

TEXAS FFA ASSOCIATION



Ag Issues and Current Briefs

2023 Chapter Agricultural FFA Quiz LDE
2023-24 Texas FFA Officer Candidate Testing

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Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies, by Bjorn Lomborg

Climate change is real and its impacts are mostly negative, but common portrayals of devastation are unfounded. Scenarios set out under the UN Climate Panel (IPCC) show human welfare will likely increase to 450% of today's welfare over the 21st century. Climate damages will reduce this welfare increase to 434%.

Arguments for devastation typically claim that extreme weather (like droughts, floods, wildfires, and hurricanes) is already worsening because of climate change. This is mostly misleading and inconsistent with the IPCC literature. For instance, the IPCC finds no trend for global hurricane frequency and has low confidence in attribution of changes to human activity, while the US has not seen an increase in landfalling hurricanes since 1900. Global death risk from extreme weather has declined 99% over 100 years and global costs have declined 26% over the last 28 years.

Arguments for devastation typically ignore adaptation, which will reduce vulnerability dramatically. While climate research suggests that fewer but stronger future hurricanes will increase damages, this effect will be countered by richer and more resilient societies. Global cost of hurricanes will likely decline from 0.04% of GDP today to 0.02% in 2100.

Climate-economic research shows that the total cost from untreated climate change is negative but moderate, likely equivalent to a 3.6% reduction in total GDP. Climate policies also have costs that often vastly outweigh their climate benefits. The Paris Agreement, if fully implemented, will cost \$819–\$1,890 billion per year in 2030, yet will reduce emissions by just 1% of what is needed to limit average global temperature rise to 1.5°C. Each dollar spent on Paris will likely produce climate benefits worth 11¢.

Long-term impacts of climate policy can cost even more. The IPCC's two best future scenarios are the “sustainable” SSP1 and the “fossil-fuel driven” SSP5. Current climate-focused attitudes suggest we aim for the “sustainable” world, but the higher economic growth in SSP5 actually leads to much greater welfare for humanity. After adjusting for climate damages, SSP5 will on average leave grandchildren of today's poor \$48,000 better off every year. It will reduce poverty by 26 million each year until 2050, inequality will be lower, and more than 80 million premature deaths will be avoided.

Using carbon taxes, an optimal realistic climate policy can aggressively reduce emissions and reduce the global temperature increase from 4.1°C in 2100 to 3.75°C. This will cost \$18 trillion, but deliver climate benefits worth twice that. The popular 2°C target, in contrast, is unrealistic and would leave the world more than \$250 trillion worse off.

The most effective climate policy is increasing investment in green R&D to make future decarbonization much cheaper. This can deliver \$11 of climate benefits for each dollar spent.

More effective climate policies can help the world do better. The current climate discourse leads to wasteful climate policies, diverting attention and funds from more effective ways to improve the world.

Source: <https://www.sciencedirect.com/science/article/pii/S0040162520304157>

Texas ag agency says climate change threatens state's food supply, by Jayme Lozano, The Texas Tribune on Tue, Jan 3, 2023 at 1:53 pm

On the heels of a historic drought that devastated crops from the High Plains to South Texas, a new Texas Department of Agriculture report released Tuesday linked climate change with food insecurity and identified it as a potential threat to the state's food supply. The food access study, coordinated by the TDA and the

University of Texas Rio Grande Valley, notes that “climate instability” is strongly associated with soil loss, water quality, droughts, fires, floods and other environmental disasters. 2022 was one of the driest years on record for Texas, and about 49% of the state was still in drought conditions at the end of December. The drought resulted in failed crops, low yields for farmers and diminished grazing, which forced ranchers to cull their cattle and led to the highest amount of livestock sales — nearly \$2.7 million — in more than a decade.

“From the agricultural perspective, concerns were expressed regarding droughts, drying up of artisanal wells, water use restrictions, fire threats and dangerous conditions for farm workers,” the report says. Extended dry periods devastated Texas’ agricultural production, said Victor Murphy, a climate service program manager with the National Weather Service. “We’re seeing longer periods without any precipitation, then when it does come, it’s in shorter, more intense bursts,” he said. In total, Texas received a similar amount of precipitation in 2022 as in 2021, but most of that precipitation came all at once at the end of the summer.

