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Via TexFile

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

Re: **City of Fort Worth, Texas - Amicus Curiae Letter Brief**
In Case No. 13-0053; *State of Texas v. Clear Channel Outdoor, Inc.*

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City of Fort Worth, Texas - Amicus Curiae Letter Brief

To the Honorable Supreme Court of Texas:

Statement of Interest

This amicus curiae letter brief is filed by and on behalf of the City of Fort Worth, Texas (the “City”), which is a home-rule municipality. Billboard condemnation is an important issue for the City. There are approximately 668 existing billboards in the City; 194 of these billboards are located in areas that the City has designated as scenic areas and corridors under the City’s zoning ordinance.

The author of this letter brief is a salaried assistant city attorney for the City of Fort Worth. Other than normal salary, no fee has been paid or will be paid for the preparation of this brief.

Argument

Under Rule 11 of the Texas Rules of Appellate Procedure, Amicus Curiae, the City of Fort Worth, Texas (the “City”) files this letter in support of the State of Texas (the “State”) in the above-captioned case. The City endorses the position of the Texas Municipal League and the Texas City Attorneys Association.

The City is interested in this litigation because it has approximately 668 billboards and 194 of those billboards are in areas that have been designated as scenic corridors. From time to time, the City must condemn property for a public project that has a billboard. This always proves to be daunting—and expensive. The City is submitting this Amicus Curiae brief to encourage the Court to accept this appeal. The City needs clarity with respect to whether evidence of billboard advertising revenue should be used to value billboard leases. Furthermore, the Court should settle the question of whether billboards are personal or real property.

In 2009, this Court appeared to prohibit the use of billboard advertising income to value billboard leases in its opinion in *State v. Central Expressway Sign Associates*, 302 S.W.3d 866 (Tex. 2009) (“CESA”). The Court states that, “Adequate compensation does not include profits generated by a business located on condemned land. *Id.* at 868, citing *Herndon v. Hous. Auth.*, 261 S.W.2d 221, 222-23 (Tex. Civ. App.—Dallas 1953, *writ ref’d*). Further, ‘...Texas courts have not recognized the exception alluded to in *Herndon* for business profits “derived from the intrinsic nature of the real estate.”’ *Id.* at 872, citing *Herndon*, 261 S.W.2d at 223. In its opinion in *CESA*, this Court discusses why profits from farming and mining businesses should be excluded because they are

unreliable. *Id.* at 872-73. And in this discussion, the Court states that there should not be an exception, “...for land on which a billboard is placed. Although CESA and Viacom consider billboards unique, there is nothing to indicate that a billboard’s location is any more significant to their business than it would be to a retail establishment whose profitability depends upon visibility and easy access.” *Id.* Finally, the Court states unequivocally that on remand, the trial court should not allow evidence of valuation based on billboard advertising revenue. *Id.* at 874.

CESA seems to be a clear mandate for courts to prohibit testimony on billboard-advertising revenue to value billboard leases, yet the First Court of Appeals allowed such testimony. Perhaps that is because CESA considered the State’s condemnation of an easement that was leased to an advertising company for the purpose of maintaining a billboard that sells advertising space, rather than the valuation of a billboard lease. *Id.* at 869. The government must have a bright-line rule with respect to what is allowed in terms of testimony. The City encourages the Court to grant the State’s Petition for Review and settle the valuation methods applicable to billboards.

Certificate of Compliance

I certify that this letter brief is 585 words, based on the computer-generated word count and excluding those parts identified in Texas Rule of Appellate Procedure 9.4(i)(1). This letter was prepared using Microsoft Word.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this amicus curiae letter brief has been served on the following via TexFile electronic case filing on this 23rd day of April, 2014.

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