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June 21, 2022

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

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

To the Honorable Texas Supreme Court:

Under Texas Rule of Appellate Procedure 11, I am writing to convey my 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 the referenced case.

1. Statement of Amicus Curiae Interest

I am a former Caldwell County Commissioner and served on the Caldwell County Commissioners Court when the Commission adopted the ordinance in this case. The Caldwell County Commissioners Court enacted its ordinance on December 9, 2013, prohibiting a landfill in the area covered by the subsequent landfill permit application.

As a County Commissioner, I was familiar with the proposed landfill site. The land is surrounded on three sides by floodplains and located upstream from a reservoir and a “high hazard” dam. If the dam is breached, the downstream residents, roads, and property owners would be flooded, causing substantial economic loss and endangering public safety. The site is also adjacent to the Carrizo-Wilcox Aquifer outcrop. Prior to voting, the Commissioners heard from twenty members of the public testifying in support of the ordinance, who cited significant concerns over water quality, flooding, property owners’ wells, noise, and traffic. It was with all this in mind that I voted in favor of the ordinance to prohibit a landfill in area of the proposed landfill site, but to also allow a landfill in a different, more suitable area of the county.

As a former Caldwell County Commissioner who examined this landfill matter and gave careful consideration to the potential impacts of a landfill and the concerns of my constituents, my interests in this case are: (1) proper respect from TCEQ for duly adopted local ordinances; and (2) the proper interpretation of Texas Health & Safety Code Section 363.112, where the Legislature established local governments’ authority to enact ordinances and orders restricting the locations of landfills.

2. The TCEQ should not ignore local government ordinances and orders when it considers landfill permit applications.

The Legislature created a role for local governments in managing the State's solid waste by allowing counties and cities to restrict where solid waste landfills may be located in their jurisdictions. Under Texas Health & Safety Code Section 363.112, counties 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 ended the Caldwell County Commission's authority before it expired by treating the landfill operator's request for a land use determination from TCEQ as if it were an application for a landfill permit. The landfill operator's submission was not a request for a landfill permit and could not have resulted in a landfill permit. The court of appeals interpreted the statutory provisions differently from their actual language and permitted TCEQ to ignore the ordinance that the Caldwell County Commissioners Court duly adopted.

The Caldwell County Commissioners Court considered the ordinance through its regular process that included public notice and participation. But TCEQ failed to give the ordinance the deference due under the Texas Public Health & Safety Code. The Legislature chose to make sure that local concerns are part of the decision-making process regarding where such significant infrastructure should be located, but the TCEQ and the court of appeals treated the ordinance, which reflected the considered judgment of the Commissioners Court, as if it never happened.

I respectfully ask the Court to grant review of this case and ensure proper respect for cities and counties' authority to limit landfills in their jurisdictions under the Health and Safety Code.

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,

/s/ Ernesto "Neto" Madrigal
Ernesto "Neto" Madrigal
Former Caldwell County
Commissioner

CERTIFICATE OF SERVICE

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

/s/ Ernesto "Neto" Madrigal
Ernesto "Neto" Madrigal

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