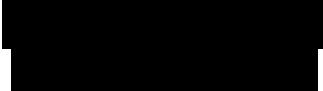


Alfredo R. Munoz

alfredo.munoz52@yahoo.com

June 21, 2022

Mr. Blake A. Hawthorne
Clerk of the Court
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: No. 21-0717, *TJFA, L.P.; Environmental Protection in the Interest of Caldwell County; James Abshier; and Bryon Friedrich v. Texas Commission on Environmental Quality and 130 Environmental Park, LLC*

To the Honorable Supreme Court of Texas:

I am writing this letter pursuant to Texas Rule of Appellate Procedure 11 to express support for the Petition for Review filed by TJFA, L.P., Environmental Protection in the Interest of Caldwell County (EPICC), James Abshier, and Bryon Friedrich in Case No. 21-0717, and the positions set forth in the petition for review.

Statement of Amicus Curiae Interest

I am a former Caldwell County Commissioner and served on the Caldwell County Commissioners Court from 1/01/2013 to 12/31/2016. My term in office included the time period when the Commission unanimously adopted the ordinance that is at issue in this case. On December 9, 2013, the

Caldwell County Commissioners Court adopted the ordinance, which prohibited landfills in the area that the landfill operator here sought to site its landfill while also designating an area in Caldwell County that would be appropriate for one. I have attached the ordinance to this letter as Exhibit A.

My interests in this case include proper respect for the role that the Legislature created for local governments in managing solid waste as well as respect for the democratic process and representation of local, important interests that are embodied in duly adopted local ordinances. Consistent with these concerns, I also have an interest in the proper construction of Texas Health & Safety Code §§ 363.112 and 364.012, which establish the authority of local governments to enact ordinances and orders restricting the locations of landfills in their jurisdictions.

Local ordinances and orders are integral to the Legislature's solid waste management design.

The Legislature established a role for local governments in managing the State's solid waste by creating authority for counties and cities to restrict where solid waste landfills may be located in their jurisdictions. Under Texas Health & Safety Code §§ 363.112 and 364.012, counties, like the Caldwell County Commissioners Court, maintain this authority up until the time a landfill operator submits a landfill-permit application to the TCEQ.

In its decision, the Third Court of Appeals misconstrued these provisions and ended the Caldwell County Commission's authority prematurely by treating the landfill operator's request here for a land-use-compatibility determination from TCEQ as if it were actually an application for a landfill permit.

The Legislature chose to give local governments a voice in landfill decisions to ensure that uniquely local concerns are addressed. The Legislature balanced this local power with that of the statewide agency by precluding a local government from prohibiting landfills in areas after a landfill-permit application has been filed and is pending with TCEQ. The court of appeals overrode this legislative balance and read the statutory provisions differently from their actual language.

The County Commissioners Court considered its ordinance through its normal and appropriate process that allowed for public comment and participation. TCEQ failed to give the ordinance the deference due under a proper reading of the statutory provisions.

Local governments like the Caldwell County Commissioners Court have expertise in their constituencies' needs and preferences regarding solid-waste management. Local governments like the Caldwell County Commissioners Court also have expertise in local factors related to landfill

placement, e.g., drainage, topography, flooding, traffic, and residential impacts, which the Legislature intended to be considered by local governments in planning landfills.

Without a correction of the court of appeals' decision, local authorities cannot protect their jurisdictions in the way that the Legislature intended. Moreover, many local jurisdictions lack the financial resources and staff to litigate this issue against a state agency or a commercial landfill operator. The Court should take this opportunity to correct the upending of the Legislature's design.

I respectfully urge the Court to accept review of the case, correct the court of appeals' decision, give proper respect under the Health and Safety Code to cities and counties' authority to limit landfills in their jurisdictions, and ensure that local governments can fulfill their statutory role in landfill planning.

In compliance with Texas Rule of Appellate Procedure 11, I state that no fee was paid or is to be paid for preparing this amicus letter.

