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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 23-0722

In the
Supreme Court of Texas

Great Value Storage, LLC and World Class Capital Group, LLC, Petitioners,
v.
Princeton Capital Corp., Respondent

On Petition for Review from the First Court of Appeals
No. 01-21-00284-CV

Response In Opposition To The Parties' Joint Request To Designate Receiver Kretzer As Respondent Or Real Party In Interest

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INTRODUCTION

Very rarely do opposing parties to an appeal get together and file a joint motion to force a non-party to author its response to a petition for review after the Appellee defended its positions at oral argument in the court below but now vaguely assures this Court it "will not be able to substantively respond to the Petition for Review." Joint Motion, page 3.

Even more rare is a joint motion filed by opposing parties that does not cite a single appellate opinion in support of its requested order. The reason that these opposing parties could not find a single case is because what they are asking for is illegal.

"If an original proceeding becomes moot, the petition should be dismissed." 6 McDonald & Carlson TEX. CIV. PRAC. APP. PRAC. § 7:5 (2d ed.) ("Advisory opinions and mootness").

The "joint statement" volunteers on page 3: "Princeton is no longer has rights[1] relating to this appeal."

Because this case lacks an actual appellee with standing, the parties have apparently decided to try manufacturing a respondent out of thin air-

[1] This is not a typographical error on the part of Receiver; apparently, the parties authored this joint submission so hastily after this Court directed Princeton to file a response to the Petition for Review last Friday that they forgot to run a grammar check in Word.

and graciously volunteered Receiver Kretzer as some vague sort of proxy party imbued with pseudo-standing.

STATEMENT OF THE FACTS

After it won a summary judgment in March 2021, Princeton asked Hon. Judge Ursula Hall of the 165th Judicial District of Harris County to appoint a Houston attorney, Seth Kretzer, as receiver. In September 2021, Judge Hall signed the proposed turnover order filed by Princeton months earlier. Princeton defended the turnover order in its appellate briefs- and at the oral Argument held in June 2022.

Both before-and-after oral argument, Princeton repeatedly asked the reviewing courts that Receiver Kretzer be kept in place over the vociferous objections of the Petitioners because he was doing such a great job for this judgment creditor. A few direct quotes from Princeton's court filings spanning 2021 and 2022 are illuminating as to how much this company wanted its requested receiver to keep working on its collection:

> "[]Appellants [Nate Paul] are unhappy that ***the Receiver is, in fact, acting pursuant to his authority to secure the judgment debtors' assets***. . . . This Court's close attention to Appellants' actions in this regard is important and Princeton looks forward to the opportunity to fully brief the legal and factual merits supporting trial court's entry of the Receivership Order and the necessity for such order, should Appellants ultimately file an appellate brief on this issue."[2]

[2] Appellee Princeton Capital Corp. Brf., Nov. 29, 2022 at 48, 49 (emphasis added).

"There is an ***emergency need for the Receiver*** to take action to prevent Appellants from contributing to removing assets outside of the reach of the properly-appointed Receiver, and of Princeton Capital Corporation ("Princeton") as the judgment creditor."[3]

"All parties are best protected during this appeal with the turnover Order securely in place and the contested assets ***under careful oversight of the court-appointed Receiver***."[4]

"Respectfully, Princeton has experienced much of the same pattern of behavior from Appellants in this dispute and shares the same concern that Appellants' assets will be lost, removed, or materially injured ***if not protected by the trial court's Order appointing the Receiver***."[5]

"As set out in the Receiver's Opposition to Appellants' Motion to Stay, ***the Receiver already located non-exempt assets*** of the judgment debtors that are available to satisfy the judgment, and which Appellants had failed to disclose in response to any discovery requests and the trial court's Order."[6]

"***Allowing the Receiver to secure the Appellants' assets during the pendency of the appeal is the only way*** to ensure that any assets that remain are not improperly transferred out of the companies to avoid the judgment."[7]

