

No. 25-0871

In the Supreme Court of Texas

TRINH T. HO,
Petitioner

v.

HARRIS COUNTY
Respondent

On Petition for Review from the First Court of Appeals
Houston, Texas
No. 01-24-00740-CV

HARRIS COUNTY'S RESPONSE TO PETITION FOR REVIEW

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RECORD REFERENCES AND CITATIONS

Harris County's brief uses the following references, with specific page numbers in brackets, unless otherwise noted.

Record References

Petition for Review, filed September 29, 2025 – “Petition at [page]”.

Petition Appendix Items – “Petition Appendix [number]”.

Response Appendix Items – “Response Appendix [number]”.

STATEMENT OF THE CASE

In accordance with Texas Rule of Appellate Procedure 53.2, Harris County provides the following Statement of the Case:

Nature of the Case

Respondent Harris County filed an *in rem* suit to foreclose on a property tax lien. Petition Appendix 4. Petitioner Trinh Ho filed a counterclaim and three amended counterclaims acknowledging that she owns the property but asserting that she does not owe taxes. Petition Appendix 5. She claimed that efforts to collect taxes were *ultra vires*, and she sought to quiet title, for an order barring the tax collector from any “future lawsuits” or from collecting taxes on her tax account ever again, and for damages for wrongful debt collection under the United States Constitution’s Fifth Amendment Takings Clause. Response Appendix 7.

Ms. Ho paid her taxes on the eve of trial, and Harris County dismissed the case against her (although Ms. Ho still owes costs and fees). The remaining issue is the viability of Ms. Ho’s counterclaim.

Trial court designation, judge, and disposition of the case

The case was filed as No. 2021-28749 in the 295th Judicial District of Texas before the Honorable Donna Roth. Petition Appendix 4.

The district court found that Harris County has government immunity in Ms. Ho’s counterclaim and granted Harris County’s plea to the jurisdiction. Petition Appendix 2.

<i>Parties in the court of appeals</i>	<u>Plaintiff-Appellant:</u> Trinh T. Ho
	<u>Defendants-Appellees:</u> <ul style="list-style-type: none"> (1) Harris County, Texas (2) Harris County Tax Assessor-Collector Ann Harris Bennett, in her official capacity, substituted by her successor in office, Annette Ramirez, in her official capacity.
<i>Court of appeals district and the names of the justices who participated in the decision and the author of the opinion</i>	Court of Appeals, First District of Texas. Panel consisted of: <ul style="list-style-type: none"> (1) Justice David Gunn, author of the opinion (2) Justice Adams (3) Justice Guiney
<i>Citation to the court of appeals' opinion</i>	<i>Trunh T. Ho v. Harris County and Annette Ramirez, in her Official Capacity as Harris County Tax Assessor-Collector</i> , No. 01-24-00740-CV, 2025 WL 2446038 (Tex. App.—Houston [1st Dist.] Aug. 26, 2025, pet. filed).
<i>Disposition in the court of appeals</i>	On August 26, 2025, the First Court of Appeals unanimously affirmed the trial court's orders granting the pleas to the jurisdiction. Petitioner only seeks review of her claims against Harris County.

ISSUE PRESENTED

The Texas Tax Code provides a procedure to adjudicate tax disputes and mandates that counties foreclose on liens for unpaid property taxes. In response to a foreclosure, Petitioner Trinh Ho filed a counterclaim against Harris County. The trial and appellate courts unanimously found that Harris County retained governmental immunity, which is consistent with *Waller County v. Simmons*, No. 01-07-00180-CV, 2007 WL 3038420 (Tex. App.—Houston [1st Dist.] Oct. 18, 2007, no pet.), and this Court’s three-part test in *Reata Construction Corporation v. City of Dallas*, 197 S.W.3d 371 (Tex. 2006). Harris County respectfully suggests that a more accurate statement of the Issue Presented is:

When a county forecloses on a property tax lien as mandated by state law, does it lose its immunity and become subject to a counterclaim for money damages by an owner who asserts no facts to explain why the taxes were not due and cannot show how the counterclaim is germane to and properly defensive to the county’s enforcement of the tax lien?

TO THE HONORABLE SUPREME COURT OF TEXAS:

INTRODUCTION

The Texas Constitution and statutes obligate local governments to fund public services by uniformly assessing and collecting taxes.¹ After Harris County took steps to foreclose on a commercial tract with delinquent property taxes, Petitioner Trinh Ho claimed an interest in the property and alleged the taxes were not due. Ms. Ho pleaded no facts to support this, yet she filed a counterclaim and three amended counterclaims seeking monetary damages against Harris County.

The trial court and a unanimous panel of the First Court of Appeals held that Harris County is entitled to governmental immunity on these counterclaims, and the sole issue is whether this Court should grant review to determine whether a county's foreclosure on a tax lien waives governmental immunity.² This Court should not grant review under Texas Rule of Appellate Procedure 56.1 and Texas Gov't Code § 22.001(a) for the following reasons:

- (1) The justices of the court of appeals were unanimous in their opinion in this case and affirmed the trial court decision.

¹ See, e.g., Tex. Const. art. VIII, § 3; Tex. Const. art. VIII, § 1(a); Tex. Const. art. VIII, § 1(b); Tex. Const. art. III, § 55; Tex. Const. art. VIII, § 10; Tex. Const. art. VIII, § 15.

² Ms. Ho does not seek review of her Fifth Amendment Takings Claim or declaratory and injunctive requests, and she has not sought review of her *ultra vires* claims against the tax collector.

(2) There is no conflict between the courts of appeals. This Court’s guidance in *Reata* makes clear that the legislature has not waived immunity to permit a counterclaim to a property tax foreclosure because: (1) a county’s collection of taxes is a constitutional duty, rather than a “choice” to engage in litigation, (2) the collection of taxes is not “monetary damages,” and (3) Ms. Ho’s counterclaims are not “germane to, connected with, and properly defensive to” the foreclosure of the property tax lien. *Reata Construction Corp. v. City of Dallas*, 197 S.W.3d 371 (Tex. 2006); *Nazari v. State*, 561 S.W.3d 495 (Tex. 2018).

(3) This case does not involve the construction or validity of a statute.

(4) The Petition does not involve constitutional issues. Ms. Ho alleges that property tax counterclaims assure compliance with Tex. Const. art. VIII (which provides that taxes be equal and uniform). However, Texas law has a different procedure to challenge property tax calculations.

(5) The justices in the court of appeals did not commit an error of law, and even if they had, the issue is not of such importance to the state’s jurisdiction to merit review because it is narrowly confined to cases where a purported property owner chooses to dispute property taxes by waiving her defenses and filing a counterclaim instead.

STATEMENT OF FACTS

On May 13, 2021, Harris County filed an *in rem* action against property owned by Trinh T. Ho to collect delinquent property taxes for a commercial block in Holloway Heights, Harris County, Texas.³ The taxes had not been paid in 2002, 2003, 2004, 2005, or 2006, and the taxes, penalties, interest, and attorney's fees totaled \$8,018.64. Petition Appendix 4 (Harris County's Original Petition).

On July 16, 2021, Ms. Ho filed a two-page answer denying that she owed any taxes and pleading boilerplate defenses of "failure of consideration, assumption of the risk, contributory negligence, duress, estoppel, fraud, illegality, laches, release, res judicata, statute of limitations, and/or waiver." She pleaded no facts to provide Harris County with notice of the nature of these defenses. She never alleged that the taxes were improperly calculated, that she did not own the property, or that the taxes were paid on a specific date. Response Appendix 1 (Trinh Ho's Answer).

On December 12, 2023, Mr. Ho filed a three-page counterclaim acknowledging that she is "the owner of real property" in question. She never alleged what was improper about the tax bill, yet she pleaded claims against Harris

³ William Walls, who appears as Ms. Ho's attorney, was also identified as owning this property and named in the lawsuit. Mr. Walls has not filed a petition for review, and his claims are not before this Court.

County for wrongful debt collection and sought damages between \$8,018.64 and \$75,000. Response Appendix 2 (Trinh Ho's Original Counterclaim).

On February 15, 2024, Ms. Ho filed an amended counterclaim that added new taxing entities, opposing counsel, and Tax Collector Ann Harris-Bennett as counter-defendants. Ms. Ho again admitted that she owned the property and pleaded no facts to suggest why the tax bill was improper. Still, she maintained that Harris County was liable for wrongful debt collection and a Fifth Amendment taking, and that the tax collector committed an *ultra vires* act by attempting to collect taxes. She sought to quiet title and for damages between \$8,018.64 and \$75,000. Response Appendix 3 (Trinh Ho's First Amended Counterclaim).

On June 14, 2024, Harris County and Tax Collector Ann Harris-Bennett answered Ms. Ho's amended counterclaim, and Harris County asserted governmental immunity. Response Appendix 4 (Harris County's Answer).

