

No. \_\_\_\_\_

IN THE  
SUPREME COURT  
OF TEXAS

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**RONALD F AVERY**

Petitioner,

v.

**GUADALUPE-BLANCO RIVER AUTHORITY**  
**MR. WILLIAM E. WEST JR.; MR. DAVID WELSCH,**  
Respondent.

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**PETITION FOR REVIEW**

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IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 53.2(a) of the Texas Rules of Appellate Procedure, the Petitioner, Ronald F. Avery, certifies to the best of his knowledge, that the following is a complete list of all persons or entities with an interest in this Petition:

1. Petitioner - Ronald F. Avery - Pro Se.

1955 Mt. Vernon  
Seguin, Texas 78155

2. Respondent - Guadalupe-Blanco River Authority (GBRA).

Guadalupe-Blanco River Authority  
933 E. Court Street  
Seguin, Texas 78155

3. Respondent - Mr. William E. West Jr. (General Manager of GBRA).

4. Respondent - Mr. David Welsch (Project Manager of GBRA).

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- 1. The note **(F-12)** refers to page 12 of the Trial Court Clerk's Files;
- 2. The note **(H-12)** refers to page 12 of the Trial Court Hearing Transcript;
- 3. The note **(2AB-12)** refers to page 12 of the Appellant's Second Amended Brief;
- 4. The note **(A-12)** refers to page 12 of the separate Appellant's Second Amended Appendix;
- 5. The note **(RB-12)** refers to page 12 of the Appellant's Reply Brief;
- 6. The note **(MRH-12)** refers to page 12 of the Appellant's Motion for Rehearing;
- 7. The note **(TAB-E2)** refers to page 2 under TAB-E in the Petitioner's Appendix;
- 8. The note **(APLEE-12)** refers to page 12 of the Appellees' Reply Brief.

No. \_\_\_\_\_

**RONALD F AVERY**

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Respondent.

---

**PETITION FOR REVIEW**

---

Petitioner, Ronald F. Avery, submits his petition for review. Petitioner will be referred to as Petitioner, and/or Avery. Petitioner was the Plaintiff in Trial Court. The Respondents, Guadalupe-Blanco River Authority (GBRA), Mr. William E. West Jr., and Mr. David Welsch, will be referred to as Respondents and/or GBRA. The Respondents were the Defendants at Trial Court and Appellees in the Court of Appeals.

STATEMENT OF THE CASE

*Nature of the case:* Petitioner, Avery, sued GBRA and two employee/managers for various forms of real and personal property damage including slander and libel. The Respondents filed a Plea and Supplemental Plea to the Jurisdiction generally claiming that,

as a quasi-public municipal corporation of the State of Texas, they all had "sovereign and/or governmental immunity" to harm, in any way, Avery, a citizen of Texas, without recourse to the courts of Texas unless the State has waived this "immunity" by statute (TTCA) or special congressional resolution obtained by Avery. Therefore, according to Respondents, the Trial Court did not have jurisdiction to hear Petitioner's case.

*Proceedings in the Trial Court:* The lawsuit was filed in the 25<sup>th</sup> District Court, Guadalupe County, Texas, Honorable B.B. Schraub presiding.

*The judgment of the Trial Court:* Judge Schraub signed an order **(TAB-F5,6)** granting the Pleas to the Jurisdiction.

*Proceedings in the Court of Appeals:* Avery appealed the judgment to the Fourth Court of Appeals, San Antonio, Texas.

*The Opinion of the Panel:* The panel that decided the case consisted of Alma L. Lopez, Chief Justice, Justice Sandy Bryan Marion, and Justice Phylis J. Speedlin. The Court of Appeals rendered its judgment and issued a "Memorandum Opinion" **(TAB-F1-4)** on April 20, 2005, authored by Justice Speedlin.

*The Judgment of the Court of Appeals:* The Court of Appeals affirmed the judgment of the Trial Court. The Court of Appeals denied Avery's Motion for Rehearing on May 11, 2005.

