NO. 13-22-00358-CV
NO. 13-22-00359-CV
NO. 13-22-00360-CV

IN THE COURT OF APPEALS
FOR THE THIRTEENTH JUDICIAL DISTRICT
CORPUS CHRISTI & EDINBURG, TEXAS

NO. 13-22-00358-CV

SAVERGV, SIERRA CLUB, and
CARRIZO/COMECRUDO NATION OF TEXAS, INC.,
Appellants

v.

TEXAS GENERAL LAND OFFICE & DAWN BUCKINGHAM, IN HER OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER,
Appellees.

NO. 13-22-00359-CV

SAVERGV, SIERRA CLUB, and
CARRIZO/COMECRUDO NATION OF TEXAS, INC.,
Appellants

v.

CAMERON COUNTY,
Appellee.

NO. 13-22-00360-CV

SAVERGV, SIERRA CLUB, and
CARRIZO/COMECRUDO NATION OF TEXAS, INC.,
Appellants

v.

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF TEXAS,
Appellee.

On Appeal from the 445th Judicial District Court
Cameron County, Texas
Cause No. 2021-DCL-05887

APPELLANTS' INITIAL BRIEF

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Oral Argument Requested

Identity of Parties and Counsel

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Appellee	Cameron County
Trial & Appellate Counsel	James P. Allison State Bar No. 01090000 j.allison@allison-bass.com John Redington

[1] The lawsuit was filed against George P. Bush, in his official capacity as the Texas Land Commissioner. Commissioner Bush, however, no longer serves as Texas Land Commissioner. The new Texas Land Commissioner is Dawn Buckingham.

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Cases

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Record References and Shorthand References

Three clerk's records were filed in this matter—one for each of the three appellate cases. The contents of the clerk's records are identical, but the page numbers vary slightly; the clerk's record for case number 13-22-00358-CV includes one extra page. For purposes of this brief, all citations to the clerk's record will be to the clerk's record for case number: 13-22-00358-CV.

Throughout this brief, Appellants will be referred to, collectively, as "SaveRGV" unless the context requires otherwise. The Appellees from each of the three appellate cases will be referred to, collectively, as "Appellees," unless the context requires that they be distinguished.

"GLO" refers to the General Land Office and the Texas Land Commissioner.

"County" refers to Cameron County.

"AG" refers to Attorney General Ken Paxton.

Statement of the Case

Nature of the Case:	Constitutional challenge of certain statutes, under Uniform Declaratory Judgment Act, against state and local governmental entities.
Trial Court:	445th Judicial District Court of Cameron County, Honorable Gloria M. Rincones.
Course of Proceedings:	Appellants sought declaratory relief against Appellees regarding the constitutionality of certain statutes. C.R. 88, 134. Appellees filed pleas to the jurisdiction, seeking dismissal of Appellants' claims on various grounds. C.R. 145, 298, 497.
Trial Court Disposition:	The trial court signed three separate Orders, granting each of Appellees' pleas to the jurisdiction and dismissing all of Appellants' claims against all Appellees. C.R. 522, 527, 531 (App. 1, 2, & 3).

Statement Regarding Oral Argument

While this appeal presents legal issues that are familiar to the Court, oral argument would aid the Court by allowing the parties' counsel to explain and address any questions regarding the constitutional provisions and statutes at issue, here.

Issues Presented

1. Does sovereign immunity deprive a trial court of jurisdiction to resolve a lawsuit challenging the constitutionality of certain statutes and seeking declaratory relief?

   Relatedly, do governmental entities enjoy sovereign immunity from lawsuits seeking only declaratory relief—not monetary damages—regarding the constitutionality of certain statutes?

2. The Texas Constitution's Bill of Rights guarantees the public, individually and collectively, the unrestricted right to use and access public beaches. Tex. Const. art. I, § 33.

   Do residents who regularly recreate, conduct research, and engage in cultural and spiritual activities at their local public beach have standing to challenge certain statutes that authorize regular closures of the public beach and its access road for space flight activities?

3. Does a district court possess the requisite subject matter jurisdiction to resolve a dispute concerning the constitutionality of certain statutes and to issue judicial declarations regarding the validity of those statutes under the Declaratory Judgment Act?

Statement of Facts[2]

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). Until somewhat recently, the Texas Open Beaches Act (the "Act"), Tex. Nat. Res. Code §§ 61.001-.254, 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).