Much of the state went through the worst of the drought conditions from June to August, during the high heat of the summer while plants are still growing. This was a sharp contrast to the torrential rainfall totals that followed. At the end of August, the Dallas-Fort Worth area was hit with a 1,000-year flood that brought 13 inches of rainfall in 18 hours.

“It is very difficult being a producer to have high and consistent yields with this kind of weather whiplash of extremes,” Murphy said. “It’s extremely difficult to prepare for a precipitation pattern that features long periods of near zero rainfall and short periods of extreme precipitation.” The report recommends several actions, including having farmers work alongside researchers and policymakers, creating more food forests that allow trees to restore soil health and improve water quality, and strengthening bonds between local farmers and businesses to boost the farm-to-school infrastructure.

Food affordability and living wages - The report, which was submitted to the Texas Legislature on Dec. 31, also points to other factors that are making it harder for Texans to access and afford food, such as wages falling behind rising costs of living and lack of access to food in rural areas. Another issue is organizations being unaware of others with similar goals; for example, the report notes that certain grocers are interested in expanding delivery services into rural markets, while several food banks have acquired trucks to do the same.

The study includes suggestions that lawmakers could consider to help more Texans have consistent food access, such as expanding online and delivery options for Supplemental Nutrition Assistance Program participants and allowing more stores to accept those benefits. Lawmakers have already filed some bills to address food insecurity during this year’s legislative session. State Rep. Shawn Thierry, D-Houston, filed House Bill 1118, which would offer tax credits to grocery stores that open in food deserts.

The report also recommends raising the minimum wage, citing the Massachusetts Institute of Technology’s living wage model, which estimates the hourly rate individuals must earn to support themselves and their families in each state. According to MIT, in a Texas household with two parents and a child, each adult needs to make \$17.44 an hour to meet their basic needs. The minimum wage in Texas is \$7.25 an hour.

According to the report, meeting the living wage draws the line between “the financial independence of the working poor and the need to seek out public assistance or suffer consistent and severe housing and food insecurity.” The report acknowledges that raising wages is an energized and politicized topic. “The important take-away here is that there are significant gaps that need to be addressed between what researchers calculate to be a living wage in Texas, the wages that Texans are actually receiving, and many of the poverty thresholds that determine eligibility for assistance programs,” the report says.

The report also highlights how many families' incomes have remained flat at the same time they're having to spend more on food, housing and utility costs. In 2021, 13.7% of Texas households faced food insecurity, the sixth-highest rate in the nation. According to a 2021 report from the Center on Budget and Policy Priorities, almost 79% of Supplemental Nutrition Assistance Program participants in Texas were families with children, and more than 27% of them are families with older and disabled adults.

Source: <https://www.sacurrent.com/news/texas-ag-agency-says-climate-change-threatens-states-food-supply-30717130>

Communities across Texas are dealing with a wide range of challenges for managing and safeguarding their water resources, by Tyler Jones and Stephen Berckenhoff

In the aftermath of Hurricane Harvey, much attention has been focused on how states across the U.S. manage water — our most precious natural resource. But even before Harvey, Texas had been grappling with the complex issues around how to best improve our water infrastructure. It's even more urgent for Texas to address these issues now because this state has one of the fastest growing populations in the U.S. While this growth brings positive opportunities for local communities and the economy, it also creates challenges when it comes to managing critical infrastructure, such as water. More people mean, we need more water to sustain the quality of life the Lone Star State is known for in cities and rural communities.

To prepare Texas for what's next, we recommend strategies that combine science and technology with innovative water management approaches so people across the state have access to safe, clean water for years to come.

1. When considering the amount of growth Texas is expected to experience over the coming years, the state's current water supply isn't enough to meet future demands. According to the Texas Water Development Board's 2017 State Water Plan, nearly nine million acre-feet — a unit of volume to measure one acre of surface water to a depth of one foot — of additional water supplies will be needed to meet the state's demand for water by 2070. There are two techniques, that are worth investing resources: a) **Brackish water desalination**. Desalination takes existing brackish water and treats it, so it's safe drink and be used again.

b) **Aquifer storage and recovery**. Aquifer storage and recovery takes water that's currently not needed and stores it in aquifers then it can be pumped to the surface and recovered as needed.