On July 17, 2024, Ms. Ho filed a second amended counterclaim naming new parties, including the Mayor of Houston in his personal capacity, the superintendent of the Houston Independent School District in his personal capacity, and the chancellor of Houston Community College, in her personal capacity. The second amended counterclaim again asserted claims for wrongful debt collection and a Fifth Amendment taking. Ms. Ho sought to quiet title, for a declaratory judgment

preventing the tax collector from collecting these taxes, and for damages between \$8,018.64 and \$75,000. Petition Appendix 5 (Trinh Ho's Second Amended Counterclaim).

On August 2, 2024, Harris County filed a plea to the jurisdiction asserting that Ms. Ho failed to meet her burden of demonstrating that the Legislature waived immunity for her claims and that the Texas Uniform Declaratory Judgment Act is not available for Tax Code claims. Response Appendix 5 (Harris County's Plea to the Jurisdiction). On August 9, 2024, Ms. Ho responded. Response Appendix 6 (Trinh Ho's Response to Harris County's Plea to the Jurisdiction).

Prior to trial, Ms. Ho paid her property taxes, and Harris County dismissed the case (except for outstanding court costs and fees). On August 9, 2024, Ms. Ho filed a third amended counterclaim advising the court that she paid her taxes under duress and wanted a refund. She admitted that she had been sued for delinquent taxes in the past and sought injunctive relief barring the tax collector from ever filing legal proceedings against her for that tax account. Response Appendix 7.

The trial court granted Harris County's plea to the jurisdiction. Petition Appendix 2 (Order granting Plea to the Jurisdiction). Ms. Ho appealed, and the court of appeals affirmed the dismissal.

SUMMARY OF THE ARGUMENT

Petitioner Trinh Ho asks this Court to review whether a party who waives the right to plead defensive facts in an *in rem* property tax foreclosure can then file a counterclaim to recoup those taxes against a county. Ms. Ho contends that the courts below departed from this Court’s holding in *Reata Construction Corporation v. City of Dallas*, 197 S.W.3d 371 (Tex. 2006). Her arguments are premised on the belief that *Reata* established that a public entity loses its immunity every time a defendant files a counterclaim to offset a monetary claim, and she frames the issue as whether a lien foreclosure is a monetary claim. Petition at 10.

A defendant may not file a counterclaim in every case in which the government seeks a monetary recovery, and this Court’s holdings in *Reata* and its progeny establish a three-part test to determine when a party may file a counterclaim against the government to offset damages. A government must (1) choose to engage in litigation to resolve a dispute and accept the costs and risks of a counterclaim, (2) assert affirmative claims for monetary damages, and (3) the counterclaim must be germane to, connected with, and properly defensive to the public entity’s claim. *Reata*, 197 S.W.3d at 375-377.

This case does not meet any of these requirements. First, Harris County is constitutionally and statutorily required to collect taxes—it does not “choose” to

collect taxes in the same way it might choose to accept the costs and risks of filing a tort claim. Second, taxes are not monetary “damages”—they are more akin to fees, fines, or other revenue essential to maintaining public services. *Nazari v. State*, 561 S.W.3d 495, 502 (Tex. 2018). Finally, Ms. Ho’s counterclaim is not germane to, connected with, or properly defensive to Harris County’s foreclosure. This is because taxation is one-sided and not designed to resolve competing damage claims between two parties. While a motorist can challenge a speeding ticket and a taxpayer can challenge an assessment, both must follow an administrative process, and neither can counterclaim for money damages. *Nazari*, 561 S.W.3d at 507-508.

ARGUMENT

I. Standard of review in an immunity case.

Sovereign immunity protects the state against lawsuits for damages unless the state consents to be sued, and governmental immunity protects political subdivisions of the state. *Gulf Coast Center v. Curry*, 658 S.W.3d 281 at 283-284 (Tex. 2022). The decision to waive immunity belongs to the legislature. *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). If the legislature elects to waive immunity, it must do so “by clear and unambiguous language.” *Tooke v. City of Mexia*, 197 S.W.3d 325 at 328-329 (Tex. 2006), citing Tex. Gov’t Code § 311.034.

The government may assert immunity through a plea to the jurisdiction challenging the pleadings, existence of jurisdictional facts, or both. *Alamo Heights Independent School District v. Clark*, 544 S.W.3d 755 at 770 (Tex. 2018). Whether the trial court has subject matter jurisdiction is a question of law reviewed *de novo*. *Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

II. This Court’s precedent correctly establishes that a county’s foreclosure on a property for delinquent taxes does not waive immunity for a party to assert a counterclaim.

Only the legislature can waive immunity, but the government’s participation in a lawsuit can affect the scope of immunity that has been waived. *Nazari v. State*, 561 S.W.3d 495 at 501 (Tex. 2018). Ms. Ho asserts that *Reata* stands for the proposition that a government loses immunity for an offset the moment it files suit seeking money from another party (Petition at 16 & 20), but the holding in *Reata* is much narrower than that.

This Court established three conditions for a party to bring a counterclaim against a government. The government must (1) “choose to engage in litigation” (2) “assert affirmative claims for monetary damages” and (3) the counterclaim is “germane to, connected with, and properly defensive to” the public entity’s claim. *Reata*, 197 S.W.3d at 375-377 (emphasis added). *Reata* met this criteria because it involved a tort action where the government and a contractor litigated competing

claims against each other, and the government was required to participate as an ordinary litigant. *Reata*, 197 S.W.3d at 377. In contrast, the case at bar does not meet this criteria for the reasons below.

A. Collecting property taxes is not a choice.

Harris County did not “choose” to litigate with Ms. Ho, because collecting property taxes is not a choice. When a government chooses to initiate a tort or contract case, it seeks a determination of negligence (or breach) and damages. A government has discretion to bring these cases, and when it does, it accepts the cost of litigation and the risk of a counterclaim.

In contrast, collecting taxes and foreclosing tax liens are not choices—they are legal obligations imposed by the Texas Constitution and legislature. See Tex. Const. art. VIII, § 3 (“Taxes shall be levied and collected by general laws and for public purposes only.”); Tex. Const. art. VIII, § 1(a) (“Taxation shall be equal and uniform”); Tex. Const. art. VIII, § 1(b) (“All real property . . . shall be taxed in proportion to its value. . .”). As the Texas Attorney General explained in an early opinion on this subject:

The quoted constitutional and statutory provisions clearly evidence the jealous care with which the framers of the constitution and the makers of our laws have sought to safeguard the revenues of the State. They speak, most emphatically, not only the intent that taxes should constitute a lien upon the land against which they were assessed (Const., Art. 3, Sec. 55; Art. 8, Secs. 1, 10 and 15), but that such a lien should

continue in force and effect until the taxes secured thereby have been paid, or by act of the Legislature have been released, after they have been due for more than ten years. (Const., Art. 8, Sec. 15; Art. 7172, R.C.S.).

Response Appendix 8 (Tex. Att'y Gen. Op. No. 0-5013 (1943)).

These provisions were adopted to end the practice of government officials showing favoritism by canceling taxes or debts. See Tex. Const. art. III, § 55; Tex. Const. art. VIII, § 10. To ensure that governments meet basic needs, counties are required to place liens on property to secure the payment of taxes:

The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent tax payer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

Tex. Const. art. VIII, § 15.

While the taxpayer and government might disagree over a property's assessed value, Harris County has no discretion to allow certain taxpayers to avoid taxes or show favoritism in deciding which properties to foreclose. Harris County did not choose to foreclose on the property purportedly owned by Ms. Ho—it was required to do so, and it did not assume the same risk of a counterclaim as it does when it initiates a tort or contract claim. See, *Reata*, 197 S.W.3d at 375. Ms. Ho's counterclaim does not satisfy the first element of the *Reata* test.

B. Collecting property taxes is not monetary “damages.”

Collecting taxes (and, *a fortiori*, foreclosing on an *in rem* property tax lien) also fails to satisfy the second element of *Reata* because these acts do not seek “monetary damages.” Damages are “awarded by a judge” and reflect “the result of the injury or loss caused by one party or another.”⁴ In contrast, property taxes are revenue owed each year to support essential government services.

In *Simmons*, the First Court of Appeals cited Texas Tax Code § 32.01⁵ and held that “a suit to recover delinquent taxes is, by its very nature, not a claim for monetary damages, but rather a foreclosure of a lien.” *Waller County v. Simmons*, No. 01-07-00180-CV, 2007 WL 3038420, at *3 (Tex. App.—Houston [1st Dist.] Oct. 18, 2007, no pet.). Ms. Ho focuses on the second part of that sentence and counters that the Fifth Court of Appeals suggested that the foreclosure of a lien is similar to a judgment and another way to collect damages. *Linbeck Construction Co. v. City of Grand Prairie*, 293 S.W.3d 896 (Tex. App.—Dallas 2009, no pet.). Ergo, Ms. Ho concludes that Harris County’s initiation of a tax foreclosure sought monetary damages.

