

**No. 04-16-00572-CV**  
**IN THE COURT OF APPEALS FOR THE**  
**FOURTH COURT OF APPEALS DISTRICT**  
**SAN ANTONIO, TEXAS**

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**RONALD F AVERY**  
**APPELLANT**  
**VS.**  
**Guadalupe County Appraisal District**  
**APPELLEES**

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**ON APPEAL FROM THE 2ND 25TH**  
**JUDICIAL DISTRICT COURT**  
**GUADALUPE COUNTY, TEXAS**  
**THE HONORABLE W. C. (BUD) KIRKENDALL, JUDGE**  
**PRESIDING**

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**APPELLANT'S BRIEF**

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**Ronald F. Avery**  
**Pro Se**  
**1933 Montclair Dr.**  
**Seguin, Texas 78155**  
**Phone: 830/372-5534**  
**E-Mail: Taphouse@SBCglobal.net**

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**ORAL ARGUMENT REQUESTED**

## **IDENTITY OF PARTIES AND COUNSEL**

Pursuant to Rule 38.1 (a) of the Texas Rules of Appellate Procedure, the Appellant, Ronald F. Avery, certifies to the best of his knowledge, the following is a complete list of all persons or entities with an interest in this appeal:

### **Appellant:**

1. Ronald F. Avery.  
Pro Se.  
1933 Montclair Dr.  
Seguin, Texas 78155  
830/372-5534  
[Taphouse@SBCglobal.net](mailto:Taphouse@SBCglobal.net)

### **Appellee:**

2. Guadalupe County Appraisal District

Lead attorney of record for Appellee in both the Trial and Appellate Courts:

Christopher Jackson  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
3301 Northland Dr., Ste. 505  
Austin, Texas 78731  
512/302-0190  
512/323-6963 (fax)  
[cjackson@pbfc.com](mailto:cjackson@pbfc.com)

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## **REFERENCE NOTATION**

(CR-15) Refers to the page number of the Clerk's Record at the Trial Court.

(RR-12) Refers to the page number of the Reporter's Record at the Trial Court.

(AA-13) Refers to the page number of the Appellant's Appendix.

## **STATEMENT OF THE CASE**

This is a "ad valorem property tax" protest and appeal case. Plaintiff/Appellant, Avery, protested his "ad valorem property taxes" on six grounds (CR-54, 73). Defendant/Appellee, Guadalupe County Appraisal District (GCAD), ruled on it. Avery appealed to the 2nd 25th District Court in Seguin, Texas (CR-475). Defendant answered (CR-52). Plaintiff and Defendant exchanged Requests for Disclosures, etc. (CR-99). The Defendant filed an Amended Original Answer, Plea to the Jurisdiction and Specific Denial of Conditions Precedent (CR-132). The Defendant then filed their Motion for Partial Dismissal for Lack of Jurisdiction (CR-286). At the same time, Defendant also filed their "Traditional" and "No Evidence" Motions for Summary Judgment (CR-138). Avery filed his Plaintiff's Verified Response to Defendant's Motion for Partial Dismissal & Traditional & "No Evidence" Summary Judgment (CR-400). A 15 minute hearing was held and Judge W.C. Kirkendall took it under advisement and later granted all the

Defendant's Motions by signed orders on 8/10/2016 (CR-471, 473).  
Avery filed his Notice of Appeal on September 6, 2016 (CR-475).

## **REQUEST FOR ORAL ARGUMENT**

This so-called "tax" case involves an improper partial dismissal and erroneous summary judgments but beyond that it is not about procedures, and rules, and the so-called "property tax code." But rather this case is about the fundamental law of the land concerning the purpose of the United States of America and the states thereof and a break in the lawful chain of authority preventing ad valorem property taxes in Texas.

A hearing before the Fourth Court of Appeals would be most helpful for the justices to discover just how far off the state of Texas has drifted from the original course set by our founders and why this is a serious detriment to all the people of Texas. The ability of the panel to ask questions of both the Appellant and Appellee will illustrate the need to return to the original course set by our founders and will also show that the present condition and course of Texas is, in fact, backward and unlawful as shown from the residual law left intact and the now contradictory constitutional provisions and the ludicrous decisions that result from their twisted application.

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## STATEMENT OF FACTS

In 1689, 100 years before the ratification of the U.S. Constitution, John Locke published his *Second Treatise of Government*<sup>1</sup> wherein he laid out the *principles of property* upon which our federal and state constitutions were founded according to Thomas Jefferson, third President of the United States of America. Locke showed in the Second Treatise that the sole purpose of government is the protection of the property of the individual people consisting of their life, liberty and estate or possessions.<sup>2</sup> Avery presented this evidence to the GCAD Review Board and to the 2nd 25th District Court (CR-439), (CR-460-461).

On Monday August 19, 1765, the Boston Globe printed an article entitled *A Dissertation on the Canon and the Feudal Law*,<sup>3</sup> written by John Adams, the second President of the United States of America. In this article Adams said that America was created for only two purposes; to secure religious freedom and **prevent the establishment**

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<sup>1</sup> John Locke, *Second Treatise of Government*  
<http://www.constitution.org/jl/2ndtreat.htm>

<sup>2</sup> That meant that lawful government could not charge the owner a rent, tax or fee, to possess their own land, home and business.

<sup>3</sup> John Adams, *A Dissertation on the Canon and Feudal Law*, (National Historical Publications & Records Commission: U.S. National Archives)  
<http://founders.archives.gov/documents/Adams/06-01-02-0052-0005>

**of the feudal system in which the people paid fees to the government to occupy and use their land, homes, tools and businesses.** Avery submitted this evidence before the GCAD Review Board and the 2nd 25th District Court (CR-445-447), (CR-464-467) .