2. The negative impacts from extreme rainfalls and hurricanes cause risks to our water infrastructure, coastal areas and even our economy. How do we protect ourselves from excessive wet weather? By planning ahead - a) **Upgrade conveyance systems** — It is vital that our sewers and wastewater treatment facilities are upgraded or retrofitted before damaging storms occur.

b) **Flood control planning** - Allows us to divert excess water from swelling rivers and reservoirs to land that is able to absorb it during times of flooding. It also reduces the impact of future droughts by using the ground as a natural place to store the water. Construction of new levees, lakes, dams or retention ponds are also solutions to control flooding.

3. How do we restore our water operations after unexpected disasters? - When a disaster strikes, we're all affected. Disasters put our water infrastructure at risk that could contaminate our drinking water supplies. a) **Disaster recovery** - We must become more resilient and prevent system failures from happening in the future.

b) **Storm surges** - Storm surges push water from the sea to the shore with forceful winds. If the storm surge is strong enough, flooding will happen, especially in low lying areas along our coasts.

4. How do we get water where we need it the most? This typically involves expensive infrastructure upgrades. **a) Transmission pipelines.** Integrated long distance transmission pipelines, reallocate water by moving it from one part of the state to another. **b) Upgrades to existing water treatment plants.** Building new water infrastructure to support our growing communities' water needs is the ideal solution, but this is expensive. An alternative, and less costly, solution is to upgrade existing water treatment plants.

5. How can we recycle our water after we use it? While we may not want to drink recycled water, there are several other ways to make the most of it for other uses. **a) Water reuse.** This approach treats our wastewater and turns it into a usable resource, such as watering our crops, lawns, athletic fields and golf courses, or for industrial processes. Indirect reuse can be used to replenish wetlands with treated wastewater and reclaimed water discharged from nearby treatment plants. **b) Biosolids.** During the anaerobic digestion process of biosolids at a wastewater treatment plant, the methane gas that is produced can be captured, then burned and converted into the energy needed to power the plant. Biosolids are also safe for fertilizing crops because they do not contain pathogens.

What's the path forward? - These five water issues are not only concerns for Texas, but issues that will require resolution for communities across the U.S. For example, in California, getting water to drought-stricken areas is an ongoing challenge. And in Florida, too much water from hurricanes and sudden rain events pose flooding threats and damage to water infrastructure. These two states, like Texas, are also dealing with explosive population growth. Other parts of the country have an urgent need to upgrade and replace aging water infrastructure, especially in cities like New York and Detroit.

Source: <https://aecom.com/without-limits/article/water-in-texas-top-5-issues-we-need-to-solve-now/>

We Can't Stand Still: How U.S. Farmers and Ranchers Depend on Trade, by John G. Murphy

What are the benefits of trade and trade agreements for the United States? ... the world is charging ahead in pursuit of new market-opening trade agreements, while Washington policymakers have been sitting on the sidelines. In that context, it's worth taking a moment to assess the benefits of trade - and trade agreements - for American agriculture. American farmers and ranchers benefit tremendously from international trade. About 25% of U.S. farm products by value are exported each year, according to the American Farm Bureau Federation. Agricultural exports are expected to reach nearly \$200 billion in fiscal year 2023, according to the U.S. Department of Agriculture (USDA).

For many crops, such as wheat or almonds, more than half the U.S. harvest is sold abroad. U.S. farmers and ranchers are so productive there's no way Americans could consume this bounty alone: The Farm Bureau estimates that one American farm produces enough food to feed 166 people annually — making exports essential to the prosperity of the U.S. farm and ranch economy.

For U.S. farmers and ranchers, America's free-trade agreements (FTAs) have been a bonanza. According to a report by USDA looking at the 2003-2013 period — during which the United States entered into new FTAs with a dozen nations — exports of U.S. farm and food products to FTA partner countries increased by more than 130%.

America's most recent FTAs are front-loaded to eliminate foreign tariffs rapidly, especially in the case of key exports, and this is evident in the following results reported by USDA:

- Under the U.S.-Chile FTA, U.S. agricultural exports to Chile grew by more than 525%, increasing from less than \$145 million in 2003 to more than \$900 million in 2013.

