



2018

The Comparable Properties Standard: A Windfall for the Wealthy, a Shortfall for the Poor

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Recommended Citation

Timothy R. MacGorman, *The Comparable Properties Standard: A Windfall for the Wealthy, a Shortfall for the Poor*, 4 Tex. A&M J. Prop. L. 361 (2018).

Available at: <https://doi.org/10.37419/JPL.V4.I4.4>

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THE COMPARABLE PROPERTIES STANDARD: A WINDFALL FOR THE WEALTHY, A SHORTFALL FOR THE POOR

Timothy R. MacGorman[†]

ABSTRACT

The Texas Constitution mandates that taxation shall be equal and uniform, and that property shall be appraised at market value for the purposes of ad valorem property taxation. While valuation methodology is crucial to property owners in such a context, the “Comparable Properties Standard” embodied in Sections 41.43(b)(3) and 42.26(a)(3) of the Texas Tax Code appears to allow wealthy property owners to unconstitutionally manipulate the appraised value of their property for ad valorem taxation purposes and shift their tax burden to other taxpayers. Unless the Texas legislature enacts a mandatory sales price disclosure statute, or directly amends or repeals the Comparable Properties Standard, such unconstitutional results will continue to diminish revenues for taxing units and shift the tax burden from the wealthy to Texas’ lower and middle-class taxpayers.

While scholars and practitioners have previously expressed the need for a Texas mandatory sales price disclosure statute in order to reduce inequity in other valuation contexts, City of Austin v. Travis Central Appraisal District (“City of Austin”) highlights the longstanding complaint that the Comparable Properties Standard, absent mandatory sales price disclosure, has distorted the appraisal process for ad valorem taxation purposes. With millions of dollars of tax revenue at stake, and a continuing shift of the tax burden from the wealthy to other Texans, the Comparable Properties Standard presents serious concerns that may ultimately affect Texans for years to come. Through the framework of City of Austin, this Article analyzes Texas’ difficulties in implementing an equal and uniform system of ad valorem taxation throughout the state, exposing the ways in which wealthy residential and commercial property owners exploit the Comparable Properties Standard in order to reduce their tax burden, and highlighting the necessity of mandatory sales price disclosure to ensure constitutionality in the ad valorem taxation process.

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DOI: <https://doi.org/10.37419/JPL.V4.I4.4>

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I. INTRODUCTION

The requirement that property be evaluated at its fair market value is virtually uniform across all United States jurisdictions for, inter alia, condemnation proceedings, ad valorem and estate taxation, and marital property disputes.¹ Valuation methodology is crucial to property owners in such contexts because the method used to determine value can result in substantial wealth transfers between parties.²

Appraisers, courts, practitioners, and scholars often disagree about which methods to utilize and which presumptions to make when determining fair market value.³ In many different legal contexts, determining market value is controversial or at least highly contested.⁴ It is accepted in many areas of law that assets sold at a forced sale will usually sell for significantly less than their fair market value.⁵ The fair market valuation dilemma exerts a destabilizing effect on proceedings in, *inter alia*, tax law, bankruptcy law, and business organizations and partnership law.⁶ This has led to widespread concern that, even in proceedings where such valuation is of paramount importance to litigants, courts may have a difficult time determining fair market value with accuracy.⁷ More concerning is that these discrepancies in value often work in favor of wealthy property owners and at the expense of less affluent property owners.⁸

1. See Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, *Forced Sale Risk: Class, Race, and the “Double Discount,”* 37 FLA. ST. U. L. REV. 589, 596 (2010).

2. *Id.* at 620.

3. See, e.g., *Advanced Commc’n Design, Inc. v. Follett*, 615 N.W.2d 285, 293 (Minn. 2000).

4. *Id.*

5. *Hickey v. United States*, 208 F.2d 269, 275 (3d Cir. 1953) (citations omitted); see also *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 537 (1994) (stating that market value in the context of forced sales “is the very *antithesis* of forced-sale value.”).

6. Mitchell, *supra* note 1, at 599.

7. See Christopher Serkin, *The Meaning of Value: Assessing Just Compensation for Regulatory Takings*, 99 NW. U. L. REV. 677, 687–704 (2005) (noting variations in compensation in takings cases associated with choice of valuation methodology).

8. See Alex E. Sadler, Note, *The Inherent Ambiguity of Commercial Real Estate Values*, 13 VA. TAX REV. 787, 808 (1994) (noting that in disputes between the I.R.S. and taxpayers, courts sometimes rely on one party’s appraisal based on the strength of that party’s expert appraiser analysis or the weakness of the opposing expert appraiser’s analysis).

As fair market value can be difficult to estimate, litigants often expend substantial amounts of money in proceedings dependent on the competing opinions of highly compensated appraisal experts.⁹ Property owners unable to marshal the resources to hire such experts find themselves at a considerable disadvantage.¹⁰ This phenomenon has led many to speculate that proceedings involving such valuation disputes may contribute to a growing gap in wealth between low- to middle-class people and the upper class.¹¹

Moreover, many speculate that courts and administrators carry out informal cost-benefit analyses concerning the litigation ability of the parties involved in such proceedings, unwittingly or not.¹² Naturally, the wealthy wield considerably greater litigation capacity than the less affluent, which leads to an inference that courts and administrators may simply be eager to avoid the time and expense of adjudicating claims featuring the mobilization of such legal prowess. Less affluent property owners, on the other hand, often lack the resources and sophistication to sustain protracted litigation. As a result, the tendency of courts and administrators is often to overvalue the property of the wealthy, and to undervalue the property of less affluent property owners.¹³ From the perspective of courts and administrators, this may simply be the most efficient means of suppressing protracted litigation. From the perspective of the property owners, however, the practical result is a windfall for the wealthy, and a shortfall for everyone else.

This Article addresses a specific subset of this greater valuation phenomenon: the Texas ad valorem property taxation system. Through the framework of *City of Austin v. Travis Central Appraisal District*,¹⁴ this Article analyzes Texas' difficulties in implementing an equal and uniform system of ad valorem taxation throughout the state.

While the disposition of *City of Austin* may not resolve all of the issues the case implicates, the constitutionality of section 41.43(b)(3) and section 42.26(a)(3) of the Texas Property Tax Code ("Tax Code") has been called into question in court, and the case accurately frames a grievance shared by many Texas taxpayers, taxing units, and appraisal districts. With millions of dollars of property taxes at stake and a continuing shift of the tax burden from wealthy property owners to low and middle-class property owners, *City of Austin* presents unique and serious concerns that may ultimately affect Texans for years to come.

