No. 19-0334

IN THE SUPREME COURT OF TEXAS

BROADWAY NATIONAL BANK, TRUSTEE OF THE MARY FRANCIS EVERS TRUST, *ET AL.*,

Petitioner,

v.

YATES ENERGY CORPORATION, *ET AL.*,

Respondents.

On Appeal from the Fourth Court of Appeals at San Antonio, Texas

BRIEF OF AMICUS CURIAE TEXAS OIL & GAS ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

Founded in 1919, the Texas Oil and Gas Association ("TXOGA") is the oldest and largest group in the State of Texas representing the interests of the oil-and-gas industry. The membership of TXOGA produces in excess of 90 percent of Texas's crude oil and natural gas, operates over 80 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In 2019, Texas's oil-and-gas industry provided more than 428,000 jobs and paid more than $16 billion in state and local taxes and state royalties—helping to fund Texas's schools, roads, and first responders.

This is a case of first impression regarding Texas Property Code § 5.029, which is the statutory framework to correct by agreement a material error in a publicly filed instrument. This Court's interpretation of Section 5.029 will create precedent that impacts TXOGA members, as well as the Texas oil-and-gas industry generally, because the industry relies upon record title to make essential decisions on whether to drill, produce, and operate oil-and-gas assets in the State of Texas. Introducing uncertainty in record title would create confusion, increase expense, and potentially lead to less development of oil-and-gas assets. TXOGA members have an interest in ensuring the stability of the record title system. TXOGA paid for the preparation of this amicus brief.

SUMMARY OF THE ARGUMENT

A property owner in Texas should not have the size of its property interest altered without its consent. The court of appeals's interpretation of Texas Property Code § 5.029 properly requires the party whose ownership interest would be impacted by a correction deed to execute the deed. Under Petitioners' interpretation of Section 5.029, though, prior owners of a property could change the nature, size, or boundaries of a property interest they no longer own—clouding title and creating uncertainty in the public record. To provide clarity on how to correct a material error in a publicly recorded instrument and to protect the stability of the public record, this Court should provide guidance on the proper interpretation of Section 5.029 and affirm the judgment of the court of appeals.

ARGUMENT

"To err is human" is a proverb for a reason. People make mistakes, including when drafting deeds and other legal instruments. Historically, Texans fixed deed errors through either correction deeds or litigation. *Myrad Props., Inc. v. LaSalle Bank Nat. Ass'n*, 300 S.W.3d 746, 750 (Tex. 2009). In 2009, though, this Court held that correction deeds should be used only in limited circumstances "to correct [] defects and imperfections" but not to make material corrections, such as "to convey an additional, separate parcel of land." *Id*. This Court reasoned that using correction deeds to make material corrections would "introduce unwarranted and unnecessary

confusion, distrust, and expense into the Texas real property records system" and would undermine "the entire purpose of record notice." *Id*. at 750-51.

The Texas Legislature responded to *Myrad* in 2011 by enacting five statutes that permit the use of correction deeds under specified circumstances to make both material and non-material corrections to a publicly recorded instrument. *See* Act of May 13, 2011, 82nd Leg., R.S., Ch. 194, § 1, 2011 TEX. GEN. LAWS 747, 748 (codified at TEX. PROP. CODE §§ 5.027-.031). By enacting these statutes, the Legislature aimed to eliminate "uncertainty within the real estate industry as to the validity of correction documents." *Id*. The five statutes are summarized in relevant part as follows:

TEX. PROP. CODE § 5.027:	explains (1) correction instruments that comply with Sections 5.028 or 5.029 may correct an ambiguity or error in a recorded original instrument of conveyance, and (2) all correction instruments are subject to Texas Property Code § 13.001 (validity of unrecorded instruments).
TEX. PROP. CODE § 5.028:	describes how to correct a non-material error, like correcting "the spelling of a name." Any person with personal knowledge of a non-material error may prepare, execute, and record a correction deed. The correction deed does not need the signatures of the original parties to the instrument, but if the original parties do not execute the deed, the corrector must then send a copy of the correction deed and notice to "each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns."

TEX. PROP. CODE § 5.029:	creates process to correct material error, such as to "remove land from a conveyance that correctly conveys other land." "The parties to the original transaction or the parties' heirs, successors, or assigns, as applicable" may make a correction. A material correction deed must be recorded and "executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns."
TEX. PROP. CODE § 5.030:	states that a correction instrument that complies with Section 5.028 or 5.029 is effective as of the date of the original instrument of conveyance and that a correction instrument is subject to the property interest of a "subsequent purchaser for valuable consideration without notice" when that subsequent purchaser acquired its interests on or after the date of the original instrument but before the date of the correction instrument is filed of record.
TEX. PROP. CODE § 5.031:	creates retroactive protection for correction instruments executed and recorded prior to the enactment of Sections 5.027-5.030. If such instruments substantially comply with Sections 5.028 or 5.029, the instruments are effective to the same extent as provided in Section 5.030, unless a court of competent jurisdiction determines otherwise.

