion of the value of the subject property in Federal Reserve Notes. Their only quarrel with HCAD is the claim that HCAD should be utilizing using gold dollars instead of Federal Reserve Notes. See exhibit B, pp. 43-44, 49-50, C.R. 44-46: p. 44, C.R. 44:

> Q. Well, let me rephrase my question. Do you have any reason to believe that the appraisal set forth by the Henderson County Appraisal District on the two properties in question is erroneous for – other than the fact that you paid 1667 gold coins for them and you believe, therefore, they should not be worth more than $16,670?
>
> A. Yes.
>
> Q. And what is that reason?
>
> A. The Constitution requires only gold and silver coin to be used in the states, and your – and the state has a duty, therefore, to ensure that its measurement is based on that gold and silver coin and its payment can be accepted – I mean, if they want to accept Federal Reserve Notes, that's up to them; but if they want to accept the gold or silver coin, then so be it. But their valuation has to be made based on the Constitution. They have a constitutional obligation – it's a contract between we, the people – and when they choose to use an uncon – I mean, Article I, Section 10, Clause 1 is very specific; no state shall make anything but gold and silver coin a tender in payment of debts. End of story.

p. 49-50, C.R. 45-46:

> Q. . . . Do you have any quarrel with the valuation placed on the properties in question by the Henderson County Appraisal District other than the fact it is not in units of coinage such as you consider –
>
> A. Well, yeah –
>
> Q. Just a second. – such as you consider legal, lawful money such as is depicted on Exhibit 3?
>
> A. Yes. The fact is that I purchased it; purchase price was $16,670.
>
> Q. Okay. So if I hear, you have two quarrels with the Henderson County Appraisal District's appraisal: one, it is not stated in units of what you consider lawful money; and, two, it is in excess of the $16,670 that you paid for it in – in gold coinage.
>
> A. In the lawful money of the United States, yes.
>
> Q. And do you have any other quarrel with the appraisal set forth on that property by the Henderson County Appraisal District?
>
> A. The other ones have been resolved.

See also, exhibit C, p. 6, C.R. 92. That issue is non-justifiable, at least with regards to HCAD.

III. The trial court correctly excluded the testimony of Dr. Vieira

> On objection of HCAD, the trial court correctly excluded the testimony of Dr. Edwin Vieira. Dr. Vieira offered only legal opinions in his testimony. Dr. Vieira testified *ad nauseam* in his deposition about what constitutes dollars, money,

> and the monetary policy of the United States. Dr. Vieira did not speak for the United States or the State of Texas but admitted to offering only legal opinions regarding the matter. See Deposition of Dr. Vieira, 78:21-79:12, C.R. 255. Pure legal opinions are not admissible under the rule for expert testimony. TEX. R. Ev. 702. *Great Western Drilling, Ltd. v Alexander*, 305 S.W.3d 688, 696 (Tex. App. – Eastland 2009, no petition); *Mega Child Care, Inc. v Tex. Dept. of Protective & Regulatory Services*, 29 S.W.3d 303, 309 (Tex. App. – Houston [14th Dist.] 2000, no petition).

Dr. Vieira is unqualified to offer any opinion on the ultimate issue herein. That ultimate issue is the value of the property at issue herein. Dr. Vieira admitted to having no appraisal training, having never seen the property in question, having never investigated the factors of its value, and having never been in Henderson County, Texas. He admitted that his only opinion was based upon a contract which he had viewed at the time of the deposition. See Deposition of Dr. Vieira at 82:20-84:19, C.R. 256. Furthermore, his opinion that the property was worth the contract price, must also be tempered by his testimony that the gold coins which were specified in the contract price are worth each in the "upper two hundreds" in Federal Reserve notes. See Deposition of Dr. Vieira at 81:9-14; 82:1-10, C.R. 255-6.

No *Daubert* motion was appropriate or necessary because Dr. Vierra claimed no expertise as a real estate appraiser and because he offered no opinion on the property's value in Federal Reserve Notes. The opinions he did offer are irrelevant. He opined on the Constitutionality of the monetary policy of the United

States. That is inconsequential to the value determination before the trial court.

IV. Request for sanctions

The Selgases' appeal is frivolous. HCAD requests this court to impose sanctions pursuant to TEX. R. APP. P. 45. When determining whether to impose sanctions, the court should consider from the viewpoint of the advocate whether there was reasonable grounds to believe the case could be reversed. *Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App. – Houston [1st Dist.] 2001, pet. denied). A court may award "just damages" under Rule 45 if, considering the record and documents filed with the court, the "appeal is objectively frivolous and injures the appellee." *Mid-Continent Cas. Co. v Safe Tire Disposal Corp.*, 2 S.W.3d 393, 396-7 (Tex. App. – San Antonio 1999, no. pet.).

As is detailed above, the basis of the Selgases' claims is that HCAD is not using gold coins as its standard in valuing property. They offered no actual contest to the appraised value of the property. In fact, as mentioned above, their own testimony indicated that they paid more for the property than the 2008 appraisal by HCAD, at least after converting gold dollars to Federal Reserve Note equivalencies. The Selgases ignore 31 U.S.C. § 5103 by which Congress establishes the Federal Reserve Note as currency of the United States. They do not challenge the constitutionality of that statute, nor do they even honestly confront the issue in their brief.

Furthermore, the Selgases' argument begs an obvious question: Why are they suing HCAD over this matter rather than the United States? It was the Congress of the United States that established the

Federal Reserve Note as lawful currency, not HCAD. If the Selgases did recover a judgment on the issue against I-ICAD, it would be to no ultimate avail. The United States government is unlikely to change its monetary policy based on a ruling against HCAD, and would certainly be under no obligation to do so. Rather than suing a party that could actually respond to or be responsible for the situation the Selgases decry, they have plucked from the realm of governmental units an utter stranger to the issue of gold coins versus Federal Reserve Notes to sue. They have obviously caused HCAD the expense of trial and appeal on an issue that is obviously not legitimate in this context and thus has no reasonable chance of reversal at this court.

Mr. Selgas, incidentally, is no stranger to frivolous litigation in the context of taxes. Note *Selgas v. C.I.R.*, 475 F.3d 697, 701 (5th Cir. 2007) *pet. den.* 552 U.S. 824 (2007):

> Selgas's arguments are utterly lacking in merit and, as an aside, his conduct in this litigation appears to have been inconsistent with that of a litigant endeavoring to aid in the truthful and efficient resolution of contested issues of fact and law. We have no sympathy for Selgas's behavior or his arguments in defense of what appears to have been a brazen attempt to avoid a few thousand dollars in legitimate tax liability.

HCAD does not accuse the Selgases or their attorneys of being rude or treacherous in their dealings. But, the Selgases' abuse of the litigation process to the detriment of HCAD, and hence the public, should not go un-redressed.

CONCLUSION AND PRAYER

The untenability of the Selgases' claims regarding the utilization of gold coins for valuation measures is patent. The fact that the Selgases produced no evidence below on any material fact legitimately at issue herein is equally patent. That being the case, HCAD asks this court to affirm the judgment of the trial court and award sanctions, as well as all costs of appeal, against the Selgases.

Respectfully submitted,

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APPENDIX Y

IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

No. 12-10-00021-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appellee.

Appeal From 173rd
Judicial District
Henderson County, Texas

APPELLANTS' MOTION FOR LEAVE
TO FILE SUPPLEMENTAL BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Appellants, Thomas D. Selgas and Michelle L. Selgas, pursuant to Rule 38.7 T.R.A.P., and request that the Court grant Appellants' Motion For Leave to File Supplemental Brief so that justice may be served and to assist the Court in its determination by listing the citations raised at oral argument.

I.

ARGUMENT IN SUPPORT OF FILING SUPPLEMENTAL BRIEF

The issue before the Court is whether, at the time of hearing on the Appellee's Motion for No Evidence Summary Judgment and Motion for Summary Judgment, a genuine issue of material fact was in dispute. There is no question that Texas law does not mandate Appellants marshall all of their evidence, but merely requires Appellants to meet this burden by producing evidence which is more than a mere scintilla.

Appellants more than met their burden through Appellants' brief and supporting evidence, namely the affidavit of Thomas D. Selgas, Buyer of the Property in question, and the affidavit of JoAnn Bryant, Seller of the property in question, both of whom are firsthand witnesses to the transaction, and through whose affidavit testimony established the market value of the property at $16,670, and their corresponding deposition testimony in support thereof.

This evidence contradicts Appellee's evidence presented in its motion for summary judgment, and constitutes evidence in the face of Appellee's no evidence motion for summary judgment, and clearly establishes a genuine issue of material fact.

Accordingly, Appellants have met their burden to show that a genuine issue of material fact existed as these affidavits constitute the production of more than a scintilla of evidence sufficient to defeat summary judgment. On this basis alone, the court should reverse the trial court's granting of Appellee's Motion for Summary Judgment, and No Evidence Motion for Summary Judgment.

However, in order to fully address the court's inquiries at Oral Argument, Appellants ask the court's permission to provide this supplemental brief in order to provide the court with relevant cases and statutes not cited in Appellants' original brief, along with a brief explanation of the applicable law as it pertains to this matter so that the court can have a complete and clear understanding of the basis upon which the dispute regarding the market value of this property arose.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants request the Court grant this motion for leave to file supplemental brief, and file Appellants' Supplemental Brief in the records of this cause.

Respectfully submitted,

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IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
AT TYLER

No. 12-10-00021-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appellee

APPELLANTS' SUPPLEMENTAL BRIEF

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IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
AT TYLER

No. 12-10-00021-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appellee

APPELLANTS' SUPPLEMENTAL BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Appellants, Thomas D. Selgas and Michelle L. Selgas, pursuant to Rule 38.7 T.R.A.P., and file this their Supplemental Brief so that justice may be served and to assist the Court in its determination by listing the citations raised at oral argument.

I.

SUPPLEMENTAL BRIEF

First, the court has insightfully raised the issue regarding the disparity of purchasing power between lawful money legal tender coins and legal tender notes, which was resolved in *Thompson v. Butler*, 95 U.S. 694, 696 (1877)), and authoritatively citied in *Crummey v. Klein Independent School District*

(Unpublished Opinion[1], U.S. Ct. App. for the 5th Circuit, No. 08-20133, 2 October 2008)), to wit:

Thompson v. Butler, 95 U.S. 694, 696

> A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them.

Both parties agree that Federal Reserve Notes are legal tender; however, Appellee ignores the fact the $10[2] gold coins tendered by the Appellants for payment of the property are equally legal tender pursuant to the following Statute:

Title 31 United States Code Sec. 5103

> United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) *are legal tender for all debts, public charges, taxes, and dues*. (emphasis added)

Unfortunately, the Secretary of the Treasury has failed in his duty to protect the equal purchasing power of each kind of currency (coin and Note) resulting in a disparity that shouldn't exist pursuant to:

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[1] *See* FED. R. APP. P. 32.1(a), and 5TH CIR. R. 47.5.4.

[2] $10 gold coins have declared "ten dollar[s]" by Congress, which is codified in Title 31, United States Code, Section 5112(a)(9)).

Title 31 United States Code Sec. 5119(a)

> [T]he Secretary shall redeem gold certificates owned by the Federal reserve banks at times and in amounts the Secretary decides are necessary *to maintain the equal purchasing power of each kind of United States currency*. (emphasis added)

The Appellee, Henderson County Appraisal District, has the same opportunity and responsibility as the Appellants to exercise its remedy to redeem Federal Reserve notes for Lawful Money on Demand pursuant to:

Title 12 United States Code Sec. 411

> *Federal reserve notes*, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They *shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank*. (emphasis added) (Note: if Federal Reserve Notes must be redeemed for "lawful money" they cannot themselves be lawful money)

The Constitution of the United States is quite clear as to the Supremacy of the United States in regulating the value of money and to that end, Congress is exclusively allowed to coin money pursuant to Art I Sec. 8 Cl. 5 of the Constitution and said money is

defined at Art I Sec. 9, Amendment 7, and by statute as the Dollar at:

Title 31 United States Code Sec. 5101

> *United States money is expressed in dollars*, dimes or tenths, cents or hundredths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar. (emphasis added)

Furthermore, the dollar is, and must be, a pure metallic standard of value as stated in *United States v. Marigold*, 50 U. S. 560, 566-568 (1850)) and most recently cited in *International Bancorp Llc v. Societe Des Bains De Mer et Du Cercle Des*, 329 F. 3d 359, May 19, 2003.

United States v. Marigold, 50 U. S. 560 (1850))

> The inquiry first propounded upon this record points obviously to the answer which concedes to Congress the power here drawn in question. *Congress are, by the Constitution, vested with the power* to regulate commerce with foreign nations; and however, at periods of high excitement, an application of the terms "to regulate commerce" such as would embrace absolute prohibition may have been questioned, yet, since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation. Such exclusion cannot be limited to particular classes or descriptions of commercial subjects; it may

embrace manufactures, *bullion, coin*, or any other thing. The power once conceded, it may operate on any and every subject of commerce to which the legislative discretion may apply it.