9. Mitchell, *supra* note 1, at 599.

10. *Id.*

11. *Id.*

12. See, e.g., Sadler, *supra* note 8, at 808.

13. Mitchell, *supra* note 1, at 594.

14. See *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607, 613–14 (Tex. App.—Austin 2016, no pet.).

II. AD VALOREM PROPERTY TAXES AND THE TEXAS STATE CONSTITUTION

Texas lacks a state income tax and caps local sales tax at 8.25%.¹⁵ As such, Texas is heavily dependent on locally levied and collected ad valorem property taxes to fund fire and police departments, infrastructure construction and maintenance, school districts, municipalities, counties, and other political subdivisions of the state.¹⁶

Article VIII of the Constitution of the State of Texas provides that “[t]axation shall be equal and uniform,” and that “[a]ll real property . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”¹⁷ The Constitution prescribes the end while leaving the determination of means to the Legislature. The Supreme Court of Texas has held that *value* in the context of article VIII is “to be based on the reasonable market value of the property.”¹⁸ In Texas, market value is defined as “the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it.”¹⁹

Taxing units calculate ad valorem taxes at a certain rate based on the value of subject properties.²⁰ Thus, the total amount of ad valorem taxes due for a given property is dependent on the appraised value of the property.²¹ In Texas, appraisal districts and Appraisal Review Boards determine appraised value for ad valorem taxation purposes.²²

The power of taxing units to tax property derives solely from the authority delegated to them by the Legislature.²³ Taxing units have no common law right to levy and collect taxes, and thus no common law remedy for an alleged loss of tax revenue.²⁴ The only remedies available to taxing units in such cases are those embodied in the Tax Code, and courts are bound to decide such cases in the manner provided by statute.²⁵

The Texas Constitution provides for no state ad valorem property taxes.²⁶ Instead, Texas instituted a county-based system for levying

15. Nathan Morey, *Unequal and Unfair: Why Texas Should Require Mandatory Sales Price Disclosure to Reconcile the Texas Property Tax Code with the Texas Constitution*, 41 ST. MARY'S L.J. 553, 592 (2010).

16. *Id.*

17. TEX. CONST. art. VIII, § 1 (a)–(b).

18. *Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931, 935 (Tex. 1996) (citing *Whelan v. State*, 282 S.W.2d 378, 380 (Tex. 1955)).

19. *State v. Carpenter*, 89 S.W.2d 194, 202 (Tex. 1936).

20. *Jim Wells Cty. v. El Paso Prod. Oil & Gas Co.*, 189 S.W.3d 861, 870 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

21. *Id.*

22. *Id.*

23. *Id.* (citations omitted).

24. *Id.*

25. *Id.*

26. TEX. CONST. art. VIII, § 1(a).

and collecting ad valorem property taxes,²⁷ and a county-based system for the appraisal of real property for ad valorem tax purposes.²⁸

The adoption of Texas' current statutory ad valorem taxation scheme stemmed from discontent with, and consistent efforts to diminish, Texas property taxes.²⁹ Prior to the adoption of the Tax Code in 1979, taxing units determined the value of property for taxing purposes.³⁰ Taxing units maintained their own tax rolls and arbitrated disputes of appraised value.³¹ In these arbitrated disputes, taxpayers were required to show substantial injury in order to prevail in challenges to property valuation.³²

The Tax Code instituted appraisal districts for every county in Texas, effectively severing the functions of the valuation of property for ad valorem taxation purposes and the arbitration of valuation disputes from taxing units.³³ Pursuant to the Tax Code, appraisal districts are required to appraise real property "at its market value as of January 1."³⁴ Property is appraised based on characteristics that affect market value, and appraisal districts are to consider all evidence specific to property value when determining market value.³⁵ The Texas Legislature, however, has declined to require mandatory sales price disclosure for real property, severely limiting the data available to appraisal districts in the valuation of property.³⁶ Texas is in the minority of states that levy ad valorem taxes but do not require mandatory sales price disclosure to appraisal or tax authorities.³⁷

At first glance, equal and uniform taxation in proportion to market value might seem an unsophisticated mandate. However, drafting a statutory taxing scheme that allows for the accurate determination of market value, absent mandatory sales price disclosure, has proved to be a convoluted task.

III. THE TAX CODE

The Supreme Court of Texas mandated uniform ad valorem tax rates for all types of property and has held that "value" in the context of section 1 of article VIII of the Texas Constitution is "to be based on

27. *Id.*

28. TEX. TAX CODE ANN. §§ 6.01–6.43 (West 2015 & Supp. 2016).

29. See Brief of Appellee, *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607 (Tex. App.—Austin 2016, no pet.) (No. 03-16-00038-CV), 2016 WL 3438258, at *2-3.

30. Morey, *supra* note 15, at 569–71.

31. *Id.* at 569–70.

32. *Id.* at 570–71.

33. *Id.* at 571–73.

34. TEX. TAX CODE ANN. § 23.01(a) (West Supp. 2016).

35. TEX. TAX CODE ANN. § 23.01(b) (West Supp. 2016).

36. Morey, *supra* note 15, at 583–84.

37. *Id.*

the reasonable market value of the property.”³⁸ Taxation is not in the same proportion to the value of the subject property unless the values are calculated by the same standard.³⁹ Nonetheless, the Court does not demand precise exactitude from the appraisal and taxation process and recognizes that exact uniformity and equality is unfeasible.⁴⁰ Reasonable discrepancies between the market value of property and the value at which property is assessed for taxes are permissible to allow for a difference in judgment.⁴¹ However, too great a discrepancy goes beyond a mere difference in judgment, and provides fertile ground for judicial scrutiny.⁴²

While a reasonable discrepancy between actual value and the value assessed for taxes is permissible in Texas, some critics assert that section 41.43(b)(3) and section 42.26(a)(3) of the Tax Code—collectively, “comparable properties standard”—practically “allow some property values to be reduced to the median value of selected comparable properties, while other properties remain at the constitutionally-mandated market value.”⁴³ The comparable properties standard appears to allow some taxpayers—particularly owners of upper class residential or commercial property—to manipulate the appraised value of their property for ad valorem taxation purposes, and shift their tax burden to other taxpayers.⁴⁴

The current Tax Code appears to be inconsistent with the axiomatic principle that “[t]he Legislature may not authorize that which the Constitution prohibits.”⁴⁵ The Tax Code appears facially constitutional, but the results produced by the comparable properties standard appear to be at odds with the dual constitutional mandates of equal and uniform taxation in proportion to market value.⁴⁶

IV. THE COMPARABLE PROPERTIES STANDARD

The comparable properties standard was enacted as part of Senate Bill 841, the so-called “Taxpayer’s Bill of Rights.”⁴⁷ While there is little or no specific legislative history shedding light on the purpose of

38. *Enron Corp. v. Spring I.S.D.*, 922 S.W.2d 931, 935 (Tex. 1996) (citing *Whelan v. State*, 282 S.W.2d 378, 380 (Tex. 1955)).