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), & 61.132). Relying on these new provisions of the Texas Open Beaches Act, Appellees Cameron County, Texas General Land Office ("GLO"), and Texas Land Commissioner George P. Bush have

[2] Many of the facts described herein are taken from Appellants' pleadings in the trial court. Because this case presents an appeal of the trial court's Orders granting Appellees' pleas to the jurisdiction and dismissing all of Appellants' claims, the relevant standard of review requires the reviewing court to accept the allegations in Appellants' pleadings as true to determine if sufficient facts were alleged to demonstrate the trial court's jurisdiction to hear the case. *Heckman v. Williamson County*, 369 S.W.3d 137, 149 (Tex. 2012).

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.

Appellants—organizations consisting of members who regularly access Boca Chica Beach—sought to have certain provisions of the Open Beaches Act declared invalid because they violate the Texas Constitution's guarantee to the public of the "unrestricted right to use and a right of ingress to and egress from a public beach." Tex. Const. art. I, § 33(b). They, therefore, filed a lawsuit, seeking declaratory relief.

I. Texas Legislature enacts the Open Beaches Act—one of the nation's strongest and most effective set of laws protecting public beach access.

The voting public and their elected representatives have long recognized Texans' essential right to access Texas public beaches. The Texas Legislature passed the Texas Open Beaches Act, Tex. Nat. Res. Code §§ 61.001-.254, in 1959 to ensure the public's right to free and unrestricted 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). In short, 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).

To protect these rights, the Act prohibits persons from impeding the public's access to the protected public beach areas. Tex. Nat. Res. Code § 61.013(a). In the event of a violation of this prohibition, the Act allows a county attorney, district attorney, or the attorney general at the request of the GLO Commissioner to enforce the Act and to prohibit any unlawful restraint on the public's right of access to and use of a public beach. Tex. Nat. Res. Code § 61.018(a).

The Act has been recognized as one of the nation's strongest and most effective set of laws protecting public beach access. *See Severance,* 370 S.W.3d at 733 (J. Medina, dissenting) (Texas has "the most comprehensive public beach access laws in the nation.").

II. Texas voters approve an amendment to the Texas Constitution to add public beach access to the Texas Bill of Rights.

In 2009, Texas voters voted, overwhelmingly,[3] to amend the Texas Constitution to guarantee public beach access. Tex. Const. art. I, § 33. This constitutional amendment provides, in relevant part, as follows: "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). The public's constitutional right "is dedicated as a permanent easement in favor of the public." *Id*.

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). And because the constitutional amendment is part of Texans' Bill of Rights, it acts as a limit on the general powers of State government. Tex. Const. art. I, § 29.[4]

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[3] 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.

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

> 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.

III. Texas Legislature enacts law allowing interference with the public's right to access and use a public beach.

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) (hereinafter, referred to as the "beach closure provisions"). Among the key provisions of House Bill 2623 is Section 61.132, "Closing of Beaches for Space Flight Activities." Tex. Nat. Res. Code § 61.132.

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). At present, only one location fits this narrow description: Cameron County, which includes the SpaceX launch site, located near Boca Chica public beach.

For those areas that fall within the description in Section 61.132(a)—*i.e.,* Cameron County—the county commissioners court may close a beach or access

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

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). 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*. 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).

