No. 12-10-00021-CV

In the Court of Appeals
for the Twelfth District of Texas
at Tyler

THOMAS D. SELGAS AND MICHELLE L. SELGAS

Appellants

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT

Appellee

APPELLANTS' SUPPLEMENTAL BRIEF

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LIST OF PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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TABLE OF CONTENTS

APPENDIX

INDEX OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

NO. 12-10-00021-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THOMAS D. SELGAS AND MICHELLE L. SELGAS APPELLANTS,	**§**	**APPEAL From 173rd**
V.	**§**	**JUDICIAL DISTRICT**
THE HENDERSON COUNTY APPRAISAL DISTRICT APPELLEE.	**§**	**HENDERSON COUNTY, TEXAS**

APPELLANTS' SUPPLEMENTAL BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Appellants, Thomas D. Selgas and Michelle L. Selgas, pursuant to Rule 38.7 T.R.A.P.., and file this their Supplemental Brief so that justice may be served and to assist the Court in its determination by listing the citations raised at oral argument.

I.
SUPPLEMENTAL BRIEF

First, the court has insightfully raised the issue regarding the disparity of purchasing power between lawful money legal tender coins and legal tender notes, which was resolved in *THOMPSON v. BUTLER*, 95 U.S. 694, 696 (1877)), and

authoritatively citied in *Crummey v. Klein Independent School District* (Unpublished Opinion[1], U.S. Ct. App. for the 5th Circuit, No. 08-20133, 2 October 2008)), to wit:

***THOMPSON v. BUTLER*, 95 U.S. 694, 696**

> A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them.

Both parties agree that Federal Reserve Notes are legal tender; however, Appellee ignores the fact the $10[2] gold coins tendered by the Appellants for payment of the property are equally legal tender pursuant to the following Statute:

Title 31 United States Code Sec. 5103

> **United States coins and currency** (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) **are legal tender for all debts, public charges, taxes, and dues**. (emphasis added)

Unfortunately, the Secretary of the Treasury has failed in his duty to protect the equal purchasing power of each kind of currency (coin and Note) resulting in a disparity that shouldn't exist pursuant to:

Title 31 United States Code Sec. 5119(a)

> [T]he Secretary shall redeem gold certificates owned by the Federal reserve banks at times and in amounts the Secretary decides are necessary **to maintain the equal purchasing power of each kind of United States currency**. (emphasis added)

---

[1] See FED. R. APP. P. 32.1(a), and 5TH CIR. R. 47.5.4.

[2] $10 gold coins have declared "ten dollar[s]" by Congress, which is codified in Title 31, United States Code, Section 5112(a)(9)).

The Appellee, Henderson County Appraisal District, has the same opportunity and responsibility as the Appellants to exercise its remedy to redeem Federal Reserve notes for **Lawful Money** on Demand pursuant to:

Title 12 United States Code Sec. 411

> **Federal reserve notes**, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They **shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank**. (emphasis added) (Note: if Federal Reserve Notes must be redeemed for "lawful money" they cannot themselves be lawful money)

The Constitution of the United States is quite clear as to the Supremacy of the United States in regulating the value of money and to that end, Congress is exclusively allowed to coin money pursuant to Art I Sec. 8 Cl. 5 of the Constitution and said money is defined at Art I Sec. 9, Amendment 7, and by statute as the Dollar at:

Title 31 United States Code Sec. 5101

> **United States money is expressed in dollars**, dimes or tenths, cents or hundredths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar. (emphasis added)

Furthermore, the dollar is, and must be, a pure metallic standard of value as stated in *UNITED STATES V. MARIGOLD*, 50 U. S. 560, 566-568 (1850)) and most

recently cited in *International Bancorp Llc v. Societe Des Bains De Mer et Du Cercle Des*, 329 F. 3d 359, May 19, 2003.

***UNITED STATES V. MARIGOLD*, 50 U. S. 560 (1850))**

> The inquiry first propounded upon this record points obviously to the answer which concedes to Congress the power here drawn in question. **Congress are, by the Constitution, vested with the power** to regulate commerce with foreign nations; and however, at periods of high excitement, an application of the terms "to regulate commerce" such as would embrace absolute prohibition may have been questioned, yet, since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, at this day, be open to doubt, that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the important interests of the entire nation. Such exclusion cannot be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, **bullion, coin**, or any other thing. The power once conceded, it may operate on any and every subject of commerce to which the legislative discretion may apply it.
>
> But the twentieth section of the Act of Congress of March 3, 1825, or rather those provisions of that section brought to the view of this Court by the second question certified, are not properly referable to commercial regulations merely as such, nor to considerations of ordinary commercial advantage. **They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government -- namely the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value, and on account of the impossibility which was foreseen of otherwise preventing the inequalities and the confusion necessarily incident to different views of policy, which in different communities would be brought to bear on this subject. The power to coin money being thus given to Congress, founded on public necessity, it must carry with it the correlative power of protecting the creature and object of that power.** It cannot be imputed to wise

