

CAUSE NO. 2021-DCL-05887

SAVERGV,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	CAMERON COUNTY, TEXAS
	§	Cameron County - 445th District Court
TEXAS GENERAL LAND OFFICE;	§	
GEORGE P. BUSH, IN HIS OFFICIAL	§	_____ JUDICIAL DISTRICT
CAPACITY AS THE TEXAS LAND	§	
COMMISSIONER; and	§	
CAMERON COUNTY,	§	
Defendants	§	
	§	

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiff SaveRGV (“Plaintiff” or “SaveRGV”) and files this original petition, seeking a declaration that certain sections of the Texas Open Beaches Act that allow for the closure of public beaches for space flight activities—specifically, Texas Natural Resources Code Sections 61.011(d)(11) and 61.132—violate the Texas Constitution. For support, SaveRGV respectfully offers the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Level 2 of the Texas Rules of Civil Procedure. Tex. R. Civ. P. 190.3. Plaintiff affirmatively pleads that this action is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169, because Plaintiff seeks nonmonetary relief. Tex. R. Civ. P. 47(c) & 169.

II. CASE OVERVIEW

2. The voting public and their elected representatives have long recognized Texans’

essential right to access Texas public beaches.

3. The Texas Open Beaches Act (the “Act”), Tex. Nat. Res. Code §§ 61.001-.254, was passed by the State Legislature in 1959, codifying the public’s right to free and unrestricted access to public beaches along the Gulf Coast. The Act is one of the nation’s strongest and most effective set of laws protecting public beach access.
4. In 2009, Texas voters adopted an amendment to the Texas Constitution, acknowledging that the public, “individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach.” Tex. Const. art. I, § 33(b). Further, the public’s constitutional right “is dedicated as a permanent easement in favor of the public.” *Id.* Finally, the Constitutional Amendment allowed the Texas Legislature to “enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.” *Id.* § 33(c).
5. Until recently, the Open Beaches Act was the legislative mechanism that implemented and ensured the public’s constitutional right to access Texas public beaches. *See* Tex. Nat. Res. Code § 61.011(a) (affirming that it is the public policy of the State that the public shall have unrestricted use of all state-owned beaches along the Gulf of Mexico). That is, the Open Beaches Act “guards the right of the public to use public beaches against infringement by private interests.” *Severance v. Patterson*, 370 S.W.3d 705, 719 (Tex. 2012).
6. In 2013, however, the Texas Legislature passed House Bill No. 2623, which amended the Texas Open Beaches Act to allow the closing of public beaches “for space flight

activities.” 83rd Leg., R.S., ch. 152, 2013 Tex. Gen. Laws 589 (now, Tex. Nat. Res. Code §§ 61.001(4-a), 61.011(d)(11), and 61.132).

7. Relying on these new provisions of the Texas Open Beaches Act, Defendants Cameron County, Texas General Land Office, and Texas Land Commissioner George P. Bush have allowed for the closure of Boca Chica Beach—a public beach, along the Gulf of Mexico, in Cameron County—for as many as 450 hours per year, to allow a private corporation, Space Exploration Technologies Corp. (“SpaceX”), to conduct an array of activities related to the launching of spacecraft or other launch vehicles.
8. Plaintiff SaveRGV is an organization of individuals who reside in the Rio Grande Valley and who, until recently, enjoyed regular use of Boca Chica Beach. Save RGV’s members are among those in the Boca Chica community who have been impacted by Cameron County’s frequent public beach closures and the closure of the only highway that accesses the beach, to allow SpaceX to conduct its activities.
9. SaveRGV, therefore, seeks a declaration from this Court, declaring that certain sections of the Texas Open Beaches Act—particularly, those sections that allow for public beach closures for space flight activities—are unconstitutional.
10. Save RGV further requests a declaration from this Court that GLO’s amendment to its Rule 15.32, adopted pursuant to House Bill 2623’s revisions to the Open Beaches Act, and certifying the County’s dune protection and beach access plan, is invalid.
11. Similarly, Save RGV requests a declaration from this Court that the Memorandum of Agreement between GLO and Cameron County, adopted pursuant to House Bill 2623’s revisions to the Open Beaches Act, is also invalid.