"Last, despite the significant obstacles created by the Judgment Debtors, the Receiver has developed a factual record showing that Debtors have misrepresented information about assets and engaged in fraudulent transfers of funds and properties to avoid the liability to Princeton and others. ***The Receiver's work is sorely needed to shine the light on what has occurred and***

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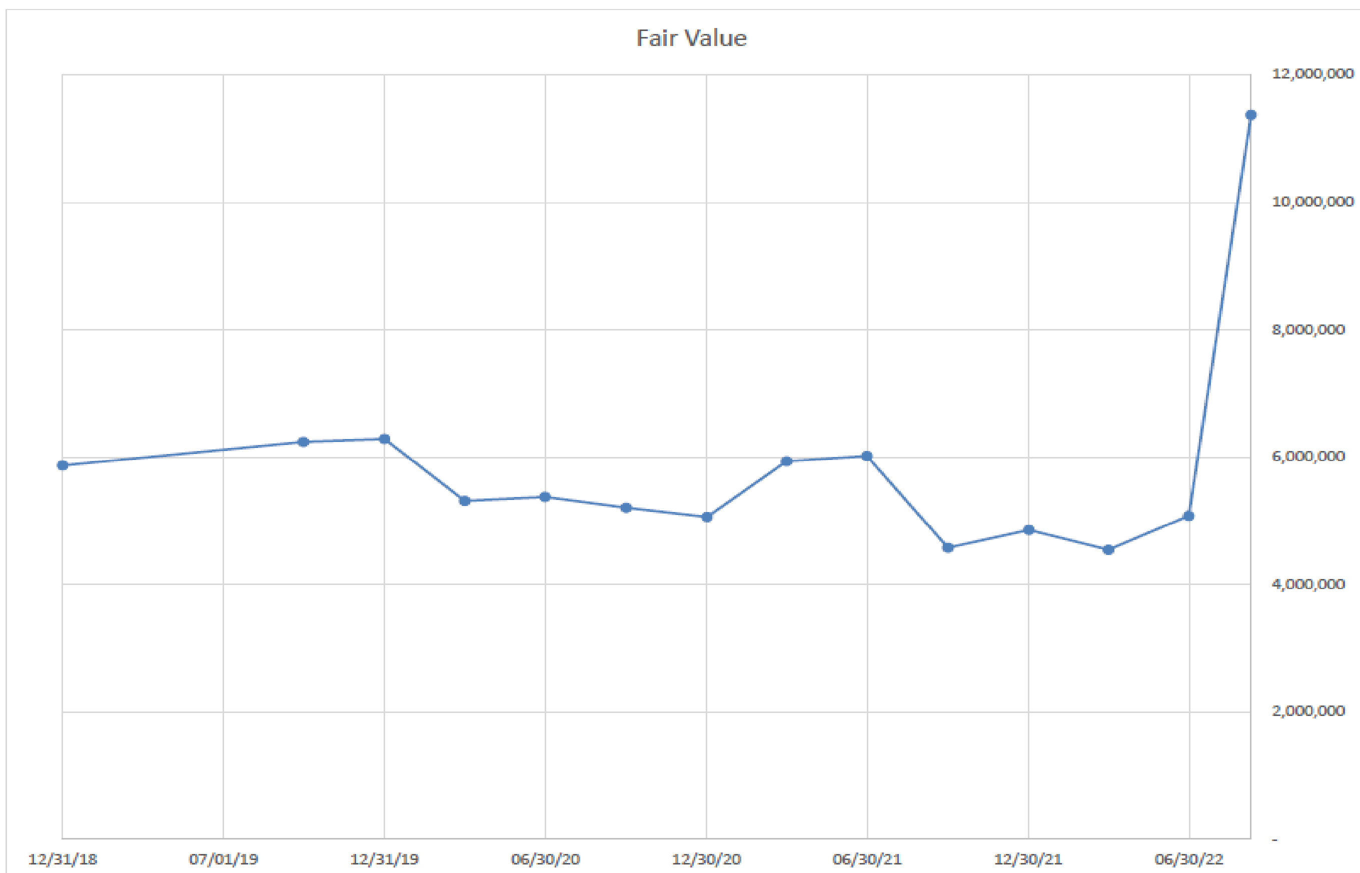
[3] Letter of Ms. Noebels to Court of Appeals Clerk, Oct. 15, 2021 at 1 (emphasis added).
[4] Princeton's Opposition to Appellants' Emergency Motion to Stay Appointment of Receiver, Oct. 13, 2021 at 3 (emphasis added).
[5] *Ibid* at 9 (emphasis added).
[6] *Ibid* at 15 (emphasis added).
[7] *Ibid* at 20-21 (emphasis added).

