

No. 12-39

IN THE
Supreme Court of the United States

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Petitioners

v.

HENDERSON COUNTY APPRAISAL DISTRICT,
Respondent

**On Petition for Writ of Certiorari to the
Twelfth Court of Appeals of Texas**

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners Thomas D. Selgas and Michelle L. Selgas respectfully request rehearing of the Court's order dated October 1, 2012, denying their petition for a writ of certiorari in this case. This is an important case about:

- 1) lower Courts assigning varying "dollar" values to United States legal tender, which often differ from those values assigned by Congress,
- 2) a citizen's right to choose which Congressionally authorized tender they utilize within our society, and
- 3) a basic right to know that the "dollar" value minted or printed on the face of such legal

tender, as regulated by Congress under its power at U.S. CONST., art. I, § 8 cl. 5, is the value thereof.

As “Roger Sherman, a delegate to the Constitutional Convention, wrote: *“If what is used as a 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...”*¹ Nowhere in the Constitution is a paper monetary system authorized.² Indeed, the founding fathers considered it, and summarily rejected it. For the same reasons our forefathers dismissed a paper currency system, many citizens today want to trade in legal tender currencies with intrinsic value, prompting states, like Utah, to reinstitute laws authorizing the use of gold as a tender in payments of debts amongst its citizenry.

Petitioners pursue this case not for personal gain, but rather to secure their ability to transact business in the legal tender currency of their choice. The Petitioners paid for their property with United States legal tender gold coin. The question is: What legal tender “dollar” value or monetary value should be assigned to their purchase? The “dollar” value “regulated” by Congress, or some other arbitrary value to be determined by some court at a later date? The answer should be obvious; yet, in the instant

¹ Report to the Congress of the Commission on the Role of Gold in the Domestic and International Monetary Systems made pursuant to Public Law 96-389, Vol II, Pg. 247. Also see *Beer v. US*, 10-5012 (Fed. Cir. Oct. 5, 2012) to understand the chilling effects that inflation (devaluing the purchasing power of currency) has on citizens, including Federal Judges.

² *United States v. Marigold*, 50 U.S. (9 How.) 560, 567-568 (1850)

case, the Texas courts assigned “dollar” values that substantially differ from those assigned by Congress.

This case, however, is not about the difference in purchasing powers between the various forms of United States currency except as it relates to the payment of state³ and federal taxes⁴. Indeed, governments have at least two options that they can statutorily implement to reconcile the difference in purchasing powers between the various forms of United States currencies, neither of which the State of Texas has done, so as to abide by existing federal law and still avoid any perceived purchasing power shortfall in their coffers:

- 1) Make laws specifically requiring taxes to be paid in the underlying type of money used in the taxable transaction, which is what the State of Utah has done.⁵
- 2) Make laws requiring all taxable transactions to be valued in one particular type of currency, which the Federal Government had done during the Civil War period.⁶

³ *Lane County v. Oregon*, 74 U.S. 71 (1869); *Hagar v. Reclamation District No. 108*, 11 U.S. 701 (1884)

⁴ See: Act of 9 July 1985, Title II, Section 202(h), Public Law 99-61, 99 Stat. 113, 116, now codified specifically in 31 U.S.C. § 5112(h), and generally under 31 U.S.C. § 5103.

⁵ H.R. 157 Substitute, 2012 Sess. (Utah 2012) at Appendix DD, pg 294a, in Petitioners’ petition for writ of certiorari, No. 12-39, July 5, 2012.

⁶ Act of 13 July 1866, ch. 184, § 9, 14 Stat. 98, 147, amending Act of 10 March 1866, ch. 15, §§ 3-5, 14 Stat. 4, 5, repealed by Act of 14 July 1870, ch. 255, § 1, 16 Stat. 256, 256. See *Pacific Insurance Co. v. Soule*, 74 U.S. (7 Wall.) 433, 440-43 (1869).