Respectfully submitted,

/s/ Alfredo R. Munoz
Alfredo R. Munoz
Former Caldwell County
Commissioner

CERTIFICATE OF SERVICE

I certify that on June 21, 2022, a copy of this amicus letter is being served on all parties to the case through electronic service through eFile.TXCourts.gov.

/s/ Alfredo R. Munoz
Alfredo R. Munoz

EXHIBIT A

STATE OF TEXAS

COUNTY OF CALDWELL

§
§
§

**ORDER TO ADOPT ORDINANCE PROHIBITING
SOLID WASTE DISPOSAL IN CALDWELL COUNTY**

WHEREAS, Section 363.112 of the Texas Health and Safety Code authorizes a county to prohibit the disposal of municipal or industrial solid waste in certain areas of the county; and

WHEREAS, Section 364.012 of the Texas Health and Safety Code authorizes a county to prohibit the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare; and

WHEREAS, the Commissioners Court of Caldwell County, Texas has the responsibility and the authority to take action to protect the public health, safety, and welfare; and

WHEREAS, the Commissioners Court of Caldwell County has determined that the Carrizo-Wilcox Aquifer is a major aquifer that serves as an important source of groundwater for residents of Caldwell County; and

WHEREAS, the Commissioners Court of Caldwell County recognizes that the Carrizo-Wilcox Aquifer supplies water for the City of Luling, City of Lockhart, and the Aqua Water Supply Corporation in Caldwell County; and

WHEREAS, the Commissioners Court of Caldwell County recognizes that the Carrizo-Wilcox Aquifer supplies water for agricultural irrigation and residential and commercial uses in Caldwell County; and

WHEREAS, the Commissioners Court of Caldwell County recognizes that the Leona Formation provides an additional valuable source of groundwater and feeds numerous springs and seeps, including those found in Lockhart State Park; and

WHEREAS, the Commissioners Court of Caldwell County recognizes that fresh water from the Leona Formation feeds the Carrizo-Wilcox Aquifer and may improve the water quality in that Aquifer, where the two formations are in close contact; and

WHEREAS, the disposal of municipal or industrial solid waste in landfills in Caldwell County could threaten the water and air quality, attract vermin, and result in the spread of refuse; and

WHEREAS, the location of landfills within Caldwell County could hamper economic development within the county and may negatively affect property values in the county; and

WHEREAS, citizens and property owners of Caldwell County oppose the location of landfills within the county; and

*Caldwell Co.
Exhibit 1*

I, Carol Holcomb, County Clerk, Caldwell County, Texas, do hereby certify that this is a true and correct copy as same appears of record in office. Witness my hand and seal of office on 3-18-15
Carol Holcomb, County Clerk
By Deputy *Sharon Williams*



D- 0001

WHEREAS, the Commissioners Court of Caldwell County finds that the disposal of municipal or industrial solid waste in the county is a threat to the public health, safety, and welfare; and

WHEREAS, the Commissioners Court of Caldwell County has determined the designation of County-owned property in Section III of the Ordinance will allow Caldwell County to better protect the public health, safety, and welfare by focusing its limited resources on County-owned property to monitor the use, condition, and hazards associated with municipal solid waste facilities under the County's inspection and enforcement authority delegated pursuant to Texas Water Code Chapter 7 and Texas Health and Safety Code Section 361.032; and

WHEREAS, an ordinance was proposed to prohibit the disposal of municipal or industrial solid waste in the Caldwell County as authorized by sections 363.112 and 364.012 of the Texas Health and Safety Code; and

WHEREAS, public hearing notices regarding the proposed ordinance were published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considered this ordinance; and

WHEREAS, the public hearing notices included (1) the proposed ordinance prohibiting solid waste disposal in Caldwell County; (2) the time, place, and date that the Commissioners Court of Caldwell County was to consider the proposed ordinance; and (3) notice that an interested citizen of the county may testify at the hearing; and