unwind the complex financial transactions in order to secure Princeton's judgment from the Debtors' fraud."[8]

"***[T]he Receiver is taking steps to locate valuable real estate assets*** that the Debtors' own and that are housed within wholly-owned subsidiary entities."[9]

So, why Princeton's change of tune? If the old adage "a picture tells 1,000 words" is true, the chart below showing the move in Appellee/Respondent Princeton's stock market value when it announced its settlement in late summer of 2022 just about says it all:



[8] Appellee's Response to Appellant's Supplemental Brief Regarding Interlocutory Appeal of Receiver Order, Apr. 15, 2021 at 15 (emphasis added).
[9] *Ibid* at 21 (emphasis added).

The real reason Princeton is asking to 'get off' for the response to the Petition for Review in this Court is because it received its money in full more than a year ago.

If there were any doubt on this score, please note that the settlement agreement specifically requires Princeton to cooperate with any efforts by the Petitioners to remonstrate against the receivership.

Lost in the miasma of the parties' "joint statement" is the legal parameter that appellate standing/jurisdiction is not a function of an appellee having lost interest in the disposition of a case which it brought as plaintiff, then sought post-judgment appointment of a receiver, and then successfully defended on appeal.

ARGUMENT

I. APPELLATE STANDING IS ONLY AFFORDED "TO PARTIES OF RECORD"; A RECEIVER IS PROHIBITED FROM BEING "A PARTY"

The first problem with the motion to designate Seth Kretzer, Receiver as a so-called "respondent" is that appellate standing is afforded "only to parties of record."[10] "Generally, only parties of record may appeal a trial court's judgment."[11]

[10] *State v. Naylor*, 466 S.W.3d 783, 787 (Tex. 2015) (quoting *Gunn v. Cavanaugh*, 391 S.W.2d 723, 724-725 (Tex. 1965).

[11] *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 723 (Tex. 2006).

The second problem is a huge impediment to the parties' joint request to tag a receiver with the task of opposing a Petition for Review: a receiver is definitionally and necessarily not "a party" to a case.[12] "By statutory definition—as well as necessity—a receiver must be both a non-party and disinterested in the outcome of the case."[13] "We also note that a receiver is an officer of the court, ***not a representative of the parties***."[14] For these reasons, Princeton cannot dragoon Receiver Kretzer into writing its opposition brief in this Court because a receiver is not the agent of a judgment creditor. "A receiver acts ***not as an agent of a creditor or any other party*** but instead is an 'officer of the court, the medium through which the court acts.'"[15] Indeed, Receiver Kretzer cannot be the agent of either Princeton- or the Nate Paul parties- because Receiver Kretzer has always been the agent of his appointing judge, Judge Ursula Hall of the 165th Judicial District of Harris County. "As the ***trial court's agent***, the receiver

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[12] *Zarate v. Sun Operating Ltd., Inc.*, 40 S.W.3d 617, 622 (Tex. App.—San Antonio 2001, pet. denied) ("We find that Lino Perez, as a receiver in this case, was not a party who claimed an interest in the subject matter of this litigation."); *Gutman v. De Giulio*, No. 05-20-00735-CV, 2022 Tex. App. LEXIS 1357, *10 (Tex. App.—Dallas Feb. 25, 2022, no pet. h.) ("[T]he Receiver was not seeking personal relief as a party; his authority to act was derived from his appointment by the court."); *Anderson & Kerr Drilling Co. v. Bruhlmeyer*, 115 S.W.2d 1212, *14 (Tex. Civ. App. 1938) ("A 'receiver' is defined as an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation…".).