## STATEMENT OF THE JURISDICTION

The Supreme Court has jurisdiction (TRAP 56.1 a 6) **(TAB-D2)** over this appeal because the decision of the Court of Appeals conflicts with this Court's decision in Dickson v. Strickland 1924 **(TAB-A)**.

The Supreme Court has further jurisdiction over this appeal because this case involves the validity of the constitutional construction of an Act of the legislature (TRAP 56.1 a 3) **(TAB-D2)** necessary to the determination of this case, namely, the Texas Tort Claims Act of 1969, (TTCA) and the resulting corresponding Texas Civil Statutes and Codes, mainly chapters 101-110 of the Texas Civil Practice and Remedy Code (CPRC).

The Supreme Court has further jurisdiction over this appeal because two surviving decisions of this Court involving the Constitution of Texas impacting this case are contradictory to each other (TRAP 56.1 a 4) **(TAB-D2)**; namely, Hosner v. DeYoung, 1847 **(TAB-B)** and Dickson v. Strickland, 1924 **(TAB-A)**.

The Supreme Court has further jurisdiction over this appeal because this case involves a dismissal for want of jurisdiction that is unconstitutional (TRAP 56.1 a 4) **(TAB-D2)** under Art 2 Sec 1 and Art 1 Sec 2, Art 1 Sec 13, Art 1 Sec 17, Art 1 Sec 19 and Art 16 Sec 48 **(TAB-H5)** of the Texas Constitution **(TAB-E1-2)**.

ISSUES AND SUBSIDIARY POINTS PRESENTED FOR REVIEW

1. The Court of Appeals erred by their failure to acknowledge the American fundamentals of civil government the Petitioner proved: ..... 5

    1.1. Sovereignty is the Ownership of Property;..... 6

    1.2. Sole purpose of Government and all Law is to protect property;..... 6

    1.3. Sovereignty does not transfer to the state;..... 6

    1.4. State is empowered by the "delegation of authority;" ..... 7

    1.5. Authority of the Citizen is limited;..... 7

    1.6. Immunity to harm belongs to no one;..... 8

    1.7. State cannot obtain immunity to harm;..... 8

    1.8. Utmost absurdity to bar civil suit against the state (agent) for harming citizen (master);..... 8

    1.9. The Judiciary has sole jurisdiction to determine the lawfulness of sovereign or governmental immunity under Art 16 Sec 48 and Art 2 Sec 1;..... 9

    1.10. The Judiciary has sole jurisdiction to hear all cases against the state brought by its citizens under **(TAB-E1-2)** Art 1 Sec 2, Art 1 Sec 13, Art 1 Sec 17, Art 1 Sec 19..... 9

    1.11. The Legislature has no authority to determine when the Judiciary has jurisdiction to hear a case brought by a citizen under Art 2 Sec 1. **(TAB-E2)**..... 9

    1.12. Any statute or principle or common law in conflict with the Constitution is void..... 9

    1.13. The Texas Constitution established the American method to empower government in Texas..... 10

    1.14. Ancient monarchial common law cannot be lawfully adopted to empower government in Texas even if it was in force at the time of the ratification of the Texas Constitution under Art 16 Sec 48..... 10

2. The Court of Appeals violated both TRAP 38.1 (e) and TRAP 47.1 **(TAB-D1)** **(MRH-3)** in filing a "Memorandum Opinion" that did not address Avery's *substantial* issues which attacked the State's "presumption of sovereign immunity" to harm the Citizens of Texas. .... 11

    2.1. The Court of Appeals erred in their citation of eight cases that did not apply to Avery's questions on appeal..... 11

2.2. The Court of Appeals erred by failing to support their own Memorandum Opinion in 14 Questions asked by Petitioner in his Motion for Rehearing.....11

3. The TTCA is no mere means to protect tax coffers but an unconstitutional formation and operation of an alternate repugnant government in Texas. ....11

