



August 24, 2022

The Supreme Court of Texas
c/o Mr. Blake Hawthorne
Clerk, Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Re: No. 20-0567, *Hlavinka, et al. v. HSC Pipeline Partnership, LLC*, on appeal from the First Court of Appeals, Houston, Texas, Cause No. 01-19-00092-CV

**LETTER BRIEF OF AMICUS CURIAE
TEXAS LAND & MINERAL OWNERS ASSOCIATION**

To the Honorable Justices of the Supreme Court of the State of Texas:

Amicus Curiae Texas Land & Mineral Owners Association (“TLMA”) submits this letter brief in support of Petitioners Terrance J. Hlavinka, Kenneth Hlavinka, Tres Bayou Farms, LP, and Terrance Hlavinka Cattle Company (collectively referred to herein as “Hlavinka”) in connection with the parties’ motion for rehearing in the above-captioned cause.

TLMA is a statewide advocacy association whose members are farmers, ranchers, and royalty owners. TLMA advocates for a business and legal environment that promotes the production of oil and gas in a manner that respects the property rights of landowners. TLMA has closely followed this case and filed an amicus brief on February 22, 2022.

TLMA addresses three issues in this amicus brief: (1) whether the subject pipeline satisfies the public use requirement of the United States and Texas Constitutions, (2) whether polymer-grade propylene is an oil product, and (3) whether the landowner’s valuation opinions proffered in the case should be admissible.

Public Use

The United States and Texas Constitutions only permit the taking of private property for a public use. *See* U.S. CONST. amd. V; TEX .CONST. art. I, § 17. This Court held in *Denbury Green Pipeline v. Texas Rice Land Partners*, 510 S.W.3d 909 (Tex. 2017) (*Texas Rice II*) that the United States and Texas Constitutions’ public use requirement for a common carrier pipeline could be satisfied in a single-recipient situation only if there is a reasonable probability of other recipients. *See* 510 S.W.3d 909, 917; *see also* Slip op. at 9, n. 11. In this case, however, the record is clear that HSC Pipeline Partnership, LLC (“HSC”) is shipping its own refined product to only one unaffiliated recipient—its customer. HSC alleges there are other potential customers that may use its pipeline in the future, but tellingly HSC was unable to elicit any evidence of any additional customer that actually wants to do so or will do so.

To try and solve this problem, HSC chose to sell the polymer-grade propylene to be transported in the purportedly common carrier pipeline at the entrance of the pipeline rather than the tailgate. Selling its product in this manner allowed HSC to argue the product being transported belonged to someone else—its customer. The Court’s opinion that approves of this program, if left unchanged, openly invites gamesmanship.

If merely transferring title at the entrance to the pipeline is all that is required to satisfy Constitutional muster, anyone seeking to build and operate a private pipeline to carry polymer-grade propylene or anything “derived” from the materials enumerated in Section 2.105 will simply sell its product to its lone customer at the entrance to the pipeline. So long as title passed at the entrance to the pipeline, then, according to the Court’s opinion in this case and its prior precedent, any viable challenge to the Constitutionality of the common carrier status of the pipeline would be effectively foreclosed at the outset. This is far too low of a Constitutional standard to satisfy for private companies who have been conferred the extraordinary power of eminent domain.

TLMA urges the Court to reconsider its ruling that the subject pipeline satisfies the United States and Texas Constitutions’ public use requirement.



Oil Product

The Legislature could have certainly included “refined products,” or some other term that contemplates refined or otherwise treated products in the list of permissible materials enumerated in TEX. BUS. ORG. CODE § 2.105,¹ but it noticeably did not. The list of materials enumerated by the Legislature in Section 2.105² are all naturally occurring materials. The reason for this carefully crafted list of naturally occurring materials is plainly obvious: these are the materials that need to be transported long distances from the place where they are extracted from the Earth to the places where they can be treated, processed, or refined.

Polymer-grade propylene is a twice refined product. Propylene is first refined from crude oil, and then later refined in a completely separate process to make it polymer-grade. At a minimum, whether twice refined polymer-grade propylene is an oil product is a fact issue that ought to be determined by the factfinder. The Court’s broad interpretation of what qualifies as an “oil product” has essentially no limit and could be construed to include anything that is made up of any product that at one time was “derived” from crude oil or any other naturally occurring material that can be tied back to the list of materials enumerated in Section 2.105. *See* Slip op. at 16 (“Because polymer-grade propylene can be derived from crude petroleum, however, it qualifies as an oil product under Section 2.105.”).

TLMA urges the Court to reconsider its ruling that includes polymer-grade propylene in the definition of an “oil product” in Section 2.105.

Valuation Evidence

This Court has long held that a landowner is entitled to be paid in a condemnation case based on the “market value” of his or her property. *City of Austin*

¹ “In addition to the powers provided by the other sections of this subchapter, a corporation, general partnership, limited partnership, limited liability company, or other combination of those entities engaged as a common carrier in the pipeline business for the purpose of transporting oil, oil products, gas, carbon dioxide, salt brine, fuller’s earth, sand, clay, liquified minerals, or other mineral solutions has all the rights and powers conferred on a common carrier by Sections 111.019–111.022, Natural Resources Code.” TEX. BUS. ORG. CODE § 2.105.

² The items listed in Section § 2.105 are oil, oil products, gas, carbon dioxide, salt brine, fuller’s earth, sand, clay, liquefied minerals, or other mineral solutions.



v. Cannizzo, 267 S.W.2d 808, 812 (Tex. 1954) “[M]arket value’ in all such issues being defined in terms of what the land would bring in a transaction between a willing seller and a willing buyer.” *Id.*

Over the years, however, precedent from this Court and intermediate Texas appellate courts has created obstacles and hurdles to the introduction of valuation evidence that would most certainly be considered in any real world or non-eminent domain situation. TLMA submits that the Court got it right in holding that “[a] condemnor must pay a fair price for the value of the land taken. Evidence of recent fair market sales to secure easements across the property that precede the taking are admissible to establish the property’s highest and best use, and its market value, at the time of taking.” Slip op. at 26.

TLMA urges the Court’s to deny HSC’s motion for re-hearing on the introduction of the Hlavinkas’ plainly relevant valuation evidence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, the undersigned certifies that this filing complies with the word limits of Rule 9.4(i)(2)(D) because, exclusive of the parts exempted by Rule 9.4(i)(1), it contains 1,095 words.

/s/ Nicholas P. Laurent _____

Nicholas P. Laurent



CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2022, a true and correct copy of the foregoing Amicus Curiae Letter Brief of the Texas Land & Mineral Owners Association was served on all parties of record indicated below in accordance with the Texas Rules of Appellate Procedure through electronic service by the electronic filing manager.

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APPENDIX

The Texas Land & Mineral Owners Association (“TLMA”) is a statewide advocacy association whose members are farmers, ranchers, and royalty owners. TLMA advocates for a business and legal environment that promotes the production of oil and gas in a manner that respects the property rights of landowners. TLMA has an interest in this case because the Court of Appeals opinion could allow the proliferation of pipeline condemnations in Texas without true public purpose.

The fees and costs for this brief were paid entirely by Texas Land & Mineral Owners Association. None of the parties to this case will contribute to paying that fee. TEX. R. APP. P. 11(c).



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