But the twentieth section of the Act of Congress of March 3, 1825, or rather those provisions of that section brought to the view of this Court by the second question certified, are not properly referable to commercial regulations merely as such, nor to considerations of ordinary commercial advantage. *They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government—namely the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value, and on account of the impossibility which was foreseen of otherwise preventing the inequalities and the confusion necessarily incident to different views of policy, which in different communities would be brought to bear on this subject. The power to coin money being thus given to Congress, founded on public necessity, it must carry with it the correlative power of protecting the creature and object of that power*. It cannot be imputed to wise and practical statesmen, nor is it consistent with common sense, that they should have vested this high and exclusive authority, and with a view to objects partaking of the magnitude of the authority itself, only to be rendered

> immediately vain and useless, as must have been the case had the government been left disabled and impotent as to the only means of securing the objects in contemplation.
>
> *If the medium which the government was authorized to create and establish could immediately be expelled and substituted by one it had neither created, estimated, nor authorized—one possessing no intrinsic value—then the power conferred by the Constitution would be useless—wholly fruitless of every end it was designed to accomplish. Whatever functions Congress are by the Constitution authorized to perform they are, when the public good requires it, bound to perform, and on this principle, having emitted a circulating medium, a standard of value indispensable for the purposes of the community, and for the action of the government itself, they are accordingly authorized and bound in duty to prevent its debasement and expulsion, and the destruction of the general confidence and convenience, by the influx and substitution of a spurious coin in lieu of the constitutional currency*. (emphasis added)

The holding in Marigold was directly derived from the fact that the term Dollar, as used in Art I Sec. 9, Amendment 7 of the United States Constitution had a well known, established and understood meaning prior to the ratification of the Constitution and that meaning was clearly revealed in the in the first coinage act of 1792 to wit:

Act of 2 April 1792, ch. 16, § 9, 1 Stat. 246, 248

> *"DOLLARS or UNITS-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one*

> *gains and four-sixteenth parts of a grain [371-4/16 grains of pure] silver"* and "the money of account of the United States shall be expressed in dollars or units, * * * and * * * all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation"[3] (emphasis added)

The reason the pure metallic silver coin dollar unit was employed as the foundational monetary unit of the United State under the Constitution was to prevent the debasement that occurred from the emission of bills of credit under the Articles of Confederation, which ultimately led to the destruction of the confederation and gave rise to the popular expression "Worthless as a Continental", as noted by the Court during Oral Argument. Thus, after the ratification of the Constitution, "Continentals" were no longer exchanged for or as money of the United States.

Benjamin Franklin, Signer of the Constitution of the United States, Printed in the December 16, 1789 edition of his paper the Pennsylvania Gazette:

> *Since the federal constitution has removed all danger of our having a paper tender*, our trade advanced fifty percent. Our moneyed people can trust their cash [throughout the country], and have brought their coin into circulation. (emphasis added)

Although this case has nothing to do with the constitutionality of Federal Reserve notes, nor is it an issue before this court, it is interesting to note that Benjamin Franklin's understanding as he published

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[3] Act of 2 April 1792, ch. 16, § 20, 1 Stat. at 250-51

in his December 16, 1789 issue of the Pennsylvania Gazette, is consistent with the removal of Congresses ability to emit bills of credit that was in the Articles of Confederation and from the first draft of the constitution as a result of a heated discussion which lead Roger Sherman, the Connecticut delegate to the Constitutional Convention, to state *"If what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures…which are condemned by the Laws of God and man …"*.

Thus, based upon the foregoing authorities, the 1,667 $10 American Eagle gold coins used by the Appellants to purchase the property in Henderson County, Texas for the total amount of *$16,670 legal tender and lawful money coin of the United States* represent the "market value" as set forth in Art. VIII, Sec. 20, Tex. Const.., and Sec. 1.04(7), Tax Code, which consequently is supported by, the terms specified in the real-estate contract, the testimony and affidavit of the Seller, JoAnn Bryant, and the testimony and affidavit of Thomas D. Selgas, all of which are evidence before the Court at the time of the ruling on the Appellee's motions.

These terms fulfilled the Sec. 23.01 requirement of proof of market value despite the lack of evidence as to the use of generally accepted appraisal techniques in determining market value. *Bailey County Appraisal District v. Smallwood*, 848 S.W.2d 822 (Tex. App.-Amarillo 1993, no writ)

Lastly the Appellant would like to highlight some items discussed at Oral Argument, which show the Appellee's total lack of understanding of the monetary law of the United States and Texas Summary Judgment powers, to wit:

(1) The Appellee relies on a 1984 Colorado case, *Walton v. Keim*, 694 P. 2d 1287 (Colo. App. 1984) to support its position, yet the citations listed below all supersede the ruling of *Walton v. Keim*:

(a) Title II, Section 202(e) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 115-116, now codified in Title 31, United States Code, Section 5112(e);

(b) Sections 2(a)(7)-(10) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, now codified in Title 31, United States Code, Sections 5112(a)(7)-(10)); and

(c) *Crummey v. Klein Independent School District* (Unpublished Opinion, U.S. Ct. App. for the 5th Circuit, No. 08-20133, 2 October 2008);

(2) The Appellee's affidavit submitted as part of its Motion for Summary Judgment conflicts with the Appellee's prior testimony. The Texas Supreme Court has held that when conflicting inferences can be drawn from a party's deposition testimony and an affidavit filed in response to a motion for summary judgment, a fact issue is presented that precludes summary judgment. *Randall v. Dallas Power & Light Co*., 752 S.W.2d 4, 5 (Tex. 1988)). Said testimony includes:

(a) Plaintiffs' (Appellants') Request for Admission No. 3, which asks: 'Admit that the unit of monetary value employed by the Defendant in making the Assessment is

the "dollar"' and for which the Appellee's answer was "… it is denied".

(b) Appellee's witness – Bill Jackson – deposition testimony (see pg. 31 of Exhibit E to Plaintiff's response to Defendant's motion for summary judgment) in which Mr. Jackson responds to the question: "Do you know what the legal definition of a dollar is?" with an answer of "No, I don't."

(c) Appellee's witness – Bill Jackson – deposition testimony (see pg. 37-38 of Exhibit E to Plaintiff's response to Defendant's motion for summary judgment) in which Mr. Jackson responds to the question: "And are there any entries on any of the documents that are created by the Appraisal Review—or created by the Chief Appraiser's office that are stated in the value of Federal Reserve Notes?" with an answer of "No, I don't personally have any knowledge of it."

(d) Affidavit of Bill Jackson, Appellee's witness (see Exhibit A of Defendant's Motion for Summary Judgment) wherein he states "the Henderson County appraises is appraised in Federal Reserve Note dollars."

II.

SUMMARY OF ARGUMENT

The issue before the Court is whether, at the time of hearing on the Appellee's Motion for No Evidence Summary Judgment and Motion for Summary Judgment, a genuine issue of material fact was in dispute. There is no question that Texas law does not

mandate Appellants marshall all of their evidence, but merely requires Appellants to meet this burden by producing evidence which is more than a mere scintilla. Appellants more than met their burden through Appellants' brief and supporting evidence, namely the affidavit of Thomas D. Selgas, Buyer of the Property in question, and the affidavit of JoAnn Bryant, Seller of the property in question, both of whom are firsthand witnesses to the transaction, and through whose affidavit testimony established the market value of the property at $16,670, and their corresponding deposition testimony in support thereof. This evidence contradicts Appellee's evidence presented in its motion for summary judgment, and constitutes evidence in the face of Appellee's no evidence motion for summary judgment, and clearly establishes a genuine issue of material fact.

Accordingly, Appellants have met their burden to show that a genuine issue of material fact existed as these affidavits constitute the production of more than a scintilla of evidence sufficient to defeat summary judgment. On this basis alone, the court should reverse the trial court's granting of Appellee's Motion for Summary Judgment, and No Evidence Motion for Summary Judgment.

Appellants in this supplemental brief have now provided the court with relevant cases and statutes not cited in Appellants' original brief, along with a brief explanation of the applicable law as it pertains to this matter on the underlying issue of monetary valuation.

However, Appellants maintain that the simple issue before the court remains whether there is a genuine issue of material fact supported by more than a mere scintilla of evidence precluding summary

judgment. It is Appellants contention that the answer to this simple question is yes. Appellants respectfully ask the court to agree, and remand this matter back to the trial court for trial on the merits.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants request the Court remand this case back to the District Court for Trial.

Respectfully submitted,

_____

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APPENDIX Z

IN THE COURT OF APPEALS
FOR THE TWELFTH DISTRICT OF TEXAS
AT TYLER

———

No. 12-10-00021-CV

———

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appellee

———

APPELLANTS' MOTION FOR REHEARING

———

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TYLER, TEXAS

No. 12-10-00021-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Appellants,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Appellee.

Appeal From 173rd
Judicial District
Henderson County, Texas

APPELLANTS' MOTION FOR REHEARING

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COME Appellants, Thomas D. Selgas and Michelle L. Selgas, pursuant to Rule 59.2 T.R.A.P., and file this their Motion for Rehearing so that justice may be served.

I.

POINTS OF ERROR FOR REHEARING

Point 1: The Court erred in upholding the District Court's granting of Appellee's No Evidence Motion for Summary Judgment as a genuine issue of material fact was shown by the evidence, on which reasonable

and fair minded jurors could differ in their conclusions in light of all the evidence presented.

Point 2: The Court erred in upholding the District Court's granting of Appellee's Traditional Motion for Summary Judgment as a genuine issue of material fact was shown by the evidence on one or more essential elements of Plaintiff's cause of action.

II.

ARGUMENT AND AUTHORITIES

Point 1: The Court erred in upholding the District Court's granting of Appellee's No Evidence Motion for Summary Judgment as the evidence, on which reasonable and fair-minded jurors could differ in their conclusions in light of all the evidence, showed a genuine issue of material fact presented.

The Appellate Court reviewed the Trial Court's decision de novo. *Tex Mun. Power Agency v. Pub. Util. Comm'n*, 253 S.W.3d 184, 192 (Tex. 2007). After adequate time for discovery, a party without the burden of proof at trial may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense. TEX. R. CIV. P. 166a(i). Once a no evidence motion has been filed in accordance with Rule 166a(i), the burden shifts to the nonmovant to bring forth evidence that raises a fact issue on the challenged element. *See Macias v. Fiesta Mart, Inc*, 988 S.W.2d 3 16,317 (Tex. App.-Houston [1st Dist.] 1999, no pet.). A no evidence summary judgment is essentially a pretrial directed verdict, which may be supported by evidence. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009).

When reviewing a no evidence summary judgment, the Court "review[s] the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Id*. (quoting *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006)). An appellate court reviewing a no evidence summary judgment must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754,755 (Tex. 2007) (per curiam).

The Court further erred by ignoring the long standing precedence in *Thompson v. Butler*, 95 U.S. 694, 696 (1877))[1], and authoritatively citied in *Crummy v. Klein Independent School District* (Unpublished Opinion[2], U.S. Ct. App. for the 5th Circuit, No. 08-20133, 2 October 2008)), to wit:

Thompson v. Butler, 95 U.S. 694, 696

> A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them.

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[1] See Clerk's Record Vol 1, pgs: 00006, 00008, 00076 , 00164, and Vol 2, pgs: 00172, 00174

[2] See FED. R. APP. P. 32.1(a), and 5TH CIR. R. 47.5.4.

The Court has chosen to ignore the fact that ten dollar ($10)[3] gold coins tendered by the Appellants for payment of the property are equally legal tender and cash pursuant to the following Statutes:

Title 31 United States Code Sec. 5103

> *United States coins and currency* (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) *are legal tender for all debts, public charges, taxes, and dues*. (emphasis added)

Title 31 United States Code Sec. 5112

> *(h) The coins issued under this title shall be legal tender as provided in section 5103 of this title.* (emphasis added)

Additionally the Court has chosen to ignore the constitutional Monetary Powers of the General Government and the States. The Constitution of the United States is quite clear as to the Supremacy of the United States in regulating the value of money and to that end, Congress is exclusively allowed to coin money pursuant to Art I Sec. 8 Cl. 5 of the Constitution and said money is defined at Art I Sec. 9, Amendment 7, and by statute as the Dollar at:

Title 31 United States Code Sec. 5101

> *United States money is expressed in dollars*, dimes or tenths, cents or hundredths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar. (emphasis added)

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[3] $10 gold coins have declared "ten dollar[s]" by Congress, which is codified in Title 31, United States Code, Section 5112(a)(9)).

Furthermore, the dollar is, and must be, a pure metallic standard of value as stated in *United States v. Marigold*, 50 U. S. 560, 566-568 (1850)) and most recently cited in *International Bancorp Llc v. Societe Des Bains De Mer et Du Cercle Des*, 329 F. 3d 359, May 19, 2003.

United States v. Marigold, 50 U. S. 560 (1850))

> The inquiry first propounded upon this record points obviously to the answer which concedes to Congress the power here drawn in question. *Congress are, by the Constitution, vested with the power* to regulate commerce with foreign nations; and however, at periods of high excitement, an application of the terms "to regulate commerce" such as would embrace absolute prohibition may have been questioned, yet, since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation. Such exclusion cannot be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, *bullion*, *coin*, or any other thing. The power once conceded, it may operate on any and every subject of commerce to which the legislative discretion may apply it.
>
> But the twentieth section of the Act of Congress of March 3, 1825, or rather those provisions of that section brought to the view of this Court by the second question certified, are not properly referable to commercial regulations merely as

such, nor to considerations of ordinary commercial advantage. *They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government—namely the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value, and on account of the impossibility which was foreseen of otherwise preventing the inequalities and the confusion necessarily incident to different views of policy, which in different communities would be brought to bear on this subject. The power to coin money being thus given to Congress, founded on public necessity, it must carry with it the correlative power of protecting the creature and object of that power*. It cannot be imputed to wise and practical statesmen, nor is it consistent with common sense, that they should have vested this high and exclusive authority, and with a view to objects partaking of the magnitude of the authority itself, only to be rendered immediately vain and useless, as must have been the case had the government been left disabled and impotent as to the only means of securing the objects in contemplation.