    3.1. The Court of Appeals did not resolve the obvious contradiction of Hosner v. DeYoung Sup. Ct., 1847 and Dickson v. Strickland Sup. Ct., 1924.....12

4. Petitioner has shown that "sovereign or governmental immunity" and the TTCA is patently unconstitutional and incurable in Texas, the Court of Appeals therefore, had a "plain duty" to rule accordingly. ....14

## STATEMENT OF THE FACTS

The Memorandum Opinion of the Court of Appeals correctly states the nature of the case only in part when it quotes the Petitioner **(TAB-F2)** in the body and the footnote in said Opinion. After quoting Avery, Justice Speedlin misstates the whole thrust of what he had appealed:

"We decline Avery's invitation to judicially abrogate the doctrine of sovereign immunity; such a drastic and fundamental change should be made, if at all, by the Legislature or the Supreme Court." **(TAB-F3)**

The Petitioner was not inviting the Court of Appeals to abrogate a lawful "outmoded principle" or "doctrine." Rather, the Petitioner was asking the Court of Appeals to opine, with citation to substantial and fundamental law, demonstrating that the State's "presumption" of "sovereign immunity" (a fictitious power or right to invade and harm the life, liberty and possessions of a citizen of Texas) is lawful under the Texas Constitution. Neither the Respondents nor the Court of Appeals did so.

Justice Speedlin further misstates the grounds of what the Petitioner had appealed:

"Because sovereign immunity is the recognized law in the State of Texas, and because Avery has not alleged a valid waiver of immunity, the trial court did not err in granting GBRA's Plea to the Jurisdiction, and the trial court's order is affirmed." **(TAB-F3)**

Avery did not appeal any matter related to whether he had properly pled a valid waiver of immunity. Instead, he appealed the

ludicrous proposition that the State of Texas could demand that a Plaintiff show a valid "unambiguous" waiver (**TAB-H7**) of State "sovereign immunity" to kill him, a citizen, and damage all of his property without recourse to "her" courts, while the State of Texas can not prove, but only "presume," to possess "sovereign or governmental immunity" to waive or assert in any degree. (**RB-10 2.7**) The Respondents in their Appellees' Brief and the Court of Appeals merely ignored the grounds and/or issues presented and all subsidiary questions raised on appeal.

The Petitioner sued Respondents for several forms of real and personal property damage (**F-103**), including several allegations of slander and libel (**F-124**), (**F-133-134**) and interference with Petitioner's right to develop real property beyond GBRA's jurisdiction or authority (**F-113**), (**F-115-116**), (**F-118**). The Respondents filed Special Exceptions (**F-61**) and Petitioner filed his Response (**F-69**) with three briefs on: Sovereign Immunity (**F-73**), Subject Matter Jurisdiction (**F-93**) and Perversion of Justice (**F-96**). Respondents failed to show for their hearing and Avery's order was signed by the Honorable Judge Gus J. Strauss (**F-100**).

Respondents filed a Plea to the Jurisdiction (**F-179**). The Petitioner filed his Response (**F-189**). The Petitioners filed a Supplemental Plea to the Jurisdiction (**F-219**) on the morning of the

hearing on the original Plea. That same morning of July 22, 2004, Petitioner presented his argument and charts or illustrations (**F-205-210**) to the Honorable B.B. Schraub. At said hearing, Petitioner distinguished between the state's "delegated authority" from the citizens, limited to what they hold in themselves, namely, the God given right to protect their property (lives, liberties and possessions) and the impossible transfer of those same properties to the State as the foundation of the State's power to act (**H-17, line 3 to H-18 line 6**) (**TAB-G17-18**). The Honorable Judge B.B. Schraub granted the Respondents' Pleas to the Jurisdiction on July 27, 2004, by signing their order (**F-228**) (**A-73**) (**TAB-F5,6**).