In 1774, Thomas Jefferson, drafter of the Declaration of Independence, wrote *A Summary View of the Rights of British America*,<sup>4</sup> in which he laid out for delegates to the First Continental Congress a set of grievances against King George III, especially against the King's and Parliament's response to the *Boston Tea Party*. Jefferson declared also that the British Parliament did not have the right to govern the Thirteen Colonies. He argued that since the individual colonies were founded they were independent of British rule. Jefferson held that allodial title, *not* feudal title, was held to American lands, **and thus the people did not owe fees and rents for that land to the British crown.**<sup>5</sup> And this fact was made clear by Jefferson in his Declaration of Independence wherein he declared:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with

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<sup>4</sup> Thomas Jefferson, *A Summary View of the Rights of British America*, (The Avalon Project: Documents in Law, History and Diplomacy, Lillian Goldman Law Library, Yale Law School)  
[http://avalon.law.yale.edu/18th\\_century/jeffsumm.asp](http://avalon.law.yale.edu/18th_century/jeffsumm.asp)

<sup>5</sup> And for the same reason, the people do not owe fees and rents to the government the people create to protect their allodial titles.

certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness..."<sup>6</sup>

Locke in his Second Treatise also defined a *slave* as one who owns no property. Slavery is an unhappy condition caused by not owning property. When one must pay something or someone else to occupy their property they are not the owners of it according to Locke's *principles of property* upon which our nation was founded according to Thomas Jefferson.

Avery, submitted the evidence provided by Thomas Jefferson to the GCAD Review Board and the 2nd 25th District Court (CR-437-439), (CR-462-464), showing that the Texas citizen possesses *allodial title* to their property and that their property cannot be lawfully alienated or aliened by any government (CR-441-443), (CR-463-464). Avery showed evidence that the Texas citizen is not subject to "ad valorem property taxes," or any other fee, on their property as the State of Texas and the United States were both created to secure the allodial

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<sup>6</sup> We cannot have property rights if we cannot own property. Property rights flow from ownership of the property. The State, a fiction, erroneously views the individual citizen, a non-fiction, as a tenant at the present and have granted the individuals tenant privileges. This is a false condition because the individuals, in reality, own their property and create government to protect it. Government has violated its purpose to plunder society.

titles of the citizens against all comers including their own governments.<sup>7</sup>

Finally, after showing that the governments of the United States were created to secure religious liberty and prevent the feudal system and could not institute it to defend against it, Avery showed the ARB and the 2nd 25th District Court, using Locke's *Principles of Property* reinforced by the work of Frederick Bastiat's *The Law*,<sup>8</sup> that there was no means for the union or states thereof to obtain lawful authority to alien or alienate the property of the individual citizens and charge them a fee or rent or tax because the people did not have that authority in themselves to delegate to their governments they created to protect their property (CR-429-430), CR-438), (CR-452), (CR-466). Avery's evidence showed that a democratic vote of the people or their representatives approving property tax is null and void from its inception because the individual has no authority to lien his neighbor's property to secure the payment of fees and "taxes" and therefore, cannot delegate that to the state. The State and its subdivisions lack

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<sup>7</sup> Otherwise, there is nothing new in Texas or the USA to sing about, glorify or defend.

<sup>8</sup> Frederick Bastiat, *The Law*, Dean Russell, ed., (The Foundation For Economic Education, Inc. Irvington-On-Hudson, New York 1950)  
[http://www.constitution.org/cmt/bastiat/the\\_law.html](http://www.constitution.org/cmt/bastiat/the_law.html)

authority from any source to impose an ad valorem property tax on the citizens of Texas.<sup>9</sup>

On May 22, 2015 Plaintiff/Appellant, Avery, filed a Notice of Protest at the Guadalupe County Appraisal District (GCAD) on three pieces of property. Avery has since sold two of them but retains one piece under protest herein (CR-424-425). The protest contained six grounds but one of the six had nine statements of fact that were the basis of his protest that needed to be answered by the Appraisal Review Board prior to appeal.

The Defendant/Appellee, GCAD, held a hearing on all three properties and all six grounds on July 21, 2015 where Avery submitted sufficient evidence on all six grounds including the nine statements of fact. On July 22, 2015, GCAD issued their orders on two of the grounds and part of a third, omitting rulings on the other three grounds and the nine statements of fact (CR-78). Had this order disposed of all the grounds protested, the 60 day deadline to file a Petition for Review at the District Court would have been September 20, 2015.

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<sup>9</sup> The alienation of the property of the citizens of Texas can be instituted only by a lawful conqueror who has a lawful claim on the property of some citizens who participated in an unlawful war against the conqueror. Even the lawful conqueror cannot lawfully lien everyone's property in the conquered state.

On August 13, 2015 Avery faxed a letter to the GCAD **requesting a "ruling"** on the other three grounds including the nine statements of fact so Plaintiff could file a timely appeal on all six grounds within the 60 day time limit, which would have been September 20, 2015 (CR-87).

On August 26, 2015, GCAD responded by **"setting another hearing"** for October 14, 2015 (CR-89). The GCAD hearing notice enumerated some of the grounds, taken from Avery's original protest, for which they were going to receive further evidence in this second hearing. The third item included "constitutional provisions and other laws." Avery submitted some new evidence in support of his issues at the October 14, 2015, hearing (CR-454-469). On October 16, 2015 the GCAD issued its *final* orders disposing of all the issues (CR-97). On December 14, 2015, Avery filed his appeal of the GCAD *final order* to the 2nd 25th District Court in Seguin, Texas (CR-3), one day before the expiration of the sixty day deadline.