12. Finally, Save RGV requests a declaration from this Court, declaring invalid any orders by Cameron County commissioners court, authorizing the Cameron County Judge to order the closure of Boca Chica Beach and/or State Highway 4, to allow for space flight activities.

III. PARTIES

13. Plaintiff SaveRGV is a Texas non-profit corporation that advocates for environmental justice and sustainability and the health and well-being of the Rio Grande Valley community. SaveRGV also promotes the conservation and protection of wildlife habitat and the natural areas of the Rio Grande Valley, including by defending the public's right to access Boca Chica Beach.

14. Defendant Texas General Land Office ("GLO") is a government agency responsible for implementing certain provisions of Section 61.132 of the Open Beaches Act. *See, e.g.* Tex. Nat. Res. Code § 61.132(f) (authorizing the GLO to deny certain beach or access point closure requests by counties, enter into a memorandum of agreement with the commissioners court of a county to govern beach and access point closures, and adopt rules to govern beach and access point closures made under this section). In 2014, the GLO adopted an amendment to its Rule 15.32, certifying as consistent with state law the amendments to Cameron County's Dune Protection and Beach Access Plan; the approved amendments to the County's Plan allowed for closure of the public beach and associated access points. 31 Tex. Admin. Code § 15.32; 39 Tex. Reg. 2575 (2014). The GLO further entered into a Memorandum of Agreement with Cameron County regarding the closures of Boca Chica Beach, which authorized the County to

order the closure of the Beach and the only highway that provides access to the public beach. The GLO may be served with process through Commissioner George P. Bush at its principal place of business and mailing address, 1700 N. Congress Ave., Austin, Texas 78701.

15. George P. Bush is the Texas Land Commissioner (the “Commissioner”) and is charged with “strictly and vigorously enforce[ing] the prohibition against encroachments on and interferences with the public beach easement.” Tex. Nat. Res. Code § 61.011(c). The Commissioner also possesses the authority to promulgate rules, consistent with the policies established in the Open Beaches Act, related to the closure of beaches for space flight activities. *Id.* § 61.011(d)(11). The Commissioner may be served with process at his principal place of business and mailing address, 1700 N. Congress Ave., Austin, Texas 78701.
16. Cameron County possesses the authority to close the Boca Chica Beach and access to the Beach, via Section 61.132 of the Texas Natural Resources Code—one of the statutory provisions that is the subject of this declaratory judgment action. The County has used this authority on multiple occasions throughout 2019, 2020, and 2021. The County may be served with process through County Judge Eddie Trevino, Jr. at his principal place of business and mailing address, Cameron County Court House, Oscar C. Dancy Building, 1100 E. Monroe Street, Suite 218, Brownsville, Texas, 78520, under the authority of Texas Civil Practice and Remedies Code Section 17.024(a).

17. In a declaratory judgment action alleging a statute is unconstitutional, as here, the

Texas Attorney General must be served with a copy of the proceeding and is entitled to be heard. Texas Attorney General Ken Paxton may be served with process at his principal place of business and mailing address, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

IV. JURISDICTION AND VENUE

18. This Court has jurisdiction under the general jurisdictional authority provided by Article V, Section 8 of the Texas Constitution and Texas Government Code Sections 24.007 and 24.008.
19. Venue is mandatory in this Court under Section 15.015 of the Texas Civil Practice and Remedies Code.

V. FACTUAL AND LEGAL BACKGROUND

Overview of Texas Beach Access Laws

20. Texas laws and the Texas Constitution protect the right of the public to access Gulf Coast beaches. Indeed, the Texas Supreme Court has recognized that “the public has an important interest in the enjoyment of the public beaches.” *Severance v. Patterson*, 370 S.W.3d 705, 713 (Tex. 2012). And, thus, Texas has “the most comprehensive public beach access laws in the nation.” *Id.* at 733 (J. Medina, dissenting).
21. The Texas Legislature passed the Texas Open Beaches Act in 1959, ensuring public access to the shoreline along the Gulf Coast. More specifically, the Act assures that the public, individually and collectively:
- shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over

an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

Open Beaches Act, 56th Leg., 2d C.S., ch. 19, 1959 Tex. Gen. Laws 108; Tex. Nat.