If the medium which the government was authorized to create and establish could immediately be expelled and substituted by one it had neither created, estimated, nor authorized—one possessing no intrinsic value—then the power

> *conferred by the Constitution would be useless—wholly fruitless of every end it was designed to accomplish. Whatever functions Congress are by the Constitution authorized to perform they are, when the public good requires it, bound to perform, and on this principle, having emitted a circulating medium, a standard of value indispensable for the purposes of the community, and for the action of the government itself, they are accordingly authorized and bound in duty to prevent its debasement and expulsion, and the destruction of the general confidence and convenience, by the influx and substitution of a spurious coin in lieu of the constitutional currency*. (emphasis added)

The holding in Marigold was directly derived from the fact that the term Dollar, as used in Art I Sec. 9, Amendment 7 of the United States Constitution had a well known, established and understood meaning prior to the ratification of the Constitution and that meaning was clearly revealed in the in the first coinage act of 1792 to wit:

Act of 2 April 1792, ch. 16, § 9, 1 Stat. 246, 248

> *"DOLLARS or UNITS—each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one gains and four-sixteenth parts of a grain [371-4/16 grains of pure] silver"* and "the money of account of the United States shall be expressed in dollars or units, * * * and * * * all accounts in the public offices and all proceedings in the courts of the United States shall be kept

> and had in conformity to this regulation"[4] (emphasis added)

The reason the pure metallic silver coin dollar unit was employed as the foundational monetary unit of the United State under the Constitution was to prevent the debasement that occurred from the emission of bills of credit under the Articles of Confederation, which ultimately led to the destruction of the confederation and gave rise to the popular expression "Worthless as a Continental". Thus, after the ratification of the Constitution, "Continentals" were no longer exchanged for or as money of the United States.

> *Benjamin Franklin, Signer of the Constitution of the United States, Printed in the December 16, 1789 edition of his paper the Pennsylvania Gazette*:
>
> > *Since the federal constitution has removed all danger of our having a paper tender*, our trade advanced fifty percent. Our moneyed people can trust their cash [throughout the country], and have brought their coin into circulation. (emphasis added)

Although this case has nothing to do with the constitutionality of Federal Reserve notes, nor is it an issue before this court, it is interesting to note that Benjamin Franklin's understanding as he published in his December 16, 1789 issue of the Pennsylvania Gazette, is consistent with the removal of Congresses ability to emit bills of credit that was in the Articles of Confederation and from the first draft of the constitution as a result of a heated discussion which

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[4] Act of 2 April 1792, ch. 16, § 20, 1 Stat. at 250-51

lead Roger Sherman, the Connecticut delegate to the Constitutional Convention, to state *"If what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures…which are condemned by the Laws of God and man …"*.

Further the Constitution of the United States is also quite clear that the States, including Texas, shall not make anything but gold and silver coin a tender in payment of debts, to wit:

> Art I Sec. 10 Cl. 1 of the Constitution of the United States
>
> > No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; *make any Thing but gold and silver Coin a Tender in Payment of Debts*; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. (emphasis added)

Additionally, the Texas Constitution limits the power to assess ad valorem taxes on property at no more than its "fair cash market value".

The TEX. CONST. art. VIII, §20 states:

> No property of any kind in this State *shall ever be assessed for* ad valorem taxes at a *greater value than its fair cash market value* … (emphasis added)

When both Art I Sec. 10 of the United States Constitution and Texas Constitution article VIII, §20 are viewed together, it is clear that the term "fair cash market value" stated in the Texas Constitution is subject to the limitations of Art I Sec. 10 of the United States Constitution. Meaning that "fair cash

market value" as term is used in the Texas Constitution can only mean either Texas declared gold and silver coin or congressionally authorized gold and silver coin tendered in payment of debts. Which is exactly what the Appellants tendered.

As recognized in by the U.S. Supreme Court in *Mccullough v. Maryland*, 17 U.S. 316 (1819), "the power to tax is the power to destroy." In that case, a state was precluded from imposing taxation upon the Bank of the United States chartered by Congress. The court reasoned that although States possess the power of taxation concurrently with Congress, that power must yield when in conflict with the supreme law of the land.

The same reasoning dictates that the power expressly reserved to the States in Art. I §10 cl. 1 of the Constitution, that nothing but gold and silver coin shall be a tender within a State, should likewise be accorded the status of being the supreme law of the land. As a government of defined and limited powers, the authority of Congress to tax and to regulate simply cannot extend into a field expressly reserved to the States.

Although, Congress has somewhat broad monetary powers under Art. I §8 cl. 5 of the Constitution, the States' reserved Art. I §10 cl. 1 monetary authority necessarily operates as an expressed limitation of Congressional authority. To conclude otherwise would render the Art. I §10 cl. 1 reserved power meaningless and void, since under the rationale adopted in McCullough, any power to tax or regulate left to Congress would be tantamount to a power to destroy the monetary character of tender required to be used for payments of debts in the 50 States.

Therefore, based upon the foregoing authorities, the 1,667 $10 American Eagle gold coins used by the Appellants to purchase the property in Henderson County, Texas for the total amount of *$16,670 legal tender and lawful money coin of the United States* represent the "fair cash market value" as set forth in Art. VIII, Sec. 20, Tex. Const.., and Sec. 1.04(7), Tax Code, which consequently is supported by, the terms specified in the real-estate contract, the testimony and affidavit of the Seller, JoAnn Bryant, and the testimony and affidavit of Thomas D. Selgas, all of which are evidence before the Court at the time of the ruling on the Appellee's motions.

These terms fulfilled the Sec. 23.01 requirement of proof of market value despite the lack of evidence as to the use of generally accepted appraisal techniques in determining market value. *Bailey County Appraisal District v. Smallwood*, 848 S.W.2d 822 (Tex. App.-Amarillo 1993, no writ).

In the instant case, Appellants evidence introduced in their response to Appellee's no evidence motion for summary judgment rises to more than a mere scintilla, such that reasonable jurors could differ in their conclusions in light of all the evidence presented. Specifically, Appellants evidence regarding market value includes the testimony of Thomas Selgas that the market value of the property is $16,670, the testimony of JoAnn Bryant that the market value of the property is $16,670, the testimony of Bill Jackson at page 30 line 24 through page 31 line 2 of his August 21, 2009 deposition wherein he states that the dollar is the unit of measure of value in Henderson County and not the Federal Reserve Note, which conflicts with his affidavit that Appellee values all properties in "Federal Reserve Notes."

Point 2: The Court erred in upholding the District Court's granting of Appellee's Traditional Motion for Summary Judgment as a genuine issue of material fact was shown by the evidence on one or more essential elements of Plaintiff's cause of action.

The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact concerning one or more essential elements of the plaintiffs claims and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co*., 690 S.W.2d 546, 548 (Tex. 1985). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. *See City of Houston v. Clear Creek Basin Auth*., 589 S.W.2d 671, 678-79 (Tex. 1979). Review of a summary judgment under either a traditional standard or no evidence standard requires that the evidence be viewed in the light most favorable to the nonmovant disregarding all contrary evidence and inferences. *Walmart Stores, Inc. v. Rodriquez*, 92 S.W.3d 502, 506 (Tex. 2002); *Nixon*, 690 S.W.2d at 548-49.

Appellants have presented sufficient evidence to support one or more essential elements of Plaintiff's cause of action in this matter, which renders summary judgment improper, and leaves material issues of fact to be decided by the jurors, which is their province. Specifically, the element of showing market value is supported by the following evidence, which includes the testimony of Thomas Selgas that the market value of the property is $16,670, the testimony of JoAnn Bryant that the market value of the property is $16,670, the testimony of Bill Jackson

at page 30 line 24 through page 31 line 2 of his August 21, 2009 deposition wherein he states that the dollar is the unit of measure of value in Henderson County and not the Federal Reserve Note, which conflicts with his affidavit that Appellee values all properties in "Federal Reserve Notes."

Appellant reasserts the argument and authorities and evidence included under Point 1 regarding the market value of the property as if fully set forth at length herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants request the Court grant this motion for REHEARING.

Respectfully submitted,

_____

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APPENDIX AA

THE SUPREME COURT OF TEXAS

No. 12-10-00021-CV and
12-10-00050-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Petitioners

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Respondent

PETITION FOR REVIEW

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ORAL ARGUMENT REQUESTED

LIST OF PARTIES & THEIR COUNSEL

The undersigned certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or need for recusal.

Petitioners	Counsel
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STATEMENT OF THE CASE

1. Nature of the Case: Petitioners appeal the court of appeals' decision to affirm the trial court's grant of summary judgment. In the underlying case, Petitioners challenged whether Respondent's appraisals of their properties were excessive. Petitioners now challenge whether the lower courts' rulings violate the Supremacy Clause of the United States Constitution and whether the cash purchase price paid for their properties was evidence of fair cash market value that raised a genuine issue of material fact, making the grant of either a no evidence or traditional summary judgment inappropriate.

2. Trial Judge: The Honorable Dan Moore

3. Trial Court: The 173rd Judicial District Court, Henderson County, Texas.

4. Disposition by Trial Court: Orders Granting Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment (1/15/10), attached to Appendix as Exhibit "A."

5. Parties to Appeal:

   Appellants – Thomas D. Selgas and Michelle L. Selgas

   Appellee – Henderson County Appraisal District

6. Appellate District: Court of Appeals for the 12th District of Texas, Tyler.

7. Appellate Panel: Chief Justice James T. Worthen, Justice Sam Griffith, & Justice Brian Hoyle comprised the panel. Justice Hoyle wrote the opinion.

8. Citation to Appellate Decision: *Thomas D. Selgas and Michelle L. Selgas v. Henderson County Appraisal District*, 2011 WL 5593138 (Tex. App.–Tyler 2011) (Opinion delivered November 16, 2011). Attached as Appendix Exhibit "B."

9. Disposition by Appellate Court: The Twelfth Court of Appeals *affirmed* the trial court's grant of summary judgment.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this cause. Petitioners brought these actions, challenging Respondent's appraised valuation of their property, in the 173rd Judicial District Court, Henderson County, Texas pursuant to chapter 42 of TEX. PROP. TAX CODE (Vernon 2009). Relevant excerpts attached as Appendix Exhibit "C." Under §42.28 of the Code, this Court has jurisdiction to review the decisions of the trial and appellate courts. (App. Ex. 26-27).

ISSUES PRESENTED

I. Whether the Court of Appeals Misconstrued the Applicable Law?

II. Whether Purchase Price Was Evidence of Fair Cash Market Value Making Summary Judgment Improper?

STATEMENT OF THE FACTS

A. Petitioners Paid $16,670 for the Subject Properties.

On February 27, 2008, JoAnn and Richard Bryant ("Sellers") conveyed to Thomas D. Selgas and Michelle L. Selgas ("Buyers") 36.428 acres (the "subject properties"), which was comprised of AB 538, RV

Morrel Sur, TR 3F 23.059 (Parcel A) and AB 538, RV Morell Sur, TR 3F 23.369 minus a defined 10 acre tract (Parcel B). *General Warranty Deed*, attached to Appendix as Exhibit "D." As payment for the subject properties, Buyers gave Sellers one thousand six hundred and sixty-seven (1,667) American Eagle ten dollar gold coins. *Id*. at p. 148 (App. Ex. 29). Accordingly, the purchase price for the subject properties was sixteen thousand six hundred and seventy dollars ($16,670).

B. The Sale of the Subject Properties Was Arms Length Transaction.

Petitioners purchased the subject properties on or about February 27, 2008. *Affidavit of Thomas D. Selgas.* at Ex. I, p. 1 (Clerk's Record (C.R.), Cause 2008A-813, Vol. 2, p. 301). They purchased the subject properties based upon prevailing market conditions, with full awareness of its potential uses and enforceable restrictions, and neither party was in position to capitalize on the exigencies of the other. *Id*. at p. 301-302. They paid $16,670 cash for the subject properties. *Id*. at p. 302. In her affidavit, Seller JoAnn Bryant testified similarly. *Id*. at p. 304-305. Accordingly, this transaction was completely devoid of any duress, compulsion, or incomplete knowledge on the part of either party, and represented a true arms-length transaction.

C. In 2008 and 2009, Petitioners Protested Excessive Appraisal Values Assigned to the Subject Properties to No Avail.

1. In 2008, HCAD appraised the values of Parcel A and Parcel B at $251,630 and $40,240, respectively.

On or about May 16, 2008, Petitioner received notification from Respondent Henderson County Appraisal District ("HCAD") that Parcel A of the subject properties had been appraised for 251,630. (C.R., Cause 2008A-813, Vol. 1, p. 6, 11, & 13). The notice also informed him that Parcel B had been appraised for 40,240. (C.R., Cause 2008A-814, Vol. 1, p. 6, 11, & 13). Upon receipt of this notice, Petitioner Thomas D. Selgas filed a Notice of Protest. (*Id*. at p. 11; & C.R., Cause 2008A-813, Vol. 1, p. 11). On June 9, 2008, the Appraisal Review Board of Henderson County, Texas heard Petitioners' protest. (*Id*. at p. 14; & C.R., Cause 2008A-813, Vol. 1, p. 14). On June 16, 2008, the Chairman of the Appraisal Review Board issued an order, overruling Petitioners' protest and concluding that no changes would be made to the appraised market values of $251,630 and $40,240 for the subject properties. (*Id*.).

2. In 2009, HCAD appraised the values of Parcel A and Parcel B at $354,040 and $53,480, respectively.

On or about May 1, 2009, Petitioner received notification from Respondent Henderson County Appraisal District ("HCAD") that Parcel A of the subject properties had been appraised at 354,040 and Parcel B had been appraised at 53,480. (C.R., Cause 2008A-813, Vol. 2, p. 182; C.R., Cause 2008A-814, Vol. 1, p. 19). Upon receipt of this notice, Petitioner Thomas D. Selgas filed a Notice of Protest. (*Id*. at p. 181-190; & *Id*.). On July 10, 2009, the Appraisal Review Board of Henderson County, Texas heard Petitioners' protest. (*C.R*., Cause 2008A-813, Vol. 1, p. 19; & *Id*.). On July 17, 2009, the Chairman of the Appraisal Review Board issued an order overruling Petitioners' protest and concluding that no changes would be made to the

appraised market value of $354,040 or $53,480. (*Id.*). Even though Petitioners had only paid $16,670 for the subject properties in February 2008, HCAD appraised their market values as $291,870 in 2008 and as $407,520 in 2009.