The Petitioner appealed to the Fourth Court of Appeals and filed his Appellant's Second Amended Brief and Appellant's Second Amended Appendix. The Respondents filed their Appellees' Brief which did not address any of the issues brought by Avery. Petitioner filed his Appellant's Reply Brief complaining of the Appellees' unresponsive Reply Brief (**RB-6**) under TRAP 38.2 (a)2 (**TAB-D1**). The Petitioner showed in eight points of his Reply Brief (**RB-8**), inter alia, that Respondents admitted in their Appellees' Reply Brief (**APLEE-7**) (**TAB-H7**) that "sovereign immunity" was a "presumption." Avery also showed that the Supreme Court in Dickson v. Strickland, 1924 (**TAB-A12**) said that the State could not "presume" anything

against the rights of the sovereign **(RB-9)** citizens not declared in the Texas Constitution **(RB-8)**. Avery has insisted from the beginning in Trial Court **(F-94)** and beyond **(2AB-30)** **(RB-13 Prayer 1)** that his cause be reviewed under *substantial fundamental principles of law and logic*, guaranteed by Texas Rules of Civil Procedure TRCP 1 and TRCP 13 **(TAB-D3)**, rather than merely having case law, common law, statutes, and codes, unlawfully applied.

Justice Speedlin filed her Memorandum Opinion affirming the Trial Court on April 20, 2005 which failed to address any of Avery's issues or questions on appeal. Petitioner filed his Motion for Rehearing asserting that the Court of Appeals erred on three issues: 1) failing to address issues under TRAP 38.1(e) and TRAP 47.1; 2) citation of 8 cases that did not apply; 3) failure to resolve two opposed Supreme Court cases. Avery's Motion for Rehearing was denied on May 11, 2005.

#### SUMMARY OF THE ARGUMENT

The Respondents, the Trial Court and the Court of Appeals have refused to address the want of fundamental substantial law (guaranteed under TRCP 1, and TRCP 13) at the foundation of the TTCA, the target of the Petitioner's challenge on appeal, violating TRAP 38.1(e) and TRAP 47.1. The citing of a thousand TTCA cases

would not address a single principle regarding the underlying "presumed sovereign immunity" at the foundation of the TTCA.

The Respondents and the Court of Appeals merely proclaim the TTCA as proof of the lawful "presumption" within it. After one has swallowed the camel of presumption, it is fruitless to strain at, or offer, the gnats of waiver as proof of the presumption. Upon the consideration of the idea that the legislature could waive or assert any degree of "sovereign immunity," it is necessary to ascent to the extension of this notion, that the state would thereby possess "absolute sovereign immunity" even, to kill the citizen and steal or destroy their liberties and possessions of every kind "without recourse to the courts."

The Petitioner disagrees with that initial presumption and has consistently asserted that the State of Texas does not have sovereignty over the citizens, who created it for their benefit, or immunity to harm the citizen in any way without recourse to the courts and therefore cannot waive or assert it in the TTCA.

#### ARGUMENT

1. The Court of Appeals erred by their failure to acknowledge the American fundamentals of civil government the Petitioner proved:

No court can determine the constitutionality of the TTCA without acknowledging the following American fundamentals of civil

government proved by Petitioner and ignored by both Trial Court and Court of Appeals:

**1.1. Sovereignty is the Ownership of Property;**

"When they were free, they loved their country, and were always ready to fight in its defence. Such as succeeded well, increased in vigor and power; and even those that were the most unfortunate in one age, found means to repair their greatest losses if their government continued. **Whilst they had a propriety in their goods, they would not suffer the country to be invaded, since they knew they could have none if it were lost**"<sup>1</sup>

"This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: **and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property.**"<sup>2</sup>

**1.2. Sole purpose of Government and all Law is to protect property;**

"**The great and chief end**, therefore, of men's uniting into commonwealths, and putting themselves under government, **is the preservation of their property**, to which in the state of nature there are many things wanting."<sup>3</sup>