Instead of addressing the issue, the Supreme Court of Texas denied Petitioners' Petition, allowing the underlying court's holding, which is in direct contravention of existing federal law, to stand, thereby ignoring its responsibility to uphold the law, as it exists.

Moreover, if the "fiscal cliff", which many on Wall Street have been discussing, does in fact occur, those citizens who, like the Petitioners, have prudently switched to utilizing legal tender gold coin will possess a currency that historically weathered all monetary crises by retaining its purchasing power, whereas paper currencies have not.⁷ In fact, during times of economic turmoil societies have repeatedly witnessed the evaporation of paper savings' purchasing power.⁸ This historical reality highlights the importance of the issue presented by this case, which is the vital right of each individual citizen to protect his property and the value thereof. Accordingly, Petitioners respectfully urge this Court to reconsider this most important case for rehearing.

Although it is not very common for this Court to grant rehearing and plenary review, it is not uncommon for this Court to grant rehearing and then grant certiorari, vacate the judgment below, and remand (a "GVR order") when such action will have immediate importance far beyond the particular facts and par-

⁷ "The only question is will we look like Weimar, Zimbabwe or Argentina?" Bob Chapman; http://www.theinternationalforecaster.com/International_Forecaster_Weekly/The_Rotten_Underpinnings_Of_Our_Financial_System_Exposed

⁸ "In [America] the continental currency lost so much of its value that it became common to describe something as worthless by saying it was "not worth a Continental." Thomas E. Woods, Jr.; <http://mises.org/daily/2340/>

ties involved or will “*resolve* conflicts of opinion on federal questions that have arisen among lower courts [a]nd ... pass upon questions of wide import under the Constitution, laws, and treaties of the United States.”⁹ This case meets the criteria as follows:

Petitioners presented the following question for review:

Does the Texas Twelfth Court of Appeals’ holding on the valuation of United States coined gold dollars directly conflict with long-standing federal precedent, which was detailed by this Court in *Thompson v. Butler*, 95 U.S. 694 (1877) and which was recently relied upon by the Fifth Circuit Court of Appeals in deciding an analogous Texas tax case, *Crummey v. Klein Indep. School Dist.*, 2008 WL 4441957 (5th Cir. 2008)?¹⁰

By answering this question this Court will resolve the issue in other pending cases, such as *Camp Hendrick Trust v. The Henderson County Appraisal District*, No. 2012B-0925, 392nd Judicial District Court of Texas, and provide much needed clarity – for states such as Utah, which have implemented gold and silver tender laws pursuant to U.S. CONST., art. I, § 10, cl. 1, with respect to an issue which carries the potential, if left unresolved, of decimating the capital of taxpayers as well as the revenues of local,

⁹ See generally R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE at 259, supra note 1, at 258 (5th ed. 1978).

¹⁰ *Selgas v Henderson County Appraisal District*, No. 12-39, Petition for a Writ of Certiorari, page (i), July 5, 2012.

state and national taxing authorities across the country.¹¹

Second, by deciding the Petitioners' question, this Court will resolve the conflict created between the decisions of the Fifth Circuit Court of Appeals in another Texas property tax case, *Crummey v. Klein Indep. School Dist.*, 2008 WL 4441957 (5th Cir. 2008) and the Texas Twelfth Court of Appeals decision in this case, *Selgas v Henderson County Appraisal District*, Case No. 12-10-00021-CV (TX Ct. App. 12, Nov. 16, 2011)¹² as well as the conflict created between the decisions in *Crummey* and *California Federal Life Insurance Co. v. Commissioner of*

¹¹ See Appendix V, pgs 153a-154a, in Petitioners' petition for writ of certiorari, No. 12-39, July 5, 2012 to wit: Under the Texas Constitution "[n]o property ... shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value." Tex. Const. art. VII, § 20. Texas law defines Market Value as the sales price in an arm's length transaction. Tex. Prop. Tax Code § 1.04(7); see also *Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824-25 (Tex. App.-Amarillo 1993, no writ) (noting fair market value results from willing purchaser, willing seller, and no pressure to buy or sell property). Further, absent capital improvements, appraised values for tax purposes may only be increased by a maximum of 10% per year. Id. § 23.23(a)(2)(A). Nevertheless, in this case the county assessor increased the subject property's appraised "dollar" value from its original purchase price of \$16,670.00 by 1,750% the first year after its acquisition and then raised that valuation to 2,500% of the purchase price the next year.