- Under the U.S.-Peru FTA, U.S. agricultural exports to Peru grew by 230%, rising from less than \$215 million in 2005 to more than \$700 million in 2013.
- Under the U.S.-Central America-Dominican Republic FTA (CAFTA-DR), U.S. agricultural exports to Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua doubled from \$1.9 billion in 2005 to \$3.8 billion in 2013.
- Under the U.S.-Australia FTA, U.S. agricultural exports to Australia rose by nearly 240%, increasing from \$410 million in 2004 to \$1.4 billion in 2013.
- Under the North American Free Trade Agreement (NAFTA) — which maintained significant agricultural tariffs for some products until 2008, when they were phased out — U.S. exports to Canada and Mexico rose by nearly 50% between 2007 and 2013 as the benefits of this more complete market opening took hold. By 2013, U.S. agricultural exports to Mexico had quintupled since the NAFTA entered into force even as Mexican agriculture also enjoyed steady growth.

The North American success story deserves special attention. Mexico and Canada are, respectively, the second and third largest export markets for U.S. agriculture (after China, with its population of 1.4 billion). Together they purchased 29% of all U.S. agricultural exports in 2021. The United States is the source for 70% of Mexico’s agricultural imports and 58% of Canada’s.

This boom in North American exports for U.S. farmers and ranchers is due in large part to the NAFTA’s elimination of all Mexican tariffs and nearly all Canadian tariffs on agricultural products. The USMCA, which entered into force in 2020, maintained this invaluable market access. The USMCA also introduced some improvements on the NAFTA with important provisions upholding agricultural biotechnology. It also provides new access to Canada’s market for U.S. dairy, poultry, and eggs while eliminating non-tariff barriers relating to wheat and wine.

Indeed, it’s often the case in trade policy that the “devil’s in the details,” and little publicized rules and regulations can become significant barriers to the export of “made-in-the-USA” products. For agricultural exports, these barriers often involve sanitary and phytosanitary standards (SPS) — having to do with animal and plant products, respectively — and are addressed in U.S. trade agreements’ SPS chapters. These chapters require transparent, non-discriminatory rules to ensure that SPS measures don’t become disguised protectionism or stealth barriers to trade. SPS chapters like the one in the USMCA “encourage the development and adoption of science-based international standards, guidelines, and recommendations” and aim to “advance science-based decision making.”

In sum, American farmers and ranchers depend on trade. Their incredible productivity produces an impressive harvest that’s simply too large not to share — and to sell around the globe. Entering into new trade agreements to help them do so should be a top priority.

Immigrant Farmworkers and America's Food Production: 5 Things to Know

Note: On March 18, 2021, the U.S. House of Representatives passed the Farm Workforce Modernization Act (H.R. 1603), introduced by Representatives Zoe Lofgren (D-CA) and Dan Newhouse (R-WA), with strong bipartisan support. The bill would modernize the H-2A visa program and establish a pathway to legal status and citizenship for certain undocumented farmworkers.

For decades, immigrant farmworkers have helped feed America. But the agriculture industry faces a chronic labor shortage that has been exacerbated by the COVID-19 pandemic, and the conditions for and rights of farmworkers and their families must be improved. The critical importance of farmworkers, including those who are undocumented, has never been clearer. Modernizing the temporary visa program, and establishing a

pathway to citizenship for long-term undocumented agricultural workers, is urgently needed to protect farmworkers and their families and ensure the future of America's essential agriculture industry.

1) Farmworkers are essential workers - and most are immigrants - Immigrant farmworkers make up an estimated 73% of agriculture workers in the United States. Farm labor is absolutely essential work that puts food on our tables across the country, powers the economy and supports our communities, from dairy farms in Wisconsin to strawberry fields in Florida and apple orchards in Washington. All together, food and agriculture sector is a \$1.053 trillion industry.¹

Every state is involved in food production, but California, Iowa, Texas, Nebraska, and Minnesota make up more than one-third of total U.S. agricultural-output value. While some sectors like livestock production are scattered across the country, others are concentrated in certain regions, such as lettuce grown in Arizona or poultry farming in southeastern states like Georgia and Alabama.²

Agricultural work requires great skill and is relentless, exhausting, and can be extremely dangerous. All across the country, farmworkers spend extremely long hours harvesting crops in all types of weather while risking injury or illness from heavy equipment or pesticide exposure. In recent years, workers in states like California and Oregon have also faced wildfires and record heat waves, in addition to the threat of COVID-19.