The Appellee, GCAD, answered and after filing Requests for Disclosure, Admissions, and Production of Documents and Request for Inspection (Missing from file requested), and after Appellant answered them (CR-99), the Appellee filed two Motions; One Motion For Partial

Dismissal for Lack of Jurisdiction (CR-286), and another Motion for Traditional and "No Evidence" Summary Judgments (CR-138). Avery then filed his Verified Response to Defendant's Motion for Partial Dismissal & Traditional & "No Evidence" Summary Judgments (CR-400).

The GCAD's Motion for Partial Dismissal for Lack of Jurisdiction claimed that Avery failed to file an appeal on the first three grounds within 60 days. Avery claimed that all he asked for was a *ruling* not a *second hearing* for new evidence. He further showed that the GCAD had not disposed of all the issues or grounds he brought in the original protest and the GCAD had a duty to *dispose* of all the issues brought by Avery in his protest prior to issuing a *final* order that could be appealed within 60 days.

On July 14, 2016, Judge W.C. Kirkendall heard all of the GCAD Motions in a 15 minute hearing (RR-1-17), and took them under advisement and then signed an Order for Partial Dismissal (CR-471), and granted both Summary Judgments and signed the Judgments, all on August 10, 2016 (CR-473-474). Avery filed his Notice of Appeal to the Fourth Court of Appeals on September 7, 2016 (CR-475-476), two days before expiration of the 30 day deadline.

## **SUMMARY OF THE ARGUMENT**

The Appellant protested his "ad valorem property taxes" challenging the authority of the State of Texas and its subdivisions to impose the feudal system on his property or any other property in Texas. The Appellant, Avery, protested his "ad valorem property taxes" showing that there is no lawful source of authority for Texas and any of its subdivisions to impose said "tax," or feudal system upon any of his property based upon at least two Texas Constitutional provisions and definitions of "the State" as used in the Texas Civil Practice and Remedy Code and also based upon the natural law and principles of property made the basis of our nation and states and the absence of authority in the people to impose it upon their neighbors' property. He basically showed that the said "tax" is really the feudal system which has no legal or moral justification or authority in Texas or the United States.

GCAD has been unable to refute or disprove any of the Appellant's arguments and have rather simply regurgitated several provisions of the Texas Property Tax Code and several Texas Constitutional provisions as justification for imposing the feudal system on Avery's

property to obtain a "Traditional" Summary Judgment and a "No Evidence" Summary Judgment against Avery.

The GCAD argument is simply that Avery could not show that his property did not exist in Guadalupe County or in the Districts of the State subdivisions imposing the "ad valorem property tax." But Avery has shown in his extensive evidence that the Appellees, State and its subdivisions, cannot show how the Constitutional Provisions permitting the said taxes are not contradictory to other Constitutional Provisions that exclude and forbid the said tax and are in harmony with the founding principles of lawful government. Nor can they show how a vote by the people can create such a "tax" if the people do not have such an authority in themselves to alien anyone's property but their own.

The argument of GCAD is the *error of democracy* that the founders hated and warned us of. The people do not have all authority in themselves and therefore they cannot delegate all authority to the government they create. The people can only delegate powers and authorities they possess. This is why government is limited. It is limited to the authority delegated to it by the people and the authority of the people is limited. Individuals have no authority to enslave

themselves or others and they have no authority to harm, alien or encumber their neighbor's property without a lawful judgment for some harm done to them. Therefore, they cannot delegate the authority to lien the property of the people to the government they create. Any Texas Constitutional provisions granting authority to Texas to impose "ad valorem property taxes" or the feudal system on any property in Texas is without authority from the citizens or any other source.

The people do have authority to protect their property and their neighbor's property and therefore, they can delegate that to the government. Therefore, this court should defend the property of Avery and the people of Texas against tyrannical encroachments by the people, their representatives, or the government they create. That is the blessing of a *republic*, which the 1876 Constitution of Texas demands. In a democracy all policy regarding everything is subject to the majority vote of the people. In a republic the property of the individual is protected and cannot be infringed by the majority voting of the people, hence phrases like "shall not be infringed," i.e., "not subject to voting."

Therefore, neither the people nor their representatives can vote to impose an "ad valorem property tax" on any property in Texas as it

requires a lien securing the payment thereof. The individual has no authority to alien another's property and therefore cannot delegate authority to alien someone else's property to government.

However, the individual has authority to grant a lien securing the payment of money to the government on their own property. The individual can contract with the State on an individual basis. Avery has no individual contract with the State granting a lien on any of his property securing the payment of taxes, fees or money to the State for any purpose.

GCAD also erroneously argues that Avery's Constitutional complaints should be dismissed because he did not appeal them in the required 60 days. The GCAD scheduled two hearings to receive evidence from Avery's original protest grounds and issued *partial orders* after the first hearing which only disposed of some of his original protests. Avery requested a *ruling* on the remaining issues prior to his appeal to the District Court, but rather than issue final orders covering all issues, GCAD scheduled another hearing instead and issued the final order disposing of all issues after the 60 days had expired from the issue of the first *partial order*. And regardless, GCAD, reopened the "Constitutional" issues and "other laws" for the

second hearing upon which they issued their final orders. Therefore none of the Avery's "Constitutional" or "other laws" grounds can be dismissed as they were reopened and ruled upon again in their *final order*.

## ARGUMENT

### 1. The trial court erred in granting Defendant's Motion to Partially Dismiss for Lack of Jurisdiction.

#### 1.1. Unless an ARB Order disposes of all issues brought in a single protest it is considered a partial order.

GCAD's Motion for Partial Dismissal for Lack of Jurisdiction is without merit because all the issues brought by Avery in his original protest were not disposed of by the GCAD Review Board in their first order, which made it a *partial order*. All grounds of a single protest must be ruled upon before the order becomes *final*, disposing of all issues brought in a single protest prior to appealing them to the District Court (CR-402), (CR-422-423), (RR-8-10), (*Travis Central Appraisal District v. Marshall Ford Marina, Inc.*, No. 03-05-00784-CV (Tex. App. 9/9/2009)). In cited case the district court made conclusions of law one of which was that:

"The First ARB Orders were **dispositive of all issues** raised during the First Protest Hearings, including the issue that there was no omitted property from the appraisal roll." (bolding added).