Res. Code § 61.011(a).¹

22. To protect these rights, the Act prohibits local governments and individuals from impeding the public's access to the protected public beach areas: "It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach." Tex. Nat. Res. Code § 61.013(a).

23. In the event of a violation of this prohibition, the Act allows a county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the Commissioner of the GLO to enforce the Act and enjoin, remove, or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates the Act. Tex. Nat. Res. Code § 61.018(a).

¹ The original version has the same text, but the sentence structure was different. It read: "shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico in the event the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public." The Act was codified, without substantive change, in 1977 as Chapter 61 of the Natural Resources Code. 65th Leg., R.S., ch. 871, 1977 Tex. Gen. Laws. 267.

24. Subchapter D of the Act is titled, “County Regulation of Public Use of Beaches,” and authorizes the commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits to regulate certain enumerated activities, such as motor-vehicle traffic on beaches, the possession of animals and glass containers on the beach, and swimming. *Id.* § 61.122(a)-(d). All traffic regulations must be consistent with the policies of Section 61.011 (granting the public free and unrestricted right of access to public beaches). *Id.* §§ 61.122(e), 61.022(b).

25. Finally, relevant to this case, the Open Beaches Act instructs that “each county that contains any area of public beach within its boundaries shall adopt a plan for preserving and enhancing access and use of public beaches.” Tex. Nat. Res. Code § 61.015(a). These “beach access and use plans” must be consistent with the policy statement in Section 61.011 (granting the public free and unrestricted right of access to public beaches) and Chapter 63 of the Natural Resources Code (relating to the protection of dunes) and must be submitted to the Commissioner of the GLO for certification as to compliance with state law. *Id.* § 61.015(b).

26. In 2009, Texas voters voted, overwhelmingly,² to amend the Texas Constitution to guarantee public beach access in the Texas Bill of Rights. Tex. Const. art. I, § 33.³

² Out of more than 1 million votes cast, 76.92% were in favor of adding Open Beaches protection to the Texas Constitution. Legislative Reference Library of Texas, HJR 102, 81st R.S., <https://lrl.texas.gov/legis/billsearch/amendmentdetails.cfm?legSession=81-0&billtypeDetail=HJR&billNumberDetail=102&billSuffixDetail=&amendmentID=647>.

³ Texas State Representative Richard Raymond, who wrote the bill that became the ballot measure, explained:

27. This constitutional amendment provides: “The public, individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.” Tex. Const. art. I, § 33(b).
28. Significantly, the constitutional amendment allows the Legislature to “enact laws to *protect* the right of the public to access and use a public beach and to *protect* the public beach easement from interference and encroachments.” Tex. Const. art. I, § 33(c) (emphasis added).
29. Both the Open Beaches Act and the constitutional provision guaranteeing the public’s right to use and access Texas public beaches reiterate and codify well-established rights; they do not create new rights. Texas residents have, since time immemorial, enjoyed free and unrestricted access to the Gulf Coast beaches, and the Open Beaches Act and the constitutional amendment are intended to acknowledge and protect the public’s free and unrestricted access to those public beaches.
30. The Act and the constitutional amendment define public beaches by recognizing two criteria: physical location and right of use. *Severance*, 370 S.W.3d at 714.
31. “Wet beaches,” or those areas from the mean low tide to mean high tide, are all

Someday, if some big corporation wanted to get a piece of South Padre Island, or Galveston Island, or Mustang Island, that the way the law stood, they could try to go lobby the legislature. So I thought, if we take this law, and put it into the Constitution, it would take two thirds of the legislature to approve it, and it would have to be put before the voters, and they would have to approve it.

Melissa Galvez, *A Constitutional Right to the Beach?: Prop 9*, Houston Public Media (October 20, 2009), <https://www.houstonpublicmedia.org/articles/news/news/2009/10/20/17580/a-constitutional-right-to-the-beach-prop-9/>.

owned by the State, and so the public always has the right to use those beaches. *Id.*

32. “Dry beaches,” or the area from mean high tide to the vegetation line, are sometimes privately owned. If a dry beach is privately owned, then, it may nevertheless fall within the definition of a “public beach” if the State establishes a right to public use—a public easement. *Id.* at 715.