D. Petitioners Filed Timely Appeals of HCAD's Final Order.

Pursuant to 42.21 of the Texas Property Tax Code, a party has sixty (60) days to file a petition with the district court, requesting a review of an appraisal board's final order. (App. Ex. 19-21). After receiving the Appraisal Board's 2008 Final Order, dated June 16, 2008, Petitioners filed Original Petitions with the 173rd Judicial District Court in Henderson County, Texas, challenging the appraised values of the subject properties as excessive. They timely filed these petitions on August 1, 2008, which assigned Cause No. 2008a-813 (Parcel A) and Cause No. 2008-814 (Parcel B). (C.R., Cause 2008A-813, Vol. 1, p.1; & Cause 2008A-814, Vol. 1, p. 1).

Similarly, after hearing the Selgas' protests over the 2009 appraisal values of the subject properties, the Appraisal Board issued final order, overruling Petitioners' protest, on July 17, 2009. Less than sixty (60) days later, on August 31, 2009, Petitioners filed their First Amended Original Petitions in Cause Numbers 2008a-813 and 2008a-814, including challenges of HCAD's 2009 appraised values of the subject properties. (C.R., Cause 2008A-813, Vol. 1, p.17- 21; and Cause 2008A-814, Vol. 1, p. 17-21).

E. District Court Granted HCAD's Motions for Summary Judgment.

On September 23, 2009, HCAD filed its Motion for Summary Judgment and for No-Evidence Summary

Judgment. (C.R., Cause No. 2008a-813, Vol. 1, 22-129; C.R., Cause No. 2008a-814, Vol. 1, 22-131). On December 7, 2009, the Selgases filed their Responses to the HCAD's Motion for Summary Judgment and for No-Evidence Summary Judgment. (C.R., Cause No. 2008a-813, Vol. 1, p. 130-169 & Vol. 2, p. 170-315; C.R., Cause No. 2008a-814, Vol. 1, p. 132-171 & Vol. 2, p. 172-317) On December 14, 2009, the court heard oral argument on HCAD's Motions. The Court then granted the HCAD's Motion for Summary Judgment and for No-Evidence Summary Judgment as it related to Parcel A on January 4, 2010, (C.R., Cause No. 2008a-813, Vol. 2, p. 321-322), and as it related to Parcel B, on January 25, 2010. (C.R., Cause No. 2008a-814, Vol. 2, p. 323-324).

F. Court of Appeals Affirmed Summary Judgment Rulings.

The Selgases then filed a timely notice of appeal in both cases. (Cause No. 2008a-813, Vol. 2, p. 325-326; C.R., Cause No. 2008a-814, Vol. 2, p. 327-328). On March 19, 2010, Petitioners filed a motion to consolidate the two related cases for appeal (Cause No. 2008a-813 [Parcel A] & Cause No. 2008a-814 [Parcel B]),; and the court of appeals granted their motion on March 30, 3010. *See Docket Sheets for Cause No. 12-10-00021-cv & 12-10-00050-cv*, attached to Appendix as Exhibits "E" & "F," respectively (App. Ex. 36-38 & 44-45). After the parties had briefed the issues on appeal, the Twelfth District Court of Appeals heard oral argument on or about January 18, 2011. *Id*. (App. Ex. 36, 44). Based upon issues raised during oral argument, the Selgases filed a motion to file a supplemental brief as well as a supplemental brief that addressed the issues of federal law raised during the hearing, but the court overruled their motions.

See Exs. "E" & "F" (App. Ex. 35, 39-41, 43, 7 46-48). Approximately ten months later, the court of appeals issued its opinion, affirming the grant of summary judgment in both cases. *Id*. (App. Ex. 35 & 43); *see also Court of Appeals Opinion* (App. Ex. 6-17). While Petitioners filed a motion for rehearing, the appellate court denied same on January 4, 2012. *See Id*. (App. Ex. 35 & 43). Because the issuance of summary judgment in these cases contravenes legal precedent, Petitioners now file this Petition, seeking reversal of the orders of the courts below and remand of the cases for trial in accordance with this Court's instructions.

SUMMARY OF THE ARGUMENT

Petitioners challenged HCAD's 2008 and 2009 appraised values of the subject properties, which were $291,870 and $407,520, respectively, as excessive. Despite Petitioners' evidence they paid $16,670 case for the subject properties, raising a material fact issue regarding the propriety of appraisals, the district court granted summary judgment. On appeal, the court ignored long-standing federal law, mandating that a gold dollar coin is worth no more than a paper dollar bearing the same face value. Affirming summary judgment, the appellate court impermissibly held that the ten dollar gold coins used to pay the $16,670 cash purchase price, when valued in terms of paper 'dollars' or FRN, were actually worth more money than HCAD's appraised values for the subject properties. Accordingly, Petitioner respectfully asks this Court to enforce the law, holding a coin dollar is equal to a paper dollar bearing same face value, and reverse and remand this case for trial consistent with its ruling and the applicable law.

ARGUMENT & AUTHORITIES

I. DID THE COURT MISCONSTRUE THE APPLICABLE LAW?

A. Texas Property Shall Be Taxed On Its Fair Cash Market Value.

"No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its *fair cash market value*." TEX. CONST. Art. VIII, § 20 (emphasis added), attached to Appendix as Exhibit "G." An appraised value, therefore, should represent the 'fair cash market value' of the property. A property owner may protest an appraised value, and can also appeal the appraisal board's ruling of a protested appraisal value. *See* TEX. PROP. TAX CODE ANN. §§ 42.01 (WEST 2008) (APP. EX. 19). If the fact finder determines the appraised value exceeds the *legal* appraised value (i.e., its 'fair cash market value'), the court must adjust it accordingly. *Id*. at §§ 42.23-42.25 (APP. EX. 23-25).

B. The Term 'Cash' Is Not Limited to Federal Reserve Notes.

The heart of this dispute centers on the meaning of 'cash'. In setting forth the applicable law, the appellate court correctly recites the test for establishing a property's market value, but then glosses over the import of the word 'cash' as used in the constitutional phrase 'fair cash market value.' (App. Ex. 10). By affirming summary judgment, the court implicitly agrees with the unfounded assertion of Respondent Henderson County Appraisal District ("HCAD") that appraisal values can only be assessed in terms of Federal Reserve Notes ("FRN") or paper 'dollars', and therefore, some type of conversion of coin to paper dollars is required to evaluate the cash purchase

price evidence. *See Selgas v. HCAD*, 2011 WL 5593138 (Tex. App.–Tyler 2011) (App. Ex. 7-17). Such a conclusion not only misconstrues federal law, but it also creates an artificial caveat that simply does not exist and cannot be supported in Texas law.

1. Texas' definition of 'cash' includes coin (specie) and paper dollars.

This Court has held the "word 'cash' in its strict sense refers to coins *and* paper money." *Stewart v. Selder*, 473 S.W.2d 3, 8 (Tex. 1971)(emphasis added). Subsequently, this Court elaborated further defining 'cash' as "ready *money* (as *coin*, *specie*, paper money, an instrument, token, or anything else *being used as a medium of exchange*)." *See Hardy v. State*, 102 S.W3d 123, 131 (Tex. 2003)(citing Webster's Third New Int'l Dictionary 346 (1961) (emphasis added). Additionally, citing this Court's definition of cash, Texas Attorney General Greg Abbott stated that Federal Reserve Notes (FRN) are only one form of '*cash*.' TEX. ATT'Y GEN. OP. NO. GA-0469, AT *2 (OCT. 18, 2006), attached to Appendix as Exhibit "H" (APP. EX. 53). As defined then, the fair cash market value of a property may be expressible in terms of either coin (specie) or paper (FRN) currency. Thus, Texas does not limit the term 'cash' to FRN only.

2. Coins have the same legal value as FRN of the same denomination.

As explained by the United States Supreme Court, a paper dollar represent an obligation of the United States to pay the holder with a gold or silver coin(s) (i.e., specie) of the same face value:

> "The same power is used, though it may be differently derived, which declares and impresses treasury notes with the value they purport to

> have upon their face. These notes are not deprived of intrinsic value, for they were issued upon the credit of the government, and have the good faith responsibility of all the people pledged for their redemption. The conviction of that being the case, though not perhaps one quite as tangible to the senses, should be an assurance of *actual value for them* [e.g., FRN], *equal to that created by the intrinsic value of gold and silver*. It was not a mere arbitrary value, therefore, which Congress provided these notes with, but one of an actual value, which at no remote day will extinguish the obligations they create with gold and silver coin."

Bronson v. Rodes, 74 U.S. (7 Wall.) 229, 239 (1868) (emphasis added). The Court subsequently reaffirmed this legal principle: "The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, *as a medium of exchange, the law knows no difference between them*." *Thompson v. Butler*, 95 U.S. 694, 696 (1877) (emphasis added). Thus, longstanding federal law mandates that when tendering payment for a debt, the amount paid shall be determined by the face value of the money received, and coin dollars are to be valued according to their face value, and therefore, equal to the value of paper dollars (FRN) of the same denomination.

3. Texas has successfully tested this legal principle in federal court.

Another Texas governmental agency successfully tested this long-standing legal principal that a gold coin has the same legal value as a paper dollar (FRN) of the same denomination in federal court. Texas

resident Brent E. Crummey sued the Klein Independent School District ("KISD") in federal court because its tax office refused to accept his proffered fifty dollar United States American Eagle gold coins for any more than their face value ($50) as payment for the taxes he owed. The district court dismissed his claims.

On appeal, the Fifth Circuit stated:

> "We reject Crummey's suggestion that the 'dollar' has multiple meanings or values within the United States system of currency. [cite omitted]. As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency.
>
> *The legal monetary value of Crummey's fifty dollar American Gold Eagle coin is equivalent to that of a fifty dollar Federal Reserve Note*. Crummey's argument to the contrary, on which the bulk of his appeal rests, fails."

Crummey v. Klein Indep. School Dist., 2008 WL 4441957, *2 (5th Cir. (Tex) 2008) (emphasis added). Attached to Appendix as Exhibit "I." The Fifth Circuit's holding relied upon the *Thompson* decision, which held a coin dollar was worth no more than a paper dollar. *Id.* at *1 (citing *Thompson*, 95 U.S. at 696) (App. Ex 58-59).

4. Because HCAD makes the same flawed argument, it too must fail.

Crummey argued that gold coins inherently have a different intrinsic value than their face value as evidenced by the fact that the U.S. Mint sells such coins into circulation at an amount that is often different than the face value of the coin. *Crummey*, 2008 WL at *1 (App. Ex. 58). Finding his argument improperly

conflated the market value of such coins with their face value as legal tender, the Fifth Circuit rejected it. *Id*. (App. Ex. 58-59). Instead, agreeing with Texas' KISD position, the Fifth Circuit that, as legal tender, coins are to be valued by their face value and not the value of their metal content. *Id*.

In the face of black letter law and contravention of Texas' KISD's position, HCAD seeks to value coins according to the value of their precious metal content and not their face value. *Appellee's Brief, Cause Nos. 12:10-00021-CV/12:10-00050-CV, In the Court of Appeals for the 12th District of Texas, Tyler*, at p. 7. Even though the Fifth Circuit reject this argument in *Crummey*, the appellate court nevertheless used it to justify affirming the lower court's ruling. *Selgas*, 2011 WL at *9-10 (App. Ex. 15-17). For the same reasons this argument failed in *Crummey*, it must fail here as well.

5. The lower courts' rulings ignore the sovereignty of federal law.

As set forth above, coins (specie) have the same legal value as a paper treasury notes (i.e., FRN) of the same denomination. Whether one tenders payment in paper notes or coins, the value paid shall be determined by the face value of the money exchanged. *Thomas*, 95 U.S. at 696. Any judicial ruling, which values coin and paper money differently, ignores this longstanding legal principle in violation of the supremacy clause of the United States Constitution. *See Bronson*, 74 U.S. at 240 ("*Where those laws are supreme, that value must be observed and secured by the courts of justice*, … ") (emphasis added). Because the lower courts' rulings value coins and FRN differently, they violate the supremacy clause, and therefore, must be reversed.

C. Law Does Not Value Coins Pursuant to their Precious Metal Content.

1. Court of Appeals' reliance on Bronson decision is misplaced.

In its ruling, the appellate court relied upon dicta in the *Bronson* decision. *Selgas*, 2011 WL at *9-10 (App. Ex. 15-16). Referring to the *Bronson* decision, the court states to that a gold coin is intrinsically worth more than the nominal value of a FRN paper dollar bearing the same denomination. *Id*. Based upon this finding, the court erroneously concluded that HCAD could ignore the face value of Petitioners' purchase price paid (i.e., $16,670) when appraising Petitioners' property, and instead should convert the purchase price based upon the value of the amount of gold in the 1,667 coins as expressed in paper dollars (i.e., FRN). *Id*.

While the *Bronson* Court acknowledged a coin dollar and a paper dollar were not of equivalent intrinsic values, it also recognized that the prevailing law valued both forms of money according to their face value. *Bronson*, 74 U.S. at p. 240. The issue in *Bronson* was whether private parties could contract to require repayment of a debt be made only with a specific type of money. *Id*. at p. 245. After surveying the currency laws, the Court concluded while the government requires coins and paper dollars to be valued equally according to their face value, private parties could require payment using a specific form of money. *Id*. at p. 252. In this case, however, no contract for repayment of debt exists between Petitioners and Respondent HCAD; and even if an implied contract could be said to exist, it certainly doesn't limit payment of taxes to a specific type of money. Accordingly, *Bronson* is irrelevant to this case.