39. *Id.* (citing *Lively v. Mo., K & T Ry. Co.*, 120 S.W. 852, 856 (Tex. 1909)).

40. *Id.*

41. *Id.*

42. *Id.*

43. Brief of Appellant, *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607 (Tex. App.—Austin 2016, no pet. h.) (No. 03-16-00038-CV), 2016 WL 1587525, at *39.

44. *Id.*; see also, Joel Nihlean, *Appraisal Woes*, COUNTY MAG. (Mar. 28, 2016), <http://www.county.org/magazine/features/Pages/2016%20March/Appraisal-Woes.aspx>.

45. Morey, *supra* note 15, at 578 (citations omitted).

46. See generally Morey, *supra* note 15.

47. *Harris Cty. Appraisal Dist. v. United Inv’rs Realty Tr.*, 47 S.W.3d 648, 652 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

the comparable properties standard, one Texas Court of Appeals found that the Taxpayer's Bill of Rights is intended to facilitate tax remedies for Texas property owners and should be given a liberal construction.⁴⁸

Prior to the enactment of the comparable properties standard, taxpayers were required to acquire an independent appraisal of the market value of a sample of similar properties in order to prevail in an unequal tax valuation challenge in district court.⁴⁹ As it currently stands, the comparable properties standard allows property owners to protest the appraisal district's determinations of value without proof of, or even regard for, the actual fair market value of the subject property and comparable properties.⁵⁰

To challenge the appraisal district's alleged unequal appraisal of a property, the property owner must identify a group of comparable properties.⁵¹ Commonly, a selection of five to ten comparable properties is considered an appropriate number for the purposes of such challenges, although more or less comparable properties are sometimes necessary depending on the subject property and the facts of the challenge.⁵²

Once an appropriate list of comparable properties has been selected, it is appropriately adjusted to the subject property, allowing for such variables as, *inter alia*, square footage of the parcels, cubic footage of improvements, and depreciation.⁵³ The taxpayers may adjust the comparable properties themselves, normally by means of an independent expert, or may simply allow the appraisal district or appraisal review board to adjust the comparable properties.⁵⁴

Once a reasonable number of comparable properties have been identified and appropriately adjusted, the median appraised value of the adjusted comparable properties is calculated.⁵⁵ If the appraised value of the subject property is greater than this median, the reviewing appraisal review board or court should grant relief on the basis that the property was appraised unequally.⁵⁶ At no point during this inquiry must the actual fair market value of the subject property or comparable properties be calculated.⁵⁷ Instead, as one court of ap-

48. *Id.*

49. *Id.* at 653.

50. *Id.*

51. Patrick C. O'Connor, *Using Assessment Comparables to Fight Unequal Property Taxes*, O'Connor & Associates (Feb. 2004), available at <http://www.pconnor.com/article.asp?id=34>.

52. *Id.*

53. *Id.*

54. *Id.*

55. TEX. TAX CODE ANN. § 42.26(a)(3) (West 2015).

56. TEX. TAX CODE ANN. § 42.26 (West 2015).

57. Harris Cty. Appraisal Dist. v. United Inv'rs Realty Tr., 47 S.W.3d 648, 653 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

peals has held, the appraisal district's appraised value is presumed to represent market value.⁵⁸

V. CITY OF AUSTIN V. TRAVIS CENTRAL APPRAISAL DISTRICT

In *City of Austin*, a major taxing unit called into question the efficacy of the statutory taxation and valuation scheme embodied in the Tax Code. The crux of the case was the City of Austin's ("City") allegation that the Travis Central Appraisal District ("TCAD") undervalued the C1 (vacant land) and F1 (commercial real property) categories of real property for the 2015 appraisal roll.⁵⁹ The case "was born out of a longstanding complaint heard around the state that the appraisal process has become distorted, with the values of large commercial properties being disconnected from their actual market value. The rub in this . . . the tax burden these properties alleviate themselves of is shifted to Texas' small business owners and homeowners."⁶⁰

While Texas courts adjudicate hundreds of property valuation challenges brought by individual taxpayers each year, valuation challenges of an entire category of property brought by taxing units inhabit a relatively undeveloped area of law.⁶¹ More importantly, *City of Austin* presents a broad challenge to the constitutionality of the comparable properties standard, highlighting serious implications for both taxing units and taxpayers.

District Judge Tim Sulak dismissed the lawsuit, finding that the City lacked standing to challenge the appraisal district's valuations.⁶² However, Judge Sulak foresaw an appeal, and intended to "tee up" the lawsuit for the Court of Appeals.⁶³

A. *The Trial Court's Disposition*

The City of Austin brought claims against the TCAD under the Tax Code and the Texas Constitution.⁶⁴ The City sought review of the decision of the appraisal review board denying the City's challenge to the level of appraisals for C1 (vacant land) and F1 (commercial real property) categories for the 2015 tax roll.⁶⁵ Additionally, the City sought a declaration that the comparable properties standard of the

58. *Id.* at 654.

59. *See generally*, Brief of Appellant, *supra* note 43.

60. Nihlean, *supra* note 44.

61. Brief of Appellant, *supra* note 43, at *2.

62. *Id.*

63. Michael King, *TCAD Lawsuit Dismissed: Onward and Upward?*, THE AUSTIN CHRONICLE (Nov. 13, 2015), <http://www.austinchronicle.com/news/2015-11-13/tcad-lawsuit-dismissed-onward-and-upward/>.