⁴ *Damages*, The Law Dictionary, <https://dictionary.thelaw.com/damages/> (last visited January 28, 2026).

⁵ On January 1 each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest imposed on the property. Tex. Tax Code § 32.01.

However, *Linbeck* is distinguished. First, it involved a contractor foreclosing on a mechanic's lien on a city-owned building rather than the government foreclosing on a tax lien. Second, the city chose to initiate a breach of contract claim and accept the cost and risk of litigation, while Harris County simply complied with its constitutional duty to collect taxes. Third, the Dallas Court of Appeals never actually reached this issue because the city withdrew its counterclaim and rendered the matter moot. *Linbeck*, 293 S.W.3d at 900.

Even if *Linbeck* was on point, it misses the bigger issue that taxes are revenue sources—not damages. This Court held in *Nazari* that collecting revenue and recovering public funds is not monetary damage and that the state retains immunity from counterclaims involving them. *Nazari*, 561 S.W.3d at 502. In *Nazari*, the state sued several dentists to recover misspent Medicaid funds. The dentists alleged that the state engaged in conspiracy, breach of contract, and conversion to mislead them into taking the money, and they filed a counterclaim to offset the state's recovery. This Court held that the state retained immunity in part because the recovery of public funds was more akin to the collection of revenue or penalties than to "monetary damages" as contemplated by *Reata*. *Nazari*, 561 S.W.3d at 502.

C. Ms. Ho’s counterclaim is not “germane to, connected with, and properly defensive to” Harris County’s action to foreclose on a property tax lien.

Ms. Ho does not meet the third *Reata* element because her counterclaim is not “germane to, connected with, and properly defensive to” Harris County’s foreclosure. The Tax Code provides a procedure for Ms. Ho to adjudicate her tax dispute, including statutes outlining how to challenge her assessment and reclaim duplicate payments. *See, e.g.*, Texas Tax Code Chapter 31. Filing a counterclaim is not part of that procedure.

In *State v. Humble Oil & Refining Co.*, an operator overpaid taxes in some months and underpaid them in others. When the state tried to recover the underpayments, the operator filed a counterclaim seeking to offset the underpayments with the overpayments. This Court held that “taxes due the State cannot be offset by an indebtedness due by the State to the tax debtor,” and while the subject matter of both the state’s tax claim and Humble Oil’s offset claim involve taxes due on the production of oil, “the one claim has no connection with the other, and the two claims are entirely independent of each other.” *State v. Humble Oil & Refining Co.*, 169 S.W.2d 707, 709-710 (Tex. 1943).

This Court reaffirmed this in *Nazari*. As noted, the government sought reimbursement from dentists who misused Medicaid funds, and the dentists were

not permitted to file a counterclaim alleging that the state engaged in conspiracy, breach of contract, and conversion, and misled them into believing they were entitled to this money. On its face, the dentists' counterclaim appears "germane to, connected with, and properly defensive" to the state's claim against them.

However, this Court held that a defendant cannot file a counterclaim to a suit by the government to collect revenue or recover public funds. *Nazari*, 561 S.W.3d at 502. It reasoned that if the dentists were owed an offset, that determination was "already one of the central issues in this case" and needed to be decided in the case-in-chief. *Nazari*, 561 S.W.3d at 507-508. Similarly, whatever defenses Ms. Ho wished to assert were central issues in Harris County's suit, and they needed to be raised in that case or the administrative processes in Chapter 31 of the Tax Code—not in a counterclaim seeking affirmative damages against the government.

This is because "[c]itizens cannot claim a penalty against the state, but the state can and does frequently assess fines, penalties, and sanctions against its citizens." *Nazari*, 561 S.W.3d at 507. If *Reata* were interpreted to allow a defendant to breach immunity by filing a counterclaim every time the government collected revenue, "any driver could assert a 'selective enforcement' counterclaim to any speeding ticket," which would "dramatically reduce entities' ability to collect revenue." *Nazari*, 561 S.W.3d at 508. Ms. Ho is entitled to dispute her taxes, but her

counterclaim could never be germane to, connected with, and properly defensive to the government's foreclosure because she does not have a reciprocal right to tax or foreclose on government property.

Finally, after three amendments, Ms. Ho's counterclaim lacks facts to place Harris County on notice of her claim. It is unclear whether she believes that she should never have to pay taxes, that she has already paid taxes, or that she simply does not recognize Harris County's authority to collect taxes. Texas local governments could not function if every taxpayer ignored their property tax bills, waited for their properties to be foreclosed, and then consumed judicial and government resources by inundating courts with vague counterclaims.

CONCLUSION AND PRAYER

The courts below unanimously reached the correct decision that Harris County retained immunity in Petitioner Trinh Ho's counterclaims. There is no conflict between the circuits on any issue relevant to this case, and Texas taxpayers have a process for adjudicating their tax disputes. Harris County respectfully asks the Court to deny the request for review.

Respectfully submitted,

JONATHAN FOMBONNE
HARRIS COUNTY ATTORNEY

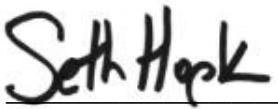
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ATTORNEYS FOR RESPONDENT
HARRIS COUNTY, TEXAS

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this document was produced on a computer and printed in a conventional typeface no smaller than 14-point, except for footnotes, which are no smaller than 12-point. This document also complies with the word-count limitations of Tex. R. App. P. 9.4. Relying on the word count of the computer program used to prepare this document, it contains 3,629 words, excluding the portions listed in Tex. R. App. P. 9.4(i)(1).



SETH HOPKINS

CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2026, a true and correct copy of the foregoing instrument was served by electronic transmission through the Texas electronic filing system and also via email to Respondent, through her counsel of record, Robert Moll, 1903 Blooming Park Lane, Katy, Texas 77450, email texlaw1992@aol.com.



SETH HOPKINS

APPENDIX TO HARRIS COUNTY'S RESPONSE TO PETITION FOR REVIEW

No.	Date	Item
1	July 16, 2021	Petitioner Trinh Ho's Answer
2	December 12, 2023	Petitioner Trinh Ho's Original Counterclaim
3	February 13, 2024	Petitioner Trinh Ho's First Amended Counterclaim
4	June 14, 2024	Harris County's Answer to Amended Counterclaim
5	August 2, 2024	Harris County's Plea to the Jurisdiction
6	August 9, 2024	Petitioner Trinh Ho's Response to Harris County's Plea to the Jurisdiction
7	August 9, 2024	Petitioner Trinh Ho's Third Amended Counterclaim
8	1943	Tex. Attorney General Opinion No. 0-5013 (1943)

APPENDIX 1

Petitioner Trinh Ho's Answer

NO. 2021-28749

HARRIC COUNTY, ET AL

X IN THE DISTRICT COURT OF

VS.

X HARRIS COUNTY, TEXAS

WILLIAM M. WALLS,
TRINH T. HO

X 295TH JUDICIAL DISTRICT

ORIGINAL ANSWER AND REQUEST FOR DISCLOSURES

TO THE COURT:

Comes now Trinh T. Ho, Defendant, and answer and respond to Plaintiffs' Original Petition as follows:

1. Defendant denies each and every allegation contained in Plaintiffs' Original Petition and demands strict proof thereof by a preponderance of the evidence with all questions of fact being presented to a jury of peers.
2. Defendant's denial shall include and shall be construed as response to all and subsequent pleadings which may be filed by Plaintiffs.
3. Defendant requests that this Court notice Defendant of all hearings in this case.
4. Defendant further requests that Plaintiffs provide the answers and material as set out in Rule 194.2 of the Texas Rules of Civil Procedure and forward its response to Defendant at the undersigned's attorney address.

5. Defendant further responds that Plaintiffs' case is not applicable due to failure of consideration, assumption of the risk, contributary negligence, duress, estoppel, fraud, illegality, laches, release, res judicata, statute of limitations and/or waiver.
6. Defendant further cross- sues Plaintiffs for wrongful collection of a debt.

Prayer

Defendant prays that Plaintiffs take nothing by reason of this lawsuit; that she go hence without day; that Defendant recovers all costs of court and attorney fees for defending this lawsuit and prosecuting counterclaims; that this matter be tried to the elected judge of this Court and no matter be heard by the tax master.

Respectfully submitted,

/s/ William M. Walls

William M. Walls
SBN 20795100
2927 Broadway
Houston, TX 77017
281.772.8068
williamwalls@gmail.com
Attorney for Defendant

APPENDIX 2

Petitioner Trinh Ho's Original Counterclaim

CASE NO. 2021-28749

HARRIS COUNTY, et al X IN THE DISTRICT COURT OF
VS. X HARRIS COUNTY, TEXAS
WILLIAM M. WALLS,
TRINH T. HO X 295TH JUDICIAL DISTRICT

TRINH T. HO'S COUNTER-CLAIM

TO THE COURT:

Trinh T. Ho, now Counter-plaintiff, files this Counter-claim and would show:

Discovery

1. Discovery should be at Level II.

Parties

Counter-plaintiff

2. Trinh T. Ho is a natural person residing in Fort Bend County, Texas and is the owner of real property located in Harris County, Texas.