2. Only contracting parties can distinguish between coin and notes.

Nine years after the *Bronson* decision, the issue of the different intrinsic values between a coin and paper 'dollar' was considered again by the Court. In *Thompson*, the parties had a contract for the purchase of a certain quantity of iron. *Thompson*, 95 U.S. at 695. Butler sued Thompson for not accepting the requisite quantity. *Id*. Because the Court entered judgment against Thompson for $5,066.17 in gold, the underlying contract must have required payment in gold. *See Bronson*, 74 U.S. at p. 254 ("When, therefore, contracts made payable in coin are sued upon, judgments may be entered for coined dollars and parts of dollars; and when contracts have been made payable generally, without specifying in what description of currency payment is to be made, judgments may be entered generally, without such specification."). To avoid appellate jurisdiction, Butler remitted damages by $66.17 in gold prior to entry of a final judgment. Thus, the court entered a final judgment for $5,000 in gold coin. *Id*.

On appeal, Butler moved to dismiss because the amount in controversy did not exceed $5,000. *Id*. The *Thompson* Court conceded it did not have jurisdiction when the amount in controversy did not exceed $5,000. *Id*. at p. 696. Acknowledging that parties could designate a specific form of acceptable money and that a coin dollar was worth more than a paper 'dollar', the Court reiterated that money, as a medium of exchange, must be valued the same [i.e., one coin dollar shall equal one paper 'dollar']. *Id*. at p. 696-97. While contracting parties can limit repayment to a specific type of money, third parties, like the *Thompson* Court, have no power to value a

payment other than by the face value tendered regardless of type. Thus, the Court was allowed merely "to determine the amount of money to be paid, and not the kind." *Id*. at p. 697. Since the did not exceed $5,000, the Court had no jurisdiction over the appeal. *Id*.

3. Petitioners purchased the subject properties for $16,670 cash.

In support of its Motions for Summary Judgment, HCAD's chief tax appraiser testified HCAD only appraises properties in FRN. (C.R.s, Cause No. 2008-813 & 814, Vol. 1, p. 31). In converting the purchase price from coin to FRN, however, Respondent HCAD sought to impermissibly convert the purchase price, paid with gold coin dollars, to FRN based on the value of the coins' gold content. But, as legal tender or medium of exchange, a coin dollar is worth no more than a paper one. *See supra*, Section I(B)(2-3) at p. 8-9. Accordingly, Petitioners paid $16,670 (1,667 coins x $10/coin) regardless of whether expressed in FRN or coin 'dollars'.

II. WHETHER PURCHASE PRICE WAS EVIDENCE OF FAIR CASH MARKET VALUE, MAKING SUMMARY JUDGMENT IMPROPER?

A. Standard of Review.

The lower court granted summary judgment against Petitioners' claim that the appraised market values of their properties were excessive. On appeal, a court reviews the grant of summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 253 S.W.3d 184, 192 (Tex. 2007). Once a motion for summary judgment under either Rule 166a(i) or Rule 166a(c)) has been filed that demonstrates a prima facie case for summary judgment, the burden shifts

to the non-movant to respond with evidence that demonstrates a genuine issue of material fact exists. *See Marcias v. Fiesta Mart, Inc*., 988 S.W.2d 316, 317 (Tex. App.–Houston [1st Dist] 1999, no pet.) (no-evidence motions); *City of Houston v. Clear Creek Basin Auth*., 589 S.W.2d 671, 678-79 (Tex. 1979) (traditional motions); TEX. RULE CIV. PROC. 166a, attached to Appendix as Exhibit "J." Courts must also view the evidence in the light most favorable to the non-movant and disregard all contrary evidence and inferences. *Walmart Stores, Inc. v. Rodriquez*, 92 S.W.3d 502, 506 (Tex. 2002) (no-evidence); *Nixon v. Mr. Property Mgmt. Co*., 690 S.W.2d 546, 548-49 (Tex 1985) (traditional).

B. Cash Purchase Price Evidence Indicates HCAD Overvalued Subject Properties.

The Texas Constitution guarantees Texas residents that their property will not be appraised for ad valorem taxes at greater than its fair cash market value. TEX. CONST. Art. VIII, § 20 (App. Ex. 50). As discussed, Texas defines 'cash' as coin (specie) or paper money. *See supra*, Section I(B)(1) at p.8. "Market Value" is the price the property would bring if offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no obligation to buy. *Exxon Corp. v. Middleton*, 613 S.W.2d 240, 246 (Tex. 1981); *see also* TEX. TAX PROP CODE ANN. § 1.04(7), attached to Appendix as Exhibit "K." Accordingly, the issue is whether the $16,670 purchase price is evidence of 'fair cash market value' that makes summary judgment inappropriate.

This Court has held that a property owner's testimony as to the worth of the property is admissible evidence as to its market value. *See Redman Homes, Inc. v. Ivy*, 920 S.W.2d 664, 669 (Tex. 1996). Petition-

ers purchased the subject properties from Sellers for $16,670 based upon prevailing market conditions, with full awareness of its potential uses and enforceable restrictions, where neither party was in position to capitalize on the exigencies of the other. *See supra* Statement of the Facts Sections (A-B), at p. 3. When a purchase price is negotiated under these types of conditions, it presents probative evidence that could support a jury finding of fair cash market value. *See Bailey Co. Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 825 (Tex. App.–Amarillo 1993, no writ); *see also* TEX. TAX CODE ANN. § 1.04(7) (App. Ex. 66). Indeed, even the appellate court acknowledged Petitioners' purchase price of $16,670 is some evidence of its market value. *See Selgas*, 2011 WL 5593138 at 10 (App. Ex. 16). Since a coin dollar cannot be valued any greater than a paper dollar, no one can dispute that the disparity between these purchase price and appraised values raises a genuine issue of material fact upon which reasonable jurors could disagree, making summary judgment inappropriate.

C. Summary judgment rulings violate supremacy clause of U.S. Constitution.

HCAD appraised the subject properties at $292,050 in 2008 and $407,520 in 2009; yet, the evidence reveals Petitioners only paid $16,670 for them in 2008. The lower courts' rulings unlawfully sought to value coin and paper dollars differently in an attempt to unlawfully reclaim the discrepancy between the face value of gold coins and the gold in them. But, as the United States Supreme Court stated, "such courts are *required to execute and carry the laws into effect as they are found*, without endeavoring to accommodate them to the accidental or premeditated depreciations produced in the currency of the country

by the tricks and devices of brokers." *Bronson*, 74 U.S. at 240. Thus, to let either the no-evidence or traditional grant of summary judgment stand, would sanction a violation of the supremacy clause. *United States Constitution*, Art. VI, Clause 2, attached to Appendix as Exhibit "L."

PRAYER

For the reasons set forth above, Petitioners respectfully pray that this Court reverse the grant of both the no-evidence and traditional summary judgments; remand the matter for further proceedings consistent with its ruling; and for such other relief, in law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

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Fax. 866-311-1769

Attorney for Petitioners
Thomas D. Selgas and Michelle L. Selgas

CERTIFICATE OF SERVICE

I certify that on February 21, 2012, a true and correct copy of Petitioners' Petitioner for Review was served by USPS Delivery, Certified Mail, RRR No. 7099 3220 0006 3938 5581 on Kirk Swinney at McCREARY, VESELKA, BRAGG & ALLEN, P.C., 700 Jeffrey Way, Suite 100, Round Rock, TX 78665.

/s/ Eve L. Henson
Eve L. Henson

APPENDIX BB

[1] IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

Cause No. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

ORAL DEPOSITION OF
THOMAS D. SELGAS
AUGUST 20, 2009

ORAL DEPOSITION OF THOMAS D. SELGAS, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the 20th day of August, 2009, from 10:02 a.m. until 11:24 a.m., before Amanda J. Leigh, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at the Henderson County Appraisal District, 1751 Enterprise, Athens, Texas 75751, pursuant to the Texas Rules of Civil Procedure.

* * *

[38] Q. Now, I'll ask you to assume, just for purposes of this deposition, that I bought this coin,

that's depicted on Exhibit 7, from a private vendor a couple of weeks ago.

A. Okay.

Q. Do you have any idea what I paid for that coin? Could you spot it within a hundred dollars, a hundred Federal Reserve Notes?

A. So you want to know what you exchanged the coin—that coin for Federal Reserve Notes?

Q. Yeah. How many Federal Reserve Notes did I have to give to that vendor to buy that ten-dollar gold coin?

A. So did you buy it or did you exchange it?

Q. Well, I gave them some Federal Reserve Notes and that vendor gave me this coin.

A. So would you call that a purchase or an exchange?

Q. I call it a purchase, but you can call it whatever you want.

A. Okay. Well, they're two different things, so—I have no idea what they would have charge—they would have exchange—or charged you to purchase it.

Q. Okay. None whatsoever? You can't spot it [39] within a hundred dollars, a hundred Federal Reserve Notes.?

A. No.

Q. If you did an exchange, I would say you probably exchanged it for 25 to 1. So in other words, 25 Federal Reserve Notes for each dollar unit of lawful money.

A. So approximately 250 Federal Reserve Notes for this ten-dollar gold coin?

A. Probably.

Q. Okay. And would it surprise you to know that I, in fact, paid 262 Federal Reserve Notes to get that coin?

A. I have no idea what you paid, but I just said it was probably 25 Federal Reserve Notes to one dollar.

Q. Okay. But it wouldn't surprise you, would it, if I paid two sixty-two?

A. No, I guess not.

Q. I'm somewhat more protective of this coin than I am of the others, so I'm not going to tender the coin itself into evidence.

MR. GREEN: Can you tell us, for the record, what year it is minted?

Q. (By Mr. Swinney) Well, I tell you what, I'll hand it to the deponent to see if you can tell.

* * *

[40] A. I think it's 2008. I can—it's right over there. Can you see that number on—I might need to get my magnifying glass out.

Q. That looks right.

MR. SWINNEY: I'll let you examine it, too.

MR. GREEN: I've probably got the worst eyes of all.

THE WITNESS: Here, I have a magnifying glass here in my wallet, if you want me to take a quick look.

2008, yes.

MR. GREEN: Just for the record, what was yours?

THE WITNESS: This one's 2005.

Q. (By Mr. Swinney) I think I asked you this already; I apologize. I get ahead of myself sometimes.

These coins that are depicted on exhibits 3 and 7, do you understand them to contain one-quarter troy ounce of gold?

A. Yes.

Q. Do you understand whether they trade just by private vendors for Federal Reserve Notes at the spot price for one-quarter ounce—one-quarter troy

* * *

[54] legally?

A. Yes. It's a minted coin containing at least 371-and-a-quarter grains of fine silver.

Q. Did you know the Bryants before you made the offer to purchase the property?

A. No, I did not.

Q. Did you know—that property is basically agricultural property; is that correct?

A. That's correct.

Q. And a residence, homestead?

A. That's correct.

Q. And as far as you know, did the Bryants have any other use for it other than that?

A. Not that I know of.

Q. Did you have any advantage over the Bryants when you purchased the property?

A. Can you restate the question?

Q. Was there anything about that property that you know that you didn't -- that you didn't find out, to the Bryants, that you thought was an advantage to you, that you had some secret information about the property that would have given you a better deal?

A. No.

Q. Was the price that you offered to them, in your mind, the market value of the price of that [55] property?

A. Yes.

MR. GREEN: Pass the witness.

FURTHER EXAMINATION

BY MR. SWINNEY:

Q. Mr. Selgas, did the Bryants have the property listed with a broker for sale?

A. I believe so, yes.

Q. And did they have a price listed as an asking price?

A. Frankly, that, I don't know.

Q. How did you decide what to offer for the property?

A. I spent a few months driving back and forth looking at it, just doing kind of due diligence on it, going up and trying to figure out, you know, what improvements they made versus what it was when the property was first put into existence and....

Q. Did the Bryants accept your first offer?

A. I don't know.

Q. You don't know because you just don't recall, or is there some other reason why you wouldn't know that?

A. There's some other reason I wouldn't know it.

APPENDIX CC

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed October 2, 2008]

No. 08-20133
Summary Calendar

BRENT E. CRUMMEY,
Plaintiff - Appellant,

v.

KLEIN INDEPENDENT SCHOOL DISTRICT;
THOMAS PETREK; DEBORAH H. WEHNER,
Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Texas
4:07-CV-1685

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:[*]

Brent E. Crummey brought this lawsuit complaining that the defendants-appellees, Klein Independent School District ("KISD") and two employees of the KISD tax office, declined to accept Crummey's fifty-dollar United States American Eagle gold coins for any more than the face value of the coins in Fed-

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[*] Pursuant to 5th CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

eral Reserve Note dollars as tender in payment for taxes Crummey owed. Crummey, proceeding *pro se*, sought to assert various federal and state causes of action arising from this incident, including that the appellees violated Crummey's alleged right under Article 1, Section 10 of the Constitution to pay a debt in gold coin.[2] The district court, adopting the Memorandum, Recommendation and Order of the Magistrate Judge, dismissed ma sponte Crummey's federal claims and declined to exercise supplemental jurisdiction over Crummey's remaining state law claims, which were remanded to state court. Crummey appeals.

The core of Crummey's appeal rests on Crummey's argument that the legal monetary value of fifty dollars in United States American Eagle gold coin is different than (and worth more than) the legal monetary value of fifty dollars in Federal Reserve Notes, or as it is sometimes affectionately called, cash. Regardless of any currency confusion that may have arisen in bygone eras, our present standard is clear: As legal tender, a dollar is a dollar.

Crummey suggests that the United States has a parallel or dual monetary valuation system for the dollar. Crummey relies for support on a statute authorizing the Secretary of the Treasury to mint certain coins and to sell them to the public at a price based on the market value of the bullion plus production costs. *See* 31 U.S.C. § 5112(f)(1). According to Crummey, the fact that the United States Mint sells coins into circulation at an amount that is often

---

[2] Article 1, Section 10 of the Constitution provides, in part: "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts."

different than the face value of the coins, supports his theory for the existence of some form of dollar-for-dollar exchange rate between the "coin" dollar and the "FRN" dollar.