WHEREAS, a public hearing on this ordinance was held on December 9, 2013 before the ordinance was considered by the commissioners court, and any interested citizen of the county was allowed to testify at the hearing; and

WHEREAS, the Commissioners Court of Caldwell County took action on this ordinance on December 9, 2013 at a public meeting noticed and held in accordance with the requirements of the Texas Open Meetings Act:

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS COURT OF CALDWELL COUNTY, TEXAS:

CALDWELL COUNTY SOLID WASTE DISPOSAL ORDINANCE

SECTION I: GENERAL PROVISIONS

This ordinance shall be designated as the Caldwell County Solid Waste Disposal Ordinance. The Commissioners Court of Caldwell County is authorized to enact this ordinance under chapters 363 and 364 of the Texas Health and Safety Code.

SECTION II: DEFINITIONS

Disposal: The discharge, deposit, injection, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be



I, Carol Holcomb, County Clerk, Caldwell County Texas, do hereby certify that this is a true and correct copy as same appears of record in office. Witness my hand and seal of office on 3-18-15
Carol Holcomb, County Clerk
By Deputy: Sharon Williams
D-0002

emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

Industrial Solid Waste: Solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

Municipal Solid Waste: Solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

Processing: Activities including, but not limited to, extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to neutralize hazardous waste; recover energy or material from hazardous waste; or render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

Solid Waste: Garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.

Solid Waste Facility: All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units

SECTION III: NOT PROHIBITED

The processing or disposal of municipal or industrial solid waste or the operation of a solid waste facility is not prohibited in the following areas within Caldwell County, Texas:

The property owned by Caldwell County, Texas, located east of Seawillow Road (County Road 205) and assigned Property ID Number 31061 and Geographic ID Number 0002194-120-100-00 by the Caldwell County Appraisal District; and described as 18.232 acres of land out of the P.B. McCarley Survey, conveyed to Caldwell County by Clarence V. Moses and wife, Bobbie Moses by deed recorded in Volume 487 at Page 63 of the Deed Records of Caldwell County Texas, and being more particularly described in Exhibit A.

SECTION IV: PROHIBITED

The processing or disposal of municipal or industrial solid waste or the operation of a solid waste facility is prohibited in the following areas within Caldwell County, Texas:

I, Carol Holcomb, County Clerk, Caldwell County, Texas, do hereby Certify that this is a true and correct copy as same appears of record in office. Witness my hand and seal of office on



3-18-15 D-0003
Carol Holcomb, County Clerk
By Deputy Sharon Williams

Sharon Williams

All portions of Caldwell County, Texas not included in Section III above.

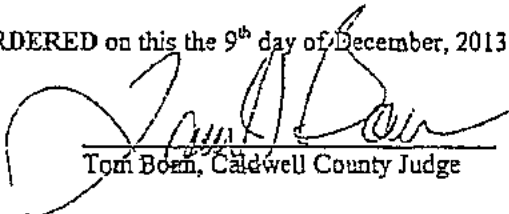
SECTION V: ENFORCEMENT

Violations of the Caldwell County Solid Waste Disposal Ordinance are subject to civil and criminal penalties to the extent allowed by state law. Each day a violation occurs is a separate offense and constitutes a separate ground for recovery.

SECTION VI: SEVERABILITY

If any portion of this ordinance is declared partially void or unenforceable by an order of a court of competent jurisdiction, said portion shall be severed, and the remaining portions of this order shall be construed as remaining in effect to the full degree allowed by that order.

ORDAINED, ADOPTED AND ORDERED on this the 9th day of December, 2013 by a vote of 5 Ayes and 0 Nays.