Counter-defendant

3. Harris County, [individually and collecting on behalf of Harris County Department of Education, the Port of Houston Authority of Harris County, The Harris County Flood Control District, and the Harris County Hospital District, all of which are included within the references to Harris County made herein], City of Houston, Houston Independent School District and Houston Community College System (collectively

hereinafter “Counter-defendant”) are county wide taxing authorities operating in Harris County, Texas.

Service

4. Service of citation and process will be pursuant to Rule 21, TRCP.

Property

5. Property subject to this counter-claim is tax account no. 0825430000016; a tract of land designated as “Commercial Reserve” in Block 2 of Holloway Heights, Section 1, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 44, Page 58 of the Map Records of Harris County, Texas (hereinafter, the “Property”).

Factual Allegations

6. Counter-plaintiff is the owner of real property and has been sued by Counter-defendant for delinquent taxes in the underlying lawsuit, alleging Counter-plaintiff is liable for delinquent taxes on the Property for tax years 2002-2006.

Cause of Action

Wrongful Debt Collection

7. Counter-defendant has initiated the underlying lawsuit to recover alleged delinquent taxes on the Property which Defendant knows are not subject to enforcement and/or collection through the legal process.

Declaratory Relief

8. Pursuant to Chapter 37.001, et seq. Texas Civil Practice and Remedies Code, (Uniform Declaratory Judgments Act), Counter-plaintiff requests this Court declare Counter-defendant's claim for delinquent taxes as set out in the underlying lawsuit unenforceable as a matter of law.

Damages

9. As a result of Counter-defendants acts as set out hereinabove Counter-plaintiff has sustained damages in the amount of at least \$8,018.64 and in the maximum amount of \$75,000.00.

Prayer Counter-plaintiff prays that Defendant be cited to appear and answer herein; that upon final hearing Counter-plaintiff have and recover of Defendant, both jointly and severally, for all damages; for post and future interest, for costs of court, for attorney fees, and for such other and further damages that Counter-plaintiff may be justly entitled to.

Counter-plaintiff prays for general relief.

Respectfully submitted,

/s/ William M. Walls'

William M. Walls
SBN 20795100
2927 Broadway
Houston, TX 77017
281.772.8068
williammwalls@gmail.com
Attorney for Counter

SERVICE CERTIFICATE. The undersigned certifies that a true copy was forwarded to all parties and attorneys on December 12, 2023 via Texas Efile/eserve.

/s/ William M. Walls

Unofficial Copy Office of Marilyn Burgess District Clerk

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

william walls

Bar No. 20795100

williamwalls@gmail.com

Envelope ID: 82494109

Filing Code Description: Counter Claim/Cross Action/Interpleader/Intervention/Third Party

Filing Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party (\$80.00)

Status as of 12/12/2023 3:18 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Margaret Alfred		Margaret.Alfred@lgbs.com	12/12/2023 2:27:07 PM	SENT
William Walls		williamwalls@gmail.com	12/12/2023 2:27:07 PM	SENT

APPENDIX 3

Petitioner Trinh Ho's First Amended Counterclaim

CASE NO. 2021-28749

HARRIS COUNTY, et al

X IN THE DISTRICT COURT OF

vs.

X HARRIS COUNTY, TEXAS

WILLIAM M. WALLS,
TRINH T. HO

X 295TH JUDICIAL DISTRICT

TRINH T. HO'S AMENDED COUNTER-CLAIM

TO THE COURT:

Trinh T. Ho, now Counter-plaintiff, files this Amended Counter-claim and would show:

Discovery

1. Discovery should be at Level II.

Parties

Counter-plaintiff

2. Trinh T. Ho is a natural person residing in Fort Bend County, Texas and is the owner of real property located in Harris County, Texas.

Counter-defendants

3. Ann Harris Bennett in her personal capacity as the tax assessor/collector of Harris County, Texas
4. Harris County individually and as collecting on behalf of Harris County Department of Education, the Port of Houston Authority of Harris County, The Harris County Flood Control District, and the Harris County Hospital District, City of Houston, Houston Independent School District and Houston Community College System (collectively “Counter-defendant”) are Harris County governmental agencies.

5. Linebarger Goggan Blair & Sampson, LLP is a limited liability professional partnership and is the attorney of record for Plaintiff in the underlying lawsuit.

Service

6. Ann Harris Bennett can be served at 1001 Preston, Houston, TX 77002.

7. Service for Harris County, in its' individual capacity and as collector of taxes for Harris County Department of Education, the Port of Houston Authority of Harris County, The Harris County Flood Control District, the Harris County Hospital District, the City of Houston, Houston Independent School District and the Houston Community College System will be pursuant to Rule 21a, TRCP.

8. Linebargar Goggan Blair & Sampson, LLP can be served by serving any attorney of the firm at 4828 Loop Central Drive, Suite 600, Houston, TX 77081

Property

9. Property subject to this counter-claim is tax account no.

0825430000016; a tract of land designated as "Commercial Reserve" in Block 2 of Holloway Heights, Section 1, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 44, Page 58 of the Map Records of Harris County, Texas (hereinafter, the "Property").

Factual Allegations

10. Counter-plaintiff is the owner of real property and has been sued by Counter-defendant for delinquent taxes in the underlying lawsuit,

alleging Counter-plaintiff is liable for delinquent taxes on the Property for tax years 2002-2006.

11. Ann Harris Bennett, in her individual capacity and as tax assessor/collector of Harris County, Texas has engaged in ultra vires acts and conduct in suing Counter-plaintiff for an alleged debt that is invalid, discharged, barred and/or is invalid under the statutes, doctrines or common-law of the State of Texas. At all times material Ann Harris Bennett had actual knowledge of the lack of merits of the delinquent tax claims, or was consciously indifferent to the facts of the claim.

12. Linebargar Goggan Blair & Sampson, LLP filed the underlying pleadings in this cause and continues it it's attempt to collect an invalid debt which it knew was invalid, discharged barred and/or is invalid under the statutes, doctrines or common -law of the State of Texas.

Cause of Action

Wrongful Debt Collection

13. Counter-defendants have initiated the underlying lawsuit to recover for alleged delinquent taxes on the Property while, at all times material, Counter-defendants had personal knowledge that the alleged delinquent taxes are not subject to judicial enforcement and/or collection through the legal process.

Declaratory Relief

14. Pursuant to Chapter 37.001, et seq. Texas Civil Practice and Remedies Code, (Uniform Declaratory Judgments Act), Counter-plaintiff requests

this Court declare that, at all times material, Ann Harris Bennett was, and is continuing to, act outside the scope of her official duties in filing and prosecuting the underlying delinquent tax suit as a matter of law.

Quiet Title

15. By filing the underlying delinquent tax suit Counter-defendants have slandered Counter-plaintiff's quiet and peaceable possession of the subject Property and Counter-plaintiff requests declaratory relief as to the rights and obligations of the parties to the Plaintiffs' claims in the underlying lawsuit.

Takings Clause

16. As a result of Counter-defendants' acts as set out above Counter-plaintiff is being subjected to seizure and deprivation of her right, title and ownership of the Property subject to the underlying lawsuit in violation of Counter-plaintiff's protection under the 5th Amendment of the Constitution of the United States.

Damages

17. As a result of Counter-defendants acts as set out hereinabove Counter-plaintiff has sustained damages in the amount of at least \$8,018.64 and in the maximum amount of \$75,000.00.

Prayer Counter-plaintiff prays that Counter-defendants be cited to appear and answer herein; that upon final hearing Counter-plaintiff have declaratory relief as requested above and recover of Defendants, both jointly and severally, for all damages; for post and future interest, for costs of court,

for attorney fees, and for such other and further damages that Counter-plaintiff may be justly entitled to.

Counter-plaintiff prays for general relief.

Respectfully submitted,

/s/ William M. Walls'

William M. Walls
SBN 20795100
2927 Broadway
Houston, TX 77017
281.772.8068
williamwalls@gmail.com
Attorney for Counter-plaintiff

SERVICE CERTIFICATE. The undersigned certifies that a true copy was forwarded to all parties and attorneys on February 13, 2024 via Texas Efile/eserve.