64. Brief of Appellant, *supra* note 43, at *1.

65. *Id.*

Tax Code is in violation of the dual constitutional mandates of equal and uniform taxation and appraisal at market value.⁶⁶

The City sought an order that individual C1 and F1 property owners were not necessary or proper parties to the suit because they lacked a justiciable interest in the City's challenge.⁶⁷ The City asserted that its challenge did not concern the valuation of any individual property⁶⁸ because the City challenged the level of appraisals for entire categories of property, and not specific properties.⁶⁹ The City averred that because no individual owns an entire category of property across Travis County, and because individual owners have their own remedy for challenging the appraisal of their property if there is a change in appraised value, individual owners were not necessary parties to the suit.⁷⁰ The City also claimed that allowing individual property owners to be parties to the suit would render an absurd result, requiring the participation of tens of thousands of taxpayers in the lawsuit.⁷¹ The trial court denied the City's motion.⁷²

The trial court allowed multiple property owners to appear and file dispositive motions.⁷³ The court granted one motion without specifying its reasons.⁷⁴ That motion alleged that: (1) the City failed to exhaust administrative remedies; (2) the City lacked standing to sue; (3) the court lacked subject matter jurisdiction; (4) the City failed to join necessary parties; and (5) the Tax Code provisions at issue were constitutional as a matter of law.⁷⁵ The court then granted another motion, which alleged that the City lacked standing to challenge the comparable properties standard embodied in the Tax Code.⁷⁶ The two motions decided most of the City's claims.⁷⁷

The City moved for a new trial, but the trial court declined to rule on the motion.⁷⁸ The City then filed a notice of appeal, requesting review of the dispositive motions and the order denying the City's request for party determination.⁷⁹

B. *The City's Appeal*

The City's appeal concerned the foundations of the Tax Code, and questioned the Legislature's allocation of power between taxing units

66. *Id.*

67. *Id.* at *1–2.

68. *Id.* at *8.

69. *Id.* at *9.

70. *Id.*

71. *Id.*

72. *Id.* at *2.

73. *Id.* at *6.

74. *Id.* at *7.

75. *Id.* at *6–7.

76. *Id.*

77. *Id.* at *7.

78. *Id.*

79. *Id.*

and appraisal districts.⁸⁰ On appeal, the City claimed that the trial court's orders left taxing units with "no meaningful opportunity to challenge whether a chief appraiser has properly determined the level of appraisals for a category of property."⁸¹ The City asserted that, pursuant to the Tax Code, taxing units are unable to pursue important valuation challenges against appraisal districts, upsetting the balance of power allocated between taxing units and appraisal districts by the Legislature.⁸² Under the Tax Code, the City argued, appraisal districts are left unanswerable for the alleged underappraisals, and taxing units are left without remedy, contravening the will of the Legislature.⁸³

TCAD has not avoided the issue entirely by challenging the City's standing to bring this action. TCAD pursued the obvious jurisdictional challenge to such allegations, but in its reply brief acknowledged that the City's goal in the litigation was to improve the Texas property tax system.⁸⁴ TCAD maintained that the district's Chief Appraiser supported legislative change to improve the tax system.⁸⁵ However, TCAD asserted that the City's grievance against the appraisal district was misdirected and, as a matter of law, the City was not entitled to relief.⁸⁶ TCAD's jurisdictional challenge undoubtedly has merit, but its response to the City's lawsuit nonetheless underscores an uneasiness with the appraisal process, an uneasiness shared by many Texas taxing units and appraisal districts.

C. *The Court of Appeals' Disposition*

A court lacks subject-matter jurisdiction if the plaintiff lacks standing to assert the claim.⁸⁷ In *City of Austin*, the City sought to address the issue of standing by asserting that its purpose in bringing the lawsuit was not to raise additional tax revenue, but instead to ensure constitutionally equal and uniform taxation to its residents.⁸⁸ The City asserted direct injury, which it claimed was sufficient to confer standing.⁸⁹ The City's theory was that the Tax Code gave it no choice but to levy taxes in an unconstitutional manner.⁹⁰

Generally, a taxing unit has standing to bring a constitutional challenge if it has been charged with implementing the allegedly unconsti-

80. *Id.* at *36.

81. *Id.* at *8.

82. *Id.*

83. *Id.* at *36.

84. Brief of Appellee, *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607 (Tex. App.—Austin 2016, no pet.) (No. 03-16-00038-CV), 2016 WL 3427157, at *5.

85. *Id.*

86. *Id.*

87. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012).

88. Brief of Appellant, *supra* note 43, at *32.

89. *Id.* at *35.

90. *Id.*

tutional statute.⁹¹ However, as the Court of Appeals held in *City of Austin*, the comparable properties standard concerns the appraisal process, and does not involve any method or mechanism by which taxing units levy or collect ad valorem taxes.⁹² The Court of Appeals held that the City was not charged with implementing the provisions at issue and, thus, the City did not demonstrate an injury conferring standing to challenge the comparable properties standard of the Tax Code.⁹³ The fact that the City might be “forced to impose [unconstitutional] taxes” did not demonstrate a concrete and particularized injury to the City, as opposed to the City’s ad valorem property taxpayers.⁹⁴

Beyond the issue of standing, the Court of Appeals found that the City had failed to exhaust its administrative remedies before seeking judicial review.⁹⁵ The Tax Code vests appraisal review boards with the exclusive jurisdiction to decide protests and challenges to appraised property values.⁹⁶ A taxing unit has a statutory right to challenge certain actions of the appraisal district before the local appraisal review board, and, where they have standing, to seek judicial review of the appraisal review board’s determination of the challenge.⁹⁷ Nonetheless, taxing units must fully exhaust administrative remedies before seeking judicial review.⁹⁸

While the City’s representatives attended the appraisal review board’s hearing of the City’s challenge petition, the City failed to present evidence or argument in support of its petition and, thus, did not present the merits of its challenge.⁹⁹ Instead, attorneys of the City and the Appraisal District encouraged the appraisal review board to deny the City’s challenge petition in order to enable TCAD to certify the tax rolls, and to allow the parties to proceed in district court.¹⁰⁰ Thus, the City appeared for the sole purpose of requesting that the appraisal review board reject its challenge petition.¹⁰¹

Such a result deprived the appraisal review board of reaching the merits of the City’s challenge petition.¹⁰² The City’s failure to exhaust administrative remedies proved fatal to the district court’s jurisdiction over the challenge to the level of appraisals of C1 and F1 property for the 2015 tax year.¹⁰³ However, exhausting administrative remedies

91. *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607, 616 (Tex. App.—Austin 2016, no pet.).

92. *Id.* at 616–17.

93. *Id.* at 617.