Tom Boen, Caldwell County Judge

ATTEST:


Carol Holcomb County Clerk



I, Carol Holcomb, County Clerk, Caldwell County, Texas, do hereby Certify that this is a true and correct copy as same appears of record in office. Witness my hand and seal of office on



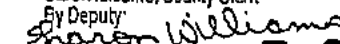
3-18-15
Carol Holcomb, County Clerk
By Deputy

Sharon Williams 9-0004

EXHIBIT A

BEING all of a certain tract or parcel of land situated in Caldwell County, State of Texas, and being a part of the P.B. McCarley Survey and being also a part of a tract of land designated as "First Tract" and conveyed to Clarence Moses, et ux by Robert O. Blanton by deed recorded in Volume 343 at Page 386 of the Deed Records of Caldwell County, Texas, and being more particularly described as follows:

BEGINNING at an iron pin set in the North line of the above mentioned "First Tract" for the Northwest corner this tract also being the Northeast corner of a 40.00 acre tract of land conveyed to W. H. Thigpen by Clarence Moses by deed recorded in Volume 355 at Page 677 of the said Deed Records.

THENCE North 89 deg. 06 min. East 966.25 feet to an iron pipe found in a reentrant corner of the said "First Tract" for the Northeast corner this tract.

THENCE South 0 deg. 22 min. West 832.13 feet to an iron pin set in the South line of said "First Tract" for the southeast corner this tract.

THENCE North 89 deg. 49 min. West 963.89 feet to an iron pin set in the Southeast corner of the above mentioned 40.00 acre tract for the Southwest corner tract.

THENCE North 0 deg. 13 min. East 813.88 feet to the PLACE OF BEGINNING containing 18.232 acres of land. Surveyed by Claude F. Hinkle, RPS No. 1612, in December, 1984.



I, Carol Holcomb, County Clerk, Caldwell County, Texas, do hereby Certify that this is a true and correct copy as same appears of record in office. Witness my hand and seal of office on

3-18-15

Carol Holcomb, County Clerk

By Deputy:

Sharon Williams

Sharon Williams

D-0005

Automated Certificate of eService

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Gina Verlander on behalf of Melanie Plowman
Bar No. 24002777
gverlander@adjtlaw.com
Envelope ID: 65639434
Status as of 6/21/2022 3:40 PM CST

Associated Case Party: TJFA, L.P., Environmental Protection

Name	BarNumber	Email	TimestampSubmitted	Status
Melanie Plowman		mplowman@adjtlaw.com	6/21/2022 3:21:57 PM	SENT
Eric Michael Allmon	24031819	eallmon@txenvirolaw.com	6/21/2022 3:21:57 PM	SENT
Marisa Perales	24002750	marisa@txenvirolaw.com	6/21/2022 3:21:57 PM	SENT
Eric Allmon		eallmon@lf-lawfirm.com	6/21/2022 3:21:57 PM	SENT
Amy Warr		awarr@adjtlaw.com	6/21/2022 3:21:57 PM	SENT
Wallace B. Jefferson		wjefferson@adjtlaw.com	6/21/2022 3:21:57 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	6/21/2022 3:21:57 PM	SENT
Autumn HamitPatterson		apatterson@texaspolicy.com	6/21/2022 3:21:57 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	6/21/2022 3:21:57 PM	SENT

Associated Case Party: 130 Environmental Park, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Michael S. Truesdale	791825	mtruesdale@enochkever.com	6/21/2022 3:21:57 PM	SENT
Brent W. Ryan	17469475	bryan@msmtx.com	6/21/2022 3:21:57 PM	SENT

Associated Case Party: Texas Comm'n on Environmental Quality

Name	BarNumber	Email	TimestampSubmitted	Status
Kellie Billings-Ray	24042447	Kellie.Billings-Ray@oag.texas.gov	6/21/2022 3:21:57 PM	SENT
Priscilla M. Hubenak	10144690	Priscilla.Hubenak@oag.texas.gov	6/21/2022 3:21:57 PM	SENT
Laura Courtney		laura.courtney@oag.texas.gov	6/21/2022 3:21:57 PM	SENT

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Gina Verlander on behalf of Melanie Plowman
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gverlander@adjtlaw.com
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cathi Trullender		ctrullender@adjtlaw.com	6/21/2022 3:21:57 PM	SENT