This Court has not yet had the opportunity to interpret Sections 5.027-.031. The court of appeals in this matter, though, correctly interpreted Section 5.029. The court's reading of Section 5.029 complies with the tenets of statutory construction, provides guidance to Texans on how to correct a material error in publicly recorded

instruments, and protects property owners from having their property interest altered without their consent. This Court should affirm the judgment of the court of appeals.

I. BY REQUIRING THE CURRENT OWNER OF THE AFFECTED INTEREST TO EXECUTE A CORRECTION DEED, THE COURT OF APPEALS INTERPRETED SECTION 5.029 IN ACCORDANCE WITH THE RULES OF STATUTORY CONSTRUCTION.

Under Section 5.029, a material correction instrument must be executed by "each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns." TEX. PROP. CODE § 5.029. In interpreting Section 5.029, the court of appeals identified different sets of parties who may need to execute a material correction deed—either the original parties to the instrument or a party's heirs, successors, or assigns. *Yates Energy Corp. v. Broadway Nat'l Bank, Tr. of Mary Frances Evers Tr.*, 609 S.W.3d 140, 148 (Tex. App.—San Antonio 2018, pet. granted). Which set must execute the correction deed depends on whether the phrase "if applicable" is triggered. *Id*.

The "if applicable" phrase is triggered "if the property interest conveyed in the original instrument has been assigned or conveyed by an original party to that party's heirs, successors, or assigns." *Id*. If an assignment or conveyance occurs, then "a correction instrument making a material change must be executed by a party's heirs, successors, or assigns, as opposed to the original parties of the recorded instrument." *Id*. Put simply, whomever owns the property interest when the

correction deed is executed—whether an original party or a successor party—must execute the correction deed.

This interpretation of Section 5.029 follows the rules of statutory construction promulgated by statute and by this Court. "In construing a statute, [a court's] primary objective is to determine and give effect to the Legislature's intent." *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003) (quotations omitted). A court should look first to the "'plain and common meaning of the statute's words.'" *Bush v. Lone Oak Club, LLC*, 601 S.W.3d 639, 647 (Tex. 2020) (quoting *MCI Sales & Serv., Inc. v. Hinton*, 329 S.W.3d 475, 500 (Tex. 2010)). Words and phrases "should be read in context and construed according to the rules of grammar and common usage." TEX. GOV'T CODE § 311.011. Moreover, courts may also consider other matters in ascertaining the Legislature's intent, including the objective of the law, common law, and the consequences of a particular construction. *Id*. § 311.023; *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex.1994).

This Court should give effect to the Legislature's intent in enacting Section 5.029 by holding that the material correction deed statute requires the parties whose interests are affected by the correction deed to execute that deed. First, the plain language of the statute supports this reading. As explained above and by the court of appeals, the phrase "party . . . or, if applicable, a party's heirs, successors, or assigns" creates two potential signatory sets—original party or successor party—

with the mechanism triggering whether the original party or the successor party must execute being the conditional phrase "if applicable." This is a clear, easy to follow rule. If, for example, the original grantee still owns the property interest acquired in the original instrument, he and the original grantor must sign the correction deed. But if, for example, the original grantee transferred his interest to a trust, then the trustee—as the grantee's heir, successor, or assign—and the original grantor must execute the correction deed instead.

The court of appeals's reading follows the common rules of grammar and gives effect to the term "if applicable." In contrast, Petitioners' reading of Section 5.029 does not. Primarily, Petitioners ignore the phrase "if applicable" and suggest instead that the Legislature simply wanted to provide options as to who can execute a deed; in their view, a correction deed could be executed by either the original grantee or grantee's successor, and either signature suffices to create a valid, material change to title. *See* Petitioner Broadway Bank's BOM at 13 (comparing choice offered in Section 5.029 to a grocery shopper's personal preference to use self-checkout or assisted checkout).

Petitioners' interpretation of Section 5.029 leads to "absurd results." *See TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (explaining courts should not adopt an interpretation of a statute that leads to absurd

results). A former property owner should not be allowed to alter real property he no longer owns.

Although Section 5.029 has not yet been interpreted by this Court, the phrase "owner or owner's heirs, successors, or assigns" is not novel. The Legislature frequently uses this phrase, or a version of it, to acknowledge that real property interests may change ownership over time. Other statutory uses of this phrase support the court of appeals's reading of Section 5.029. *See Bush*, 601 S.W.3d at 647 (explaining courts should give the same meaning to legislative text that is the same or "substantially the same").

For example, in Chapter 21 of the Texas Property Code (eminent domain), the Legislature authorizes a "person . . . or that person's heirs, successors, or assigns" to reacquire condemned property under certain circumstances. TEX. PROP. CODE § 21.101. This statute, like Section 5.029, connects two groups, "person" and "heirs, successors, or assigns" via the connector "or." But reading Section 21.101 as granting either a former owner or a current owner the right to repurchase (a reading consistent with Petitioners' analysis of Section 5.029) would create chaos and uncertainty—what happens if both parties want to exercise the right? Instead, the plain, common sense reading of the eminent domain statute is that only the current interest owner has the right to repurchase condemned property (a reading aligned with the court of appeals's analysis of Section 5.029).