[13] *Wiley v. Sclafani*, 943 S.W.2d 107, 110 (Tex. App.—Houston [1st Dist.] 1997, no writ) (citing TEX. CIV. PRAC. & REM. CODE ANN. § 64.021(a).

[14] *Forex Capital Mkts., LLC v. Crawford*, No. 05-14-00341-CV, 2014 Tex. App. LEXIS 13969, *5 n.4 (Tex. App.—Dallas Dec. 31, 2014, pet. denied) (quoting *Sec. Trust Co. of Austin v. Lipscomb County*, 142 Tex. 572, 584, 180 S.W.2d 151, 158 (1944)).

[15] *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. E-Court, Inc.*, No. 03-02-00714-CV, 2003 Tex. App. LEXIS 3966, *11 (Tex. App.—Austin May 8, 2003, no pet.)

is subject to the trial court's authority, decrees, and orders at all times and in all things pertaining to the administration of the receivership."[16]

Moreover, even some palpable connection to a case does not confer appellate jurisdiction on non-parties.[17]

In other words, Receiver Kretzer cannot be dubbed "a respondent" or a "real party in interest" just because the actual plaintiff and defendants have collusively decided that this a convenient thing to do. The same rationale militates against the perpetration of shams on Texas' courts in other jurisdictional contexts:"[t]he parties may not create a justiciable interest by agreement."[18]

In actuality, the "joint" filing demonstrates clearly to this Court that both sets of parties believe that this appeal is moot.[19]

II. THIS APPEAL LACKS ANY FORM OF APPELLATE JURISDICTION

Judgment Creditor Princeton has been fully paid, this settlement has been repeatedly disclosed to the U.S Securities and Exchange Commission,

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[16] *Congleton v. Shoemaker*, Nos. 09-11-00453-CV, 09-11-00654-CV, 2012 Tex. App. LEXIS 2880, *4 (Tex. App.—Beaumont Apr. 12, 2012, pet. denied).

[17] *Central Mut. Ins. Co. v. Dunker*, 799 S.W.2d 334, 336 (Tex. App. - Houston [14th Dist.] 1990, writ denied) (holding that where an insurance company was not a party of record, the insurance company lacked standing to bring an appeal).

[18] Adele Hedges, 1 Tex. Prac. Guide Civil Pretrial § 2:16 (*citing Holland v. Taylor*, 153 Tex. 433, 435, 270 S.W.2d 219, 220 (1954)).

[19] *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016) (citing *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000) (per curiam) ("The mootness doctrine applies to cases in which a justiciable controversy exists between the parties at the time the case arose, but the live controversy ceases because of subsequent events. It prevents courts from rendering advisory opinions, which are outside the jurisdiction conferred by Texas Constitution article II, section 1."

and the proceeds were distributed to its shareholders by way of special dividend more than a year ago.

A. Jurisdiction Is This Court's First Inquiry

In the final line of the footnote on the final page, the Petition For Review makes a sheepish request: "To the extent this Court believes this appeal could be moot, Petitioners respectfully request an opportunity to brief the issue." [Petition For Review, at p. 27, n.7.]

The problem with burying mootness concerns in the last line of a brief is that jurisdictional questions are primary, going to the heart of a court's power to decide a dispute; hence, a reviewing court necessarily begins there.[20]

B. Princeton Has Repeatedly Told The Courts- And The Securities and Exchange Commission- That Any Future Court Determination "Will Not Have Any Affect On Princeton Or Its Final Settlement"

If Princeton's concession in the 'joint motion to designate Receiver Kretzer as the respondent' filed February 7, 2024 left any doubt on this score, Princeton has repeatedly made clear in its public securities filings for more than a year that it has no stake in the instant appeal.