Underscoring the critical importance of farmworkers, the Department of Homeland Security has deemed the food and agriculture sector as “critical infrastructure” during the pandemic. They deserve protections — not just the label “essential.”

2) Even before COVID-19 struck, America's farms faced a chronic labor shortage crisis. - The American Farm Bureau Federation estimates that, in total, U.S. agriculture needs 1.5 to 2 million hired workers each year. Farmers have been struggling to fill these positions; in 2019, 56% of California farmers reported being unable to find all the workers they needed over the last five years.

This is partly because, even when wages and benefits are increased, there are still not enough U.S. citizens applying. The current agricultural workforce is also aging, requiring younger workers to replace them. Immigrants have filled these shortfalls in the workforce for decades, but in recent years, fewer immigrants are coming to the U.S. to work in agriculture, a result of current U.S. immigration policy and rising incomes in Mexico.

The labor shortage puts American agriculture at a competitive disadvantage. American growers' inability to find dependable sources of labor is a major reason for the significant increase in the amount of fresh fruit and vegetables that are imported into the U.S, costing billions in sales and tens of thousands of jobs. Without workers, crops wither in the fields, contributing to food waste and millions of dollars in lost production. In 2020, this chronic labor shortage was further exacerbated by the COVID-19 pandemic, which forced employers to keep workers at home and restricted access to foreign-born workers that farmers had been planning to employ.

3) Legalizing the undocumented workforce is an economic and moral imperative. - Undocumented farm workers make up approximately 50% of the farm labor workforce. Without their hard work, millions of pounds of food would otherwise go unharvested. While these workers pay taxes and contribute to the economy, they are not protected by U.S. labor laws, and they live every day under the threat of arrest and family separation – all while working in extremely difficult conditions.

Despite lacking a legal immigration status, these workers and their families have lived in the United States for a long time. In general, the majority of undocumented immigrants have lived in the U.S. for more than ten years. Likewise, the average farmworker has worked for their current farm employer for seven years, and more than 80% of hired farmworkers work at a single location within 75 miles of their home.

Relying on large numbers of undocumented individuals to fuel an industry is bad policy for workers and employers alike. But forcing them to leave would be even more devastating to our food supply, and fundamentally unfair, given what they've contributed. For example, the dairy industry estimates that retail milk prices would nearly double if farmers lost their foreign-born workers. Overall, agricultural output would fall by \$30 to \$60 billion. Above all, the United States has a moral imperative to find a solution for undocumented families who have called this country home for so long, who have contributed greatly with little recognition, and who have more than earned their place in the American story.

4) The temporary H-2A visa program is important, but it is not enough. - The H-2A Temporary Agricultural Worker Program is the primary way in which immigrant workers can legally perform short-term farm labor in the U.S. U.S. farmers can sponsor workers for a temporary employment visa if sufficient numbers of domestic workers are not available.

In 2019, about 258,000 immigrant workers were granted temporary H-2A visas, up from 48,000 positions certified in 2005, but less than 4% of the total number of workers that are needed for food production. Florida, Georgia, Washington, California and North Carolina were the top five states where the most H-2A workers were employed. While the current H-2A program helps address labor shortages, more needs to be done to ensure farmworkers have access to basic rights, and protections from persistently low wages, overcrowded or unsafe housing conditions, and lack of access to health insurance.³

Additionally, farmers say utilizing the H-2A system is an expensive, slow process. On average, workers arrive to pick crops 22 days late. Farmers in year-round sectors like dairy or pork production cannot even participate because visas are only available for seasonal workers.

5) Americans would benefit enormously from a stable agricultural workforce. - The nonpartisan Congressional Budget Office (CBO) has found that providing legal status to current undocumented workers would have a net positive effect on the federal budget, increasing tax revenues. The CBO has also found that legalizing the undocumented population would boost economic output and increase employment for U.S.-born workers.