The appeal in the Travis Central case hinged upon a finding that the first order *disposed of all the issues*. Had the appellant in that case shown that there were issues of the protest that were not disposed of,

they could have appealed after a second hearing. Avery's initial protest included 6 issues with 9 statements of fact which he submitted evidence to support at the first hearing. The Second hearing was held and the Second Order given to dispose of issues the first order omitted. Therefore, Avery can appeal all six issues with the 9 statements of fact.

**1.2. Partial Dismissal Order dismissed one issue that had been Reopened in Second Hearing.**

Even if GCAD's Motion for Partial Dismissal had merit, GCAD voluntarily reopened the "Constitutional" and "other laws" issues and grounds of protest to receive more evidence in the Second Hearing which was appealed within the 60 day deadline (CR-87, 89, 97) (CR-402). The GCAD even issued a new order concerning them (CR-94). Therefore, the only part of Avery's protest that could have been dismissed, if their argument had merit, is any dispute over the "market value" or "equality of value" of his property. But Avery's remaining protest grounds render those two issues mute.

## **2. The trial court erred in granting Defendant's Motion for a "No Evidence" Summary Judgment.**

### **2.1. Statute Prevents "No Evidence" Summary Judgment when an Affidavit is filed containing evidence submitted at ARB Hearings.**

GCAD's Motion for a "No Evidence" Summary Judgment is barred by statute. Texas Property Tax Code Sec. 42.23(f) (TAB-D), (CR-416), says that the offer of any evidence at all by any party to an appeal that was presented at the ARB hearing will constitute sufficient evidence to deny the motion:

"(f) For purposes of a no-evidence motion for summary judgment filed by a party to an appeal under this chapter, the offer of evidence, including an affidavit or testimony, by any person, including the appraisal district, the property owner, or the owner's agent, that was presented at the hearing on the protest before the appraisal review board constitutes sufficient evidence to deny the motion."

Therefore, GCAD's "No Evidence" Motion for Summary Judgment must be reversed as per said statute. This statutory provision (Sec. 42.23(f) alters the Texas Rules of Civil Procedure rule 166a.(i) regarding "No Evidence" Summary Judgments precluding its use in tax cases where anyone has submitted any evidence of any kind to the District Court which was offered before the appraisal review board. Avery filed affidavits of his written evidence from both ARB hearings to the District Court (CR-420), (CR-426), (CR-454). Therefore, all

issues related to questions of contradictory constitutional laws and constitutional prohibitions, and other laws against ad valorem property taxes are preserved and should not have been dismissed by a "No Evidence" Summary Judgment.

### **3. The trial court erred in granting Defendant's Motion for a Traditional Summary Judgment.**

#### **3.1. The Appellees admitted their Traditional Summary Judgment did not address all the issues.**

The Appellees admitted their Traditional Summary Judgment did not address the "Constitutional" and Other Laws" issues which they presumed would be dismissed for lack of jurisdiction. The Motion for Traditional Summary Judgment did not address the contradictory constitutional provisions and prohibitions and other laws against an "ad valorem property tax" because GCAD presumed those questions to be disposed of by their Motion for Partial Dismissal for Lack of Jurisdiction as so stated by GCAD (CR-140-141):

***If*** the Defendant's Motion to Partially Dismiss is granted, the Plaintiff's following three claims remain: 1) the property should not be taxed in Texas; 2) the property should not be taxed in the Guadalupe Appraisal District or taxing units; and 3) the unlawfulness of the ad valorem property tax in America. **It is these three claims that the District moves for summary judgment on.**" (Emphasis added)

Therefore, Appellees did not attempt to show how all those true facts and reasonable inferences were immaterial as a matter of law. All the Appellant's true facts and reasonable inferences and questions resolved in his favor showing the want of authority to impose an "ad valorem property tax" in Texas because of contradictions in constitutional provisions and constitutional prohibitions and other laws were not addressed by admission of Appellee. For this reason alone, the Traditional Summary Judgment should be reversed.

To dismiss Avery's "remaining protests" in a traditional summary judgment the GCAD was required to show an unbroken chain of lawful authority from some lawful source, encompassing matters of jurisdiction, as well to impose an "ad valorem property tax," as "a matter of law." However, GCAD restricted their argument and evidence to a mere showing that Avery's property existed in Guadalupe County. And then Appellees applied the Texas Property Tax Code and Texas Constitutional provisions that permit or authorize them. But Avery showed more superior evidence straight from the pen of the founders of our nation that our nation and states thereof were created to abolish and prevent the feudal system in America. Thomas Jefferson's written testimony in his *Rights of British America* (CR-

441-442) and his *Declaration of Independence* (CR-438) filed at ARB hearings and the trial court by Avery showed that each person in the United States owns their property with an allodial title that cannot be alienated by government. The individual's property is unalienable by his neighbor or their government preventing the attachment of a lien to it precluding ad valorem property tax. GCAD showed no evidence to show otherwise and they are not due an award of a Summary Judgment as a matter of law.