[20] "'Because lack of standing deprives the court of subject-matter jurisdiction,' we would normally 'address the issue first' before resolving the merits of the plaintiffs' claims." *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 917 (Tex. 2020) (quoting B*P Am. Prod. Co. v. Laddex, Ltd*., 513 S.W.3d 476, 479 (Tex. 2017). *See also Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 95 (Tex. 2009) ("First, we must address Unifund's argument that the trial court did not have jurisdiction over Villa's claim for sanctions, because if it did not, then we do not.") (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd*., 852 S.W.2d 440, 443-44 (Tex. 1993)).

Princeton filed its latest Form 10-Q on November 9, 2023. This public federal securities filing is available at:

https://ir.princetoncapitalcorp.com/all-sec-filings/content/0001213900-23-085201/0001213900-23-085201.pdf

There is quite simply no mention of the appeal *sub judice*- or its case number- in this SEC document. In other words, Princeton and its public auditor felt that there was nothing to disclose to the investing public- because Princeton has nothing at stake in this appeal.

Please note that the same Form 10-Q reiterates all of Princeton's prior disclosures in the earlier securities filings that its settlement is final:

> "As disclosed in the Company's Form 8-K that was filed on September 9, 2022, on September 2, 2022, the Company entered into a Settlement, Assignment and Acceptance Agreement with Natin Paul and his related parties, whereby the Company would sell its promissory notes from GVS and World Class to Phoenix Lending, LLC, a newly formed Natin Paul related entity, in exchange for a settlement payment of $11,372,699 to be funded out of the $15 million reserve in the bankruptcy court. Further, the GVS affiliated parties agreed to indemnify the Company and retain $1 million on reserve in the bankruptcy court for any future legal fees or claims related to the settlement. ***On October 7, 2022, the Company closed the settlement and received $11,372,699.***"

Id. at page 28 (emphasis added).

C. Princeton Always Kept The SEC Apprised Of The Receivership- And The Appellate Litigation Challenging That Receivership- While Princeton Fought Like A Tiger To Keep The Turnover Order In Place

Princeton first disclosed the receivership- and related appellate litigation challenging the receivership- on page 28 of its Form 10-Q filed November 12, 2021:

> "On June 30, 2021, the Company filed a Motion for Post-Judgment Receivership to appoint a receiver to the court to collect the judgment on our behalf. On September 8, 2021, the court granted the appointment of a receiver. On October 8, 2021 an appellate court granted a temporary stay of the receiver to allow the GVS defendants to seek a supersedeas bond, a status of which is to be filed with the Court of Appeals by November 15, 2021, or the receiver could be reinstated."[21]

https://ir.princetoncapitalcorp.com/all-sec-filings/content/0001213900-21-058695/0001213900-21-058695.pdf

D. The Settlement Proceeds Were Paid Out By Way of Special Dividend In The Year 2022

Princeton's annual report was pellucid that it paid out the settlement proceeds a few weeks after Petitioners' settlement check cleared. This was a stark change, as Princeton Capital Corporation had not paid a dividend for years prior:

> "For the fiscal year ended December 31, 2022, the Company declared and paid a cash dividend of $0.075 per share of common stock on or about December 1, 2022 to stockholders of record as of the close of business on November 21, 2022.

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[21] This supersedeas bond never came to be. The Panel Opinion was clear as to what happened: "We withdrew the stay of the order appointing a receiver and reinstated the appeal on the active docket because Great Value failed to comply with this court's prior order to obtain from the trial court a determination concerning supersedeas. Princeton has contested the declarations of net worth filed by Great Value and WCCG. The appellate record does not include an order determining Princeton's challenge to the declarations of net worth, and ***no issue regarding supersedeas is properly before this Court in this appeal***." *Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 Tex. App. LEXIS 2537, *17 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, pet. filed).

> "For each of the fiscal years ended December 31, 2021 and 2020, the Company did not declare any cash dividends on the Company's common stock."