33. “Public beach,” for purposes of the Act and the constitutional amendment, thus, includes wet beaches, State-owned dry beaches, and private property on dry beaches where a public easement has been established. *Id.*

House Bill 2623

34. In May 2013, the State Legislature passed House Bill 2623, titled, “An Act relating to the authority of certain counties and the General Land Office to temporarily close a beach or beach access point.” 83rd Leg., R.S., ch. 152, 2013 Tex. Gen. Laws 589 (now codified at Tex. Nat. Res. Code §§ 61.001(4-a), 61.011(d), & 61.132).

35. The key provisions of House Bill 2623 are found in the newly created Section 61.132, “Closing of Beaches for Space Flight Activities.” Tex. Nat. Res. Code § 61.132.

36. Section 61.132 is limited in its application. It applies only to “a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration.” *Id.* § 61.132(a).

37. For those areas that fall within the description in Section 61.132(a), the county commissioners court may close a beach or access points to the beach to allow for

launching of a vehicle or spacecraft. *Id.* § 61.132(c); *see also* Tex. Civ. Prac. & Rem. Code § 100A.001 (defining “launch,” “launch vehicle,” “spacecraft,” “space flight activities,” & other relevant terms).

38. If the commissioners court orders the closure of a beach or access to the beach to allow for a launch, the commissioners court must comply with the county’s beach access and use plan, adopted and certified by the GLO under Section 61.015 of the Open Beaches Act. Tex. Nat. Res. Code § 61.132(e). And it must comply with the dune protection plan, adopted and certified under Chapter 63 of the Natural Resources Code. *Id.*
39. Also relevant to this case, the statute allows the GLO to enter into a memorandum of agreement with the commissioners court of a county to which the statute applies to govern beach and access point closures. *Id.* § 61.132(f)(2).
40. Pursuant to mechanisms provided for in House Bill 2623, Cameron County has been closing Boca Chica Beach and State Highway 4 to allow SpaceX, a private corporation, to conduct tests, rocket launches, and other space flight activities near the Beach.

Boca Chica Beach Closures

41. Boca Chica Beach is a roughly 8-mile stretch of sandy, undeveloped, public beach, located in Cameron County, about 20 miles east of Brownsville. It lies between the Rio Grande delta and the lower Laguna Madre. The Beach provides the public free use and enjoyment of an undeveloped, pristine, secluded sanctuary along the Gulf Coast.

42. The Beach is a part of the Lower Rio Grande Valley National Wildlife Refuge, and is thus protected by both state and federal authorities. The Refuge provides the public with a number of free wildlife-dependent recreation, such as fishing, wildlife observation, photography, environmental education and interpretation. It falls within the Open Beaches Act's definition of a public beach, Tex. Nat. Res. Code § 61.001(8), and within the definition of "public beach" found in Article I, Section 33 of the Texas Constitution. Tex. Const. art. I, § 33(a).
43. Boca Chica Beach is accessed by Texas State Highway 4—also known as the Boca Chica Highway—which runs east-west, terminating at the Gulf. This is the only road that reaches Boca Chica Beach.
44. In August 2013, the Cameron County commissioners court amended its Dune Protection and Beach Access Plan to provide for the closure of Boca Chica Beach and access points on a primary or backup launch date. The closures are subject to GLO approval only if they occur on certain summer weekends and holidays.
45. The amended plan was incorporated into GLO's regulations after GLO certified the plan as consistent with state law. 39 Tex. Reg. 2575 (2014) (explaining that the updated plan enables the County to foster development of a launch site); 31 Tex. Admin. Code § 15.32(d).
46. Also in 2013, Cameron County and the GLO entered a Memorandum of Agreement ("MOA") pursuant to Section 61.132(f)(2) of the Natural Resources Code, the terms of which allow the temporary closure of Boca Chica Beach and its access points for space flight activities.