**3.2. Appellant is entitled to have a jury of his peers determine the Facts and the Law directed by the court.**

Appellant admits that there are no material fact issues related to the *location* of his property. However, Appellant does not admit that there are no fact issues related to the inability of any one other than himself to place a value or appraise his property or alien it. Also Appellant does not admit that there are no material fact issues related to the present condition of the laws and what principles they were intended to be based upon by the founders for the protection of their posterity. Avery is entitled to have a jury determine the true facts and all their reasonable inferences and how the law is resolved with them under the direction of the court as in other cases. (Article 1 Section 8) (TAB-C), (Art. 1 Sec. 13) (TAB-C).

### **3.3. Material Facts concerning the lack of a lawful source of State *authority* to Levy an "ad valorem property tax."**

The trial court did not take all the facts alleged by Avery as true nor did they indulge every reasonable inference drawn from those facts and resolve all questions in his favor. And the Appellees failed to show how those true facts and reasonable inferences and questions resolved in Avery's favor presented no material fact questions related to how and why the conflicting law should be resolved in their favor warranting them a summary judgment as "a matter of law." This determination should be made by a jury as in other cases (Art. 1 Sec. 8).

Avery's whole point was that the laws concerning "ad valorem property tax" are contradictory and those authorizing same have no foundation in the fundamental law of the land, or the Principles of Property and natural law of delegated authority all made the foundation of our State and Nation. The true facts and reasonable inferences and all questions resolved in Avery's favor show that the State does not have authority to alien the inalienable property of individuals in the United State of America which precludes "ad valorem property tax." The Appellees never showed how that was not true. Simply quoting contradicted Constitutional provisions and the

Texas Property Tax Code cannot show that Avery's thesis is incorrect "as a matter of law" worthy of a Summary Judgment.

GCAD's Motion for Traditional Summary Judgment was granted without a showing that there were "no genuine issues as to any material fact" as required under TRCP 166a.(c) and that it was "entitled to judgment as a matter of law" on all protest issues brought by Avery. The following is a list of the genuine issues of material fact related to the contradictory law of the land and how those disputed facts concerning the law should to be resolved.

**3.3.1. Contradicted Provisions in the Constitution are unenforceable until remedied or resolved.**

Two Constitutional Provisions that are in harmony with the *principles of property*<sup>10</sup> that were made the foundation of our nation and states for which purpose they serve and for which they were created, according to Thomas Jefferson, prevent "ad valorem property tax." The Constitutional provisions that permit "ad valorem property taxes" conflict with those constitutional provisions which are in harmony with the *principles of property*. All Constitutional provisions

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<sup>10</sup> Locke's Second Treatise of Government. Locke admitted that his work developed the principles of property more fully than anywhere else. It is undeniable. But it has been amplified by Frederick Bastiat in his book, The Law.

authorizing "ad valorem property taxes" are contradictory to Article 8 Section 1(a) (CR-66) and Article 8 Section 1-e (CR-411-413).

It is common knowledge that conflicting terms in any contract, social or commercial, are unenforceable or to be ruled in favor of the benefactor, in this case the people and strictly against the servants of the people: "Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." Canal Ins. Co. v. Nat'l House Movers, LLC 777 S.E.2d 418 Court of Appeals South Carolina Sept. 16, 2015. Ambiguity alone in contracts, social or commercial, renders the provision unenforceable: "the exclusion is ambiguous as it applies to Jones, and therefore unenforceable in this case." Id.

**Article 8 Section 1(a)** says: "Taxation shall be equal and uniform." Avery provided evidence showing that no two properties in Texas can be taxed equally and uniformly and infinitely less with all other property. He also showed that even his own property in question cannot be valued equally between any two individuals. It is impossible for his property to be assessed and taxed equally and uniformly under any method of determination (RR-13-15) (CR-66-67).

The system of determining property values is completely subjective regardless of how precise and intricate the formula becomes. The Appellees did not supply any evidence showing how those facts about the impossible task of assessing property values equally and uniformly under the law is immaterial or how their mere quotations of the tax code resolved those issues deserving the grant of a traditional summary judgment (CR-404).

Avery contended that Article 8 Section 1(a) is consistent with the *principles of property*, the natural law of delegated authority, and the purpose of Texas and the United States and alone prevents and stands in contradiction to all forms of the feudal "ad valorem property tax." The determination of the amount of ad valorem property tax to apply on each property is arbitrary and subjective and nothing more than extorted rent negotiation between an unlawful *confiscator*, the State, and the lawful *owner*, the Citizen (CR-414).

God grants each individual life, liberty and possessions to sustain his life. No one can determine the value of another individual's property. If the owner does not wish to sell, no value can be placed upon it. No one can figure the value of another human being, or the value of their liberty or their possessions because both are used to

sustain the individual's life. This is a sacred natural law which is violated by the State of Texas against its purpose for creation and maintenance (CR-461).

All Constitutional provisions allowing, permitting, or authorizing "ad valorem property taxes" are contradictory to **Article 8 Section 1-e** (CR-67), which says:

"ABOLITION OF AD VALOREM PROPERTY TAXES.  
No State ad valorem taxes shall be levied upon any  
property within this State."

Present interpretations of Article 8 Section 1-e produce unsound, contorted and ludicrous mandates that violate Article 8 Section 1(a) resulting in constant litigation brought by State subdivisions against the State (CR-69-70), (CR-412). Sound Constitutional laws would not produce such entangled and ludicrous mandates that violate other provisions of the Constitution revealing a true error of law and principle. In fact, the school districts can't determine if they are violating Article 8 Section 1-e unless they call every school district in the state and ask them what they are setting their tax rate at so they can set it at something different. That interpretation of Article 8 Section 1-e does not come up to a constitutional law principle. All

principles of law should be known to all people all the time without reference to everyone else.