"What, then, is law? **It is the collective organization of the individual right to lawful defense.**"<sup>4</sup>

**1.3. Sovereignty does not transfer to the state;**

"\* \* \* for the **fountain-power** remaineth most eminently in the people, 1. Because they give it to the king, *ad modum recipientis*, and **with limitations; therefore it is unlimited in the people**, and bounded and limited in the king, and so less in the king than in the people. \* \* \*

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<sup>1</sup> Sidney, Algernon, *Discourses Concerning Government* 1683 ed. Thomas G. West (Liberty Fund, Inc. 8335 Allison Pointe Trail, Suite 300, Indianapolis, Indiana 46250-1687) p. 260. **(A-52) (2AB-15)**

<sup>2</sup> Locke, John, *Two Treatises of Government* 1689 ed. Peter Laslett (Cambridge Texts in the History of Political Thought Cambridge University Press 40 West 20<sup>th</sup> Street, New York, NY 10011-4211, USA) p. 350. **(F-77) (2AB-18)**

<sup>3</sup> Locke, p. 350. **(F-77)**

<sup>4</sup> Bastiat, Frederick, *The Law 1801-1850* (The foundation For Economic Education) p. 2. **(A-61)**

But the most eminent and **fountain-power** of royalty remaineth in the people as in an **immortal spring**}”<sup>5</sup>

“When the competency of women to hold office in Texas is challenged, the fundamental inquiry is as to the extent of restrictions on **the people in their sovereign capacity** with respect to freedom of choice of their public servants.”<sup>6</sup>

#### 1.4. State is empowered by the “delegation of authority;”

“All political power is inherent in the people, and all free governments are founded on their **authority**, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.”<sup>7</sup>

“There is no position which depends on clearer principles, than that every act of a **delegated authority**, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. **To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master;** that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid”<sup>8</sup>

#### 1.5. Authority of the Citizen is limited;

“This will be evident to all those who consider, **that no man can confer upon others that which he has not in himself:**”<sup>9</sup>

“**Each of us has a natural right--from God--to defend his person, his liberty, and his property.** These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties?”<sup>10</sup>

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<sup>5</sup> Rutherford, Rev. Samuel, *Lex Rex 1644* (Crown Rights Book Company, P.O. Box 386 Dahlonega, Georgia 30533, 2004) Question 19, p.81-2. **(2AB-15,42) (A-34)**

<sup>6</sup> *Dickson v. Strickland*, Secretary of State, et al. (No. 4215) (Supreme Court of Texas. Oct. 15, 1924) (114 Tex. 176, 265 S.W. 1012) p. 1021. **(TAB-A12)**

<sup>7</sup> Article 1 Section 2 Texas Constitution **(2AB-16)**.

<sup>8</sup> Hamilton, Alexander, *The Federalists Papers* ed. Clinton Rossiter (Penguin Books USA Inc. 375 Hudson Street, New York, N.Y. 10014 U.S.A., 1961) No. 78, P. 467. **(2AB-37) (A-65)**

<sup>9</sup> Sidney, Chap. 2, Sec. 31, p. 304. **(2AB-19) (A-53)**

<sup>10</sup> Bastiat, p. 2. **(A-61)**

1.6. Immunity to harm belongs to no one;

"The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, Which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, **no one ought to harm another in his Life, Health, Liberty, or Possessions.**"<sup>11</sup>

1.7. State cannot obtain immunity to harm;

"If every person has the right to defend -- even by force -- his person, his liberty, and his property, then **it follows that a group of men have the right to organize and support a common force to protect these rights constantly.** Thus the principle of collective right -- its reason for existing, its lawfulness -- is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, **since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force -- for the same reason -- cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.**"<sup>12</sup>

