



November 15, 2018

Supreme Court of Texas  
Supreme Court Building  
201 W 14th St., Room 104  
Austin, TX 78711

RE: *Felan v. Maverick County*, No. 18-0465

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner Ethelvina I. Felan’s petition for review seeks judicial affirmation of the statutory requirements that provide transparency and protect the public during a county government’s annual assessment of its tax rate. Accordingly, the Texas Public Policy Foundation submits this *amicus curiae* letter brief in support of Petitioner Felan’s petition for review and respectfully requests that the Court grant review to protect Texas taxpayers during the annual property tax rate adoption process.

The Texas Public Policy Foundation (the “Foundation”) is a non-profit, non-partisan research organization dedicated to promoting liberty, personal responsibility, and free enterprise through academically-sound research and outreach. Since its inception in 1989, the Foundation has emphasized the importance of limited government, free market competition, private property rights, and freedom from regulation. In accordance with its central mission, the Foundation has hosted policy discussions, authored research, presented legislative testimony, and drafted model ordinances to reduce the burden of government on Texans. Specifically, the Foundation seeks to further property tax reform policymaking within the scope of its mission through its Centers for Economic Prosperity and Local Governance. The Foundation has not and will not pay a fee for the preparation of this amicus letter.

Chapter 26 of the Texas Tax Code establishes a process for the annual adoption of a county's property tax rate designed to be transparent and to provide opportunity for public notice and comment prior to final adoption. The adoption of the tax rate triggers statutory duties and deadlines and also is the final event allowing the public to stop monitoring that process – like it or not. Inherent in this process also is its finality – when a county adopts its tax rate, that act should be final until the next year's budgeting process.

The process of setting local tax rates begins when the taxing unit receives the certified appraisal roll from the chief appraiser. Tex. Tax Code § 26.01. Following the receipt of the appraisal roll, the taxing unit uses the statutory formula to calculate the effective and rollback tax rates. Tex. Tax Code § 26.04. Subsequently, the taxing unit will publish notice of the effective and rollback tax rates and the taxing unit will adopt their budgets. Tex. Tax Code § 26.04(e). At the beginning of September, the governing body will provide notice of their proposed tax rates and subsequently hold public hearings for any opinions or concerns by property owners. Tex. Tax Code §§ 26.05(d), 26.06. To finalize the tax creation process, governing entities must adopt the local tax rate by September 30th or at least 60 days after receiving the appraisal roll, whichever date is later. Tex. Tax Code § 26.05(a). If the governing entity fails to adopt a tax rate by the deadline, the new tax rate automatically becomes “the lower of the effective tax rate calculated for that tax year or the tax rate adopted by the taxing unit for the preceding tax year.” Tex. Tax Code § 26.05(c). The governing entity's adoption of a tax rate marks the end of this tax rate creation process.

Once adopted, the Tax Code provides two remedies that taxpayers may pursue regarding the tax rate. The first remedy is an injunction, whereby a taxpayer may address a miscalculation of a tax rate or an error in the publication requirements if the tax assessor's error or miscalculation was not in good faith. Tex. Tax Code § 26.04(g). The second remedy available is a petition by qualified voters for an election to repeal a tax increase when the tax rate exceeds the rollback tax rate. Tex. Tax Code § 26.07.

In this case, Maverick County created an alternate final outcome that thwarted the transparency intent of chapter 26. On its face, chapter 26 of the Texas Tax Code sets forth a thorough process that Maverick County was required to follow in order to set and implement a tax rate for the current fiscal year. Chapter 26 promotes the idea that governing entities are, or should be, open to a transparent process that has a finite beginning and end. In advancing the idea of transparency, the Texas Legislature sets forth a step-by-step process, including extensive details for each

necessary step, potential remedies, and a government failsafe. These requirements are meant to ensure that governing entities provide taxpayers appropriate notice and opportunity to address any issues that may arise regarding taxes. As with all processes, there is a beginning and an end. Chapter 26 demonstrates that the governing entity's adoption of a tax rate marks the end of this process.

Maverick County first did complete this process. It received a proposed tax rate and completed the notice and hearing requirements to adopting the published tax rate. The County initially followed all of the necessary steps to adopt a tax rate for the year. However, after adopting the final tax rate, the tax assessor informed the entity that there was a miscalculation resulting in an adopted tax rate high enough to trigger the option for a citizen referendum rollback election.