94. *Id.*

95. *Id.* at 619.

96. *Id.* at 617.

97. *Id.* at 618.

98. *Id.*

99. *Id.* at 619.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 620 n.7.

would not confer the requisite standing for a constitutional challenge. The district court would have jurisdiction only to review the appraisal review board's decision regarding, specifically, the appraised value of C1 and F1 property for the 2015 tax year.

The Court of Appeals found that the City's constitutional challenge was "a transparent attempt by a taxing unit to debate an issue of tax policy that is within the prerogative of the Legislature, rather than the Judiciary."¹⁰⁴ The judiciary probably will not address the constitutionality of the comparable properties standard. As it is likely that neither taxing units nor the taxpayers damaged by the inequity in tax burden will be able to show the concrete, particularized injury necessary to confer standing, courts will likely continue to avoid the constitutional question. Ultimately, if the issue is to be resolved, it is likely the prerogative of the Texas Legislature to act.

The use of two separate values for determining appraisals pursuant to the comparable properties standard, according to the City's theory, is plainly in violation of the Texas Constitution's dual mandates of equality and uniformity in taxation and appraisal at market value.¹⁰⁵ While the constitutionality of the comparable properties standard has not been fully addressed by Texas courts, one court of appeals has held that "[i]t is unfair, and constitutionally prohibited, to require one taxpayer to pay a tax based on market values if other taxpayers are paying a rate that is lower than the market value of their properties."¹⁰⁶ Somewhat surprisingly, the same court decided that conflicts between taxation at market value and equal and uniform taxation are to be resolved in favor of equal and uniform taxation—apparently regardless of the Constitution's mandate of appraisal at market value.¹⁰⁷ Moreover, as *City of Austin* makes clear, taxing units lack standing to challenge the constitutionality of the comparable properties standard. Implementation of the comparable properties standard is within the purview of Texas appraisal districts.

VI. APPRAISAL DISTRICTS AND ACCEPTED APPRAISAL METHODOLOGY

Appraisal districts are political subdivisions of the state.¹⁰⁸ A board of directors, selected by the taxing units of the district, governs each appraisal district.¹⁰⁹ The board of directors appoints the chief ap-

104. *Id.* at 620.

105. Brief of Appellant, *supra* note 43, at *39.

106. *Id.* (quoting *Harris Cty. Appraisal Dist. v. United Inv'rs Realty Tr.*, 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, pet. denied)).

107. *Harris Cty. Appraisal Dist. v. United Inv'rs Realty Tr.*, 47 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

108. TEX. TAX CODE ANN. § 6.01 (West 2015).

109. TEX. TAX CODE ANN. § 6.03(a) (West 2015).

praiser of the district.¹¹⁰ In some counties, the board of directors also appoints members of the appraisal review board.¹¹¹ In counties with a population of 120,000 or more, the members of the appraisal review board are appointed by the local administrative district judge of the county in which the appraisal district is established pursuant to Subchapter D, Chapter 74, Government Code.¹¹² The chief appraiser sets the preliminary valuation of taxable property,¹¹³ while appraisal review boards hear and adjudicate disputes by taxpayers and taxing units.¹¹⁴

In the absence of mandatory sales price disclosure, the Legislature has failed to give much guidance to appraisal districts as to how to value properties according to market value. The Tax Code provides simply that appraisal districts must value properties as “determined by the application of generally accepted appraisal methods and techniques.”¹¹⁵

Appraisal districts are to consider and select the most appropriate method between the cost, income, and market data comparison methods of appraisal.¹¹⁶ Such instruction, at least as to the market data comparison method, acknowledges that sales price is one of the most accepted indicators of the fair market value of property. However, as sales data for many properties is unavailable due to the lack of mandatory sales price disclosure, appraisal districts must often rely on the cost and income methods of appraisal.

A. *The Cost Method*

According to the Texas Comptroller of Public Accounts, the cost method of appraisal is particularly useful in the appraisal of properties for which there is an absence of sales and income data.¹¹⁷ The cost method of appraisal is based on estimates from “generally accepted sources” of what it would cost to replace a building with “one of equal utility.”¹¹⁸ Chief appraisers are to make appropriate adjustments for obsolescence and depreciation in applying the cost method.¹¹⁹

110. TEX. TAX CODE ANN. § 6.05(c) (West 2015).

111. TEX. TAX CODE ANN. § 6.41(d) (West Supp. 2016).

112. TEX. TAX CODE ANN. § 6.41(d-1) (West Supp. 2016).

113. TEX. TAX CODE ANN. § 25.01(a) (West 2015).

114. TEX. TAX CODE ANN. § 41.01(a) (West 2015).

115. TEX. TAX CODE ANN. § 23.01(b) (West 2015).

116. TEX. TAX CODE ANN. § 23.0101 (West 2015).

117. Glenn Hegar, *Property Tax Basics*, TEX. COMPTROLLER OF PUB.ACCTS. 5 (June 2016), https://search.comptroller.texas.gov/search?site=ctg_collection&client=ctg_frontend&proxystylesheet=ctg_frontend&output=xml_no_dtd&getfields=description&searchDropdown=ctg_collection&q=property+tax+basics (download third PDF).

118. *Id.*

119. *Id.*

The theory behind the cost method of appraisal is the principle of substitution.¹²⁰ The assumption is that purchasers would not pay more for a property than the cost of replacing the property.¹²¹ Pursuant to the cost method of appraisal, market value may be determined by adding the market value of the land, as if it were vacant, to the cost of structural improvements, allowing for the accumulated depreciation of the improvements.¹²²

Theoretically, this may seem a sound approach to determining market value. However, there is danger in equating cost and value. Correspondence between market value and cost cannot be guaranteed unless the property improvements are new and make the highest and best use of the site, concurrently with the market nearing or reaching a point of long-term equilibrium.¹²³

Cost presents difficulties, as it is an amalgam of various elements that are not readily identifiable to appraisers.¹²⁴ Moreover, appraisal experts have yet to engineer a satisfactory method of measuring depreciation.¹²⁵ These difficulties stem from the same root cause, that “market transactions *which provide the only reliable evidence of market value* cannot be analyzed using the cost method.”¹²⁶ (Emphasis added). Thus, the cost method fails to take into account the way in which buyers and sellers determine their asking and bid prices.¹²⁷ The cost approach to appraisal is certainly useful in some contexts, but falls short of providing a meaningful solution to the discrepancies in the appraisals of upper-class and commercial properties in comparison to low- or middle-class owned properties pursuant to the comparable properties standard.