47. In May 2014, the Federal Aviation Administration (“FAA”) published a final environmental impact statement (“EIS”), and in July 2014, it published its record of decision (“ROD”), approving permits that authorize SpaceX to conduct operations and launches of various launch vehicles, including its “Falcon rockets” on privately-owned property near Boca Chica Beach.⁴ Cf. Tex. Nat. Res. Code § 61.132(a).
48. The FAA’s ROD contemplated that SpaceX would close the Boca Chica Beach for up to 180 hours per year for purposes of its launching activities. The MOA includes no limit on the number of hours per year that the Beach may be closed.
49. Notably, the law Cameron County and the GLO were already implementing in 2013 and 2014, when they entered into their MOA and amended the Dune Protection and Beach Access Plan, states: “This section applies only to a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration.” Tex. Nat. Res. Code § 61.132(a). The adoption of the Memorandum of Agreement between the Cameron County Commissioners Court and the GLO, Cameron County’s amendments to its Beach Access and Dune Protection Plan, and the GLO’s certification of those amendments, all took place before the FAA’s record of decision and were thus premature, under Section 61.132

⁴ SpaceX since changed plans and decided to conduct “Starship” test operations and orbital launches at this site. See *History of the SpaceX Starship Super Heavy Project*, Federal Aviation Administration (last modified Nov. 20, 2020 at 12:29 PM), https://www.faa.gov/space/stakeholder_engagement/spacex_starship/history/.

of the Natural Resources Code.⁵

50. In March 2019, the Cameron County Commissioners Court authorized the Cameron County Judge to execute any and all necessary or appropriate notices or orders of temporary closures of State Highway 4 and/or the beach at Boca Chica Beach in connection with space flight activities.

51. In 2019, Cameron County began closing Boca Chica Beach and the State Highway 4 access point to the Beach for SpaceX activities. This was accomplished via Orders by the County Judge.

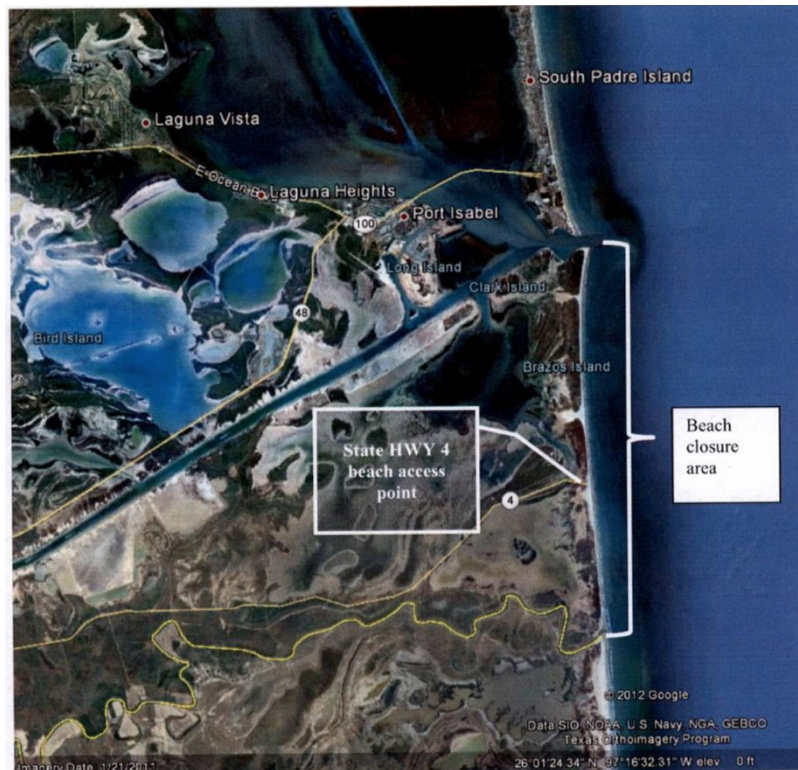


Figure 1
Aerial image depicting the State Highway 4 beach access point and the corresponding stretch of beach closed for each SpaceX-related closure.

⁵ The MOA was adopted in September 2013. Cameron County adopted its amendments to its beach access and dune protection plan on August 15, 2013. And the GLO certified the amendments to the County's plan and incorporated the amended plan into its rules on April 9, 2014.