/s/ William M. Walls

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

william walls
Bar No. 20795100
williamwalls@gmail.com
Envelope ID: 84537627
Filing Code Description: Request
Filing Description: Request (\$0.00)
Status as of 2/16/2024 9:59 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William Walls		williamwalls@gmail.com	2/15/2024 9:48:19 AM	SENT
Damon D. Edwards		damon.edwards@lgbsonline.com	2/15/2024 9:48:19 AM	SENT

APPENDIX 4

Harris County's Answer to Amended Counterclaim

CAUSE NO. 2021-28749

HARRIS COUNTY, ET AL
Plaintiff,

v.

WILLIAM M. WALLS, ET AL
Defendants.

**IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
295TH JUDICIAL DISTRICT**

**DEFENDANT HARRIS COUNTY'S ORIGINAL ANSWER
AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Harris County and Ann Harris Bennet, individually and in her official capacity, named as counter-defendants herein, and make and file their Answer, made in response to the allegations set forth in Counter-Plaintiff's Complaint and would respectfully show the following:

**I.
General Denial**

Counter-Defendants assert a general denial as authorized by TEX. R. CIV. P. 92, and respectfully requests that the Counter-Plaintiff be required to prove the charges and allegations against the Counter-Defendants by a preponderance of the evidence as is required by the Constitution and the Laws of the State of Texas.

**II.
Official Immunity**

Counter-Defendant Ann Harris Bennett is entitled to official immunity from suit. Under the laws of the State of Texas, government officials are entitled to official immunity from suits arising from the performance of their discretionary duties in good faith while acting within the scope of their authority. *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994).

Harris County, Texas is entitled to invoke (and does hereby invoke the doctrine of sovereign immunity (or governmental immunity). Any suit against the Harris County Tax

Collector, in her official capacity, is no different from a suit filed against Harris County, Texas. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). “Suits against the state officials in their official capacity therefore should be treated as suits against the State.” *see Bennett v. Pippin*, 74 F.3d 578, 584 (5th Cir. 1996).

The allegations contained in Counter-Plaintiff’s petition do not fall within the limited waiver of immunity and permission to sue as set forth within the “Texas Tort Claims Act,” TEX. CIV. PRAC. & REM. CODE §§ 101.001.

Additionally, under Texas law, a county (or any unit of government) cannot be held liable under the Texas Tort Claims Act, based on any vicarious liability for alleged acts of its employee, when the employee himself enjoys individual immunity (e.g., official immunity, qualified immunity) from tort claims for damages. TEX. CIV. PRAC. & REM. CODE § 101.026.

Harris County, Texas cannot be held vicariously liable for the acts of others and/or liable under the doctrine of *Respondent Superior*, in connection with any claim for deprivation of a person’s constitutional rights. *Monell v. Department of Social Services*, 436 U.S. 658, 694.

Accordingly, as a matter of law, Counter-Plaintiff has not stated and cannot state, a claim under the laws of State of Texas or the United States Constitution.

III. **Rule 193.7**

Counter-Defendant gives notice to Counter-Plaintiff and all parties that any and all documents produced during discovery may be used against Plaintiff and all parties at any pre-trial proceeding and/or trial of this matter without the necessity of authenticating the document pursuant to Tex. R. Civ. P. 193.7.

IV.

Relief

Counter-Defendants pray that Counter-Plaintiff take nothing from this suit. Counter-Defendant seeks all other relief, at law and in equity, to which it shows itself to be justly entitled.

Date: June 14, 2024

Respectfully submitted,

CHRISTIAN D. MENEFEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND FIRST
ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, & REAL
ESTATE DIVISIONS

By: /s/ Amanda Blons
AMANDA BLONS
Assistant County Attorney
State Bar No. 24117944
Amanda.blons1@harriscountytx.gov

JASON DIZON
Assistant County Attorney
State Bar No. 24003910
Jason.dizon@harriscountytx.gov

OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
Tel: 713-755-5101

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true copy of this document was e-served on Plaintiff's counsel of record in accordance with the Tex. R. Civ. P. by electronic service on June 14, 2024.

William M. Walls
Texas Bar No. 207965100
2927 Broadway
Houston, Texas 77017
Telephone: (281) 772-8068
E-Service: williamwalls@gmail.com

ATTORNEY FOR COUNTER-PLAINTIFF

/s/Amanda Blons
AMANDA BLONS

Automated Certificate of eService

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Jada Spinkston on behalf of Amanda Blons

Bar No. 24117944

Jada.Spinkston@harriscountytx.gov

Envelope ID: 88823737

Filing Code Description: Answer/ Response / Waiver

Filing Description: Defendant Harris County's Original Answer and Jury Demand

Status as of 6/14/2024 1:37 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Damon D. Edwards		damon.edwards@lgb.com	6/14/2024 1:35:08 PM	SENT
William Walls		williamwalls@gmail.com	6/14/2024 1:35:08 PM	SENT
Amanda Blons		amanda.blons1@harriscountytx.gov	6/14/2024 1:35:08 PM	SENT
Jason Dizon		jason.dizon@harriscountytx.gov	6/14/2024 1:35:08 PM	SENT
Jada Spinkston		jada.spinkston@harriscountytx.gov	6/14/2024 1:35:08 PM	SENT

APPENDIX 5

Harris County's Plea to the Jurisdiction

CAUSE NO. 2021-28749

HARRIS COUNTY, ET AL
Plaintiffs,

v.

**WILLIAM M. WALLS,
TRINH T. HO**
Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

295th JUDICIAL DISTRICT

HARRIS COUNTY'S PLEA TO THE JURISDICTION

COMES NOW, Plaintiff/Third-Party Defendant, Harris County and files this Plea to the Jurisdiction in response to Defendant/Third-Party Plaintiff Trinh T. Ho's Second Amended Counter-Claim and respectfully shows this honorable Court the following:

I.
INTRODUCTION

Harris County brought suit for the recovery of delinquent ad valorem taxes under Tex. Tax Code § 33.41 against William M. Walls ("Walls") and Trinh T. Ho (In Rem Only) ("Ho").

Ho filed a counterclaim against Harris County for wrongful debt collection and, pursuant to the Uniform Declaratory Judgments Act, requests this Court declare Harris County's claim for delinquent taxes to be unenforceable.

In subsequent Amended Counter-Claims, Ho has caused numerous individuals and entities to be joined into the suit as third-party defendants. Not all parties have yet made an appearance in this case.

II.
PLEA TO THE JURISDICTION

A party can raise the lack of subject-matter jurisdiction in a **plea to the jurisdiction** or a motion for summary judgment. *Bland Indep. Sch. Dist. v. Blue* 34 S.W.3d 547, 554 (Tex. 2000). A lack of “[s]ubject matter jurisdiction . . . can be raised at any time.” *See Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012). A plea to the jurisdiction challenges a trial court’s authority to determine the subject matter of the cause of action, but without defeating it on the merits. *City of Houston v. Northwood Mun. Util. Dist. No. 1*, 73 S.W.3d 304, 308 (Tex. App.-Houston [1st Dist.] 2001, pet denied) (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000)). While the underlying claims may form the context in which a plea to the jurisdiction is raised, the purpose of the plea is not to preview or delve into the merits of the case, but to establish the reason why the merits of the underlying claims need not be reached. *Id.* In the absence of a waiver of governmental immunity, a court has no jurisdiction to entertain a suit. *Tex. Dep’t of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). When a trial court learns that it lacks jurisdiction to hear a cause, the court must dismiss the cause and refrain from rendering a judgment on the merits. *Li v. Univ. of Tex. Health Sci. Ctr.*, 984 S.W.2d 647, 654 (Tex. App.-Houston [14th Dist.] 1998, writ denied).

Because this Court lacks subject matter jurisdiction to hear Ho’s claims against Harris County, this Court should grant Third-Party Defendant’s Plea to the Jurisdiction and dismiss Ho’s counter-claim against Harris County.

III.
ARGUMENTS & AUTHORITIES

A. HARRIS COUNTY IS ENTITLED TO GOVERNMENTAL IMMUNITY, WHICH HAS NOT BEEN WAIVED

Government entities and their employees will generally remain immune from suit. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009). Harris County falls under a political subdivision as defined by the Tort Claims Act, Tex. Civ. Prac. & Rem. Code § 101.001(3)(B) and is immune from suit absent a clear and unambiguous statutory or constitutional waiver. *See Travis Cent. Appraisal Dist. v. Norman*, 342 S.W.3d 54, 57-58 (Tex. 2011). Immunity from suit deprives courts of jurisdiction over suits against governmental entities unless the Legislature has expressly consented. *See City of Dallas v. Albert*, 354 S.W. 368, 373 (Tex. 2011).

A plaintiff bears the burden to affirmatively demonstrate a trial court's jurisdiction by express legislative permission. *See Tex. Dep't of Transp. V. Jones*, 8 SW3d 636, 638 (Tex. 1999). Ho has not provided this Court for a basis for waiver of Immunity for Harris County and therefore not met her burden.