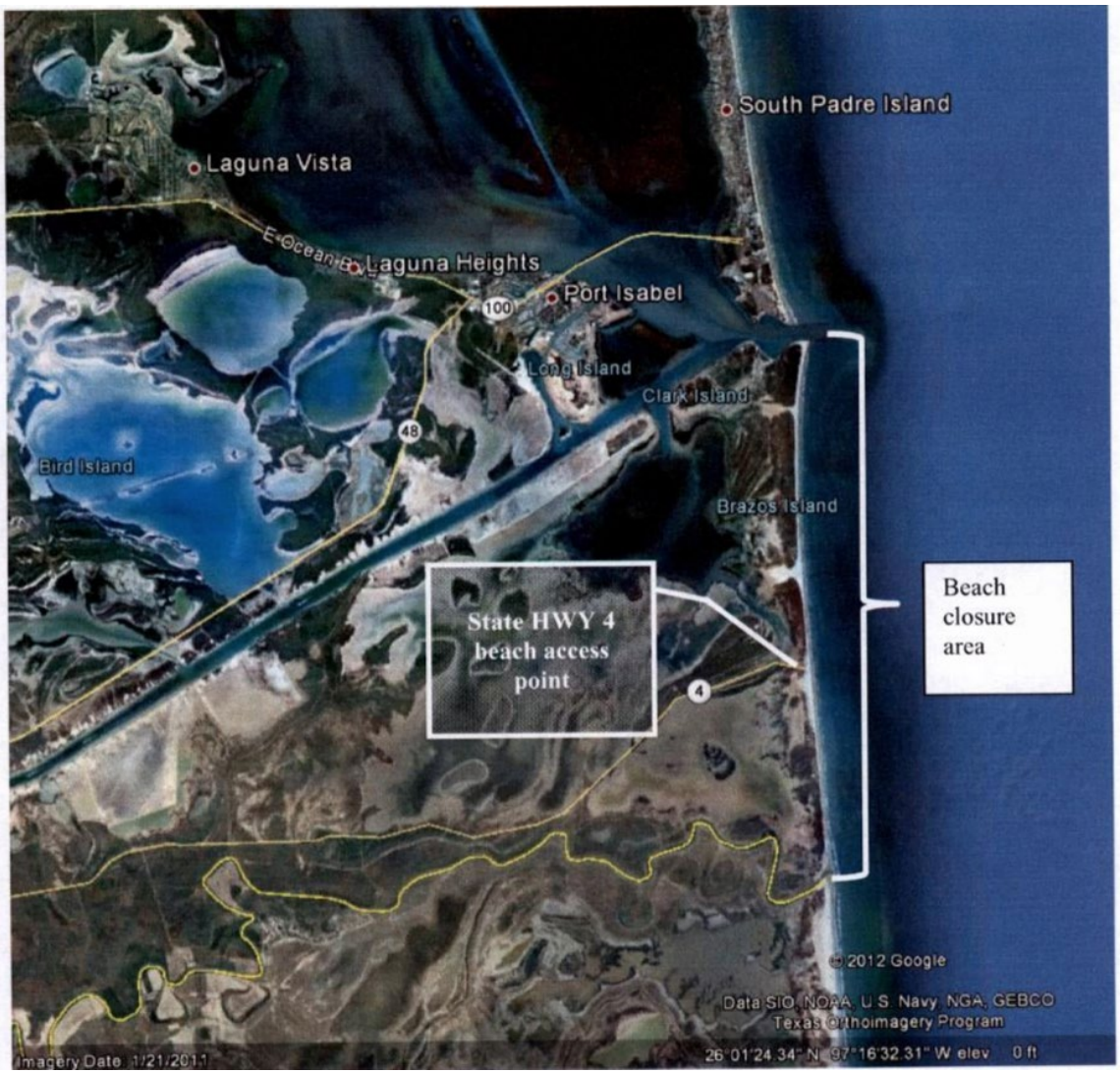
IV. Cameron County closes access to Boca Chica beach, regularly, impeding the public's right to access and use the public beach.

Boca Chica Beach is a roughly 8-mile stretch of sandy, undeveloped, public beach, located in Cameron County, about twenty miles east of Brownsville. It lies between the Rio Grande delta and the lower Laguna Madre. 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. C.R. 99. Boca Chica Beach 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).

The Beach provides the public free use and enjoyment of an undeveloped, pristine, secluded sanctuary along the Gulf Coast. The Beach is also 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 free wildlife-dependent recreation, such as fishing, wildlife observation, photography, environmental education, and interpretation. C.R. 98.

Pursuant to mechanisms provided in House Bill 2623, Cameron County has been, regularly, 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. 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. In accordance with this authorization, the County Judge, via written Orders, began closing Boca Chica Beach and the State Highway 4 access point to the Beach for SpaceX activities. C.R. 100-101. The closures continue to this day.



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

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. A conservative estimate of the number of hours that Boca Chica Beach was closed or inaccessible in 2021, 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.[5] 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. Further, the closures often occur during peak recreational hours, denying the public access to the Beach for recreational purposes. C.R. 103.