Additionally, stabilizing the workforce would help U.S. farmers stay open for business, keepings jobs available for U.S. workers and pushing back on increasing food and production costs driven by the shortages. Congress should allow undocumented farmworkers who have been present in the U.S. to adjust to a legal status. This would allow farmers to maintain their current workforce legally, while also allowing undocumented immigrants to come out of the shadows, earn a fair wage, be better protected from exploitation and abuse, and fully participate in the communities they have called home for years.⁴

Notes:

¹ As the United States Department of Agriculture (USDA) Economic Research Service explains, "Agriculture, food, and related industries contributed \$1.053 trillion to U.S. gross domestic product (GDP) in 2017, a 5.4-percent share. The output of America's farms contributed \$132.8 billion of this sum—about 1 percent of GDP. The overall contribution of the agriculture sector to GDP is larger than this because sectors related to agriculture—forestry, fishing, and related activities; food, beverages, and tobacco products; textiles, apparel,

and leather products; food and beverage stores; and food service, eating and drinking places—rely on agricultural inputs in order to contribute added value to the economy.”

² While some sectors of agriculture have turned to increased mechanization to try to address labor shortages, others cannot; for example, berries and other fresh produce be picked by hand to ensure their quality, and many dairy farmers can’t absorb the cost of switching to robotic milking machines. And because many workers eventually move on to other sectors, farmers are virtually always in need of new hires.

³ The legal status of H-2A workers is also temporary and subject to an employer's sponsorship. While the visa can be re-approved annually for up to three years, then the worker must leave the U.S. for at least three months before applying to receive a H-2A visa again. No matter how many years a worker returns, there is no path to citizenship or permanent legal status for the worker or his or their family - despite the reality that many immigrant workers have been working on the same farm for years, sometimes year-round.

⁴ With this reality in mind, farmers and farmworker advocates joined together to push for legislation to establish a legal, long-term workforce. In December 2019, the full House of Representatives passed the bipartisan Farm Workforce Modernization Act (H.R. 5038). The bill would modernize the H-2A program, require agriculture employers to authorize workers through an updated “E-Verify” process, and create a pathway to citizenship for current unauthorized agriculture workers. While H.R. 5038 marks the first time the House has approved agriculture-related immigration legislation since 1986, this model legislation has not received a vote in the Senate.

Source: <https://www.uschamber.com/international/we-cant-stand-still-how-u-s-farmers-and-ranchers-depend-on-trade>

Eminent Domain Victory for Landowners Supreme Court Victory for Texas Landowners Changes How Condemned Property Will Be Valued, by Victoria G. Myers, Progressive Farmer Senior Editor 6/6/2022

Texas landowners had an unexpected victory recently in their state Supreme Court, giving them more power in future valuation negotiations over their condemned property. Attorney Brian McLaughlin, based at Midland, Texas, closely follows the issue of condemnation, also known as eminent domain. His roles include private counselor, as well as chairman of the Texas & Southwestern Cattle Raisers Association's Property Rights and Tax Committee, and its Legal Advisory Committee. He spoke to DTN about the Texas Supreme Court's opinion in *Hlavinka v. HSC Pipeline P'ship*, released May 27, calling it "a huge victory for landowners" there.

"I'm curious to see how this will be received by those who condemn land, because it shifts the advantage away from the pipeline companies and to the landowners in these negotiations," he said of the ruling's impact.

SUPREME COURT SPEAKS - Justice Jane Bland delivered the opinion of the Texas Supreme Court on the *Hlavinka* case, which first made its way through the trial court and then through the Court of Appeals for the First District of Texas. There were several issues put before the court, but the one that has landowners encouraged today was how the court viewed valuation of a condemned property easement. Here the difference was huge between what the landowners said the easement was worth (about \$3.3 million) and what the pipeline company wanted to set the price at (just over \$23,000).

In remanding the case back to the trial court, Justice Bland wrote: "A condemnation should not be a windfall for a landowner. Nor should it be a windfall for a private condemnor. A condemnor must pay a fair price for the value of the land taken. Evidence of recent fair market sales to secure easements running across the property that precede the taking are admissible to establish the property's highest and best use, and its market value, at the time of the taking."

McLaughlin, who is familiar with the court documents in the case, explained that the Hlavinkas had negotiated for, and been paid for, two private pipelines prior to a condemnation by HSC for a pipeline easement. Those earlier negotiations were not eminent domain cases. HSC said the value paid under those third-party agreements was not admissible as evidence as to the value of the condemned easement they wanted to take, but the Supreme Court disagreed.

The Texas attorney hopes that moving forward, this ruling can help landowners who often have to deal with land brokerage companies he says are often rude, arrogant and treat them poorly where condemnations are sought.