B. HO IS NOT ENTITLED TO DECLARATORY RELIEF

Ho asks this Court for declaratory relief, of which she is not entitled. “The Declaratory Judgment Act is not a general waiver of sovereign immunity.” *Bandera Cnty. v. Hollingsworth*, 419 S.W.3d 639, 647 (Tex. App. 2013) (citing *Tex. Dep't. of Transp. v. Sefzik*, 355 S.W.3d 618, 621-22 (Tex. 2011)). Sovereign Immunity bars Declaratory Judgment Act actions against the State and political divisions absent a legislative waiver. *Id.*

Additionally, The Texas Uniform Declaratory Judgment Act is not available for relief when the Tax Code applies. Tax Code remedies are mandatory and exclusive. *Houston Indep. Sch. Dist. V. 1615 Corp.*, 217 S.W.3d 631, 638 (Tex. App. — Houston [14th Dist.] 2006, pet. denied) (citing Tex. Tax Code § 42.09 and *Cameron Appraisal District v. Rourk*, 194 S.W.3d 501-02). “The Declaratory Judgment Act cannot be used as a vehicle to avoid or evade the exclusive administrative process and remedies in the tax code.” *City of Fort Worth v. Pastusek Indus., Inc.*,

48 S.W.3d 366, 371 (Tex. App — Fort Worth 2001, no pet.) (quoting *Grand Prairie Hosp. Auth v. Tarrant Appraisal Dist.*, 707 S.W.2d 281, 284 (Tex. App. — Fort Worth 1986, writ ref'd n.r.e.)).

IV.
CONCLUSION

Harris County must be dismissed from this suit as this Court lacks jurisdiction to hear Ho's claims against it. Harris County retains immunity, as there is no evidence that immunity has been waived. Additionally, Ho is not entitled to declaratory relief. Therefore, this Plea to the Jurisdiction must be granted.

V.
PRAYER

Harris County prays that its Plea to the Jurisdiction be granted and that this case be dismissed with prejudice, and it be granted any further relief to which it is entitled.

Date: August 2, 2024

Respectfully submitted,

CHRISTIAN D. MENEFEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND FIRST
ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, & REAL
ESTATE DIVISIONS

By: /s/ Amanda Blons
AMANDA BLONS
Assistant County Attorney
State Bar No. 24117944

Amanda.blons1@harriscountytx.gov

JASON DIZON

Assistant County Attorney

State Bar No. 24003910

Jason.dizon@harriscountytx.gov

OFFICE OF THE HARRIS COUNTY ATTORNEY

1019 Congress

Houston, Texas 77002

Tel: 713-755-5101

ATTORNEYS FOR DEFENDANT

Unofficial Copy Office of Marilyn Burgess District Clerk

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, a true and correct copy of the foregoing document was sent as indicated to all counsel of record in accordance with TEX. R. CIV P. 21 and 21a, as follows:

William M. Walls
Texas Bar No. 207965100
2927 Broadway
Houston, Texas 77017
Telephone: (281) 772-8068
E-Service: williamwalls@gmail.com

ATTORNEY FOR TRIN T. HO

Damon D. Edwards
State Bar. No. 2407156
E-Service: damon.edwards@lgbs.com

ATTORNEY FOR PLAINTIFF

s/Amanda Blons
AMANDA BLONS

Unofficial Copy Office of Marilyn Burgess District Clerk

Automated Certificate of eService

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Jada Spinkston on behalf of Amanda Blons

Bar No. 24117944

Jada.Spinkston@harriscountytx.gov

Envelope ID: 90486819

Filing Code Description: Motion (No Fee)

Filing Description: Harris County's Plea to the Jurisdiction

Status as of 8/2/2024 2:42 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Damon D. Edwards		damon.edwards@lgbs.com	8/2/2024 2:28:08 PM	SENT
William Walls		williamwalls@gmail.com	8/2/2024 2:28:08 PM	SENT
Amanda Blons		amanda.blons1@harriscountytx.gov	8/2/2024 2:28:08 PM	SENT
Jason Dizon		jason.dizon@harriscountytx.gov	8/2/2024 2:28:08 PM	SENT
Jada Spinkston		jada.spinkston@harriscountytx.gov	8/2/2024 2:28:08 PM	SENT

APPENDIX 6

Petitioner Trinh Ho's Response to Harris County's Plea to the Jurisdiction

CASE NO. 2021-28749

HARRIS COUNTY, et al

X IN THE DISTRICT COURT OF

VS.

X HARRIS COUNTY, TEXAS

WILLIAM M. WALLS and TRINH T. HO
DISTRICT

X 295TH JUDICIAL

TRINH TO HO'S RESPONSE TO HARRIS COUNTY'S PLEA TO
JURISDICTION

TO THE COURT:

Trinh T. Ho, Counter-plaintiff and Respondent herein, files this Response
to Harris County's Plea to Jurisdiction and would show:

Request to Take Judicial Notice

1. Pursuant to Tex.R.Evid. 201 Respondent requests this Court take
judicial notice of adjudicative facts, to wit: Trinh T Ho's Third Amended
Counter-Claim.

Background

2. Counter-defendants have prosecuted delinquent tax claims against the
party defendants numerous times over delinquent taxes, included
alleged taxes due for omitted taxes under tax account

0825430000016, which is the subject of this lawsuit (hereinafter “prior lawsuits”) with several of the prior lawsuits resulting in final judgments.

3. Counter-plaintiff seeks, *inter alia*, refund of all payments made under duress in tax account 0825430000016.
4. Counter-plaintiff seeks declaratory relief as to Counter-defendant’s claims being barred by the doctrine of *res judicata* and injunctive relief barring Counter-defendants from filing future legal proceedings against Counter-plaintiff for the omitted improvements subject to tax account 0825430000016 and a declaration that said tax account be stricken from the tax roll of Harris County.

Argument and Authorities

5. Texas does not allow immunity to related counter-claims except to the extent that monetary damages exceed amounts claimed. In *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 377 (Tex.2006) the Court held as follows: “Therefore, we hold that the decision by the City of Dallas to file suit for damages encompassed a decision to leave its sphere of immunity from suits against it which are germane to, connected with and properly defensive to claims the City asserts. Once it asserts affirmative claims for monetary recovery, the City must participate in the litigation process as an ordinary litigant, save for the limitation that the City continues to have immunity from affirmative damages claims against it for monetary relief exceeding amounts necessary to offset the City’s claims.” *id* at 377.

6. Respondent has pled facts which evidence the necessity for this Court to issue rulings regarding the rights of Respondent and tax account 0825430000016. Respondent seeks nothing more than a declaration

from the Court that the claims against Counter-plaintiff are barred and which do not impair enforcement of the Tax Code.

7. As Counter-defendants have requested relief involving a tax sale of the subject property Respondent seeks relief from the actions of Counter-defendant under the theory of that Counter-defendants actions amount to a taking under the Takings Clause. See *Devillier v. State of Texas*, No. 21-40750, United States Court of Appeals, Fifth Circuit, 2023).

WHEREFORE, Counter-plaintiff prays that Harris County's Plea to Jurisdiction be denied. Counter-plaintiff prays for such relief as necessary.

Respectfully,

/s/ William M. Walls

William M. Walls
SBN 20795100
2927 Broadway
Houston, TX 77017
281.772.8068
williamwalls@gmail.com
Attorney for Plaintiff

SERVICE CERTIFICATE. The undersigned certifies that a true copy of the foregoing was served on all parties and attorneys of record on August 9, 2024 via Texas Efile/eserve.

/s/ William M. Walls

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

william walls
Bar No. 20795100
williamwalls@gmail.com
Envelope ID: 90744629
Filing Code Description: No Fee Documents
Filing Description: Answer/ Response / Waiver (\$0.00)
Status as of 8/9/2024 4:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William Walls		williamwalls@gmail.com	8/9/2024 4:14:16 PM	SENT
Damon D. Edwards		damon.edwards@lgbsonline.com	8/9/2024 4:14:16 PM	SENT
Amanda Blons		amanda.blons1@harriscountytx.gov	8/9/2024 4:14:16 PM	SENT
Jason Dizon		jason.dizon@harriscountytx.gov	8/9/2024 4:14:16 PM	SENT
Jada Spinkston		jada.spinkston@harriscountytx.gov	8/9/2024 4:14:16 PM	SENT

APPENDIX 7

Petitioner Trinh Ho's Third Amended Counterclaim

CASE NO. 2021-28749

HARRIS COUNTY, et al

X IN THE DISTRICT COURT OF

VS.

X HARRIS COUNTY, TEXAS

WILLIAM M. WALLS,
TRINH T. HO

X 295TH JUDICIAL DISTRICT

TRINH T. HO'S THIRD AMENDED COUNTER-CLAIM

TO THE COURT:

Trinh T. Ho, now Counter-plaintiff, files this Third Amended Counter-claim and would show:

Discovery

1. Discovery should be at Level II.

Parties

Counter-plaintiff

2. Trinh T. Ho is a natural person residing in Fort Bend County, Texas and is the owner of real property located in Harris County, Texas.

