

IN THE SUPREME COURT OF TEXAS

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No. 12-0518
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IN RE NESTLE USA, INC., RELATOR

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ON PETITION FOR WRIT OF MANDAMUS
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JUSTICE WILLETT, joined by JUSTICE LEHRMANN, dissenting.

For the reasons explained in my separate writing in *In re Allcat Claims Service, L.P.*,¹ I believe the Court lacks exclusive original mandamus jurisdiction in taxpayers' constitutional challenges like this. In my view, the Court has stretched our mandamus jurisprudence beyond its constitutional and prudential limits. I would reaffirm those purposeful curbs on judicial power, not redefine them.

Mandamus is not a jurisdictional talisman to conjure instant Supreme Court review. As a constitutional matter, we cannot exercise original jurisdiction that the Constitution does not permit; as a statutory matter, the Tax Code disallows taxpayer suits like this; and as a prudential matter, deciding whether a statute is constitutional is simply not the stuff of mandamus.

All in all, because I believe the Court has disregarded settled doctrines to remake the mandamus remedy into something more ordinary than extraordinary, I respectfully dissent.

¹ 356 S.W.3d 455, 474–93 (Tex. 2011).

Don R. Willett
Justice

OPINION DELIVERED: October 19, 2012