

IN THE SUPREME COURT OF TEXAS

CURADEV PHARMA PVT. LTD. AND CURADEV PHARMA LIMITED,
Petitioners,

v.

THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER, DR. XIAOCHEN
BAI, AND DR. XUEWU ZHANG,
Respondents.

On Petition for Review from the
Fifteenth Court of Appeals at Austin, Texas
No. 15-25-00004-CV

**BRIEF FOR *AMICUS CURIAE* THE CHAMBER OF COMMERCE
IN SUPPORT OF PETITIONERS**

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a strong interest in the question presented here, which is fundamental to the scope of property rights protected under the Texas Takings Clause. The Chamber has many member entities that do business in Texas, including with entities that contract with the State of Texas and thus have a direct interest in the correct interpretation of the Texas Takings Clause in the context presented here.¹

¹ Amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. See TEX. R. APP. P. 11(c).

SUMMARY OF THE ARGUMENT

For decades, Texas has cultivated a well-earned reputation as one of the nation’s premier destinations for business, technology, and innovation. That reputation did not develop by accident. It reflects a legal and regulatory environment that respects and protects private property, including the intellectual property that increasingly drives the modern economy.

But the court of appeals’ divided decision threatens to undermine that success story by adopting an unduly cramped reading of the Texas Takings Clause. Under the court’s view, if the government purports to take the plaintiff’s property under rights granted by a contract with a third party, the plaintiff has no viable takings claim. That cannot possibly be right. Even the federal Takings Clause does not foreclose takings claims in those circumstances, *see, e.g., A & D Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1156 (Fed. Cir. 2014); *Allegre Villa v. United States*, 60 Fed. Cl. 11, 19 (2004), and this Court has repeatedly recognized that the Texas Takings Clause is more protective than its federal counterpart. As Chief Justice Brister put it, “[u]nder the plain terms of the Texas Constitution’s ancient and venerable Takings Clause,” it is clear that “[i]f the government has taken, damaged, or destroyed *B’s property* for public use, it is no excuse that *A agreed* we could do it.” Pet. App. Tab 2 at 2 (internal quotation marks omitted; emphases in original).

Correcting course here is critical to maintaining the robust protection of intellectual property that has allowed innovation and investment to transform Texas into a magnet for corporate relocation. Permitting state actors to appropriate, use, and disclose valuable intellectual property developed by private industry without compensation—simply because a contract happens to exist between the government and a third party—would send exactly the wrong signal to the businesses and inventors that Texas has worked so hard to attract. This Court should reverse the judgment below on Curadev’s takings claim and remand for further proceedings.

ARGUMENT

BY INTERPRETING THE TEXAS TAKINGS CLAUSE MORE NARROWLY THAN THE FEDERAL TAKINGS CLAUSE, THE COURT OF APPEALS UNDERMINES TEXAS’S REPUTATION FOR BUSINESS AND INNOVATION

A. Texas Has Achieved Tremendous Success In The Fields Of Business, Technology, And Innovation

Over the past twenty-five years, Texas has emerged as the nation’s leading engine of economic growth. Between 2000 and 2025, the State’s gross domestic product (GDP) nearly quadrupled, rising from \$742 billion to \$2.9 trillion, and Texas climbed from the nation’s third-largest state economy to its second-largest, surpassing New York. *See Texas Captured More of America’s Economic Growth Than Any Other State Over the Last 25 Years*, NAT’L L. REV. (June 4, 2026).²

² <https://tinyurl.com/4mux42wv>.

That growth has fueled Texas's rise as the nation's premier business destination—a title that the State has wrested from California. The 2026 Fortune 500 list ranks Texas first in the nation for corporate headquarters, with 57 to California's 56. Texas's companies now generate \$2.8 trillion in annual revenue compared to California's \$2.7 trillion. *See* Kristen Altus, *California loses Fortune 500 crown to Texas as billionaire tax threat looms*, FOX BUS. (June 4, 2026).³ Since 2018, 725 companies—including Hewlett-Packard, Charles Schwab, ExxonMobil, Chevron, and SpaceX—have relocated their operations to Texas. *See id.*; Grant Halk, *Texas Leads Nation in Economic Growth*, TEX. SCORECARD (June 15, 2026).⁴ This growth shows no sign of slowing down: In the second quarter of 2025, Texas's annualized real GDP grew by 6.8 percent, far greater than California's 1.2 percent rate from the prior quarter. *See Texas vs. California Economy: Which State is Best for Business?*, TEX. ECON. DEV. CORP. (Jan. 15, 2026).⁵

Texas's success is driven by its technology and innovation sectors. Consider the metro areas of Austin and Dallas-Fort Worth.