> and practical statesmen, nor is it consistent with common sense, that they should have vested this high and exclusive authority, and with a view to objects partaking of the magnitude of the authority itself, only to be rendered immediately vain and useless, as must have been the case had the government been left disabled and impotent as to the only means of securing the objects in contemplation.
>
> **If the medium which the government was authorized to create and establish could immediately be expelled and substituted by one it had neither created, estimated, nor authorized -- one possessing no intrinsic value -- then the power conferred by the Constitution would be useless -- wholly fruitless of every end it was designed to accomplish. Whatever functions Congress are by the Constitution authorized to perform they are, when the public good requires it, bound to perform, and on this principle, having emitted a circulating medium, a standard of value indispensable for the purposes of the community, and for the action of the government itself, they are accordingly authorized and bound in duty to prevent its debasement and expulsion, and the destruction of the general confidence and convenience, by the influx and substitution of a spurious coin in lieu of the constitutional currency**. (emphasis added)

The holding in Marigold was directly derived from the fact that the term Dollar, as used in Art I Sec. 9, Amendment 7 of the United States Constitution had a well known, established and understood meaning prior to the ratification of the Constitution and that meaning was clearly revealed in the in the first coinage act of 1792 to wit:

Act of 2 April 1792, ch. 16, § 9, 1 Stat. 246, 248

> "**DOLLARS or UNITS—each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one gains and four-sixteenth parts of a grain [371-$^{4}/_{16}$ grains of pure] silver**" and "the money of account of the United States shall be expressed in dollars or units, * * * and * * * all accounts in the public offices and all proceedings in the courts of the United

> States shall be kept and had in conformity to this regulation"[3] (emphasis added)

The reason the pure metallic silver coin dollar unit was employed as the foundational monetary unit of the United State under the Constitution was to prevent the debasement that occurred from the emission of bills of credit under the Articles of Confederation, which ultimately led to the destruction of the confederation and gave rise to the popular expression "Worthless as a Continental", as noted by the Court during Oral Argument. Thus, after the ratification of the Constitution, "Continentals" were no longer exchanged for or as money of the United States.

Benjamin Franklin, Signer of the Constitution of the United States, Printed in the December 16, 1789 edition of his paper the Pennsylvania Gazette:

> **Since the federal constitution has removed all danger of our having a paper tender**, our trade advanced fifty percent. Our moneyed people can trust their cash [throughout the country], and have brought their coin into circulation. (emphasis added)

Although this case has nothing to do with the constitutionality of Federal Reserve notes, nor is it an issue before this court, it is interesting to note that Benjamin Franklin's understanding as he published in his December 16, 1789 issue of the Pennsylvania Gazette, is consistent with the removal of Congresses ability to emit bills of credit that was in the Articles of Confederation and from the first draft of the constitution as a result of a heated discussion which lead Roger Sherman, the Connecticut delegate to the Constitutional Convention, to state "**If what is used as a**

[3] Act of 2 April 1792, ch. 16, § 20, 1 Stat. at 250-51

medium of exchange is fluctuating in its value, it is no better than unjust weights and measures…which are condemned by the Laws of God and man …".

Thus, based upon the foregoing authorities, the 1,667 $10 American Eagle gold coins used by the Appellants to purchase the property in Henderson County, Texas for the total amount of **$16,670 legal tender and lawful money coin of the United States** represent the "market value" as set forth in Art. VIII, Sec. 20, Tex. Const.., and Sec. 1.04(7), Tax Code, which consequently is supported by, the terms specified in the real-estate contract, the testimony and affidavit of the Seller, JoAnn Bryant, and the testimony and affidavit of Thomas D. Selgas, all of which are evidence before the Court at the time of the ruling on the Appellee's motions.

These terms fulfilled the Sec. 23.01 requirement of proof of market value despite the lack of evidence as to the use of generally accepted appraisal techniques in determining market value. *Bailey County Appraisal District v. Smallwood*, 848 S.W.2d 822 (Tex. App.-Amarillo 1993, no writ)

Lastly the Appellant would like to highlight some items discussed at Oral Argument, which show the Appellee's total lack of understanding of the monetary law of the United States and Texas Summary Judgment powers, to wit:

1) The Appellee relies on a 1984 Colorado case, *Walton v. Keim*, 694 P. 2d 1287 (Colo. App. 1984) to support its position, yet the citations listed below all supersede the ruling of *Walton v. Keim:*

    a. Title II, Section 202(e) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 115-116, now codified in Title 31, United States Code, Section 5112(e);

b. Sections 2(a)(7)-(10) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, now codified in Title 31, United States Code, Sections 5112(a)(7)-(10)); and

c. *Crummey v. Klein Independent School District* (Unpublished Opinion, U.S. Ct. App. for the 5th Circuit, No. 08-20133, 2 October 2008);