Crummey's argument conflates the market value of such coins as bullion, or as a collectors' items, with the value of the coins as legal tender. Fittingly, the Supreme Court has explained:

> A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them.

Thompson v. Butler, 95 U.S. 694, 696 (1877). "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts." 31 U.S.C. § 5103; *see also Mathes v. Commissioner of Internal Revenue*, 576 F.2d 70, 71 (5th Cir. 1978) (per curiam) ("Congress has delegated the power to establish this national currency which is lawful money to the Federal Reserve System."); *United States v. Wangrud*, 533 F.2d 495, 495 (9th Cir. 1976) (per curiam) ("By statute it is established that federal reserve notes, on an equal basis with other coins and currencies of the United States, shall be legal tender for all debts, public and private, including taxes.").

We reject Crummey's suggestion that the "dollar" has multiple meanings or values within the United States system of currency. *See* 31 U.S.C. § 5101 ("United States money is expressed in dollars, dimes or tenths, cents or hundreths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."). As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency.

The legal monetary value of Crummey's fifty dollar American Gold Eagle coin is equivalent to that of a fifty dollar Federal Reserve Note. Crummey's argument to the contrary, on which the bulk of his appeal rests, fails.

Having carefully considered all of Crummey's issues on appeal in light of the record and the applicable law, we find them to be without merit. For these reasons, the judgment of the district court is AFFIRMED.

Furthermore, appellees' motion for sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure is DENIED, Crummey's alternative request for an evidentiary hearing on appellees' motion for sanctions is DENIED as moot.

APPENDIX DD

Enrolled Copy H.B. 157

CURRENCY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: John L. Valentine

Cosponsors:
Fred C. Cox
Bradley M. Daw
Brad L. Dee
John Dougall
Craig A. Frank
Gage Froerer
Richard A. Greenwood
Keith Grover
Christopher N. Herrod
Gregory H. Hughes
Eric K. Hutchings
Ken Ivory
Michael T. Morley
Michael E. Noel
Curtis Oda
Patrick Painter
Jeremy A. Peterson
Dixon M. Pitcher
Douglas Sagers
Stephen E. Sandstrom
Dean Sanpei
Ryan D. Wilcox
Brad R. Wilson
Bill Wright

LONG TITLE

General Description:

This bill amends provisions related to currency.

Highlighted Provisions:

This bill:

- exempts specie legal tender from the Pawnshop and Secondhand Merchandise Transaction Information Act;
- addresses provisions related to specie legal tender, including:

- renaming the Legal Tender Act to the Specie Legal Tender Act;
- defining "specie legal tender" to mean gold or silver coin issued by the United States or certain other gold or silver coin if authorized by a court of competent jurisdiction or Congress;
- providing that specie legal tender is legal tender in the state;
- providing that a person may not compel another person to tender or accept specie legal tender except as expressly provided by contract;
- repealing obsolete language;
- requiring the attorney general to enforce the Specie Legal Tender Act; and
- providing a severability clause;

▪ addresses an income tax credit for certain capital gains on a transaction involving legal tender;

▪ addresses a sales and use tax exemption for certain currency or coins;

▪ addresses the remittance of sales and use taxes on certain transactions involving specie legal tender; and

▪ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

This bill provides for retrospective operation.

Utah Code Sections Affected:

AMENDS:

13-32a-103.5, as enacted by Laws of Utah 2009, Chapter 272

59-1-1501, as enacted by Laws of Utah 2011, Chapter 302

59-1-1502, as enacted by Laws of Utah 2011, Chapter 302

59-1-1503, as enacted by Laws of Utah 2011, Chapter 302

59-10-1028, as enacted by Laws of Utah 2011, Chapter 302

59-12-104, as last amended by Laws of Utah 2011, Chapters 288, 314, 370, and 391

59-12-107, as last amended by Laws of Utah 2009, Chapter 212

ENACTS:

59-1-1501.1, Utah Code Annotated 1953

59-1-1505, Utah Code Annotated 1953

59-1-1506, Utah Code Annotated 1953

REPEALS:

59-1-1504, as enacted by Laws of Utah 2011, Chapter 302

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 13-32a-103.5 is amended to read:

13-32a-103.5. Applicability to coin dealers—Specie legal tender exempt from chapter.

(1) This chapter applies to coin dealers, except:

(a) where provisions otherwise specifically address coin dealers[.]; or

(b) as provided in Subsection (2).

(2) Specie legal tender as defined in Section 59-1-1501.1 that is used as legal tender is exempt from this chapter.

Section 2. Section 59-1-1501 is amended to read:

Part 15. Specie Legal Tender Act

59-1-1501. Title.

This part is known as the "Specie Legal Tender Act."

Section 3. Section 59-1-1501.1 is enacted to read:

59-1-1501.1. Definitions.

Subject to Subsection 59-1-1502(3), as used in this part, "specie legal tender" means gold or silver coin that is issued by the United States.

Section 4. Section 59-1-1502 is amended to read:

59-1-1502. Specie legal tender is legal tender in the state—Person may not compel another person to tender or accept specie legal tender—Court or congressional action to authorize gold or silver coin or bullion as legal tender.

(1) ~~[Gold and silver coin issued by the federal government]~~ Specie legal tender is legal tender in the state.

(2) [~~A~~] Except as expressly provided by contract, a person may not compel any other person to tender or accept ~~[Gold and silver coin issued by the federal government]~~ specie legal tender.

(3) Gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, is considered to be specie legal tender and is legal tender in the state if:

(a) a court of competent jurisdiction issues a final, unappealable judgment or order determining that the state may recognize the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, as legal tender in the state; or

(b) Congress enacts legislation that:

(i) expressly provides that the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, is legal tender in the state; or

(ii) expressly allows the state to recognize the gold or silver coin or bullion, other than gold or silver coin that is issued by the United States, as legal tender in the state.

Section 5. Section 59-1-1503 is amended to read:

59-1-1503. Nonrefundable credit—Sales and use tax exemption—Sales and use tax remittance.

~~[(1) There is a nonrefundable credit established for any capital gains incurred from the exchange of fold and solver coin issued by the federal government for another form of legal tender as provided in Section 59-10-1028.]~~

(1) A nonrefundable individual income tax credit is allowed as provided in Section 59-10-1028 related to a capital gain on a transaction involving the exchange of one form of legal tender for another form of legal tender.

(2) ~~[The exchange of gold and silver coin issued by the federal government for another form of legal~~

~~tender is~~] Sales of currency or coin are exempt from sales and use taxes as provided in Subsection 59-12-104(50).

(3) The remittance of a sales and use tax on a transaction involving specie legal tender is as provided in Section 59-12-107.

Section 6. Section 59-1-1505 is enacted to read:

59-1-1505. Attorney general to enforce part.

The attorney general shall enforce this part.

Section 7. Section 59-1-1506 is enacted to read:

59-1-1506. Severability clause.

If any provision of this part or the application of any provision to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this part shall be given effect without the invalid provision or application. The provisions of this part are severable.

Section 8. Section 59-10-1028 is amended to read:

59-10-1028. Nonrefundable tax credit for capital gain transactions on the exchange of one form of legal tender for another form of legal tender.

(1) As used in this section:

(a) "Capital gain transaction" means a transaction that results in a:

(i) short-term capital gain; or

(ii) long-term capital gain.

(b) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(c) "Long-term capital loss" is as defined in Section 1222, Internal Revenue Code.

(d) "Net capital gain" means the amount by which the sum of long-term capital gains and short-term capital gains on a claimant's, estate's, or trust's transactions from exchanges made for a taxable year of one form of legal tender for another form of legal tender exceeds the sum of long-term capital losses and short-term capital losses on those transactions for that taxable year.

(e) "Short-term capital loss" is as defined in Section 1222, Internal Revenue Code.

[~~(c)~~] (f) "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(2) Except as provided in Section 59-10-1002.2, for taxable years beginning on or after January 1, 2012, a claimant, estate, or trust may claim a nonrefundable tax credit equal to the product of:

(a) [~~to the extent a capital gain is not offset by a capital loss under Chapter 1, Subchapter P, Capital Gains and Losses, Internal Revenue Code, the total~~] to the extent a net capital gain is included in taxable income, the amount of the claimant's, estate's, or trust's [~~short-term capital gain or long term~~] net capital gain on a capital gain [~~transaction~~] transactions from [~~an exchange~~] exchanges made on or after January 1, 2012, [~~of gold or silver coin issued by the federal government~~] for a taxable year, of one form of legal tender for another form of legal tender; and

(b) 5%.

(3) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to implement this section.

Section 9. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

(i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or

(b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103;

(3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

(i) the proceeds of each sale do not exceed $1; and

(ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and

(b) Subsection (3)(a) applies to:

(i) food and food ingredients; or

(ii) prepared food;

(4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

(i) alcoholic beverages;

(ii) food and food ingredients; or

(iii) prepared food;

(b) sales of tangible personal property or a product transferred electronically:

(i) to a passenger;

(ii) by a commercial airline carrier; and

(iii) during a flight for in-flight consumption or in-flight use by the passenger; or

(c) services related to Subsection (4)(a) or (b);

(5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:

(A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(II) for:

(Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;

(Bb) renovation of an aircraft; or

(Cc) repair of an aircraft; or

(B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or

(ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and

(b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

(ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before September 30, 2011;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or

studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;

(b) if a seller that sells at the same business location assisted cleaning or washing of tangible personal property and cleaning or washing of tangible personal property that is not assisted cleaning or washing of tangible personal property, the exemption described in Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or washing of the tangible personal property; and

(c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for sales of assisted cleaning or washing of tangible personal property;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the vehicle to the borders of this state; or

(B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

(ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the item described in Subsection (12)(c) is not available to the general public; or

(B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

(i) a medical facility; or

(ii) a nursing facility; and

(c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property or a product transferred electronically by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property or product transferred electronically by that person; and

(ii) not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(b) this Subsection (13) does not apply if:

(i) the sale is one of a series of sales of a character to indicate that the person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(ii) the person holds that person out as regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(iii) the person sells an item of tangible personal property or product transferred electronically that the person purchased as a sale that is exempt under Subsection (25); or

(iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:

(A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing the circumstances under which:

(i) a person is regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(ii) a sale of tangible personal property or a product transferred electronically is one of a series of sales of a character to indicate that a person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically; or

(iii) a person holds that person out as regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration facility, of the following:

(i) machinery and equipment that:

(A) are used:

(I) for a manufacturing facility except for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(55)(b):

(Aa) in the manufacturing process;

(Bb) to manufacture an item sold as tangible personal property; and

(Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(a)(i)(A)(I) in the state; or

(II) for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(55)(b):

(Aa) to process an item sold as tangible personal property; and

(Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(a)(i)(A)(II) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) have an economic life of three or more years; and

(B) are used:

(I) for a manufacturing facility except for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(55)(b):

(Aa) in the manufacturing process; and

(Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the state; or

(II) for a manufacturing facility that is a scrap recycler described in Subsection 59-12-102(55)(b):

(Aa) to process an item sold as tangible personal property; and

(Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the state;

(b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006, of the following:

(i) machinery and equipment that:

(A) are used:

(I) in the manufacturing process;

(II) to manufacture an item sold as tangible personal property; and

(III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection (14)(b) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) are used:

(I) in the manufacturing process; and

(II) in a manufacturing facility described in this Subsection (14)(b) in the state; and

(B) have an economic life of three or more years;

(c) amounts paid or charged for a purchase or lease made on or after January 1, 2008, by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(i) machinery and equipment that:

(A) are used:

(I) (Aa) in the production process, other than the production of real property; or

(Bb) in research and development; and

(II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c) in the state; and

(B) have an economic life of three or more years; and

(ii) normal operating repair or replacement parts that:

(A) have an economic life of three or more years; and

(B) are used in:

(I) (Aa) the production process, except for the production of real property; and

(Bb) an establishment described in this Subsection (14)(c) in the state; or

(II) (Aa) research and development; and

(Bb) in an establishment described in this Subsection (14)(c) in the state;

(d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010, but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(A) machinery and equipment that:

(I) are used in the operation of the web search portal;

(II) have an economic life of three or more years; and

(III) are used in a new or expanding establishment described in this Subsection (14)(d) in the state; and

(B) normal operating repair or replacement parts that:

(I) are used in the operation of the web search portal;

(II) have an economic life of three or more years; and

(III) are used in a new or expanding establishment described in this Subsection (14)(d) in the state; or

(ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, of the following:

(A) machinery and equipment that:

(I) are used in the operation of the web search portal; and

(II) have an economic life of three or more years; and

(B) normal operating repair or replacement parts that:

(I) are used in the operation of the web search portal; and

(II) have an economic life of three or more years;

(e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:

(i) shall by rule define the term "establishment"; and

(ii) may by rule define what constitutes:

(A) processing an item sold as tangible personal property;

(B) the production process, except for the production of real property;

(C) research and development; or

(D) a new or expanding establishment described in Subsection (14)(d) in the state; and

(f) on or before October 1, 2011, and every five years after October 1, 2011, the commission shall:

(i) review the exemptions described in this Subsection (14) and make recommendations to the Revenue and Taxation Interim Committee concerning whether the exemptions should be continued, modified, or repealed; and

(ii) include in its report:

(A) an estimate of the cost of the exemptions;

(B) the purpose and effectiveness of the exemptions; and

(C) the benefits of the exemptions to the state;

(15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

(A) a government identification tag placed on the tooling, equipment, or parts; or

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(i) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(ii) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission; and

(b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the following items of tangible personal property or products transferred electronically traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

(A) becomes part of real estate; or

(B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) notwithstanding Subsection (18)(a), amounts paid or charged for the following are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is incidental to farming:

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm, or other agricultural produce is sold by:

(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce;

(b) an employee of the producer described in Subsection (20)(a); or

(c) a member of the immediate family of the producer described in Subsection (20)(a);

(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of the purchase;

(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

(D) not used in conducting business in this state; and

(ii) for:

(A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of the product for a purpose for which the product is designed occurs outside of this state;

(B) a boat, the boat is registered outside of this state; or

(C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (24)(a) does not apply to:

(i) a lease or rental of a product; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (63); or

(iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(28) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state; or

(B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state;

(31) sales of aircraft manufactured in Utah;

(32) amounts paid for the purchase of telecommunications service for purposes of providing telecommunications service;

(33) sales, leases, or uses of the following:

(a) a vehicle by an authorized carrier; or

(b) tangible personal property that is installed on a vehicle:

(i) sold or leased to or used by an authorized carrier; and

(ii) before the vehicle is placed in service for the first time;

(34) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(35) sales relating to schools and fundraising sales;

(36) sales or rentals of durable medical equipment if:

(a) a person presents a prescription for the durable medical equipment; and

(b) the durable medical equipment is used for home use only;

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

(c) passenger ropeways as defined in Section 72-11-102; or

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

(39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for amusement, en-

tertainment, or recreation an unassisted amusement device as defined in Section 59-12-102;

(b) if a seller that sells or rents at the same business location the right to use or operate for amusement, entertainment, or recreation one or more unassisted amusement devices and one or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if the seller separately accounts for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for the assisted amusement devices; and

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for assisted amusement devices;

(41) (a) sales of photocopies by:

(i) a governmental entity; or

(ii) an entity within the state system of public education, including:

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is

subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(43) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(44) sales or leases of semiconductor fabricating, processing, research, or development materials regardless of whether the semiconductor fabricating, processing, research, or development materials:

(a) actually come into contact with a semiconductor; or

(b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) sales or uses of electricity, if the sales or uses are:

(a) made under a tariff adopted by the Public Service Commission of Utah only for purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy source, as designated in

the tariff by the Public Service Commission of Utah; and

(b) for an amount of electricity that is:

(i) unrelated to the amount of electricity used by the person purchasing the electricity under the tariff described in Subsection (47)(a); and

(ii) equivalent to the number of kilowatt hours specified in the tariff described in Subsection (47)(a) that may be purchased under the tariff described in Subsection (47)(a);

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(49) sales of water in a:

(a) pipe;

(b) conduit;

(c) ditch; or

(d) reservoir;

(50) sales of currency or [~~coinage~~] coins that constitute legal tender of a state, the United States, or [~~of~~] a foreign nation;

(51) (a) sales of an item described in Subsection (51)(b) if the item:

(i) does not constitute legal tender of [~~any nation~~] a state, the United States, or a foreign nation; and

(ii) has a gold, silver, or platinum content of [~~80%~~] 50% or more; and

(b) Subsection (51)(a) applies to a gold, silver, or platinum:

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(52) amounts paid on a sale-leaseback transaction;

(53) sales of a prosthetic device:

(a) for use on or in a human; and

(b) (i) for which a prescription is required; or

(ii) if the prosthetic device is purchased by a hospital or other medical facility;

(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

(i) a motion picture;

(ii) a television program;

(iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

(vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or

(b) notwithstanding Subsection (54)(a), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the

following are subject to the taxes imposed by this chapter:

(i) a live musical performance;

(ii) a live news program; or

(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or

(ii) define:

(A) "commercial distribution";

(B) "live musical performance";

(C) "live news program"; or

(D) "live sporting event";

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a renewable energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (55)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) a wind turbine;

(B) generating equipment;

(C) a control and monitoring system;

(D) a power line;

(E) substation equipment;

(F) lighting;

(G) fencing;

(H) pipes; or

(I) other equipment used for locating a power line or pole; and

(b) this Subsection (55) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new renewable energy production facility; or

(B) the increase in the capacity of a renewable energy production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the renewable energy production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

(B) the increased capacity described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii);

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) generating equipment;

(B) a control and monitoring system;

(C) a power line;

(D) substation equipment;

(E) lighting;

(F) fencing;

(G) pipes; or

(H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new waste energy facility; or

(B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (56)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on or before June 30, 2019, of machinery or equipment that:

(i) is leased or purchased for or by a facility that:

(A) is located in the state;

(B) produces fuel from biomass energy including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as a result of the installation of the machinery or equipment;

(ii) has an economic life of five or more years; and

(iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) machinery or equipment used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the machinery or equipment is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired after:

(A) the facility described in Subsection (57)(a)(i) is operational; or

(B) the increased capacity described in Subsection (57)(a)(i) is operational;

(58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the

state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider; and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iv) telecommunications maintenance or repair equipment, machinery, or software;

(v) telecommunications switching or routing equipment, machinery, or software; or (v) telecommunications transmission equipment, machinery, or software;

(62) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible personal property or a product transferred electronically that are used in the research and development of coal-to-liquids, oil shale, or tar sands technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (62)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in the research and development of coal-to-liquids, oil shale, and tar sands technology;

(63) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (63)(a)(i)(A); and

(C) used in conducting business in this state; and

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or

(B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (63)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (63)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (63) as in Subsection (24); or (iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(64) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

(b) the disposable home medical equipment or supplies are used exclusively by the person to whom the prescription described in Subsection (64)(a) is issued; and

(c) the disposable home medical equipment and supplies are listed as eligible for payment under:

(i) Title XVIII, federal Social Security Act; or

(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(65) sales:

(a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act; or

(b) of tangible personal property to a subcontractor of a public transit district, if the tangible personal property is:

(i) clearly identified; and

(ii) installed or converted to real property owned by the public transit district;

(66) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (66)(b); and

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 63H-4-111;

(70) (a) sales of tangible personal property to an aircraft maintenance, repair, and overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other

than this state as the location of registry of the fixed wing turbine powered aircraft; or

(b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft;

(71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

(a) to a person admitted to an institution of higher education; and

(b) by a seller, other than a bookstore owned by an institution of higher education, if 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a textbook for a higher education course; and

(72) a license fee or tax a municipality imposes in accordance with Subsection 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced level of municipal services.

Section 10. Section 59-12-107 is amended to read:

59-12-107. Collection, remittance, and payment of tax by sellers or other persons—Returns—Reports—Direct payment by purchaser of vehicle—Other liability for collection—Rulemaking authority—Credits—Treatment of bad debt—Penalties.

(1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123 and subject to Subsection (1)(e), each seller shall pay or collect and

remit the sales and use taxes imposed by this chapter if within this state the seller:

(i) has or utilizes:

(A) an office;

(B) a distribution house;

(C) a sales house;

(D) a warehouse;

(E) a service enterprise; or

(F) (1)(a)(i)(A) through (E);

(ii) maintains a stock of goods;

(iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:

(A) advertising; or

(B) solicitation by:

(I) direct mail;

(II) electronic mail;

(III) the Internet;

(IV) telecommunications service; or

(V) a means similar to Subsection (1)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by:

(A) common carrier; or

(B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

(b) A seller that does not meet one or more of the criteria provided for in Subsection (1)(a):

(i) except as provided in Subsection (1)(b)(ii), may voluntarily:

(A) collect a tax on a transaction described in Subsection 59-12-103(1); and

(B) remit the tax to the commission as provided in this part; or

(ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

(c) The collection and remittance of a tax under this chapter by a seller that is registered under the agreement may not be used as a factor in determining whether that seller is required by Subsection (1)(a) to:

(i) pay a tax, fee, or charge under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(C) Section 19-6-714;

(D) Section 19-6-805;

(E) Section 69-2-5;

(F) Section 69-2-5.5;

(G) Section 69-2-5.6; or

(H) this title; or

(ii) collect and remit a tax, fee, or charge under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(C) Section 19-6-714;

(D) Section 19-6-805;

(E) Section 69-2-5;

(F) Section 69-2-5.5;

(G) Section 69-2-5.6; or

(H) this title.

(d) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

(i) the seller did not collect a tax imposed by this chapter on the transaction; and

(ii) the person:

(A) stores the tangible personal property or product transferred electronically in the state;

(B) uses the tangible personal property or product transferred electronically in the state; or

(C) consumes the tangible personal property or product transferred electronically in the state.

(e) The ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the

printed product is produced, shall not result in the retailer being considered to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(f) (i) As used in this Subsection (1)(f):

(A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in this state.

(B) "Common ownership" is as defined in Section 59-7-101.

(C) "Related seller" means a seller that:

(I) is not required to pay or collect and remit sales and use taxes under Subsection (1)(a) or Section 59-12-103.1;

(II) is:

(Aa) related to a seller that is required to pay or collect and remit sales and use taxes under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

(Bb) a limited liability company owned by the parent corporation of an affiliated group if that parent corporation of the affiliated group is required to pay or collect and remit sales and use taxes under Subsection (1)(a); and

(III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

(ii) A seller is not required to pay or collect and remit sales and use taxes under Subsection (1)(a):

(A) if the seller is a related seller;

(B) if the seller to which the related seller is related does not engage in any of the following activities on behalf of the related seller:

(I) advertising;

(II) marketing;

(III) sales; or

(IV) other services; and

(C) if the seller to which the related seller is related accepts the return of an item sold by the related seller, the seller to which the related seller is related accepts the return of that item:

(I) sold by a seller that is not a related seller; and

(II) on the same terms as the return of an item sold by that seller to which the related seller is related.

(2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be collected from a purchaser.

(b) A seller may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.

(c) (i) Each seller shall:

(A) give the purchaser a receipt for the tax collected; or

(B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.

(ii) The receipt or invoice is prima facie evidence that the seller has collected the tax and relieves the

purchaser of the liability for reporting the tax to the commission as a consumer.

(d) A seller is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public money.

(e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

(f) If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

(g) If the accounting methods regularly employed by the seller in the transaction of the seller's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that will, in the commission's opinion, better suit the convenience of the taxpayer or seller and will not jeopardize collection of the tax.

(h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1, and until such time as the commission accepts specie legal tender for the payment of a tax under this chapter, if the commission requires a seller to remit a tax under this chapter in legal tender other than specie legal tender, the seller shall state on the seller's books and records and on an invoice, bill of sale, or similar document provided to the purchaser:

(A) the purchase price in specie legal tender and in the legal tender the seller is required to remit to the commission;

(B) subject to Subsection (2)(h)(ii), the amount of tax due under this chapter in specie legal tender and in the legal tender the seller is required to remit to the commission;

(C) the tax rate under this chapter applicable to the purchase; and

(D) the date of the purchase.

(ii) (A) Subject to Subsection (2)(h)(ii)(B), for purposes of determining the amount of tax due under Subsection (2)(h)(i), a seller shall use the most recent London fixing price for the specie legal tender the purchaser paid.

(B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for determining the amount of tax due under Subsection (2)(h)(i) if the London fixing price is not available for a particular day.

(3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(b) (i) Each seller shall, on or before the last day of the month next succeeding each

(ii) calendar quarterly period, file with the commission a return for the preceding quarterly period.

(ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the tax required

under this chapter to be collected or paid for the period covered by the return.

(c) Except as provided in Subsection (4)(c), a return shall contain information and be in a form the commission prescribes by rule.

(d) The sales tax as computed in the return shall be based upon the total nonexempt sales made during the period, including both cash and charge sales.

(e) The use tax as computed in the return shall be based upon the total amount of purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge.

(f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if the commission considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(h) (i) The commission may require a seller that files a simplified electronic return with the commission to file an additional electronic report with the commission.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing:

(A) the information required to be included in the additional electronic report described in Subsection (3)(h)(i); and

(B) one or more due dates for filing the additional electronic report described in Subsection (3)(h)(i).

(4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a seller that is:

(i) registered under the agreement;

(ii) described in Subsection (1)(b); and

(iii) not a:

(A) model 1 seller;

(B) model 2 seller; or

(C) model 3 seller.

(b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in accordance with Subsection (1)(b) is due and payable:

(A) to the commission;

(B) annually; and

(C) on or before the last day of the month immediately following the last day of each calendar year.

(ii) The commission may require that a tax a remote seller collects in accordance with Subsection (1)(b) be due and payable:

(A) to the commission; and

(B) on the last day of the month immediately following any month in which the seller accumulates a total of at least $1,000 in agreement sales and use tax.

(c) (i) If a remote seller remits a tax to the commission in accordance with Subsection (4)(b), the remote seller shall file a return:

(A) with the commission;

(B) with respect to the tax;

(C) containing information prescribed by the commission; and

(D) on a form prescribed by the commission.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules prescribing:

(A) the information required to be contained in a return described in Subsection (4)(a)(i); and

(B) the form described in Subsection (4)(c)(i)(D).

(d) A tax a remote seller collects in accordance with this Subsection (4) shall be calculated on the basis of the total amount of taxable transactions under Subsection 59-12-103(1) the remote seller completes, including:

(i) a cash transaction; and

(ii) a charge transaction.

(5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified electronic return collects in accordance with this chapter is due and payable:

(i) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and

(ii) for the month for which the seller collects a tax under this chapter.

(b) A tax a remote seller that files a simplified electronic return collects in accordance with this chapter is due and payable as provided in Subsection (4).

(6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.

(b) The commission shall collect the tax described in Subsection (6)(a) when the vehicle is titled or registered.

(7) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale and the retailer is responsible for the collection or payment of the tax imposed on the sale if:

(a) the retailer represents that the personal property is purchased by the retailer for resale; and

(b) the personal property is not subsequently resold.

(8) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax and the person prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not

been fully credited against sales or use tax due and payable under the rules promulgated by the commission.