¹² Sup. Ct. R. 10(c). See also *Michigan v. Clifford*, 464 U.S. 287, 289 (1984) ("We granted certiorari to clarify doubt that appears to exist as to the application of our decision in [Michigan v.] Tyler."); *Aldinger v. Howard*, 427 U.S. 1, 3 (1976) ("We granted certiorari to resolve the conflict on this important question.").

Internal Revenue, 680 F.2d 85 (9th Cir. 1982).¹³ Therefore a GVR order would be the appropriate disposition in this case.

This Court has a duty to resolve:

- 1) conflicts created by lower courts;
- 2) violations of the supremacy clause; and
- 3) refusals by States and their courts to adhere to decisions of this Court.

The current holding in this case results from not just one of the above-enumerated errors requiring resolution by this Court, but all three:

The decision of the Texas Twelfth Court of Appeals is squarely in conflict with:

- 1) The decision rendered by the Fifth Circuit Court of Appeals in another Texas property tax case, *Crummey v. Klein Indep. School Dist.*, 2008 WL 4441957 (5th Cir. 2008).
- 2) Every decision of this Court related to gold clause contracts and their value when paid in currently minted United States gold coins, to wit:
 - a. parties have the right to engage in gold clause contracts, 31 U.S.C. § 5118 and *Bronson v. Rodes*, 74 U.S. (7 Wall.) 229 (1869);
 - b. parties have the right to enforce gold clause contracts, 31 U.S.C. § 5118(d)(2) and *Butler v. Horwitz*, 74 U.S. (7 Wall.) 258 (1869), and

¹³ Sup. Ct. R. 10(a).

- c. the value of a gold clause contract made payable in currently minted United States legal tender gold coins is the sum of the face value of all the coins tendered for full payment and fulfillment of said contract, *Thompson v. Butler*, 95 U.S. 694 (1877).
- 3) The power of Congress to coin money and regulate its value pursuant to U.S. CONST. art. I, § 8, cls. 5 and 18; which power Congress has exercised in 31 U.S.C. §§ 5103, 5112, and 5118 to provide Americans with legal-tender gold and silver coinage and a right to make and enforce gold-clause contracts,¹⁴ and which right the Supremacy Clause, U.S. CONST. art. VI, cl. 2, requires the States to enforce according to the rules set forth by the decisions of this Court in *Bronson v. Rodes*, 74 U.S. (7 Wall.) 229 (1869), *Butler v. Horwitz*, 74 U.S. (7 Wall.) 258 (1869), and *Thompson v. Butler*, 95 U.S. 694 (1877).

¹⁴ See: Act of 17 December 1985, Section 2(a)(9), Public Law 99-185, 99 Stat. 1177, now codified in 31 U.S.C. § 5112(a)(9); Act of 9 July 1985, Title II, Section 202(h), Public Law 99-61, 99 Stat. 113, 116, now codified specifically in 31 U.S.C. § 5112(h), and generally under 31 U.S.C. § 5103, and 31 U.S.C. § 5118.

CONCLUSION

For the foregoing reasons, this Court should grant rehearing, vacate the order denying certiorari, and enter a GVR order so that the Texas Twelfth Court of Appeals recognizes the validity of this Court's holding in *Thompson v. Butler*, 95 U.S. 694 (1877) as well as the right of the Petitioners, and every other United States citizen, to engage in enforceable gold clause contracts pursuant to 31 U.S.C. § 5118.

Respectfully submitted,

By: _____

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CERTIFICATE OF COUNSEL

As counsel of record for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

By: _____

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October 25, 2012