1.8. Utmost absurdity to bar civil suit against the state (agent) for harming citizen (master);

"If the king, or such as he appoints, cannot judge him, he cannot be judged by the ways ordinarily known amongst us. If he or other by authority from him may judge, he is judge in his own case, and we fall under that which he accounts **the utmost of all absurdities:** if a remedy be found for this, he must say that the king in his own case may judge the people, but the people must not judge the king, because it is theirs; that is to say, **the servant entertained by the master may judge him, but the master must not judge the servant whom he took only for his own use.** The magistrate is bound by no oath or contract to the people that created him, but the people is bound to its own creature, the magistrate."<sup>13</sup>

**"for (monarch's) prerogative (or state's immunity) is nothing but the power of doing public good without a rule"**<sup>14</sup>

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<sup>11</sup> Locke, p. 271. (2AB-17 3.3)

<sup>12</sup> Bastiat, p. 2. (A-62)

<sup>13</sup> Sidney, p. 313. (A-56)

<sup>14</sup> Locke, p. 378. Parenthesis added, (F-86) (2AB-23 3.7.1)

1.9. The Judiciary has sole jurisdiction to determine the lawfulness of sovereign or governmental immunity under Art 16 Sec 48 and Art 2 Sec 1;

"All laws and parts of laws now in force in the State of Texas, **which are not repugnant to the Constitution of the United States, or to this Constitution**, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature."<sup>15</sup>

"England, as she **advanced in Christian civilization**, was fast to find means to rid herself of the **iniquities** which must have resulted, had some of the strict common-law rules governing marital rights and duties been rigidly applied."<sup>16</sup>

"It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to **keep the latter within the limits assigned to their authority**."<sup>17</sup> (A-65, 5.1.4.2)

1.10. The Judiciary has sole jurisdiction to hear all cases against the state brought by its citizens under **(TAB-E1-2)** Art 1 Sec 2, Art 1 Sec 13, Art 1 Sec 17, Art 1 Sec 19.

1.11. The Legislature has no authority to determine when the Judiciary has jurisdiction to hear a case brought by a citizen under Art 2 Sec 1. **(TAB-E2)**

"The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and **no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others**, except in the instances herein expressly permitted."<sup>18</sup>

1.12. Any statute or principle or common law in conflict with the Constitution is void.

"The Constitution is the supreme law of the state. It is elementary that a statute or principle of the common law in conflict with the

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<sup>15</sup> Article 16 Section 48, Texas Constitution **(TAB-H5) (TAB-E2) (2AB-30,32,35,39)**.

<sup>16</sup> Dickson v. Strickland, **(A-11) (TAB-A5) (2AB-16,17,35)**.

<sup>17</sup> Hamilton, No. 78, p 467. **(2AB-31-34,36)**

<sup>18</sup> Article 2 Section 1, Texas Constitution **(TAB-E2) (2AB-29)**.

Constitution is void. So, if there be any conflict between the common law, \* \* \*, and the Constitution, \* \* \*, it is our duty to give effect to the Constitution."<sup>19</sup>

"\* \* \*. Mr. Jefferson,<sup>20</sup> who, besides his other advantages for remarking [on] the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting *Notes on the State of Virginia*, p. 195. "**All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one.** Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. **An elective despotism was not the government we fought for;** \* \* \*"<sup>21</sup>

**1.13.** The Texas Constitution established the American method to empower government in Texas.

"Thomas Jefferson regarded John Locke and Algernon Sidney as the two leading sources for the American understanding of the principles of political liberty and the rights of humanity."<sup>22</sup><sup>23</sup>

**1.14.** Ancient monarchial common law cannot be lawfully adopted to empower government in Texas even if it was in force at the time of the ratification of the Texas Constitution under Art 16 Sec 48.

Nothing as **repugnant** as the King owning all the lives and liberties and possessions of his "subjects" where he cannot be sued in "his own courts" can be lawfully used to empower government in Texas. It certainly was not in effect at the time of the present

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<sup>19</sup> Dickson v. Strickland, Secretary of State, et al. (No. 4215) (Supreme Court of Texas. Oct. 15, 1924) p. 1021. **(2AB-35 6.5)**

<sup>20</sup> Jefferson, Thomas 3<sup>rd</sup> President of the U.S. of America.