"When a landowner is sued, they live and breathe that suit every day, moment to moment. It wears on them and it's a financial drain. And at the end, even if they win, they are not allowed to recover attorney fees, so they can be out a lot of money," McLaughlin said. He added there is a lot of inequity in the way condemnations have been handled over the years, and it's something he has seen firsthand with his own family's ranch.

"These companies come in and they leave a scar on the land," he said. "This is a personal issue to me. After they damage your land, they don't have to pay to restore it because that valuation is capped at the market value of the land. It isn't anywhere close to the cost of the damages they can do. In our case, for example, a lakebed was damaged to the point that it won't hold water anymore."

HOW HLAVINKA GOT TO THE SUPREME COURT - The Hlavinka case was first appealed on several issues. Included was whether HSC Pipeline was a "common carrier," as defined by Texas law, and whether the product their pipeline would carry, propylene, was an oil product. There was also the issue of whether HSC could prove the pipeline was for public use, and lastly whether the trial court had erred when it refused to allow Terrance Hlavinka, one of the plaintiffs, to testify as to the market value of the condemned land.

In Texas, in order to condemn property, an entity must be considered a common carrier. The Appeals Court in the Hlavinka case held HSC was a common carrier. The court also held that propylene is an oil product and a liquified mineral, and thus is a proper "common carrier product." A common carrier cannot take private property unless it is "for public use," and this bar was also met by HSC.

As for value of the land, the Appeals Court noted that compensation for land taken by eminent domain is measured by the market value of the land at the time of its taking. The court pointed out that this does not require expert testimony, but rather that a landowner can testify as to the value of the property -- as the Hlavinkas attempted to do in the trial court.

The Appeals Court said: "The object of the inquiry is always to find the fair market value of the property; an appraisal method is valid only if it produces an amount that a willing buyer would actually pay a willing seller." That price should be at the land's "highest and best use."

HSC said the highest and best use of the condemned easement was as agricultural/recreational or rural/recreational land. The Hlavinkas had, however, specifically purchased the land in 2001, for the purpose of selling pipeline easements, due to its unique location near the Texas Gulf Coast, directly between refinery and industrial centers in Texas City and the Oyster Creek and Freeport areas.

At the time of HSC's condemnation of the easement across the property, there were 25 pipelines across the acreage. In addition, Terry Hlavinka, who was not allowed to testify at the trial court, had been negotiating pipeline easements and oil and gas leases for more than 30 years at the time of trial. He planned to use the two previous sales of pipeline easements across the property as comparables, reporting a value in acres and in "rods" -- a common measurement for pipelines. A rod is a linear measure, void of width, of 16.5 feet in length.

Hlavinka's testimony would have placed the value of HSC's condemned easement at \$3.3 million. HSC, however, valued the easement at just \$23,326. It was roughly 6 acres in total size.

The Appeals Court found that Hlavinka's use of a price per rod factor in determining the easement's value was not improper and that his overall valuation testimony was relevant. The Appeals Court said, "He used comparable sales to support his opinions regarding the fair market value of the easement" and that the trial court abused its discretion by not allowing the testimony. It was on this point, and the others noted above, that the case went to the Texas Supreme Court for a final decision.

LEGISLATIVE UPDATES ON EMINENT DOMAIN - On the legislative side, five bills were approved last year in Texas that will affect eminent domain issues in the state: HB 2730, HB 4107, SB 721, SB 725 and SB 726. All five bills were signed by the governor and are now in effect. Briefly, those bills include the following (to read the bill, click on the provided link):

-- HB 2730 creates what is known as the "Landowner's Bill of Rights" in Texas. It outlines the process that all condemning authorities must follow and the landowner's rights.

-- HB 4107 provides rules for common carrier pipeline entities exercising eminent domain power, including the notice and indemnification they are required to provide the property owner.

-- SB 721 requires entities with eminent domain power to disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity that relate specifically to the owner's property and were used in determining the entity's opinion of the value.

-- SB 725 requires a condemning entity to pay any additional taxes/expenses if a subject property with an agricultural tax exemption loses that tax exemption due solely to the condemnation.

-- SB 726 requires a condemning entity to complete at least three actions (it had been two) to show "actual progress" on a condemned property.

Source: <https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2022/06/06/supreme-court-victory-texas-changes>