2) The Appellee's affidavit submitted as part of its Motion for Summary Judgment conflicts with the Appellee's prior testimony. The Texas Supreme Court has held that when conflicting inferences can be drawn from a party's deposition testimony and an affidavit filed in response to a motion for summary judgment, a fact issue is presented that precludes summary judgment. ***Randall v. Dallas Power & Light Co.*, 752 S.W.2d 4, 5 (Tex. 1988)).** Said testimony includes:

a. Plaintiffs' (Appellants') Request for Admission No. 3, which asks: 'Admit that the unit of monetary value employed by the Defendant in making the Assessment is the "dollar"' and for which the Appellee's answer was "… it is denied".

b. Appellee's witness – Bill Jackson – deposition testimony (see pg. 31 of Exhibit E to Plaintiff's response to Defendant's motion for summary judgment) in which Mr. Jackson responds to the question: "Do you know what the legal definition of a dollar is?" with an answer of "No, I don't."

c. Appellee's witness – Bill Jackson – deposition testimony (see pg. 37-38 of Exhibit E to Plaintiff's response to Defendant's motion for summary judgment) in which Mr. Jackson responds to the question: "And are there any entries on any of the documents that are created by the Appraisal Review -- or created by the Chief Appraiser's office that are stated in the value of Federal Reserve Notes?" with an answer of "No, I don't personally have any knowledge of it."

d. Affidavit of Bill Jackson, Appellee's witness (see Exhibit A of Defendant's Motion for Summary Judgment) wherein he states "the Henderson County appraises is appraised in Federal Reserve Note dollars."

II.
SUMMARY OF ARGUMENT

The issue before the Court is whether, at the time of hearing on the Appellee's Motion for No Evidence Summary Judgment and Motion for Summary Judgment, a genuine issue of material fact was in dispute. There is no question that Texas law does not mandate Appellants marshall all of their evidence, but merely requires Appellants to meet this burden by producing evidence which is more than a mere scintilla. Appellants more than met their burden through Appellants' brief and supporting evidence, namely the affidavit of Thomas D. Selgas, Buyer of the Property in question, and the affidavit of JoAnn Bryant, Seller of the property in question, both of whom are firsthand witnesses to the transaction, and through whose affidavit testimony established the market value of the property at $16,670, and their corresponding deposition testimony in support thereof. This evidence contradicts Appellee's evidence presented in its motion for summary judgment, and constitutes evidence in the face of Appellee's no evidence motion for summary judgment, and clearly establishes a genuine issue of material fact.

Accordingly, Appellants have met their burden to show that a genuine issue of material fact existed as these affidavits constitute the production of more than a scintilla of evidence sufficient to defeat summary judgment. On this basis alone, the court should reverse the trial court's granting of Appellee's Motion for Summary Judgment, and No Evidence Motion for Summary Judgment.

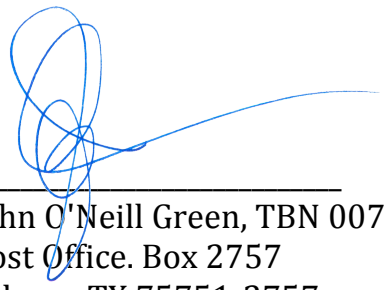
Appellants in this supplemental brief have now provided the court with relevant cases and statutes not cited in Appellants' original brief, along with a brief explanation of the applicable law as it pertains to this matter on the underlying issue of monetary valuation.

However, Appellants maintain that the simple issue before the court remains whether there is a genuine issue of material fact supported by more than a mere scintilla of evidence precluding summary judgment. It is Appellants contention that the answer to this simple question is yes. Appellants respectfully ask the court to agree, and remand this matter back to the trial court for trial on the merits.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellants request the Court remand this case back to the District Court for Trial.

Respectfully submitted,



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Certificate of Service

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I certify that I have served this document on all other parties, which are listed below on January 27, 2011 as follows:

Kirk Swinney at McCREARY, VESELKA, BRAGG & ALLEN, P.C., 700 Jeffrey Way, Suite 100, Round Rock, TX 78665 Attorney for THE HENDERSON COUNTYAPPRAISAL DISTRICT

By (check all that apply)

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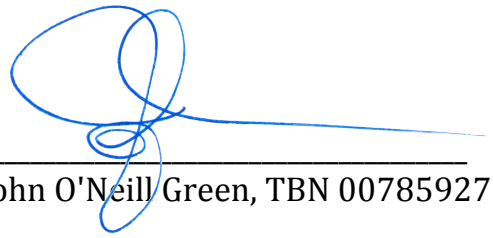

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