Present interpretations of constitutional provisions concerning ad valorem property tax say that school tax rates (CR-458-459) must be unequal, violating Article 8 Section 1(a), or they will violate Article 8 Section 1-e. This is ludicrous in more ways than one. How can an equal education required under Article 7 Section 1 (TAB-C) be provided with unequal tax rates required under Article 8 Section 1-e? (CR-69-70). The concept of ad valorem property tax is a false doctrine and it cannot be collected or distributed equally or uniformly.

If Article 8 Section 1-e only abolished *uniform statewide* ad valorem property taxes, and not *state subdivision* ad valorem property taxes as it says on its face, then it violates Article 8 Section 1(a).

If Article 8 Section 1-e abolished all ad valorem property taxes, as it says it does on its face, then Article 7 Section 3(e) violates the *natural law of delegated authority*. Art. 7 Sec. 3(e) authorizing School Districts, each a State Subdivision which is the State by statute, was so authorized by the State which has no such authority to delegate to its subdivisions. Article 7 Section 3(e) says:

" The Legislature shall be authorized to pass laws for the assessment and collection of taxes in all school districts

and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified voters of the district voting at an election to be held for that purpose, shall approve the tax."

If Art.8 Sec.1-e only abolished *statewide* ad valorem property taxes it requires a violation of Article 8 Section 1(a) as the school districts or State subdivisions are now required to impose unequal and non-uniform tax rates to avoid violation of Article 8 Section 1-e (CR-70) which says:

"ABOLITION OF AD VALOREM PROPERTY TAXES.  
No State ad valorem taxes shall be levied upon any property within this State."

There is no such thing as the "State" as a separate thing from all its subdivisions. Each subdivision is the State, both alone and in combination with any or all other subdivisions, as per Texas Civil Practice and Remedy Code (CPRC) 101.001(3)(A)(B) (CR-68):

"(3) "Governmental unit" means:  
(A) **this state and all the several agencies of government that collectively constitute the government of this state**, including other agencies bearing different designations, and all departments, bureaus, boards, commissions, offices, agencies, councils, and courts;

(B) **a political subdivision of this state**, including any **city, county, school district**, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority;" (Bolding added)

Obviously then the term "state" means every "governmental unit" in the State of Texas, both singularly and combined. The term "state" does not mean; something applied equally throughout the geographic area of the state of Texas but not including any of the state subdivisions, as so used in Supreme Court decisions regarding school district lawsuits challenging the constitutionality of ad valorem property taxes under Article 8 Section 1-e under constant review.

Avery has filed evidence showing the facts and law indicating that the *State* cannot lawfully levy an ad valorem property tax on any property in Texas, and those facts and all reasonable inferences drawn from them and all questions resolved in Avery favor means that no *subdivision* of the State of Texas, counties, districts, etc., can levy an ad valorem property tax on any property in Texas. Nothing the Appellees asserted or filed showed otherwise.

"Taxing units" are simply subdivisions of the "State of Texas" which can have no more authority than the State. If the state does not have authority to impose ad valorem property tax or the feudal system then it cannot delegate that to any of its subdivisions (CR-57).

Avery has shown facts (RR-14-15) that the appraisal process, that all in government work so hard to perfect, is nothing more than rent negotiation between those who own it and those who stole it, as if that was going to result in a "fair, uniform equality." Rent is a lawful term while theft and extortion are more appropriate terms for the eternal perpetual demand for money from the owner to use his own property. This means that the entire "Texas Property Tax Code" is nothing more than a pirate's code for plunder management.

Avery has shown evidence of conflicting Constitutional Laws, statutes and fundamental and natural laws and expert testimony showing that there are fact issues related to the authority of Texas and its subdivisions to levy an ad valorem property tax.

When there is ambiguity and conflicting terms in any contract, social or commercial, extrinsic facts are to be admitted to the fact finder for a determination: "If the contract is found to be ambiguous, the court may consider extrinsic evidence of the parties' intentions"

*Peterson v. The Sunrider Corp.* 48 P.3d 918

Supreme Court of Utah, April 26, 2002. The Utah high court also stated their rule:

"A contract's interpretation may be either a question of law, determined by the words of the agreement, or a question of fact, determined by extrinsic evidence of intent. If a trial court interprets a contract as a matter of law, we accord its construction no particular weight, reviewing its action under a correctness standard. However, if the contract is not an integration or is ambiguous and the trial court proceeds to find facts respecting the intentions of the parties based on extrinsic evidence, then our review is strictly limited." Id.

Avery has shown evidence that the intent of the founders of the United States and the State of Texas never intended for their property to be surrendered to the State or aliened by the State at its creation or for its maintenance and that this extrinsic historic expert evidence should be heard by a fact finding jury.

**3.3.2. No one can delegate to another more authority than they hold in themselves.**

The majority vote of the people cannot be a source of authority to alien the property of individuals, as each individual cannot lien his neighbor's property and cannot delegate to government the power to alien anyone's property but their own (CR-111, 430,). The State cannot exercise an authority it does not possess (CR-438). The State cannot

delegate an authority it does not have to any of its subdivisions or anything else (CR-428).

**3.3.3. The State cannot show it was defeated by a lawful conqueror.**

GCAD cannot show the State was defeated by a lawful conqueror who has a right to alien property of select people who participated in an unlawful war against the conqueror and certainly not alien the property of all the people. GCAD cannot show that the State of Texas has been lawfully conquered and the property of any or all of its citizens confiscated for the purposes of lawful restitution or reparations (CR-58-59,442).

In order for GCAD to prove it has authority not derived from the people, the State, or the Union to appraise Avery's property for the purpose of imposing an ad valorem property tax on his property secured by a "property tax lien" they must show they are the agents of a foreign government that has a lawful claim against Avery personally for harming them in an unlawful war. Absent this showing, GCAD cannot show an unbroken chain of lawful authority to alien Avery's property for the payment of taxes, fees, tenures, or money of any kind.