Maverick County's Commissioners Court then *sua sponte* repealed the adopted rate, defaulting in its opinion to § 26.05(c), which provides for the automatic adoption of the lower effective tax rate for the present or previous year if entities fail to adopt a tax rate. But, § 26.05(c) should not bail out a governing body that has buyers' remorse after completing the chapter 26 process in adopting a property tax rate.

The process laid out in chapter 26 of the Tax Code provides that the end of this process is the governing entity's adoption of a tax rate. There are no additional steps for the governing entity to take after the entity adopts the tax rate. Instead, the legislature provided optional remedies that taxpayers may pursue to contest the adopted tax rate, which become moot if the tax rate is never final. Tex. Tax Code §§ 26.04(g), 26.07. The governing entity must accept its final outcome, whatever that may be and with any consequences that may follow. A significant purpose for including taxpayer remedies as well as a statutory failsafe, § 26.05(c), is to demonstrate that there is an end to this initial process. Whether the process ends smoothly or the entity faces opposition along the way, the process remains complete and allowing the entity to move backward to fix an issue it caused defies this entire process.

Maverick County's adoption, then repeal, of its final tax rate due to a mistake does not provide a judicial excuse to allow the County to go outside of chapter 26. Here, in an attempt to avoid a rollback election, Maverick County tried to repeal the adopted rate without alerting taxpayers. Allowing the government to change its final outcome by stepping outside the rules of this process thwarts the very nature of transparency, even if to the taxpayers' benefit. The only situation where a governing entity may be authorized to alter the approved budget is in a case of grave public

necessity. Tex. Local Govt. Code § 111.010. In those situations, the governing entity is acting on behalf of the public to promote public health and safety. That is not the case here.

Furthermore, § 26.05(c) does not apply to the facts at issue. This failsafe statute only applies when a governing entity fails to adopt a tax rate. It should not apply to situations where a governmental entity failed to correct a mistake it made—especially if it had ample time to do so. Once a governing entity adopts a tax rate, it should be bound by that tax rate, even if it may be subject to a rollback election. Simply repealing the adopted tax rate and allowing the statutory rate to take effect, the governing entity fails to do its job and thwarts the entire purpose of transparency and policy. Governing entities cannot and should not be permitted to tamper with its tax rate after the fact.

Maverick County attempted to hide its mistakes without facing the consequences – in this case, a potential rollback election. Allowing the government to tamper with the process once it is over is rival to the very fundamentals on which government and transparency function. Permitting governing entities to continue with this interpretation of the process, and therefore allowing tax rates to change without notice or explanation, would place an unnecessary burden on taxpayers to play a game of pin the tail on the moving target. This unnecessary burden of scrupulously tracking the government’s moves—without transparency—is not in the applicable statutory provisions nor is it a role that citizens should be required to play. Our governments, at every level, depend on the representatives we elect to continue managing it. As one of the rights and duties we hold as citizens, we elect individuals to carry out the duties of government. The public should not be required to double-check their elected officials at every step, especially when state law says the process is over.

By granting review, this Court should close an apparent loophole in the taxation process created by Maverick County’s mistake and affirm that chapter 26 establishes a rigid process for a county adoption of a tax rate that may not be set aside under any circumstance. Therefore, the Foundation respectfully requests this Court to grant Petitioner Ethelvina’s petition for review and, consistent with the plain terms of the Tax Code, affirm that governing entities cannot repeal and replace a tax rate once finally adopted.

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Respectfully submitted,

/s/Robert Henneke

ROBERT HENNEKE

Texas Bar No. 24046058

[rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com)

General Counsel & Director,

Center for the American Future

Texas Public Policy Foundation

901 Congress Avenue

Austin, Texas 78701

Telephone: (512) 472-2700

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *amicus curiae* letter brief has been served by eService on the 15<sup>th</sup> day of November, 2018, on counsel of record for each party as follows:

Jerad Wayne Najvar  
[jerad@najvarlaw.com](mailto:jerad@najvarlaw.com)  
Najvar Law Firm, PLLC  
2180 North Loop West, Suite 255  
Houston, Texas 77018  
*Counsel for Petitioner*

Robert W. Wilson  
[rww@sanchezwilson.com](mailto:rww@sanchezwilson.com)  
Sánchez & Wilson, PLLC  
6243 IH-10 West, Suite 1025  
San Antonio, Texas 78201

Luis Robert Vera, Jr.  
[lrvlaw@sbcglobal.net](mailto:lrvlaw@sbcglobal.net)  
Luis R. Vera & Associates  
1325 Riverview Towers Bldg.  
111 Soledad Street  
San Antonio, Texas 78205  
*Counsel for Respondent*

/s/Robert Henneke  
ROBERT HENNEKE