<sup>21</sup> Madison, James *The Federalist Papers* ed. Clinton Rossiter (Penguin Books USA Inc., 375 Hudson Street, New York, New York 10014, U.S.A.) #47, p. 310-311. **(2AB-41) (F-91) (A-69)**

<sup>22</sup> "From the Minutes of the Board of Visitors, University of Virginia," March 4, 1825, in Thomas Jefferson, *Writings* (New York: Library of America, 1984) 479. **(A-46)**

<sup>23</sup> Sidney, p. xv. **(A-46)**

constitution as it was well expunged, if existing, by the Declaration of Independence and Constitution of 1836.

2. The Court of Appeals violated both TRAP 38.1 (e) and TRAP 47.1 (TAB-D1) (MRH-3) in filing a "Memorandum Opinion" that did not address Avery's *substantial* issues which attacked the State's "presumption of sovereign immunity" to harm the Citizens of Texas.

2.1. The Court of Appeals erred in their citation of eight cases that did not apply to Avery's questions on appeal.

All eight cases cited by the Court of Appeals relate to some possible waiver of one or more provisions of the TTCA or a constitutional challenge to one or more of the provisions of the TTCA. No case cited related to the challenge brought by Avery to the unlawful "presumption" of sovereign immunity at the foundation of the TTCA which renders the whole of it incurable and unconstitutional.

2.2. The Court of Appeals erred by failing to support their own Memorandum Opinion in 14 Questions asked by Petitioner in his Motion for Rehearing.

The Court of Appeals refused to address 14 questions asked by Avery in his Motion for Rehearing that would prove the State of Texas possessed "sovereign or governmental immunity" to harm its citizens without recourse to the courts of Texas **(TAB-H1-4)**.

3. The TTCA is no mere means to protect tax coffers but an unconstitutional formation and operation of an alternate repugnant government in Texas.

The Texas Constitution prescribes the required method of empowering government to act for the citizens and the limitations upon that power. The Constitution is the bedrock for this empowerment. However, since 1847 the Supreme Court has misplaced the foundation for the empowerment of government on unlawful common law quicksand.

**3.1.** The Court of Appeals did not resolve the obvious contradiction of Hosner v. DeYoung Sup. Ct., 1847 and Dickson v. Strickland Sup. Ct., 1924.

"The first reported Texas case<sup>24</sup> on point adopted governmental immunity without citation of authority."<sup>25</sup>

Upon reading Hosner v. DeYoung, **(TAB-B)**, the above quote from the Southwestern Law Journal is verified and reveals that the presumption of sovereign or governmental immunity in Texas to harm the citizen without recourse has no citation to any law whatsoever. Yet, it is the foundation for the present TTCA and the many derivative statutes and codes which deprive the Trial Court from having jurisdiction to hear a case against the State, giving rise to this appeal.

Hosner v. DeYoung, is in direct contradiction to Dickson v. Strickland. The Dickson court found the following:

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<sup>24</sup> Hosner v. DeYoung, 1 Tex. 764 (1847). **(A-12) (2AB-33, 6.2)**

<sup>25</sup> Southwestern Law Journal *The Governmental Immunity Doctrine in Texas - An Analysis and Some Proposed Changes* by Glen A. Majure, W.T. Minick and David Snodgrass (Sw L J 23:341 My'69) p. 341. **(2AB-33)**

"To approach the subject from any other viewpoint would not accord with the constitutional history of Texas. Among the first words of the state's declaration of independence, adopted March 2, 1836, is the declaration that government derives **all its legitimate powers from the people**. In the Constitution of the Republic is a statement of rights never to be violated on any pretense whatever. There we find it recorded that **"all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit."** The declaration is carried into every Constitution, appearing as section 2 of article 1 of the Constitution of 1876."<sup>26</sup>