52. According to the MOA, beach closure requests from an applicant such as SpaceX are considered timely if submitted to the County, with a copy to the GLO, at least 14 days before the earliest proposed closure date. The requisite notice, however, was almost never provided before the County ordered closure of the Beach and/or Highway 4. Sometimes, notice was provided to the public mere hours before Boca Chica Beach was closed. According to an internal tracking document maintained by GLO, in July 2021, most notices were sent to GLO less than one day before the announced closure date.
53. An example of a typical beach closure illustrates how the County arbitrarily authorizes the denial of public access to Boca Chica Beach. On March 8, the Cameron County Judge issued a notice and order, announcing Boca Chica Beach would be closed on March 9 from 12:00 p.m. until 8:00 p.m., with “alternate” dates of March 10 and/or March 11.⁶
54. The County issued another notice and order that same day, announcing the closure of the beach on March 10, with March 11 and/or March 12 as “alternate” dates.
55. Ultimately, the Beach was closed on March 9, 10, and 11. According to local residents, on March 11, the Cameron County sheriff closed the Beach at about 11:00 a.m., and the Beach was not re-opened until about 9:00 p.m. that evening, exceeding the 12:00 p.m. until 8:00 p.m. time span announced in the County Judge’s notice.
56. This scenario is a typical one, since the County began closing the Beach or access to

⁶ Cameron County posts its beach closure orders online at <https://www.cameroncounty.us/announcements-press-releases/>.

the Beach, for purposes of SpaceX's space flight activities.⁷

57. There is no official record keeping track of the number of hours the County has closed the Beach and/or Highway 4 since the County began allowing the closures. In fact, there have been reports by residents that sometimes SpaceX closes the Beach on its own, without the County's official approval, or otherwise changes its plans at the last minute and exceeds the announced closure times.

58. A conservative estimate of the number of hours that Boca Chica Beach was closed or inaccessible in 2021, thus far, based on the notices of closure provided by the County is over 500, with a beach or access point closure occurring on over 100 separate days.⁸

59. The federal U.S. Fish and Wildlife Service has calculated that State Highway 4 has been closed for more than 1000 hours in both 2019 and 2020, or about 42 days total per year, and is on a similar pace this year. Further, the closures often occur during peak recreational hours, denying the public access to the Beach for recreational purposes.

Impacts to Plaintiff

60. Several of SaveRGV's members reside, recreate, use, and otherwise regularly access

⁷ The lack of adequate notice of closures has led one local non-profit organization engaged in scientific research on the Texas Coast to attempt to track beach closures so they can try to find some pattern to the closures so as to identify any time they may make a trip to Boca Chica without wasting their time. *See SpaceX Launch Site Brings Controversy to Texas Town*, 60 Minutes Overtime (Aug. 17, 2021), <https://www.cbsnews.com/news/spacex-launch-site-boca-chica-texas-60-minutes-plus/>.

⁸ The Coastal Bend Bays and Estuaries Program tracked all County notices of Beach and/or State Highway 4 closures between January 2021 and August 2021, and calculated the number of closure hours to be 473 for this span of time.

Boca Chica Beach. These members have all been impacted by the frequent closure of the Beach and of the State Highway that provides the only access to the Beach.

61. For instance, one member of SaveRGV has worked tirelessly on behalf of the organization to advocate, protect, preserve, and conserve native habitat and wildlife, accessibility to parks and native landscapes, and general environmental quality of the Rio Grande Valley, including but not limited to areas at the Laguna Atascosa National Wildlife Refuge, the Lower Rio Grande Valley National Wildlife Refuge, and Boca Chica Beach. The frequent Beach closures and State Highway 4 closures have resulted in limiting his ability to continue his conservation and preservation work at the Beach and surrounding area.
62. Another member owned a home in Boca Chica Beach Village, having purchased it in 2005. Her home was just over one mile from Boca Chica Beach. When the Beach closures began in earnest, it impacted her ability to use and enjoy her home, and it impacted her ability to use and enjoy the Beach. The impacts to her livelihood and her quality of life, caused by the frequent Beach closures, led her to sell her property and move elsewhere.
63. Another member visits—or rather, used to visit—the Beach approximately once every month. As a member and former president of the Frontera Audubon Society, he visited the Beach, in part, to see birds. Boca Chica is one of the best places to see a number of wading birds and shore birds, including 3 species of plovers, black skimmers, red knots, and brown pelicans.
64. This same member of SaveRGV also regularly visited Boca Chica to observe the

native plants in the area; the only known stand of red mangrove in Texas is on Boca Chica, at the mouth of the Rio Grande, and this member frequently guides visitors to observe this mangrove stand.