B. *The Income Method*

The income method of appraisal centers on income and expense data and attempts to determine what investors would pay now for potential revenue generated by the property.¹²⁸ The income method is best suited to properties purchased for the purpose of the production of income, such as office buildings or residential rental properties.¹²⁹ Chief appraisers approximate, on reasonably clear and appropriate evidence, the gross income potential and operating expenses, the capi-

120. Stanley Hamilton, *Real Estate Investment Analysis and Appraisal*, VANCOUVER: UBC REAL ESTATE DIV. (1998), https://professional.sauder.ubc.ca/re_creditprogram/course_resources/courses/content/330/REIAACH7.htm#N_1_.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Hegar, *supra* note 117, at 5.

129. *Id.*

talization rates or rates of discount, and projections of future income and expenses for the subject property.¹³⁰

Like the cost method of appraisal, the income method is not without flaws as a method of determining market value. Operational problems may raise or depress net income.¹³¹ Rents may be unreasonably high or low, yielding an unrealistic expectation of future rent under competent management.¹³² Tenants may not be paying their rent, severely depressing income.¹³³ Expenses may be much higher or lower than they ideally should be, skewing estimates of profitability.¹³⁴ Such variables have little or nothing to do with the actual market value of the property, but instead ebb and flow with the efficacy of the property's management. Still, these variables exhibit a significant fluctuating effect on the valuation of property when utilizing the income method of appraisal.¹³⁵ Such variables render the income method suspect as a consistent and reliable method of determining the fair market value of property. Moreover, the utility of the income method of appraisal is to income-producing properties. Thus, the income method of appraisal does little to relieve appraisal districts of their difficulties in determining fair market value, especially as it pertains to residential property valuation challenges pursuant to the comparable properties standard.

C. *The Market Data Comparison Method*

In the absence of mandatory sales price disclosure, appraisal districts are statutorily bound to determine the market value of properties as of the first of January each year, yet inadequately equipped as to the methodology by which to do so.¹³⁶

The character of the Texas real estate market is such that the sales data of some types of property are more readily available than the sales data of other types of property.¹³⁷ While Texas lacks a mandatory sales price disclosure statute, owners of low- and middle-class residential properties are more likely than owners of commercial or upper-class residential properties to have the sales price of their properties listed in a Multiple Listing Service (MLS), a privately owned database commonly used by real estate brokers, private appraisers, and appraisal districts for the valuation of properties.¹³⁸ The

130. *Id.*

131. See generally James Kimmons, *The Income Method of Real Estate Appraisal and Valuation*, BALANCE (Oct. 19, 2016), <https://www.thebalance.com/the-income-method-of-real-estate-appraisal-and-valuation-2866419>.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Morey, *supra* note 15, at 576–77.

137. *Id.* at 567.

138. *Id.* at 568–69.

availability of such data diminishes the ability of middle-class residential property owners to successfully challenge the valuation of their property, as many appraisal districts present MLS data as evidence upon review.¹³⁹ The growing void of MLS data on upper-class residential properties appears to coincide with the recent rise in instances of so-called “off-market” real estate transactions, in which sellers decline to list property on such databases, opting for other means of finding a buyer.¹⁴⁰ Thus, sophisticated and affluent property owners are able to shift their tax burden to low- and middle-class property owners by utilizing the void of sales data to reduce the appraised value of their property. Moreover, the lack of MLS sales data on many commercial properties often induces appraisal districts to utilize the income method of appraisal for such properties, with all of the inaccuracies of that method of appraisal described above.

Lower- and middle-class residential property owners have little hope in challenging the valuations of their properties, as appraisal districts can simply point to MLS listings of the subject property or comparable properties. This is not to say that this is an inequitable result in every such low- or middle-class residential valuation challenge. Arguably, the data available for comparable properties in the MLS listings make appraisal district valuations of such properties both more accurate and easier to determine. However, the MLS listings enable appraisal districts to accurately value a disproportionately high number of low- and middle-class properties in comparison to commercial and upper-class residential properties.¹⁴¹ Wealthy property owners are free to levy their considerable resources in attempts to reduce the appraised value of their properties for ad valorem taxation purposes, in the void of MLS sales data on such properties.¹⁴² For wealthy property owners, there is significant room to argue which properties are comparable, and what the appropriately adjusted median appraised value of those properties actually is.¹⁴³

VII. MANDATORY SALES PRICE DISCLOSURE

While the comparable properties standard presents difficulties for equality and uniformity in proportion to market value, the underlying solution to the valuation problem may be simple. The comparable properties standard is only relevant if the taxpayer protests the appraisal of their property as unequal for ad valorem taxation pur-

139. *Id.*

140. *See, e.g.,* Morgan Brennan, *Stealth ‘Off-Market’ Home Sales On The Rise Among The Super-Wealthy*, FORBES (Feb. 15, 2013), <https://www.forbes.com/sites/morganbrennan/2013/02/15/stealth-home-sales-on-the-rise-among-the-super-wealthy/#2b2b90e9225f>.

141. Morey, *supra* note 15, at 592.

142. *Id.* at 567–69.

143. *Id.*

poses.¹⁴⁴ Taxpayer valuation challenges pursuant to the comparable properties standard operate under the assumption that the appraisal district's valuation is unequal to the median appraisal of comparable properties appropriately adjusted.¹⁴⁵ Appraisal districts can more accurately value property with mandatory sales price disclosure. With such a tool, the ability of commercial and upper-class residential property owners to lower the appraised value of their property through appraisal review boards and courts diminishes. Thus, the subsequent shifting of tax burden to low- and middle-class property owners is reduced.¹⁴⁶

While the sales price of property may not always reflect its fair market value, sales price nonetheless remains among the appraiser's best tools.¹⁴⁷ Opponents to mandatory sales price disclosure frequently emphasize the disparity between sales price and market value, yet appraisal districts and private appraisers frequently utilize sales price data to determine market value in their appraisals, when such data is available.¹⁴⁸

In Texas, purchase price is probative evidence of market value.¹⁴⁹ Both appraisal review boards and reviewing district courts take sales price as evidence of market value in valuation challenges.¹⁵⁰ Nonetheless, the Legislature has declined to compel the mandatory sales price disclosure of real property to taxing and appraisal authorities.¹⁵¹

The frequently articulated reasoning behind the Legislature's rejection of mandatory sales price disclosure is to protect the privacy of parties to real property transactions.¹⁵² The reasoning is clear enough: buyers and sellers of real property may have a substantial interest in avoiding the public disclosure of the amount of wealth exchanged in return for a parcel of property.

