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PRESS RELEASE

General Land Office and Texas Public Policy Foundation Score Major Victory Against Biden Administration

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AUSTIN — On Thursday, September 5, 2024, the Western District of Texas ruled in favor of the Texas General Land Office ("GLO"), determining the Biden Administration misapplied the law — for the second straight time—to deny the Texas Public Policy Foundation ("TPPF")'s petition to delist the golden-cheeked warbler.

The golden-cheeked warbler is a beautiful songbird that nests entirely in the state of Texas. Although the U.S. Fish and Wildlife Service (USFWS) listed the Warbler as endangered in 1990, recent scientific advances have provided evidence that there are far more Warblers and far greater Warbler habitat than initially believed. TPPF petitioned the USFWS in 2015 presenting this evidence and requesting the USFWS review the Warbler's status.

The law requires the USFWS to review the Warbler's status if the petition presents evidence that delisting "may be warranted." However, the USFWS refused to review the Petition.

Because the Warbler's continued listing devalues GLO's Permanent School Fund, GLO sued the USFWS, represented by TPPF's Center for the American Future ("CAF"). In that case, the Fifth Circuit found in 2021 that the standard the USFWS used to deny the Petition was impermissibly high, ordering them to reconsider it.

Nevertheless, the USFWS once more applied a heightened standard to deny the Petition, defying the Fifth Circuit's prior order and refusing to follow the law. So GLO, represented again by CAF, filed suit to hold the USFWS accountable for their continued improper behavior.

The district court found that the USFWS made the same error again by denying the Petition using an overly stringent standard of review, and ordered them to evaluate the Petition by determining whether review of the Warbler's status "may be warranted."

"As Texas Land Commissioner, I am thrilled that this ruling will hold the U.S Fish and Wildlife Service accountable to adhering to the Fifth Circuit's order. Federal agencies are not above the law, and this ruling reflects that," said Commissioner Buckingham. "I look forward to the thorough review of the evidence we provided, which in part shows

golden-cheeked warblers are far more prevalent in Texas than originally reported. It is my hope that their endangered status will ultimately be reconsidered, which will give property owners the ability to make decisions regarding their own land without the federal government impeding with an unjustified ESA classification."

"Nothing permitted the U.S. Fish and Wildlife Service to ignore the Fifth Circuit's order—but that is exactly what the Service did," said TPPF Senior Attorney Ted Hadzi-Antich.

"The court held the Service's feet to the fire and required it to follow the Fifth Circuit's instructions. That should send a message to all federal administrative agencies seeking to arrogate power for themselves that does not belong to them."

"The court recognized a simple truth: federal agencies must follow the law," said Connor Mighell. "Now the Service must do its job and examine our Petition's evidence, rather than inventing improper ways to dismiss it."