65. He is also a frequent visitor of the Lower Rio Grande Valley National Wildlife Refuge and is the current president of the Friends group for the Refuge, which includes most of Boca Chica. And sometimes he visits Boca Chica Beach simply to enjoy its primitiveness and tranquility, look for shells, and any evidence of nesting sea turtles. Boca Chica is a nesting beach for the endangered Kemps Ridley turtle.
66. SaveRGV members have almost entirely stopped visiting Boca Chica Beach because it is closed so often, and it is impossible to accurately predict when it will be closed.⁹
67. These and other members of SaveRGV have been impacted by the frequent closures of the Beach and of the only road that provides access to the Beach.
68. Boca Chica Beach is one of the few, undeveloped, free public beaches in the area, and the frequent denial of access to this Beach has impacted SaveRGV's members' ability to use and enjoy this unique public beach. These members have come to rely on their guaranteed right to access and use the Beach, and they have structured their activities and even their livelihoods in a manner that allows them to use and enjoy the Beach frequently and regularly.
69. On several occasions, members of SaveRGV have attempted to visit the Beach, only

⁹ SaveRGV is not a membership organization, but is led, guided, and funded by persons who also recreate in, reside near, and otherwise regularly use the Boca Chica Beach, and SaveRGV has standing to sue on their behalf.

to be turned away by local law enforcement enforcing the County's closure of the Beach or of State Highway 4. The frequent Beach and State Highway closures have had an adverse impact on the activities and the livelihoods of SaveRGV's members, who rely on their right to freely access Boca Chica Beach.

70. In other words, the changes to the Open Beaches Act that were effected by House Bill 2623 have resulted in the denial of SaveRGV members' access to Boca Chica Beach, a public beach, in direct contravention of the constitutional amendment, overwhelmingly approved by Texas voters, guaranteeing the right to use and access public beaches.

VI. REQUEST FOR DECLARATORY RELIEF

First Claim: Section 61.132 of the Texas Natural Resources Code is unconstitutional, on its face, because it violates the public's constitutional right to use and access public beaches.

71. Plaintiff SaveRGV repeats and incorporates by reference herein the allegations of paragraphs 1 through 70 of this Petition as if fully set forth herein.

72. Section 61.132 of the Natural Resources Code is titled "Closing of Beaches for Space Flight Activities."

73. This section authorizes the commissioners court of a county¹⁰ to temporarily close a public beach or access points to the public beach in the county for space flight activities. Tex. Nat. Res. Code § 61.132(c). The county must obtain prior approval

¹⁰ Section 61.132 specifies that Section 61.132 only applies to counties "bordering on the Gulf of Mexico or its tidewater limits that contain[] a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration."

from the GLO to close a public beach on certain summer weekends and holidays, as provided in subsection (d) of the statute. *Id.* § 61.132(d).

74. Article I, Section 33, of the Texas Constitution acknowledges the public’s unrestricted right to use and a right of ingress to and egress from a public beach. This right is dedicated as a permanent easement in favor of the public.

75. Section 61.132, authorizing a county to close a public beach for space flight activities, is in direct conflict with the Texas Constitution’s guarantee that the public shall have the *unrestricted* right to use and access a public beach.

76. Further, while the Texas Constitution acknowledges that the Legislature may enact laws related to public beach access, those laws should “protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.” Tex. Const. art. I, § 33(c).

77. A law, such as Section 61.132, allowing the routine closure of a public beach and of the only road that provides access to the public beach is in direct contravention of “protect[ing] the right of the public to access and use a public beach.” Rather than protecting public beach access, this law plainly interferes with, encroaches on, and impedes public beach access.

78. Section 61.132’s beach closure provisions interfere with the public access easement because the public cannot access the beach if it is closed “for space flight activities.”

79. Accordingly, SaveRGV requests declaratory judgment that Section 61.132 of the Texas Natural Resources Code is unconstitutional because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an

unrestricted right to use and access Texas public beaches.