Wealthy real estate investors are, understandably, reluctant to embrace transparency in their transactions. The price paid for a parcel might be well above or below fair market value, for reasons not readily apparent to a disinterested observer. Sales price disclosure might yield revelations concerning the economic positions of the parties, prompting third parties to draw undesirable conclusions. The fallout of mandatory sales price disclosure might harm the posturing of parties to real estate transactions, adversely affecting future negotiations. Mandatory sales price disclosure could potentially subject the parties of real estate transactions to unfavorable press. For these reasons and

144. TEX. TAX CODE ANN. § 41.43(b) (West 2015).

145. TEX. TAX CODE ANN. § 41.43(b)(3) (West 2015).

146. See generally Morey, *supra* note 15.

147. *Id.* at 566.

148. *Id.* at 587.

149. *Id.* at 566.

150. *Id.*

151. *Id.* at 583.

152. *Id.* at 588.

more, many argue that mandatory sales price disclosure would suppress the State's interest in promoting the alienability of real property. The City in *City of Austin*, however, originally requested that, *inter alia*, the court declare that mandatory sales price disclosure is essential in order for appraisal districts to fulfill their duties, although the City later dropped this request.¹⁵³

While the privacy anxieties of parties to such transactions may be understandable, such concerns are unconvincing in the context of Texas real property transactions. Texas county tax offices are required to disclose to the public the appraised value of property in their jurisdiction. Anyone may retrieve the appraised value of virtually any property in Texas. As tax offices and appraisal districts provide easy access to such information, protecting privacy is not at issue.

VIII. THE COMPARABLE PROPERTIES STANDARD IN PRACTICE

To further illustrate how mandatory sales price disclosure might alleviate Texas of many of its appraisal issues, it is necessary to explore the workings of the comparable properties standard, in practice. Consider *Harris County Appraisal District v. United Investors Realty Trust*.¹⁵⁴

On January 28, 1998, United Investors Realty Trust purchased Mason Park Centre in Houston, Texas, for \$15,200,000.¹⁵⁵ With 163,278 square feet of rentable area, United Investors paid roughly \$93 per square foot.¹⁵⁶ The Harris County Appraisal District listed the appraised value of Mason Park Centre as \$13,900,000 for the 1998 tax year at \$85.13 per square foot.¹⁵⁷

HCAD likely appraised the Mason Park Centre at significantly below its fair market value. While sales price does not always accurately reflect fair market value, it is unlikely that sophisticated real estate investors would voluntarily pay in excess of \$1,000,000 of the fair market value of a property, barring some extreme extrinsic circumstances. Nonetheless, United Investors challenged the valuation of its newly purchased property pursuant to the comparable properties standard, and sought to decrease the already questionably low appraisal of Mason Park Centre from \$13,900,000 to \$10,239,163, from \$85.13 per square foot to \$62.71 per square foot.¹⁵⁸

153. Andra Lim, *Austin's appraisal lawsuit no longer includes sales disclosure request*, AUSTIN AMERICAN-STATESMAN (Nov. 2, 2015), <http://www.mystatesman.com/news/local/austin-appraisal-lawsuit-longer-includes-sales-disclosure-request/aQYvrV9YcCtNZs6q6Nbi8O/>.

154. 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

155. *Id.* at 649.

156. *Id.*

157. *Id.*

158. *Id.* at 650.

United Investors hired an expert valuation witness, who made no independent determinations of market value.¹⁵⁹ The expert valuation witness did, however, compare HCAD's determinations of the market value of comparable properties.¹⁶⁰ HCAD, on the other hand, argued that United Investors' (and the district court's) determination of value was not based on market value and lacked any relationship to market value, in contravention to the Texas Constitution's mandate of valuation at market value.¹⁶¹

The court determined that such remedial statutes are to be liberally construed so as not to interpret the statute as defeating the purpose for which it was enacted.¹⁶² The court held that the comparable properties standard requires no independent appraisal of market value.¹⁶³ Taxpayers must simply contrast the appraisal district's appraised value of the subject property with the appraisal district's appraised value of appropriately adjusted "comparable" properties in order to show a disparity in "market value." Thus, the comparable properties standard, as interpreted by the court of appeals in *Harris County*, "facilitates proof of inequity and therefore facilitates tax remedies for property owners."¹⁶⁴

The court in *Harris County* could not avoid the disturbing conclusion that the comparable properties standard allows property owners to protest the appraisal district's and appraisal review board's determinations of value without proof of or even regard for the actual fair market value of the subject property and comparable properties.¹⁶⁵ Nonetheless, the court found no error in the district court's finding that the provision did not violate the Texas Constitution's requirement that all property be taxed equally and uniformly in proportion to market value.¹⁶⁶ Instead, the court held that the Tax Code provides that the appraisal district's appraised value *is* market value, and the record lacked evidence that the property at issue was not appraised at market value.¹⁶⁷ Consequently, the court simply assumed that the appraisal district's appraised value of the comparable properties represented the properties' fair market value.¹⁶⁸ Even if this were not the case, the court determined that conflicts between taxation at market value and equal and uniform taxation are to be resolved in favor of equal and uniform taxation, at the expense of taxation at market value.¹⁶⁹

159. *Id.*

160. *Id.*

161. *Id.* at 651.

162. *Id.*

163. *Id.* at 653.

164. *Id.*

165. *Id.*

166. *Id.* at 654.

167. *Id.*

168. *Id.*

169. *Id.*

This decision leaves much more to be desired. The comparable properties standard may have been fairly interpreted by the court in *Harris County* as not requiring a determination of market value, but the Texas Constitution mandates both equal and uniform taxation *and* appraisal at market value, not merely one or the other.