The Legislature also chose to use substantially the same phrase "each party . . . or, if applicable, a party's heirs, successors, or assigns" in Section 5.028. The Court should construe Section 5.029 together with Section 5.028 rather than construing these sections in isolation. *See McIntyre*, 109 S.W.3d at 745 ("[C]ourts will not give an undefined statutory term a meaning that is out of harmony or inconsistent with other provisions in the statute."). Section 5.028 establishes the process to correct a non-material error in a recorded instrument. TEX. PROP. CODE § 5.028. Any person with personal knowledge of a non-material error may execute and file a correction deed; a non-material mistake does not need to be corrected by agreement of the parties. *Id*. However, the person recording the correction deed must then "send a copy of the correction instrument and notice by first class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns." *Id*.

In contrast, Section 5.029 does not have a notice provision. If Petitioners' reading of Section 5.029 were correct, then the Legislature would require personal notice to a successor party of non-material changes but would require no personal notice to a successor of material changes. That would be absurd. However, if the court of appeals's reading of Section 5.029 is correct, the lack of a notice requirement makes sense: no notice is needed for a material correction deed because the successor party participated in the execution of the deed.

It is a "common law maxim that an assignee stands in the shoes of his assignor." *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 571-72 (Tex. 2001) (quotations omitted). Applying this maxim to Section 5.029 by example, if James Smith assigns all of his right, title, and interest in two tracts of land to Abigail Adams, Abigail now stands in the shoes of James. James no longer has an interest in the land and should, therefore, have no power to alter its nature, size, or shape.

II. THE COURT OF APPEALS'S INTERPRETATION OF SECTION 5.029 GIVES EFFECT TO THE LEGISLATURE'S INTENT AND PROTECTS THE STABILITY OF RECORD TITLE.

By requiring the current interest owner of the affected property interest to execute a material change correction instrument, the court of appeals upheld the purpose of the correction deed statutes and promoted sound public policy. *See* TEX. GOV'T CODE §§ 311.021; 311.023. When the Legislature enacted the correction deed statutes, common law prohibited Texans from making material changes to the public record via correction deeds. In *Myrad*, this Court invalidated material change correction deeds as a matter of law out of concern that material change correction deeds "introduce unwarranted and unnecessary confusion, distrust, and expense into the Texas real property records system" and undermine "the entire purpose of record notice." *Myrad*, 300 S.W.3d at 750-51.

In enacting the correction deed statutes, the Legislature modified common law to allow correction deeds to correct agreed upon material changes. *See Dugger v. Arrendondo*, 408 S.W.3d 825, 829 (Tex. 2013) (stating statutes can modify common law rules). However, the Legislature created strict rules for this process in an effort to eliminate the uncertainty, distrust, and expense that worried this Court in *Myrad*. *See* Act of May 13, 2011, 82nd Leg., R.S., Ch. 194, § 1, 2011 TEX. GEN. LAWS 747, 748; *see also Bush*, 601 S.W.3d at 647 (explaining courts should "presume the Legislature enacted the statute with complete knowledge of the existing laws and with reference to it") (quotations omitted). An interpretation of the correction deed statutes should take into consideration the Legislature's intent that correction deeds should not undermine record notice. A reading of Section 5.029 that increases uncertainty in record title would contradict legislative intent and retrigger this Court's concerns about protecting the integrity of record notice.

Petitioners' reading of Section 5.029 fails this test. Allowing a former property owner to file a material correction deed without the consent of the current owner would cause havoc for property owners by creating confusion, increasing expense, and building distrust in the record title system. *See Myrad*, 300 S.W.3d at 750-51. Under the prior example, James Smith could acquire two tracts of land from Thomas Jefferson, assign both tracts to Abigail Adams, and then enter into a correction deed with Thomas Jefferson changing the original conveyance from two

tracts to one. If Petitioners were right, that correction instrument could be executed without Abigail's consent or notice.[1] Abigail, and anyone else who has purchased property in Texas, would have to routinely check the public records to ensure that no correction deed has been recorded to reduce the size of her property. Worse still, Abigail would have to file suit and engage in potentially lengthy and costly litigation to reclaim her title.

In contrast, if Section 5.029 requires Abigail's consent to the material correction deed process, the expense, burden, and uncertainty identified would disappear. The court of appeals' reading of Section 5.029 creates clear rules on who must execute a correction deed, and it protects a property owner from having her interest reduced without her consent.

The Legislature never contemplated that a material correction deed could be used to alter a party's property interest without his or her consent; rather, material changes to a deed may be made only with the agreement of the current owner of the property interest. *See* TEX. PROP. CODE §5.029. If the interested parties do not agree to correct a material change, Section 5.029 is not available.

To protect the stability of Texas's record-title system, this Court should ensure that property owners whose interests will be affected by a material correction deed

[1] In contrast, other potential clouds on title require notice to a property owner. *See, e.g.*, TEX. PROP. CODE § 53.055 (requirement to notify property owner of lien claim and affidavit).

must give their consent to that material correction deed. The court of appeals's judgment should be affirmed.

PRAYER

For these reasons, the Texas Oil & Gas Association requests that the Court affirm the judgment of the court of appeals.

Respectfully submitted,

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