(9) (a) For purposes of this Subsection (9):

(i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

(ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

(A) an amount included in the purchase price of tangible personal property, a product transferred electronically, or a service that is:

(I) not a transaction described in Subsection 59-12-103(1); or

(II) exempt under Section 59-12-104;

(B) a financing charge;

(C) interest;

(D) a tax imposed under this chapter on the purchase price of tangible personal property, a product transferred electronically, or a service;

(E) an uncollectible amount on tangible personal property or a product transferred electronically that:

(I) is subject to a tax under this chapter; and

(II) remains in the possession of a seller until the full purchase price is paid;

(F) an expense incurred in attempting to collect any debt; or

(G) an amount that a seller does not collect on repossessed property.

(b) A seller may deduct bad debt from the total amount from which a tax under this chapter is calculated on a return.

(c) A seller may file a refund claim with the commission if:

(i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same time period; and

(ii) as provided in Section 59-1-1410.

(d) A bad debt deduction under this section may not include interest.

(e) A bad debt may be deducted under this Subsection (9) on a return for the time period during which the bad debt:

(i) is written off as uncollectible in the seller's books and records; and

(ii) would be eligible for a bad debt deduction:

(A) for federal income tax purposes; and

(B) if the seller were required to file a federal income tax return.

(f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection (9), the seller shall report and remit a tax under this chapter:

(i) on the portion of the bad debt the seller recovers; and

(ii) on a return filed for the time period for which the portion of the bad debt is recovered.

(g) For purposes of reporting a recovery of a portion of bad debt under Subsection (9)(f), a seller shall apply amounts received on the bad debt in the following order:

(i) in a proportional amount:

(A) to the purchase price of the tangible personal property, product transferred electronically, or service; and

(B) to the tax due under this chapter on the tangible personal property, product transferred electronically, or service; and

(ii) to:

(A) interest charges;

(B) service charges; and

(C) other charges.

(h) A seller's certified service provider may make a deduction or claim a refund for bad debt on behalf of the seller:

(i) in accordance with this Subsection (9); and

(ii) if the certified service provider credits or refunds the entire amount of the bad debt deduction or refund to the seller.

(i) A seller may allocate bad debt among the states that are members of the agreement if the seller's books and records support that allocation.

(10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter.

(b) A violation of this section is punishable as provided in Section 59-1-401.

(c) Each person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts determined to be due by the commission under Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Section 59-1-401.

(d) For purposes of prosecution under this section, each quarterly tax period in which a seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.

Section 11. Repealer.

This bill repeals:

Section 59-1-1504, Revenue and Taxation Interim Committee study.

Section 12. Effective date—Retrospective operation.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 8, 2012

(2) The amendments to Sections 59-12-104 and 59-12-107 take effect on July 1, 2012.

(3) The amendments to Section 59-10-1028 have retrospective operation for a taxable year beginning on or after January 1, 2012.

APPENDIX EE

Bernanke to Congress: It's your turn to act
By Martha C. White
June 25, 2012, 6:19 pm

[Ben Bernanke photo] MSNBC.msn.com

In meeting with lawmakers Thursday, Federal Reserve Chairman Ben Bernanke's message was clear: The Fed can steer, but Congress needs to step on the gas to keep the economy from rolling off a fiscal cliff.

"Monetary policy is not a panacea," Bernanke said in testimony to the Joint Economic Committee. He urged lawmakers to address pressing fiscal issues on which both parties have essentially declared a stalemate. Bernanke made it clear that while the Fed will take action if the domestic or global financial situations worsen, the central bank shouldn't be expected to do Congress' heavy lifting.

"I'd be much more comfortable if, in fact, Congress would take some of this burden from us," he said. Although committee members on both sides of the aisle unsuccessfully pressed Bernanke to outline specific legislative steps, the Fed chairman emphasized outcomes rather than tactics. In particular, he urged Congress to head off the prospect of a so-called "fiscal cliff" at the end of the year, when automatic spending cuts will kick in and tax cuts will expire if no action is taken.

Lawmakers and investors alike are starting to get apprehensive, and this fear factor could become an economic drag in its own right.

"It's always undesirable to have uncertainty about the fiscal path," said Kim Schoenholtz, an economics professor at New York University. "Economic growth requires investment, and that requires risk taking. Anything Congress can do to reduce uncertainty... would be helpful."

"The Fed and the chairman are right to point the finger" at Congress, said Michael Gapen, Barclays senior U.S. economist. "Lack of progress on the fiscal front in resolving some of these uncertainties have meant that firms are less willing to invest and hire."

Last Friday, the Labor Department reported the U.S. economy created a paltry 69,000 jobs in May while the unemployment rate rose to 8.2 percent. In his prepared remarks before the committee, Bernanke acknowledged that job growth had slowed and that it would take an acceleration of economic activity to reignite that growth.

Fitch Ratings has reiterated it will cut the nation's AAA credit rating next year if lawmakers can't pull together a real plan for tackling debt and deficits, Reuters reported Thursday, citing an analyst who pointed out that the United States is the only one of the world's top four economies with an escalating debt-to-GDP ratio. Rival ratings agency Standard & Poor's cut the nation's debt rating to AA-plus status last summer during the height of the debt-ceiling crisis.

Bernanke warned that failing to act on the spending cuts and tax hikes would be detrimental to the economy. Congress must "try to avoid a situation where you have a massive cut in spending and increase in taxes all hitting at one moment," he said.

"It seems clear that the situation is deteriorating at the global level," Barry Bosworth, an economist at the Brookings Institution, said via e-mail. "The big risk is what the political parties will do in the fall."

Although Bernanke spoke in measured tones about the state of the U.S. economy, saying that it was continuing to grow moderately, his testimony came against the backdrop of a eurozone debt crisis that threatens to plunge Europe back into recession and perhaps drag the global economy along for the ride. China, the world's No. 2 economy, already is feeling the pain; it lowered benchmark interest rates by 25 basis points Thursday to stimulate domestic demand as its export-driven economy slows.

Although Sen. Jim DeMint, R-S.C., labeled Fed activities as "monetary activism," Brookings' Bosworth said Fed policymaking pales in comparison to what urgently needs to take place in Washington. "Any monetary policy change would be largely symbolic in the presence of the fiscal uncertainty," he said.

APPENDIX FF

MONEY LAW
The Coinage Act of April 2, 1792
(1 Stat. 246)

Statute I.

April 2, 1792

Chapter XVI.—An Act establishing a Mint, and regulating the coins of the United States.

Mint established at the seat of government.

Section I. Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, and it is hereby enacted and declared, That a mint for he purpose of a national coinage be, and the same is established, to be situate and carried on at the seat of the government of the United States, for the time being; and that for the well conducting of the business of the said mint, there shall be the following officers and persons, namely,—a Director, an Assayer, a Chief Coiner, an Engarver, a Treasurer. ...

Species of the coins to be struck.

Section 9. And be it further enacted, That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions, viz.

Eagles	EAGLES—each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eighths of a grain of pure, or two hundred and seventy grains of standard gold.
Half Eagles	HALF EAGLES—each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six eighths of a grain of pure, or one hundred and thirty-five grains of standard gold.
Quarter Eagles	QUARTER EAGLES—each to be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven eighths of a grain of pure, or sixty-seven grains and four eighths of a grain of standard gold.
Dollars or Units	DOLLARS OR UNITS—each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver.
Half Dollars	HALF DOLLARS—each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten sixteenth parts of a grain of pure, or two hundred and eight grains of standard silver.

Quarter Dollars

QUARTER DOLLAR—each to be of one fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen sixteenth parts of a grain of pure, or one hundred and four grains of standard silver.

Dismes

DISMES—each to be of the value of one tenth of a dollar or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and three fifths parts of a grain of standard silver.

Half Dismes

HALF DISMES—each to be of the value of one twentieth of a dollar, and to contain eighteen grains and nine sixteenth parts of a grain of pure, or twenty grains and four fifths parts of a grain of standard silver.

Cents

CENTS—each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper.

Half Cents Act of May 8, 1792.

HALF CENTS—each to be of the value of half a a cent, and to contain five penny-weights and a half a penny-weight of copper.

Of what devices

Section 10. And be it further enacted, That, upon the said coins respectively, there shall be the following devices and legends, namely: Upon one side of each of

the said coins there shall be an impression emblematic of liberty, with an inscription of the word Liberty, and the year of the coinage; and upon the reverse of each of the gold and silver coins there shall be the figure or representation of an eagle, with this inscription, "UNITED STATES OF AMERICA" and upon the reverse of each of the copper coins, there shall be an inscription which shall express the denomination of the piece, namely, cent or half cent, as the case may require.

Proportional value of gold and silver

Section 11. And be it further enacted, That the proportional value of gold and silver in all coins which shall by law be current as money within the United States, shall be fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals.

Standard for gold coins, and alloy how to be regulated

Section 12. And be it further enacted, That the standard for all gold coins of the United States shall be eleven parts fine to one part alloy; and accordingly that eleven parts fine to one part alloy; and accordingly that eleven parts

in twelve of the entire weight of each of the said coins shall consist of pure gold, and the remaining one twelfth part of alloy; and the said alloy shall be composed of silver and copper, in such proportions not exceeding one half silver as shall be found convenient; to be regulated by the director of the mint, for the time being, with the approbation of the President of the United States, until further provision shall be made by law. And to the end that the necessary information may be had in order to the making of such further provision, it shall be the duty of the director of the mint, at the expiration of a year commencing the operations of the said mint, to report to Congress the practice thereof during the said year, touching the composition of the alloy of the said gold coins, the reasons for such practice, and the experiments and observations which shall have been made concerning the effects of different proportions of silver and copper in the said alloy. …

Director to report the practice of mint touching the alloy of gold coins.

Coins made a lawful tender,

Section 16. And be it further enacted, That all the gold and silver coins which shall

have been struck at, and issued from the said mint, shall be a

lawful tender in all payments whatsoever, those of full weight according to the respective values herein before declared, and those of less than full weight at values proportional to their respective weights. ...

Money of account to be expressed in dollars, etc.

Section 20. And be if further enacted, That the money of account of the United States shall be expressed in dollars, or units, dismes or tenths, cents or hundredths, and the milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

APPENDIX GG

From the "Report on the Subject of the Mint" to Congress. H.R. Doc. No. 24, 1st Cong., 3d Sess. (1791) ("Hamilton's Mint Report") published in *Universal Asylum and Columbian Magazine*, March p. 189-201 and April 1791, p. 263-269, relevant excerpts below

* * *

March 1791 p. (189)

> "In order to a right judgement of what ought to be done, the following particulars require to be discussed.
>
> I. What ought to be the nature of the money unit of the United States?
>
> II. What the proportion between gold and silver, if coins of both metals are to be established?
>
> III. What the proportion and composition of alloy in each kind?
>
> IV. Whether the expence of coinage shall be defrayed by the government, or out of the material itself?
>
> V. What shall be the number, denominations, sizes and devices of the coins?
>
> VI. Whether foreign coins shall be permitted to be current or not; in the former, at what rate, and for what period?"

* * *

April 1791 p. 265:

> "It is now proper to resume and finish the answer to the first question; in order to which the three succeeding ones have necessarily been

anticipated. The conclusion, to be drawn from the observations which have been made on the subject, is this – That the unit, in the coins of the United States, ought to correspond with 24 grains and 3/4 of a grain of pure gold, and with 371 and 1/4 of a grain of pure silver, each answering to a dollar in the money of an account. The former is exactly agreeable to the present value of gold, and the latter is within a small fraction of the mean of the two last emissions of dollars; the only ones which are now found in common circulation, and of which the newest is in the greatest abundance."

APPENDIX HH

IN THE DISTRICT COURT OF
HENDERSON COUNTY, TEXAS
173RD JUDICIAL DISTRICT

[Filed Dec. 11, 2009]

Cause No. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS
Plaintiffs,

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT
Defendant.

DEFENDANT'S OBJECTION TO PLAINTIFFS' SUMMARY JUDGMENT EVIDENCE

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES the Defendant, the Henderson County Appraisal District, objecting to certain matters raised by the Plaintiffs in their response to the Defendant's Motion for Summary Judgment. The Defendant objects to the testimony of Dr. Edwin Vieira for several grounds:

I.

Dr. Vieira offers only legal opinions in his testimony. Dr. Vieira testifies ad nauseam in his deposition about what constitutes dollars, money, and the monetary policy of the United States. Dr. Vieira does not speak for the United States or the State of Texas but admits to offering only legal opinions regarding

the matter. See Deposition of Dr. Vieira attached to the Plaintiffs' response 78:21-79:12. Pure legal opinions are not admissible under the rule for expert testimony. TEX. R. EV. 702. *Great Western Drilling, Ltd. v Alexander*, S.W.3d ___, 2009 WL 3212558, *7 (Tex. App. – Eastland 2009, no petition hist.); *Mega Child Care, Inc. v Tex. Dept. of Protective & Regulatory Services*, 29 S.W.3d 303, 309 (Tex. App. – Houston [14th Dist.] 2000, no petition).

II.

Dr. Vieira is unqualified to offer any opinion on the ultimate issue herein. That ultimate issue is the value of the property at issue herein. Dr. Vieira admits to having no appraisal training, having never seen the property in question, having never investigated the factors of its value, and having never been in Henderson County, Texas. He admits that his only opinion is based upon a contract which he had viewed at the time of the deposition. See Deposition of Dr. Vieira at 82:20-84:19. Furthermore, his opinion, quoted by the Plaintiffs that the property was worth the contract price, must also be tempered by his testimony that the gold coins which were specified in the contract price are worth each in the "upper two hundreds" in Federal Reserve notes. See Deposition of Dr. Vieira at 81:9-14; 82:1-10. Copies of the excerpts of Dr. Vieira's deposition are attached.

III.

Dr. Vieira's opinions are irrelevant. He opines on the Constitutionality of the monetary policy of the United States. That is inconsequential to the value determination before the court.

Respectfully submitted,

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