Form 10-K filed March 30, 2023 [available at: https://ir.princetoncapitalcorp.com/all-sec-filings/content/0001213900-23-024619/0001213900-23-024619.pdf]

III. THE "JOINT STATEMENT" MOCKERIES THE TEXAS CONSTITUTION'S OPEN COURTS PROVISION

"If an original proceeding becomes moot, the petition should be dismissed."[22]

This is because Article 1, Section 13 of the Texas Constitution contains what is commonly known as the open-courts provision: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

"Under the Texas Constitution, standing is implicit in the open courts provision, which contemplates access to the courts only for those litigants suffering an injury."[23]

> "The distinctive feature of an advisory opinion is that it decides an abstract question of law without binding the parties. *Alabama State Fed'n of Labor v. McAdory*, 325 U.S. 450, 461, 89 L. Ed. 1725, 65 S. Ct. 1384 (1945); *Firemen's Ins. Co.*, 442 S.W.2d at 333; *Puretex*

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[22] 6 McDonald & Carlson TEX. CIV. PRAC. APP. PRAC. § 7:5 (2d ed.) ("Advisory opinions and mootness")

[23] *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993); *see also Nat'l Collegiate Athletic Ass'n v. Jones,* 1 S.W.3d 83, 86 (Tex. 1999) (Appellate courts are prohibited from deciding moot controversies, consistent with the separation of power doctrine that prohibit courts from rendering advisory opinions.).

> *Lemon Juice, Inc.*, 160 Tex. at 591, 334 S.W.2d at 783. An opinion issued in a case brought by a party without standing is advisory because rather than remedying an actual or imminent harm, the judgment addresses only a hypothetical injury. *See Allen v. Wright*, 468 U.S. 737, 751, 82 L. Ed. 2d 556, 104 S. Ct. 3315 (1984). **Texas courts, like federal courts, have no jurisdiction to render such opinions.**"

Id. (emphasis added).

Professor Dorsaneo explains: "Texas courts have long recognized constitutional limits on the exercise of judicial power established by the Texas Constitution. One of the primary limits on the exercise of judicial power is the prohibition against the rendition of advisory opinions. It has been repeatedly held that Article 5, § 8 of the Texas Constitution does not empower courts to render advisory opinions."[24]

It must be remembered that unlike an actual appeal- where the opposing parties want different things from one another- Petitioners do not want Princeton to do anything for them. To the contrary, the settlement agreement is clear that Petitioners have indemnified Princeton for $1 million related to any litigation since the funding date:

> "[T]he GVS affiliated parties agreed to indemnify the Company and retain $1 million on reserve in the bankruptcy court for any future legal fees or claims related to the settlement."

https://ir.princetoncapitalcorp.com/all-sec-filings/content/0001213900-23-085201/0001213900-23-085201.pdf (at page 28).

[24] Dorsaneo, William, THE ENIGMA OF STANDING DOCTRINE IN TEXAS COURTS, 28 REV. LITIG. 35, 43 (2008).

Even though Princeton Capital Corporation is contractually obligated to do whatever it is directed to by Petitioners under the express terms of their settlement agreement and its indemnity provision, Receiver Kretzer cannot be infused with pseudo-standing to pick up the mantle as a proxy party.

CONCLUSION

Receiver Kretzer was appointed by a Texas trial court; the order of appointment was upheld completely in Texas' First Court of Appeals upon Princeton's vociferous advocacy at oral argument. But before re-hearing was denied, Princeton was paid more than the full value of its judgment in exchange for a commitment to remonstrate against the receivership. That lucre was paid out to public shareholders over a year ago.

Receiver Kretzer is definitionally not "a party" under Texas caselaw; this Court should decline the 'joint invitation' to pretend that he is a proxy party. Receiver Kretzer is the agent of his appointing court; he cannot be made to act as agent of a judgment creditor who is worried about having to refund its settlement money to its debtors.

Since this case has become moot during the pendency of this appeal[25], the petition for review must be denied.

Dated: February 8, 2024

Respectfully submitted,

/s/ Seth Kretzer

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this brief were served on all parties by electronic filing on the 8th day of February 2024.

/s/ Seth Kretzer
Seth Kretzer

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 2,454 words.

/s/ Seth Kretzer
Seth Kretzer

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[25] *Williams v. Huff*, 52 S.W.3d 171, 184 (Tex. 2001) ("[f]or a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal.").

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