In 2024, Austin's tech-sector GDP grew by 7.79 percent—the second-highest rate in the country, trailing only Silicon Valley—and the city has grown its tech GDP

³ <https://tinyurl.com/48hv43fd>.

⁴ <https://tinyurl.com/423shd3x>.

⁵ <https://tinyurl.com/56wpv5n6>.

faster than any other major U.S. metropolitan area since 2020. *See Austin's Tech Resilience: Built for What's Next*, OPPORTUNITY AUS. (May 21, 2025).⁶ The American Growth Project named Austin the United States' top-performing metro area in 2025. *See Austin-Round Rock-San Marcos: Government and High Tech at the State's Center*, FED. RSRV. BANK OF DALL. 17 (2025).⁷ The city is now home to major operations of Tesla, Apple, Google, Meta, Dell, and Samsung. *Id.* at 14. Austin inventors alone account for 30.8 percent of all patents awarded in Texas in 2020, and the University of Texas ranked third among domestic universities and sixth worldwide for patents awarded to higher-education institutions in 2024. *Id.* at 15.

Dallas-Fort Worth has likewise emerged as one of the nation's leading technology hubs. *See Texas on Top: Austin, Houston, and Dallas as Leading Tech Hubs*, PROSUM (May 28, 2026).⁸ Between 2022 and 2024, the Dallas-Fort Worth metroplex added approximately 47,100 tech jobs—more than any other major U.S. metropolitan area—and it now ranks third nationally in active tech job postings. *Id.*

⁶ <https://tinyurl.com/2cpzgj57>.

⁷ <https://tinyurl.com/muydjph>.

⁸ <https://tinyurl.com/ycxc8wb2>.

In short, Texas has experienced a remarkable and ongoing rise as one of the nation’s foremost centers of business, technology, and innovation. But the decision below threatens that hard-won progress.

B. The Texas Takings Clause Is More Protective Of Property Rights Than The Federal Takings Clause

“Generally, Texas constitutional standards have been considered more protective of property owners than federal standards.” *Vulcan Materials Co. v. City of Tehuacana*, 369 F.3d 882, 888 n.4 (5th Cir. 2004). The Texas Takings Clause in particular is more solicitous of private-property rights than its federal counterpart in the Fifth Amendment. As multiple Justices on this Court have correctly recognized, “the Texas Takings Clause is broader than the federal Takings Clause.” *City of Baytown v. Schrock*, 645 S.W.3d 174, 184 (Tex. 2022) (Young, J., concurring); accord *Jim Olive Photography v. Univ. of Hou. Sys.*, 624 S.W.3d 764, 780 (Tex. 2021) (Busby, J., concurring) (“[T]he Texas Takings Clause provides broader protection [than the federal Takings Clause] in certain areas.”).

The text of the respective clauses confirms that view. The Texas Takings Clause states that “[n]o person’s property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation.” TEX. CONST. art. I, § 17. The federal Takings Clause, in contrast, states that “private property [shall not] be taken for public use, without just compensation.” U.S. CONST. amend. V.

Thus, by its plain language, the Texas Takings Clause “protects against *more types of government action* than its federal counterpart, as it contains the additional verbs ‘damaged,’ ‘destroyed,’ and ‘applied’—each of which creates a claim with its own distinct scope.” *Tex. Dep’t of Transp. v. Self*, 690 S.W.3d 12, 25 (Tex. 2024) (emphasis added); *accord Commons of Lake Hou., Ltd. v. City of Houston*, 711 S.W.3d 666, 678 n.34 (Tex.), *reh’g denied* (May 30, 2025), *cert. denied sub nom. City of Houston v. Commons of Lake Hou., Ltd.*, 146 S. Ct. 299 (2025); *see also Steele v. City of Houston*, 603 S.W.2d 786, 789 (Tex. 1980) (“[T]he terms [taking, damaging, and destruction] have a scope of operation that is different.”).