Counter-defendants

3. Ann Harris Bennett in her personal capacity as the tax assessor/collector of Harris County, Texas.
4. John Whitmire in his personal capacity as the mayor of the City of Houston in his personal capacity.
5. Mike Miles In his personal capacity as Superintendent of Houston Independent School District.
6. Margaret Ford Fisher in her personal capacity as Chancellor of Houston Community College.
7. Houston Community College System.
8. City of Houston which is a home-ruled city.

9. Houston independent School District is an independent school district in Harris County, Texas.
10. Houston Community College System is a college in Harris County, Texas.
11. Harris County individually and as collecting on behalf of Harris County Department of Education, the Port of Houston Authority of Harris County, The Harris County Flood Control District, and the Harris County Hospital District, City of Houston, Houston Independent School District and Houston Community College System (collectively "Counter-defendant") are Harris County governmental agencies.
12. Linebarger Goggan Blair & Sampson, LLP is a limited liability professional partnership and is the attorney of record for Plaintiffs in the underlying lawsuit.

Service

13. Ann Harris Bennett has answered and appeared
14. Harris County has answered and appeared.
15. John Whitmire can be served at 901 Bagby, Houston, TX 77002.
16. City of Houston may be served by serving it's City Attorney, Arturo Michel, 900 Bagby, 4th Floor, Houston, TX 77002.
17. Houston Independent School District may be served by serving it's general counsel, Catoshia Woods, at 4400 West 18th St., Houston, TX 77092.
18. Mike Miles may be served at 4400W. 18th St., Houston, TX 77092
19. Houston Community School System may be served by serving it's Chancellor Margaret Ford Fisher at it's main campus, 1300 Holman St., Houston, TX 77004
20. Service for Harris County, in its' official capacity and as collector of taxes for Harris County Department of Education, the Port of Houston

Authority of Harris County, The Harris County Flood Control District, the Harris County Hospital District, the City of Houston, Houston Independent School District and the Houston Community College System will be pursuant to Rule 21a, TRCP.

21. Linebarger Goggan Blair & Sampson, LLP can be served by serving any attorney of the firm at 4828 Loop Central Drive, Suite 600, Houston, TX 77081

Property

22. Property subject to this counter-claim is tax account no. 0825430000016; a tract of land designated as "Commercial Reserve" in Block 2 of Holloway Heights, Section 1, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 44, Page 58 of the Map Records of Harris County, Texas (hereinafter, the "Property").

Factual Allegations

23. Counter-plaintiff is the owner of real property and has been sued by Counter-defendant for delinquent taxes in the underlying lawsuit, alleging Counter-plaintiff is liable for delinquent taxes on the Property for tax years 2002-2006.

24. Counter-defendants Ann Harris Bennett, John Whitmire, Mike Miles and Adriana Tamez, each in his or her individual capacity, engaging in prosecuting wrongful claims against Plaintiff in the underlying lawsuit, have engaged in ultra vires acts and conduct in suing Trinh T. Ho for an alleged debt that is invalid, discharged, barred and/or is invalid under

the statutes, doctrines or common-law of the State of Texas. At all times material each of these Counter-defendants, or their predecessor(s), had actual knowledge of the lack of merits of the delinquent tax claims, and/or were consciously indifferent to the facts of the claim.

25. Trinh T. Ho has caused to be paid the taxes which are the subject of

this lawsuit, with the payment made under duress with all rights reserved.

26. Linebarger Goggan Blair & Sampson, LLP filed the underlying pleadings in this cause and is continuing in it's attempt to collect an invalid debt which it knew was invalid, discharged barred and/or is invalid under the statutes, doctrines or common -law of the State of Texas.

Cause of Action

Wrongful Debt Collection

27. Counter-defendants have initiated the underlying lawsuit to recover for alleged delinquent taxes on the Property while, at all times material, Counter-defendants had personal and/or constructive knowledge that the alleged delinquent taxes are not subject to judicial enforcement and/or collection through the legal process. Each Counter-defendant and/or his or her predecessor had actual and/or constructive knowledge of the numerous prior prosecutions for delinquent taxes which resulted in final judgments and involved the same parties.

Declaratory Relief

28. Pursuant to Chapter 37.001, et seq. Texas Civil Practice and Remedies Code, (Uniform Declaratory Judgments Act), Counter-plaintiff requests

this Court declare that, at all times material, Ann Harris Bennett was, and is continuing to, act outside the scope of her official duties in filing and prosecuting the underlying delinquent tax suit as a matter of law. Counter-plaintiff requests this Court declare that Counter-defendants do not have the authority to proceed with this or future lawsuits involving the subject matter of this cause.

29. Counter-plaintiff requests that this Court also enter an injunction against Counter-defendants from filing future tax delinquent suits or collecting the taxes that Counter-defendants may allege are due on tax account #0825430000016/

Quiet Title

30. By filing the underlying delinquent tax suit Counter-defendants have slandered Counter-plaintiff's quiet and peaceable possession of the subject Property and Counter-plaintiff requests declaratory relief as to the rights and obligations of the parties to the Plaintiffs' claims in the underlying lawsuit.

Takings Clause

31. As a result of Counter-defendants' acts as set out above Counter-plaintiff is being subjected to seizure and deprivation of her right, title and ownership of the Property subject to the underlying lawsuit in violation of Counter-plaintiff's protection under the 5th Amendment of the Constitution of the United States.

Damages

32. As a result of Counter-defendants acts as set out hereinabove Counter-plaintiff has sustained damages in the amount of at least \$9,172.60.

Counter-defendants to reimburse Counter-plaintiff for taxes paid under
duress on tax account
#082543000.
All _____ E

34. It was necessary for Trinh T. Ho to engage William M. Walls at her attorney to defend and prosecute her rights.

Conditions Precedent

35. All necessary conditions precedent have been performed.

Prayer Counter-plaintiff prays that Counter-defendants be cited to appear and answer herein; that upon final hearing Counter-plaintiff have declaratory relief as requested above and recover of Defendants, both jointly and severally, for all damages; for post and future interest, for costs of court, for attorney fees, and for such other and further damages that Counter-plaintiff may be justly entitled to.

Counter-plaintiff prays for general relief.

Respectfully submitted,

/s/ William M. Walls'

William M. Walls
SBN 20795100
2927 Broadway
Houston, TX 77017
281.772.8068
williamwalls@gmail.com
Attorney for Counter-plaintiff

SERVICE CERTIFICATE. The undersigned certifies that a true copy was forwarded to all parties and attorneys on August 9, 2024 via Texas Efile/eserve.

/s/ William M. Walls

Unofficial Copy Office of Marilyn Burgess District Clerk

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APPENDIX 8

Tex. Attorney General Opinion No. 0-5013 (1943)



THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-5013

Re: Authority of Tax Collector
to issue certificate showing
all taxes paid on property
which is in receivership and
taxes are delinquent after
sale of such property by re-
ceiver "free and clear of all
encumbrances and claims of
any person or party of any na-
ture whatever," under order of
court.

The facts reflected by your letter of December 8, 1942, supplemented by your letter of January 26, 1943, and the enclosures therewith, may be stated as follows:

In 1925, a receiver was appointed to take charge of, and operate certain oil leases. The appointment was made at the instance of plaintiffs who owned certain interests in the oil lease. The receivership is still pending and the operation of the property has shown a loss during each year of the receivership.

At the time of the appointment of the receiver State and county ad valorem taxes against this property were delinquent for the years 1923 and 1924, and same was assessable for such taxes for the year 1925. The State intervened in the receivership proceeding, and in 1931, the court rendered judgment in favor of the State against all other parties to the proceeding (including the receiver) for state and county taxes in the sum of \$6464.65, said sum representing state and county taxes, penalties and interest for the years 1923 to 1929, inclusive, and foreclosed the tax lien on the property in the hands of the receiver.

No further action appears to have been taken by the State. No part of such judgment has been paid, and none of the state and county taxes which have accrued during the period from 1930 to the present time have been paid.

On July 25, 1940 the Court ordered the receiver to sell all of the property on which the State's lien for taxes had been foreclosed, and on which taxes had accrued each year during the receivership, "free and clear of all encumbrances and claims of any person or party of any nature whatever". Under this order of the court the property was sold, the receiver undertaking to convey same free of such encumbrances, and such sale was by the Court confirmed. The proceeds of the sale of the property were later disbursed in payment of receiver's fees and operating costs under order of the Court.

The purchaser at receiver's sale now desires a tax certificate, certifying that all state and county taxes have been paid through the year 1940.

You request the opinion of this department advising whether the county tax collector is authorized to issue cancellation certificates and thereafter certify that all state and county taxes on said property for such years have been paid.