V. The County and the GLO adopt plans to allow for ongoing closures of Boca Chica Beach.

Pursuant to House Bill 2623, in August 2013, the Cameron County commissioners court amended its Dune Protection and Beach Access Plan to allow for the closure of Boca Chica Beach and access points for space flight activities. The GLO certified the County's amended plan as consistent with state law and incorporated it into GLO's regulations. 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).

Also in 2013, and pursuant to House Bill 2623, Cameron County and the GLO entered into a Memorandum of Agreement ("MOA"), the terms of which allow the temporary closure of Boca Chica Beach and its access points for space flight activities. The MOA included no limit on the number of hours per year that the

[5] 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. C.R. 103.

Beach may be closed. And although the MOA required at least 14 days' notice to the GLO before a proposed beach closure, the requisite notice was almost never provided before the County ordered closure of the Beach and/or Highway 4. 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. C.R. 102.

Notably, the law (House Bill 2623) Cameron County and the GLO were 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) (emphasis added). The adoption of the MOA between the County 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 Federal Aviation Administration's ("FAA") record of decision ("ROD"). The FAA published its ROD in July 2014, approving permits that authorize SpaceX to conduct

operations and launches of various launch vehicles, near Boca Chica Beach.[6] In other words, the County and GLO enacted plans to close the Beach before SpaceX was even authorized to start its space flight activities; their actions were, thus, premature under Section 61.132 of the Natural Resources Code.[7] C.R. 100.

VI. SaveRGV files a lawsuit, challenging the provisions of the Open Beaches Act that authorize closure of Boca Chica Beach, as unconstitutional.

SaveRGV filed a lawsuit seeking a judicial declaration that the 2013 amendment to the Open Beaches Act (House Bill 2623) violates the Texas Constitution—namely, the provision in the Bill of Rights that guarantees the public access to and use of Texas public beaches. C.R. 6-29. The lawsuit was filed against Cameron County, because the County is the entity responsible for the beach closures. SaveRGV also sued the GLO and Texas Land Commissioner, in his official capacity, because of their role in implementing the challenged provisions of the Open Beaches Act. As required by the Declaratory Judgment Act, SaveRGV provided notice to the Attorney General, who then intervened in the lawsuit. C.R. 30-40; Tex. Civ. Prac. & Rem. Code § 37.006(b).

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[6] 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. As explained above, however, the closures have consistently exceeded this estimate. C.R. 100.

[7] 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.

Appellants Sierra Club and Carrizo/Comecrudo Nation of Texas later intervened in the lawsuit, as they too had an interest in challenging the statutes that allowed for the closure of Boca Chica Beach. Both organizations include members who have been affected by the beach closures. C.R. 134.

Appellees each filed pleas to the jurisdiction, arguing that sovereign immunity prohibited the court from exercising its jurisdiction and that SaveRGV lacked standing to pursue its claims. C.R. 145, 298, & 497. By three separate orders, the trial court granted all three pleas to the jurisdiction and dismissed all of SaveRGV's claims against Appellees. C.R. 522, 527, 531.

Within 30 days of the date the court signed its Orders, SaveRGV filed a single notice of appeal, seeking review of the trial court's three Orders granting Appellees' pleas to the jurisdiction and dismissing all of SaveRGV's claims against them. C.R. 534. In SaveRGV's view, despite the absence of a single final judgment, the trial court's orders granting Appellees' pleas to the jurisdiction and dismissing all of SaveRGV's claims were final and appealable. That is, when considered together, it is apparent that the three orders, issued without a conventional trial, "actually dispose[d] of all claims and parties then before the court." *Lehmann v. Har-Con Corporation*, 39 S.W.3d 191, 192-93 (Tex. 2001), *overruled on other grounds by Industrial Specialists, LLC v. Blanchard Refining Company, LLC*, No. 20-0174,

2022 WL 2082236, at *2 (Tex. June 10, 2022); *accord Chehab v. Edgewood Dev., Ltd.*, 619 S.W.3d 828, 833 (Tex. App.—Houston [14th Dist.] 2021, no pet.).