Since Avery's facts concerning the fundamental laws and all inferences drawn from them show that the State does not have

authority to alien the property of the citizens for its creation or maintenance and said authority is not acquired by any other means, GCAD must show law that shows otherwise or they are not entitled to a summary judgment as a matter of law. The court must consider that Avery's facts about the law are correct unless GCAD has shown doctrines and theories that prove his thesis incorrect. The Appellees did nothing but recite contradicted constitutional provisions and tax code requirements, none of which address Appellant's issues he protested and appealed. Therefore, a grant of a traditional summary judgment was unjustified and erroneous and must be reversed for trial on the merits before a jury of his peers under the direction of the court.

**3.4. Appellee's entire argument is based upon the *error of democracy*.**

Avery has also shown that the people cannot *vote* to lien, alien or alienate their neighbor's property as security for payment of money, fees, taxes or any tenures. Only the individual citizen can contract with the state to pay them money secured by a lien on their own property. The people have no authority to alien their neighbor's property without a judgment to repair harm done them. Therefore, they cannot delegate what they have not to the state. It is also a known fact

that people can be deceived by others to vote themselves into slavery over time as Samuel Adams observed (CR-467). But he also said that the people do not have authority to voluntarily make themselves slaves without property.

The state cannot obtain authority to alien anyone's property for the payment of fees, taxes, or tenures as the people don't have it to delegate. The claim that the people voted to alien their property for ad valorem tax purposes is without merit, as they had no such authority to begin with. Any such claim that the people delegated their authority to alienate their neighbor's property for the purposes of ad valorem property taxes to the State of Texas is absurd.

The whole argument of the Appellees in their Motion for Traditional Summary Judgment is based upon a falsehood that the State of Texas is a "democracy" wherein the people possess infinite and unlimited authority and can delegate any power they can imagine to their government, and everything and anything they delegate to government is lawful. This is the implied assertion of GCAD since they showed nothing else but the vote of the people and their representatives no matter how contorted, confused, contradictory or unreasonable or arbitrary and wanting of principle.

The Appellees said "the Texas Constitution contains the bedrock principles of ad valorem taxation." But upon close inspection and scrutiny it is not anything but pure democracy without a lawful principle of taxation behind it. The portion they quoted (CR-144) is a clear example of no discernable principle. Avery showed that the said provision simply taxed all property without a showing of why that is a sound and lawful concept (CR-409). A similar principle would be "All people will report to the department of homeland security for an implant for the safety of the people of Texas." Now that is certainly a provision that could be sold to the people or their representatives to vote for, but doesn't that violate something else in the Constitution or fundamental principles of the Republic of Texas? Yes! The provision would violate the most sacred human rights to your own privacy and freedom to live without government spying on you at all times.

### **3.5. Texas is a Limited Republic based upon the limited authority of the people for their Benefit.**

The same concept of a Republican form of government asserted by Article 1 Section 2 applies to ad valorem property tax provisions. The government cannot own your property and it cannot obtain a lien on it and or lawfully charge you to occupy your property and they cannot lawfully evict you for not paying them money for anything. Lawful

government is created to protect the property of the people and that includes maintaining their ownership of it not confiscate it. This is what is meant in Article 1 Section 2 when it says:

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient."

That means that government can have no more authority than rests in an individual that they can delegate to government and that the government is instituted for the protection of the property of the individual. This is the *principle of property* that the sole purpose of government is the protection of the property of the people or individuals consisting of their life, liberty and estate. The government cannot alien your life, liberty or estate or possessions. Your estate and liberty must be unalienable in order to sustain and defend your life. Any attack on either is an attack upon your life. The protection of your estate must include the acknowledgment of your allodial unalienable title to your property ruling out ad valorem property taxation.

Property rights spring from absolute allodial title or ownership of life, liberty and estate or possessions. The State presently operates as the owner of all property as shown by many unlawful constitutional provisions permitting ad valorem property taxes or eternal rent. The true owners have been reduced to tenants in their own homes and businesses. And the people only possess *tenant privileges* where granted in the Texas Property Tax Code. But the State is a fiction which cannot own the property of the people who created it for their benefit. It does not benefit the individual to never own property for which they must pay eternally or be evicted (CR-426, 445).

The people and most of their representatives have been deceived by those who benefit from a tyrannical State and forces the people to pay money or be evicted from their own property they purchased and built. People don't exist to create rental property for the State. And the State does not exist to protect State rental property. The State exists to protect the individual's allodial title to their own property.

The mere voting of deceived representatives and people of Texas cannot establish a lien upon the property of the individual citizens of Texas because no one can delegate more authority than they hold in themselves. No one can alien the property of another without their

own personal consent, therefore, they cannot transfer a lien they don't possess to the state to be used as security against another's property for the payment of fees, bonds, loans or any other debt or tenure.

The use of ad valorem property taxes to pay banks for loans is a criminal enterprise which must be stopped. Banks should operate in the open market like other businesses and not be able to use the police arm of the State to secure loans against the property of the citizens. The State cannot lawfully alien the property of the people by any process including the democratic voting of the people or their representatives. The Republican Principles of Property prevent this perversion of government called unlimited democracy of which the entire argument of GCAD is based.

#### **4. "Ad valorem property tax" is Feudal, Un-American and Unlawful in all States of the Union.**

##### **4.1. Superior, Expert Testimony filed by Avery Shows the U.S. was created to prevent "ad valorem property tax."**

Avery filed expert testimonial evidence at ARB hearings and the trial court of the fact that ad valorem property taxes are un-American and unlawful in any and every state in the Union. Appellees did not file any evidence to show otherwise and cannot be granted a summary judgment as a result.