IX. CONSTITUTIONALITY

Texas has adopted a two-pronged framework for analyzing the constitutionality of taxation statutes and the tax classifications embodied therein.¹⁷⁰ First, challenged statutes are granted a strong presumption of constitutionality.¹⁷¹ The presumption of constitutionality is particularly strong when the constitutionality of taxation statutes is challenged.¹⁷² Second, the Legislature must have a rational basis for creating tax classifications.¹⁷³ Such tax classifications “must not only be rational but must attempt to group similar things and differentiate dissimilar things.”¹⁷⁴ Tax classifications must relate reasonably to the purpose of the tax.¹⁷⁵ Crucially, the Legislature has broad discretion in structuring tax laws, particularly when the object of the tax is not easily or precisely valued.¹⁷⁶

If a court can ascertain a reasonable, constitutional construction that carries out the Legislature’s intent, the statute is upheld.¹⁷⁷ The presumption of constitutionality persists unless the challenging party shows the unlawfulness of the statute beyond a reasonable doubt.¹⁷⁸ The statute may be invalidated upon a showing of substantial injury to the challenging party.¹⁷⁹

The Legislature may create tax classifications so long as they are not unreasonable, arbitrary, or capricious.¹⁸⁰ However, the Legislature’s ability to form classifications for ad valorem taxes is considerably more limited than its ability to form classifications for other types of taxation, such as occupation, use, and sales taxes.¹⁸¹ While the Texas Constitution directs that taxes on real property be in proportion to the market value of the property, it does not prohibit utilizing diverging methods of determining market value for ad valorem taxation purposes.¹⁸²

170. *Hegar v. Tex. Small Tobacco Coal.*, 496 S.W.3d 778, 785 (Tex. 2016).

171. *Id.*

172. *Id.*

173. *Id.*

174. *In re Nestle USA, Inc.*, 387 S.W.3d 610, 622 (Tex. 2012).

175. *Id.* at 623.

176. *Id.*

177. 12B TEX. JUR. 3D CONSTITUTIONAL LAW § 54 (2017).

178. 69 TEX. JUR. 3D TAXATION § 9 (2017).

179. *Id.*

180. *Enron Corp. v. Spring I.S.D.*, 922 S.W.2d 931, 936 (Tex. 1996).

181. *Id.*

182. *Id.*

The Texas Constitution's requirements of equality and uniformity are similar to those embodied in the Fourteenth Amendment to the United States Constitution.¹⁸³ Decisions concerning the constitutionality of tax classifications under the Fourteenth Amendment offer guidance.¹⁸⁴ Yet even in cases of great disparities in tax burden, the protections of the Fourteenth Amendment are satisfied as long as the court can discern policy justifications for the classifications.¹⁸⁵ Courts give even more deference to classifications formed under complex tax laws.¹⁸⁶ Judicial deference to the complex ad valorem taxation scheme embodied in the Tax Code renders judicial intervention in the comparable properties standard conundrum unlikely, to say the least. As a result, Texas courts appear to have little interest in, or ability to hear, the merits of constitutional challenges to the comparable properties standard.

X. CONCLUSION

Texas has embraced deference for the Legislature's perceived policy justifications for tax statutes, and much of Texas' system of ad valorem taxation embodies policies favorable toward and protective of taxpayers.¹⁸⁷ For example, Section 23.12(f) of the Tax Code allows the taxpayer to choose between two different appraisal dates for the valuation of inventory for ad valorem taxes: September 1 of the year preceding the tax year to which the appraisal applies, or the value as of January 1 of the tax year to which the appraisal applies.¹⁸⁸ It is far from certain, however, that taxpayers will choose the valuation date that most closely reflects the fair market value of their property. Naturally, taxpayers will choose the date that grants the lesser of the two appraisals and reduces their resulting tax burden, despite the contention that Section 23.12(f) evidences legislative intent to promote appraisals on a value more indicative of true market value.¹⁸⁹

Despite policy assertions explaining the Legislature's adoption of the comparable properties standard absent mandatory sales price disclosure, the current state of the Tax Code and Texas jurisprudence offers little meaningful ability to challenge the constitutionality of the comparable properties standard. Taxing units are generally excluded from the appraisal process.¹⁹⁰ Taxing units may challenge certain actions of the local appraisal district through Chapter 41, subchapter A of the Tax Code, such as a challenge of the level of appraisals of any

183. *Id.* at 936–37.

184. *Id.* at 937.

185. *Id.* (citation omitted).

186. *Id.*

187. *Id.* at 939 (citations omitted).

188. *Id.*

189. *Id.*

190. *City of Austin v. Travis Cent. Appraisal Dist.*, 506 S.W.3d 607, 610–11 (Tex. App.—Austin 2016, no pet.).

category of property in the district.¹⁹¹ Once a taxing unit files a challenge with the appraisal review board, the appraisal review board holds a hearing and issues a written order stating its decision.¹⁹² In the case of an adverse decision by the appraisal review board, the taxing unit may appeal the order to the county's district court.¹⁹³ However, a taxing unit's challenge is contingent, like all other claims, on sufficient injury to confer standing, and the court's willingness to interrupt deference for the legislative taxing scheme in order to hear the merits of the constitutional challenge.

Taxing units, who feel firsthand the brunt of crippling losses of tax revenue, lack standing to challenge the constitutionality of the comparable properties standard, as *City of Austin* makes clear. The City could not "demonstrate an injury that is concrete and particularized to the City, as opposed to the City's property owners."¹⁹⁴ It seems unlikely that other taxing units would be able to show such an injury in similar cases.

Taxpayers may have more leeway to challenge the constitutionality of the statute if they have suffered such an injury, yet this proposition is also dubious. It is unlikely, if not impossible, that a low- or middle-class taxpayer can show that they have personally suffered concrete and particularized injury due to the diminished tax burden of other taxpayers. The shifting tax burden in Texas disperses amongst millions of low- and middle-class taxpayers. The injury diffuses into a class so large as to make a showing of individual concrete and particularized injury unrealistic.

Texas courts have little power to remedy the constitutional problems raised by the comparable properties standard and the absence of mandatory sales price disclosure in Texas. Where there is no standing to assert a constitutional challenge, there is no subject-matter jurisdiction granting courts the ability to decide the issue on the merits. Even where courts have jurisdiction to hear the challenge, deference to the Legislature may discourage courts from hearing the merits of the challenge. The Legislature, however, may amend the comparable properties standard to disallow the unconstitutional results it produces, or may require the mandatory sales price disclosure necessary for the comparable properties standard to be implemented constitutionally. Until the Legislature comes to such a decision, Texas low- and middle-class property owners will continue to bear the ever-growing tax burden passed onto them by wealthy property owners, and taxing units will continue to suffer from the devastating loss of revenue attributable to the comparable properties standard of the Tax Code.

191. *Id.* at 613–14.

192. *Id.* at 616–17.

193. *Id.* at 611.

194. *Id.* at 617–18.