The Court, subsequently, separated the appeal into three separate appeals with three separate case numbers, but upon request of SaveRGV, the Court consolidated the three cases for purposes of the record and briefing. SaveRGV maintains that because the three Orders disposed of all of SaveRGV's claims, together, they reflect a final judgment ripe for appeal. But in the event this Court were to determine that the three Orders are interlocutory, then, SaveRGV maintains that its notice of appeal should be construed as an implied motion for extension of time to file its notice of appeal, and urges that this Court still has jurisdiction to consider SaveRGV's appeal. *See Verburgt v. Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that in civil cases, "a motion for extension of time is necessarily implied" when appellant, acting in good faith, files notice of appeal beyond time permitted by Rule 26.1, but within fifteen-day period in which appellant would be entitled to move to extend filing deadline under Rule 26.3).

Summary of Argument

Texas has a long, proud history of ensuring that public beaches remain open to the public. Since 1959, Texans have benefitted from one of the most comprehensive public beach access laws in the nation—the Texas Open Beaches Act. *See Severance,* 370 S.W.3d at 733 (J. Medina, dissenting).

In November 2009, Texans overwhelmingly voted to amend the Texas Constitution to guarantee public beach access. Tex. Const. art. I, § 33(a). Significantly, the constitutional amendment allowed the Legislature to "enact laws to *protect* the right of the public to access and use a public beach." Tex. Const. art. I, § 33(c) (emphasis added).

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 unrestricted access to the Texas public beaches, and the Open Beaches Act and the constitutional amendment were intended to acknowledge and protect the public's access to those beaches.

In 2013, however, the Texas Legislature attempted to circumvent Texans' constitutional right to access and use public beaches by passing 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." HB 2623 authorized the

GLO and the County to close Boca Chica Beach, as needed, to allow SpaceX, a private corporation, to conduct its space exploration activities. That the Texas Open Beaches Act, prior to 2013, and the Texas Constitution, did not allow for such beach closures for SpaceX's proposed activities is evident; otherwise, there would have been no need for House Bill 2623.

Appellants in this case have all been impacted by the frequent Boca Chica Beach closures, which were authorized by House Bill 2623. Before the enactment of this statute, Appellants enjoyed unrestricted use of Boca Chica Beach, for purposes of recreation, sacred spiritual practices, and for research. Since the enactment of HB 2623, however, the County, with GLO's approval, regularly closes Boca Chica Beach—whenever SpaceX notifies the County and the GLO of its desire to close the beach so that it may conduct its space flight operations. Thus, Appellants sought to challenge the statute that authorized these frequent beach closures as inconsistent with and a violation of their constitutional right to unrestricted access to Texas public beaches.

Courts have long recognized that parties seeking to challenge a statute as unconstitutional may do so by seeking declaratory relief in district court. And in such cases, governmental entities and officials waive sovereign immunity. The trial court in this case, however, failed to follow this well-settled law, and dismissed all of Appellants' claims against Appellees for lack of jurisdiction.

Argument

By their lawsuit, SaveRGV sought a determination that certain statutory provisions in the Open Beaches Act irreconcilably conflict with the Open Beaches provision in the Texas Bill of Rights; they sought a declaration that the challenged statutory provisions are unconstitutional—facially and as applied. SaveRGV also sought a declaration that the MOU between the County and the GLO and the County's amended Dune Protection and Beach Access Plan were invalid, because they were adopted pursuant to the unconstitutional legislation.[8] Appellees all filed pleas to the jurisdiction, arguing that sovereign immunity prevented the district court from exercising jurisdiction, that SaveRGV lacked standing to pursue their claims, and that SaveRGV had not presented the trial court with a viable claim within the court's jurisdiction. The district court agreed and granted Appellees' pleas to the jurisdiction, dismissing all of SaveRGV's claims, without stating the grounds for its ruling.

I. The applicable standard of review requires no deference to the trial court's decision; pleadings should be construed liberally in favor of jurisdiction.

[8] SaveRGV also challenged the GLO's amendment to its Rule 15.32, 31 Tex. Admin. Code § 15.32, which certified the County's amended Dune Protection and Beach Access Plan. SaveRGV challenged this rule under the Texas Administrative Procedure Act, Tex. Gov't Code § 2001.038, but later advised the court that they would amend their petition and drop this claim. C.R. 519.

Whether a court has subject matter jurisdiction is a question of law; thus, appellate courts review de novo a trial court's ruling on a plea to the jurisdiction. *Suarez v. City of Tex. City*, 465 S.W.3d 623, 632 (Tex. 2015); *Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 226 (Tex. 2004). In doing so, appellate courts redetermine each legal issue without giving deference to the lower court's decision. *Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1999).