The inclusion of the verbs “damaged,” “destroyed,” and “applied” in the 1876 Texas Constitution was a deliberate response to “the injustice of requiring an actual [physical] taking.” *DuPuy v. City of Waco*, 396 S.W.2d 103, 108 (Tex. 1965). Inserting “the words ‘damaged or destroyed’” into the Texas Takings Clause “afford[s] protection to the owner of property, by allowing him compensation, when by the construction of a public work his property was directly damaged or destroyed, although no part of it was actually appropriated.” *Trinity & S. Ry. Co. v. Meadows*, 11 S.W. 145, 146 (Tex. 1889).

Despite the expansive breadth of the Texas Takings Clause, the court of appeals here adopted an interpretation of the clause that, if allowed to stand, would render the clause *less* protective than the federal Takings Clause. Specifically, the

court of appeals held that there can be no taking when the State is acting under color of any contract—even one with a third party who does not own the property in question. Pet. App. Tab 1 at 9-13. Yet under the federal Takings Clause, the existence of a contract with a third party is insufficient to bar a takings claim. Instead, for a contract to preclude a takings claim, the plaintiff generally must have “entered into [a] contract[] directly with the Government,” *Allegre Villa*, 60 Fed. Cl. at 19; *see also A & D Auto Sales*, 748 F.3d at 1156 (same); the contract must have “create[d] the property right subject to a [takings] claim,” *Tamerlane, Ltd. v. United States*, 80 Fed. Cl. 724, 738, *aff’d*, 550 F.3d 1135 (Fed. Cir. 2008); and the plaintiff must be able to invoke the contractual remedies associated with the “contractual property right” alleged to have been taken, *Castle v. United States*, 301 F.3d 1328, 1342 (Fed. Cir. 2002). In contrast, when the contract at issue is between the government and a third party and when no one claims that the takings plaintiff has any rights to enforce anything under that contract—precisely the situation alleged here—the contract does not foreclose the takings claim.⁹

⁹ The Tucker Act gives the Court of Federal Claims exclusive jurisdiction over takings claims against the federal government worth more than \$10,000, 28 U.S.C. § 1491(a)(1); 28 U.S.C. § 1346(a), and the Federal Circuit has exclusive jurisdiction over appeals from the Court of Federal Claims, 28 U.S.C. § 1295(a)(3). Thus, most relevant federal takings decisions come from the Federal Circuit and Court of Federal Claims.

A & D Auto Sales drives that point home. There, the court addressed the takings claims of car dealers whose franchises were terminated in the bankruptcies of GM and Chrysler. 748 F.3d at 1147-49. The plaintiffs alleged that “these terminations constituted a taking because the government required them as a condition of its providing financial assistance to GM and Chrysler.” *Id.* at 1147. The court recognized that the contracts between the government and the auto companies GM and Chrysler “might well bar a takings claim” by *those* companies. *Id.* at 1156. But because “the government did not bargain or contract with the plaintiffs” and the plaintiffs therefore had “no ordinary commercial remedy against the government,” the contract did not categorically preclude the takings claim. *Id.*

In *Allegre Villa*, the Court of Federal Claims reached a similar conclusion. There, the court explicitly distinguished cases in which a takings claim could not proceed because the plaintiff “entered into contracts directly with the Government” that “provide[d] a remedy” for the supposed taking from those in which the takings claim could proceed because the plaintiff was “not in privity [of contract] with the Government” and had “no contract claim against the Government.” 60 Fed. Cl. at 19; *see also Mesquite Asset Recovery Grp., L.L.C. v. City of Mesquite*, 154 F.4th 313, 318 (5th Cir. 2025) (noting that takings claims are not precluded when “the plaintiff had no contractual relationship with the [government]”); *cf. Armstrong v.*

United States, 364 U.S. 40, 41-42, 48-49 (1960) (finding a taking even though the government had seized property pursuant to a contractual right with a *third* party).

Here, Curadev was not a party to Takeda's contract with Respondents; the property Curadev alleges was taken was not created by Takeda's contract; and Curadev has no right to enforce that contract. *See* Petitioner's Merits Br. 2-4. In those circumstances and under the federal Takings Clause, therefore, the contract between Takeda and Respondents would not preclude Curadev's takings claim. Despite that, the court of appeals held that the contract does preclude the Texas Takings Clause claim. And it did so without pointing to any text of the Texas Takings Clause that would warrant a less protective result. That turns Texas constitutional law upside down. As explained, under both its plain text and the judicial construction of that text, the Texas Takings Clause is more protective and more expansive than the federal Takings Clause. The court of appeals' misguided decision cannot be reconciled with that settled view.