The precise question here involved has never been passed upon by the courts of this state. Upon the general question of subordination of previously existing liens to the costs of receivership, the courts have passed many times. The leading case is that of *Craver v. Greer*, 107 Tex. 356, 179 S. W. 862, in which the Supreme Court said:

"Where a lienholder procures the appointment of a receiver with the power to operate the property, which is subject to his lien, in a continuance of the business to which it is devoted, it is only just that the consequent expenses should take precedence over his lien, since it must be anticipated that such operation will be attended with cost, and possibly in excess of income. *Heisen v. Binz*, 147 Ind. 284, 45 N. E. 104. The same rule should be applied to a party who, while not directly the applicant upon whose petition the receiver is appointed is privy to the action which results in the appointment. But the indebtedness of the receiver has no right of priority over the vested lien of a creditor who neither applied for the receivership nor was a party to its procurement, merely because he is a party to the suit." (Emphasis ours)

The rule announced by the Supreme Court in *Craver v. Greer* has been consistently followed by the courts of this State. *Mayotown Lumber Co. v. Nacogdoches Grocery Co.*, (Com. App.) 236 S. W. 704; *Wagner Supply Co. v.*

Bateman, 260 S.W. 672; Hayes v. Gardner, 40 S.W. (2d) 917; Lynch Davidson Co. v. Hinnant, 93 S.W. (2d) 532; Texas Steel Co. v. Huey & Philip Hardware Co., 110 S.W. (2d) 9674. It is true that the general rule is qualified to the extent that the court has the power, in the exercise of a sound judicial discretion, to charge the liabilities of the receiver against the corpus of the receivership estate where such estate is "affected with a public interest" and the public has an interest in the continued operation of the property and such expenses are necessary in such continued operation. Craver v. Greer, *supra*; Ellis v. Water Co., 86 Tex. 109, 23 S.W. 858; Clint v. Houston Ice & Brewing Co., 106 Tex. 508; 169 S.W. 411.

The property here involved is private property. The receivership proceeding was instituted by its owners. It is neither public nor quasi-public in its nature and could not be said to be "affected with a public interest." The State had no part in procuring the appointment of the receiver.

The fact remains, however, that in 1928, some three years after the appointment of the receiver, the State intervened in the proceeding, bringing suit for some taxes which had accrued and constituted a lien on the property at the time of the appointment and for some taxes which had accrued subsequent to the appointment of the receiver. The court thereafter rendered judgment for the State as against all other parties to the suit which judgment is regular on its face establishing the State's claim as a lien "superior and prior" to "all other claims, interests, rights, titles and liens of whatsoever kind or character held, claimed or owned by any person or persons whatsoever" on the property here involved, and foreclosed the lien as against the receiver and all other parties to the suit. No objection has been raised to the judgment. This judgment of the court did not create the right of precedence of the State's lien for taxes, but simply established the existence of the right. Maytown Lumber Co. v. Nacogdoches Grocery Co., *supra*. The legality of the taxes and the existence of the lien have thus been adjudicated by the court. Likewise the priority of that lien has been adjudicated.

No claim appears to have been made by the State for taxes which have accrued on the property since the year 1930. As to such taxes it cannot be said that the State has sought to invoke the aid of the receivership proceeding in their collection, and as to these taxes the State has not become a party to the receivership proceeding.

The question to be answered here is whether the order of the court directing the receiver to sell the property here involved, free and clear of all encumbrances, is sufficient to free the property so sold from the State's lien for taxes previously adjudicated and established by the same court as well as to free it from the State's lien for taxes which accrued subsequent to such judgment.

Many jurisdictions hold that the court is authorized to subordinate the lien for taxes to the receiver's costs and the cost of operation of the property. We find no such case decided by any court of a state having constitutional and statutory provisions with reference to tax liens similar to our own. Both our constitution and our statutes are explicit in defining the character of the tax lien and the duration of its existence.

Pertinent constitutional and statutory provisions are the following:

Section 55 of Article 3 of our constitution reads:

"The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years." (Emphasis ours).

Section 1 of Article 8 of the constitution provides, in part that:

"Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as provided by law. (Emphasis ours)

Section 10 of Article 8 of the Constitution provides that:

"The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town from the payment of taxes levied for State or county purposes."

Section 11 of the same Article provides that:

"All property, whether owned by persons or corporations shall be assessed for taxation, And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer."

Honorable George H. Sheppard, Page 5, 0-5013

By Section 15 of Article 8, the Constitution provides that:

"The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide."

(Emphasis ours)

Article 7145, R. C. S., provides that all property, not expressly exempted by the statutes shall be subject to taxation. Article 7146 defines "real property" as the land itself and all improvements and fixtures thereon, including all mines, minerals, etc., in and under the same. Article 7172, R. C. S., provides that:

"All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for;"

(Emphasis ours)

Article 7336f, V.A.C.S., bars the collection of ad valorem taxes which became due before December 31, 1919. The Legislature has not seen fit to bar the collection of any such taxes which have accrued since that date.

The quoted constitutional and statutory provisions clearly evidence the jealous care with which the framers of the constitution and the makers of our laws have sought to safeguard the revenues of the State. They speak, most emphatically, not only the intent that taxes should constitute a lien upon the land against which they were assessed (Const., Art. 3, Sec. 55; Art. 8, Secs. 1, 10 and 15), but that such a lien should continue in force and effect until the taxes secured thereby have been paid, or by act of the Legislature have been released, after they have been due for more than ten years. (Const., Art. 8, Sec. 15; Art. 7172, R. C. S.)

The State of Oklahoma has constitutional and statutory provisions with respect to tax liens, very similar to ours. In the case of *Edwards v. Pratt*, 42 Pac. (2d) 506, the Supreme Court of that State had before it the identical question here presented to us. The court stated the question thus:

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"Does a court of equity in Oklahoma in a general receivership proceedings have jurisdiction to order and sell property in its custody free and clear of all delinquent taxes."

The Oklahoma constitutional provision was identical with our Constitution, Art. 8, Sec. 10, insofar as the latter is applicable to this fact situation. The Oklahoma statute provided that taxes upon real property should be a "perpetual lien." Our statute (Art. 7145, R.C.S.) provides that taxes upon real property "shall be a lien upon such property until the same shall have been paid." The Oklahoma Constitution provided that the Legislature should pass no law "exempting any property from taxation," except as provided in the Constitution. Our Constitution provides (Art. 8, Sec. 1) that "all property in this State . . . shall be taxed."

In holding that the court order authorizing the receiver to sell property free and clear of "all taxes" was void the Oklahoma Supreme Court in *Edwards v. Pratt*, said:

"Taxes are a perpetual lien, and having attached to the land, this lien cannot be directed by a sale under judicial process whether upon execution, decree of court, or foreclosure of mortgage.

"The third syllabus in the case of *Board of Commissioners of Woods County et al v. State ex rel. Commissions of Land Office*, 125 Okl. 287, 257 Pac. 778, 53 A.L.R. 1128, says: 'A perpetual tax lien having attached to land is not divested by a sale of the land under judicial process, whether upon execution, decree of court, foreclosure of mortgage, or any other proceedings in view of section 9724, compiled Oklahoma Statutes 1921, and article 10, § 5, of the Constitution.'

"In the body of the opinion, the case of *Bloxham v. Consumers' Electric Light & Street Railroad Company*, 36 Fla. 519, 18 So. 444, 29 L.R.A. 507, 51 Am. St. Rep. 44 is quoted: 'The state's lien for taxes, having attached by the assessment of the property, could not be divested by a subsequent judicial sale, even though the decree under which the sale was made should have directed that the property should be sold free from all incumbrances. . . . *Mesker v. Koch*, 76 Ind. 68.'

" . . .

"The judgment of the receivership court is void. This appears upon the face of the record, and it is subject to attack any time and

Honorable George H. Sheppard, Page 7, 0-5013

any way, and the unpaid taxes were a valid outstanding lien at the time Edwards conveyed to Pratt and the covenant of warranty in the deed was breached."

The fact situation, the statutes and the constitutional provisions before the Oklahoma Supreme Court are almost identical with those confronting us here. We think that case correctly disposed of the question and that the same reasoning applies and controls here. We are, therefore, of the opinion that in so far as the order of the court undertakes to free the land here involved from the state and county tax liens it is void upon the face of the record. Consequently, we advise you that the tax collector is without authority to issue tax cancellation certificates cancelling such taxes, and further advise that he is without authority to issue tax certificates showing that such taxes have been paid until such time as they have, in fact, been paid.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Fowler Roberts*
Fowler Roberts
Assistant

APPROVED FEB 19, 1943

Fowler Roberts
FIRST ASSISTANT
ATTORNEY GENERAL

FR:ff

APPROVED
OPINION
COMMITTEE
By *BVR*,
Chairman

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Filing Description: Harris County's Response to Petition for Review
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