"It would be in the power of such convention to take away or destroy individual rights, **but such an intention would never be presumed**; and to give effect to a design so unjust and unreasonable would require the support of the most direct, explicit affirmative declaration of such intent."<sup>27</sup>

"The Constitution is the supreme law of the state. It is elementary that a statute or principle of the common law in conflict with the Constitution is void. So, if there be any conflict between the common law, declaring Mrs. Ferguson ineligible, and the Constitution, declaring her eligible, **it is our plain duty to give effect to the Constitution.**"<sup>28</sup>

The Dickson decision permitted the first woman to run for governor of Texas and hold that office. The three quotes above and two others from 1.3 and 1.12 above reflect the real foundation of the empowerment of government in Texas as declared in the Constitution of Texas: The citizen is sovereign; empowers their government by "delegated authority" (not by the transfer of their property); nothing against their rights or liberties (such as the TTCA) may be "presumed," and any act (TTCA), principle (sovereign

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<sup>26</sup> Dickson v. Strickland No. 4215, 1924 (114 Tex. 176, 265 S.W. 1012) (TAB-A12) (A-10)

<sup>27</sup> Dickson v. Strickland (TAB-A12) (2AB-17)

<sup>28</sup> Dickson v. Strickland (TAB-A14) (2AB-35)

or governmental immunity), or statute (VRCS), or code (CPRC), or common law (Hosner v. DeYoung), in conflict with this, is void.

4. Petitioner has shown that "sovereign or governmental immunity" and the TTCA is patently unconstitutional and incurable in Texas, the Court of Appeals therefore, had a "plain duty" to rule accordingly.

It's not the duty of the Petitioner to prove every point of error regarding something that is patently unconstitutional, such as "sovereign or governmental immunity" in Texas. That is the sole responsibility of the Judiciary. Also, the courts must be especially vigilant today to resist the temptations to follow political agendas that presume the only protection from "global terrorism" is higher technological surveillance and more restrictions on liberty. This is a rare opportunity indeed for the judicial system to insure that future generations in Texas are safe from the more prevalent historical realities of governmental tyranny orchestrated against their own citizens. It is time for the judiciary to exercise its authority and abolish the alternate and unconstitutional system of government empowered under the TTCA and set Texas firmly on the foundation intended by the citizens.

Therefore, shall Texas rest on quicksand and continue its "state of war" (**F-96-Locke**) against the Petitioner, or, shall the constitutional purpose of the Judiciary be fulfilled?

## PRAYER

This Petition asks the Supreme Court of Texas to decide the biggest issue since the formation of the Republic of Texas. How will Texas be empowered, by the constitutional method of "limited delegated authority" to "protect the property of citizens" or by the unlawful judicially adopted common law fiction that has been soundly refuted for over 350 years which brought an end to the monarchies of Europe? There is no excuse or cause great enough to unlawfully empower Texas upon the fiction that a state can own the lives, liberties and possessions of the citizens and may harm them without recourse to 'her' courts unless waived. Hosner v. DeYoung, "sovereign or governmental immunity," and the TTCA must go!

THEREFORE, all premises considered, Ronald F. Avery asks the Supreme Court to grant this petition for review, request briefs from the parties, request the record from the Fourth Court of Appeals, set this case for oral argument, and, after argument, sustain Avery's issues presented for review, reverse the judgment of both the Trial Court and Court of Appeals and remand this case for a trial on the merits.

Further, the Petitioner prays for any other relief to which he may be entitled.

Respectfully Submitted,  
Ronald F. Avery  
Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing  
Petition For Review and Petitioner's Appendix under separate cover  
was forwarded by certified mail,  
return receipt requested # 7004 2890 0004 4558 3407, on this the  
\_\_\_\_\_ day of \_\_\_\_\_, 2005 to the following:

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