Avery's undeniable, irrefutable superior testimonial expert evidence of the founders of our Nation and State shows that "ad valorem property tax" is really the *feudal system* which the United States of America and the states thereof were created to prevent (CR-101). Avery has submitted evidence at the ARB hearings and at the trial court that "Ad valorem property taxation" is a misnomer but rather a confiscation of the property (CR-430) of the individual people of Texas without compensation and the imposition of an unlawful rent against the citizen (real owner) by the State (false owner) in violation of Article 1 Section 17 (TAB-C) and Article 1 Section 19 (TAB-C). The "ad valorem property tax" system is properly called the *feudal system* which the United States was formed to prevent according to John Adams, Thomas Jefferson, and Samuel Adams.

Avery's irrefutable evidence shows that citizens of any and all States in the Union own their property with an *allodial* superior title rather than a *feudal* title, according to Thomas Jefferson. This allodial title cannot be *aliened* by government to pay money, fees, taxes, or tenures (CR-56).

According to the founders no state in the United States of America has lawful authority to alien the property of its citizens precluding the

ad valorem property tax which requires a lien to secure the payment of money or "tax". This system is properly termed *feudal* and resistance to this system is one of the two purposes for which the United States was formed, the other being the security of religious freedom, according to John Adams (CR-445-447).

GCAD cannot show that the State of Texas has authority to impose feudal "ad valorem property taxes," as it is a State of the United States of America which was created to prevent said system. GCAD cannot prove the State of Texas is not a state of the United States of America which was created for the two purposes of securing religious freedom and preventing the feudal ad valorem property tax system, according to the founders (CR-57-59).

Locke, Samuel Adams, and Bastiat agreed that the individual's possession of property in the *state of nature* precedes government they form for the protection of the property consisting of life, liberty and estate or possessions (CR-461). They also agreed that it is the greatest absurdity that men would create government to surrender their property to government or have the government confiscate their property rather than secure their possession of their property against all others. including the government they create (CR-467).

Samuel Adams went further and gave the solution to the situation in which we find ourselves. He said that if the people were deceived into denouncing any of their property or property rights that the nations would vacate such denouncements for the grand end of government is the preservation of the property of each and every citizen (CR-467), (RR-13-15). That cannot mean the preservation of their property in the name of someone else or their government.

John Adams said that America was formed for only two reasons, namely, to secure religious freedom and to prevent the feudal property system where the people had to pay fees (rents, taxes) to remain in possession. Thomas Jefferson said that the people of America (and the United States) own their land and property with an allodial title which is superior to all and that it cannot be aliened by any government including their own which would rule out any imposition of "ad valorem property taxes."

The Appellees failed to show that the United States of America has been lawfully conquered by another nation or that Texas is still under Reconstruction and our lands confiscated thereby for the lawful payment of just reparations now in progress. This would be the only

other source of lawful authority to confiscate property and make some people tenants to work it.

Therefore, the reasonable inference must be in light of the true facts submitted to the ARB Hearings and the trial court, that individuals of Texas still own their estates including land, homes, businesses, tools and personal possessions with an allodial title which cannot be alienated by the State of Texas for the payment of taxes. And therefore none of the State subdivisions can acquire such a lien. Avery has shown there is no source of lawful authority for the State to impose ad valorem property taxes on the property of the people. The United States of America is not a source but a defense to it. The people of Texas are not a source or their representatives. And no lawful conqueror is the source.

Avery has shown with his facts, law and reasonable inferences and questions resolved in his favor, and Appellees have failed to show otherwise, that there is no lawful source of authority for the State of Texas or any of its subdivisions to impose an ad valorem property tax on any property in this State. Article 8 Section 1-e says it well:

**No State ad valorem taxes shall be levied upon any property within this State!**

Therefore, Appellee's Motion for Traditional Summary Judgment should be reversed and Avery's cause be remanded for further proceedings.

## **PRAYER**

Therefore Premises Considered, The Appellant, Ronald F. Avery, requests that the trial court's Order to Dismiss, and the trial court's Judgment granting a "No Evidence" Summary Judgment, and a Traditional Summary Judgment on appeal herein, be reversed and his cause remanded for trial on the merits, and that Avery be granted any other relief to which he may be entitled.

Respectfully submitted,

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Ronald F. Avery, Pro Se  
1933 Montclair Drive  
Seguin, Texas 78155  
Home phone: 830/372-5534  
Email: [taphouse@sbcglobal.net](mailto:taphouse@sbcglobal.net)

## **CERTIFICATE OF SERVICE**

I certify that on November 14, 2016, I served a copy of the foregoing on the Appellee's Attorney listed below by Certified Mail RRR 7016 0910 0001 2761 3877:

Christopher Jackson  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
3301 Northland Dr., Ste. 505  
Austin, Texas 78731

Attorney for Guadalupe County Appraisal District:

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Ronald F. Avery, Pro Se

## **CERTIFICATE OF COMPLIANCE**

I hereby certify, Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), that the total word count of the Appellant's Brief is 8,008 words of a 15,000 word limit.

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Ronald F. Avery, Pro Se

## APPENDIX

ITEM	TAB
Trial Court's Order On Defendant's Motion to Partially Dismiss for Lack of Jurisdiction	A
Trial Court's Judgment Granting Defendant's Motion for Summary Judgment and "No Evidence" Summary Judgment	B
<b>Texas Constitution:</b>	C
Article 1 Section 1	
Article 1 Section 2	
Article 1 Section 3	
Article 1 Section 8	
Article 1 Section 13	
Article 1 Section 17	
Article 1 Section 19	
Article 8 Section 1(a)	
Article 8 Section 1-e	
Article 7 Section 3(e)	
<b>Tax Code:</b>	D
Article 42.23.(f)	