Claim 2: Sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code are unconstitutional, as applied, because Boca Chica Beach is a public beach, and the public has a constitutionally guaranteed right to access the Beach.

80. Currently, Section 61.132 of the Open Beaches Act is being applied in such a manner as to deny the public access to Boca Chica Beach.

81. Boca Chica Beach is a “public beach,” as defined by the Open Beaches Act and by Article I, Section 33 of the Texas Constitution.

82. Section 33 guarantees the public’s right to access a public beach. Therefore, the closure of Boca Chica Beach and the only access road thereto, under the authority of Section 61.132 of the Open Beaches Act, violates the Texas Constitution.

83. The GLO has applied Section 61.011(d)(11) by certifying and adopting, via its rules, Cameron County’s amended Beach Access and Dune Protection Plan, which allows unlimited beach closures. The GLO’s adoption of the County’s amended Plan, as authorized by Section 61.011(d)(11) of the Open Beaches Act, violates the Texas Constitution and the guarantee of the public’s right to access public beaches.

84. Accordingly, SaveRGV requests declaratory judgment that Sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code, as applied to Boca Chica Beach, violate Article I, Section 33 of the Texas Constitution.

85. Similarly, SaveRGV requests declaratory judgment that the GLO’s amendment to its Rule 15.32, adopted pursuant to House Bill 2623’s revisions to the Open Beaches Act, and certifying the County’s dune protection and beach access plan, is invalid and violates the Texas Constitution, as applied.

86. SaveRGV also requests declaratory judgment that the Memorandum of Agreement between GLO and Cameron County, adopted pursuant to House Bill 2623's revisions to the Open Beaches Act, is invalid and violates the Texas Constitution.

87. Finally, SaveRGV requests a declaration from this Court, declaring invalid the Cameron County commissioners court order, authorizing the Cameron County Judge to order the closure of Boca Chica Beach and/or State Highway 4, to allow for space flight activities, as it violates the Texas Constitution.

Claim 3: Section 61.011(d)(11) of the Texas Natural Resources Code is unconstitutional on its face.

88. Section 61.011(d)(11) of the Natural Resources Code provides as follows: "The [GLO] commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only . . . the closure of beaches for space flight activities." Tex. Nat. Res. Code § 61.011(d).

89. Authorizing the closure of public beaches for space flight activities, via promulgation of state agency rules, violates the guarantee of public beach access in Article I, Section 33 of the Texas Constitution.

90. Accordingly, SaveRGV requests declaratory judgment that Section 61.011(d)(11), allowing for closure of public beaches via promulgation of state agency rules, is unconstitutional because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an unrestricted right to use and access Texas public beaches.

VIII. REQUEST FOR ATTORNEY'S FEES

91. Plaintiff SaveRGV requests recovery of its attorney's fees and costs that it incurs in pursuit of the declaratory relief it seeks here, as authorized by Section 37.009 of the Civil Practice and Remedies Code.

IX. PRAYER

92. Plaintiff SaveRGV prays this Court render judgment:

- a. declaring Section 61.132 of the Texas Natural Resources Code unconstitutional because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an unrestricted right to use and access Texas public beaches;
- b. declaring Sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code, as applied to Boca Chica Beach, unconstitutional because they violate Article I, Section 33 of the Texas Constitution;
- c. declaring Section 61.011(d)(11) of the Texas Natural Resources Code, allowing for closure of public beaches via promulgation of state agency rules, is unconstitutional because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution, which guarantees the public an unrestricted right to use and access Texas public beaches;
- d. declaring the GLO's amendment to its Rule 15.32, certifying the County's dune protection and beach access plan, invalid because it violates the Texas Constitution;
- e. declaring the Memorandum of Agreement between GLO and Cameron County, adopted pursuant to House Bill 2623's revisions to the Open Beaches Act, invalid

because it violates the Texas Constitution;

- f. declaring invalid the Cameron County commissioners court order, authorizing the Cameron County Judge to order the closure of Boca Chica Beach and/or State Highway 4, to allow for space flight activities, because it violates the Texas Constitution;
- g. awarding SaveRGV its costs and attorneys' fees; and
- h. granting SaveRGV such other relief, including supplemental and injunctive relief, to which it may show itself entitled.

Respectfully submitted,

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