C. This Court Must Reverse To Protect Texas's Reputation As A Leading Business And Technology Hub

The importance of protecting intellectual property rights in Texas's economy makes it critical that this Court reject the court of appeals' unduly narrow interpretation of the Texas Takings Clause. Given the complexity of licensing relationships in the area of intellectual property, that interpretation will give rise to

numerous opportunities for state actors to expropriate intellectual property painstakingly developed by private actors without paying for it.

That would be a disaster for Texas innovation. It is well established that robust protections for intellectual property promote both homegrown innovation and foreign direct investment. *See, e.g.,* Hitoshi Tanaka & Tatsuro Iwaisako, *Intellectual property rights and foreign direct investment: A welfare analysis*, 67 EUR. ECON. REV. 107-08 (2014)¹⁰; Pedro Cunha Neves et al., *The link between intellectual property rights, innovation, and growth: A meta-analysis*, 97 ECON. MODELLING 196-209 (2021)¹¹; *see also* *How Intellectual Property Rights Protect and Support Innovators*, U.S. CHAMBER OF COM. (Mar. 20, 2023).¹² That is little surprise. When Texas inventors know that their innovations will be protected as much as real estate or personal property, they will engage in the sort of risk-taking necessary to make big discoveries, and investors will feel confident in funding such ventures.

The decision below threatens that fruitful environment for innovation and economic growth. As here, innovators often enter into contractual arrangements with other parties that have separate relationships with government entities, especially public academic institutions. If individuals and businesses believe that

¹⁰ <https://tinyurl.com/bp92cmys>.

¹¹ <https://tinyurl.com/bdhvby9u>.

¹² <https://tinyurl.com/nem2re6a>.

such arrangements will expose them to expropriation of their intellectual property by government entities with no recourse, they will inevitably be more reluctant to enter into those arrangements. That would close off avenues for collaboration and information-sharing that are the lifeblood of major technological advances. *See, e.g., The Rule of Law and IP Rights Protection: Key Factors in Attracting FDI to the US*, RESEARCHFDI (July 14, 2023).¹³

Such a regime will also put Texas behind other States such as California, New York, and Florida. These three States have not adopted a similar rule and instead have consistently construed their respective takings clauses to be at least as protective as the federal clause. *See, e.g., Varjabedian v. City of Madera*, 20 Cal. 3d 285, 298 (1977) (“[T]he California Constitution[’s Takings Clause] . . . protects a somewhat broader range of property values from government destruction than does the analogous federal provision.”); *San Remo Hotel L.P. v. City & Cnty. of San Francisco*, 27 Cal. 4th 643, 664 (2002) (California Takings Clause largely construed congruently with federal Takings Clause); *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1222 (Fla. 2011), *rev’d on other grounds*, 570 U.S. 595 (2013) (similar for Florida); *DoorDash, Inc. v. City of New York*, 692 F. Supp. 3d 268, 295 (S.D.N.Y. 2023) (citing *Am. Econ. Ins. Co. v. New York*, 87 N.E.3d 126,

¹³ <https://tinyurl.com/3jerb2mc>.

139-40 (N.Y. 2017)) (similar for New York). Texas courts should not undermine the Texas Miracle through an atextual and ahistorical interpretation of the Texas Takings Clause.

In short, to ensure that Texas continues to be a place where businesses and innovators thrive, this Court should reverse the decision below.

PRAYER

For the foregoing reasons and those set forth in Curadev's petition for review and brief on the merits, this Court should reverse the judgment below on Curadev's takings claim and remand for further proceedings.

Dated: July 17, 2026

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CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 11 and 9.4(i)(2)(B), I certify that this brief contains 2,786 words, excluding the portions of the brief exempted by Rule 9.4(i)(1). I further certify that the foregoing brief complies with the typeface requirements of Rule 9.4(e), because it is a computer-generated brief produced using Microsoft Word in the font Times New Roman at size 14 for text and size 12 for footnotes.

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CERTIFICATE OF SERVICE

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