When reviewing a trial court's ruling on a plea to the jurisdiction, appellate courts consider the plaintiffs' pleadings and factual assertions, as well as any evidence relevant to the jurisdiction issue. *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 625-26 (Tex. 2010); *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). The reviewing court construes pleadings liberally in favor of the plaintiffs, looks to the pleaders' intent, and accepts the allegations in the pleadings as true to determine if the pleader has alleged sufficient facts to demonstrate the trial court's jurisdiction to hear the case. *Heckman v. Williamson Cnty*., 369 S.W.3d 137, 149 (Tex. 2012). The reviewing court does not look to the merits of the case, but considers only the pleadings and evidence relevant to the jurisdictional inquiry. *Miranda*, 133 S.W.3d at 228 (holding that plaintiffs need not "put on their case simply to establish jurisdiction") (quoting *Bland*, 34 S.W.3d at 554); *Cnty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

If the plaintiffs' pleadings affirmatively negate the existence of jurisdiction, then, the plea must be granted. *Heckman*, 369 S.W.3d at 150. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiffs should be afforded the opportunity to amend. *Miranda*, 133 S.W.3d at 227. If the defendant challenges the existence of jurisdictional facts in the plaintiffs' pleadings, then, the defendant must present undisputed, relevant evidence negating the existence of the court's jurisdiction, to prevail on its plea to the jurisdiction. *Heckman*, 369 S.W.3d at 150.

If the plaintiffs' pleading requirement has been met and evidence has been submitted that implicates the merits of the case, then, the court takes as true all evidence favorable to the nonmovants/plaintiffs. *Miranda*, 133 S.W.3d at 228 (citing *Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997)). The court indulges every reasonable inference and resolves any doubts in the nonmovants'/plaintiffs' favor. *Id*.

II. Governmental immunity is waived in cases challenging the constitutionality of a statute, such as the one presented by SaveRGV.

By their pleas to the jurisdiction, Appellees all alleged that sovereign immunity barred the declaratory judgment claims against them. But SaveRGV's

lawsuit seeks judicial declarations regarding the constitutionality of certain statutes, and the legislature has waived sovereign immunity for these types of claims.

"Sovereign immunity is inapplicable in a suit against a governmental entity that challenges the constitutionality of a statute and seeks only equitable relief." *Patel v. Texas Dep't of Licensing and Regulation*, 469 S.W.3d 69, 76 (Tex. 2015) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n. 6 (Tex.2009)). Further, in a declaratory judgment action challenging the constitutionality of a statute, the Declaratory Judgment Act requires the relevant governmental entities be made parties, thereby waiving sovereign immunity. *Id*. at 76-77; Tex. Civ. Prac. & Rem.Code § 37.006(b) ("In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard."). Indeed, in this case, the Attorney General voluntarily intervened in SaveRGV's lawsuit.

By their First Amended Petition, SaveRGV sought to have two statutes—Sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code—declared unconstitutional. They alleged that the two statutes are facially unconstitutional and unconstitutional as applied, because the statutes conflict with the Open Beaches provision in the Texas Bill of Rights. C.R. 111. Thus, SaveRGV's claims fall

squarely within the line of cases acknowledging that sovereign immunity is waived for claims challenging the constitutionality of a statute. *See, e.g., Patel*, 469 S.W.3d at 75-76.

Relatedly, SaveRGV challenged, as invalid, (1) the MOA between the County and the GLO, (2) the GLO's approval of the County's amended Dune Protection and Beach Access Plan, and (3) the County's Order authorizing the County Judge to close Boca Chica Beach for space flight activities. SaveRGV alleged that these were actions taken pursuant to an unconstitutional statute, and sought to have them declared invalid. C.R. 111-12. The supreme court has acknowledged that where, as here, plaintiffs sue government entities or officials for actions taken in accordance with an unconstitutional statute, sovereign immunity is waived. *Patel*, 469 S.W.3d at 76-77.

A. SaveRGV's lawsuit sought declaratory relief against Appellees regarding the constitutionality of certain statutes, not damages.

Faced with the extensive caselaw acknowledging waiver of sovereign immunity in suits challenging the constitutionality of statutes, Appellees strained to re-characterize SaveRGV's lawsuit as private cause of action, seeking to enforce a constitutional provision, in their arguments to the trial court. For instance, the County curiously argued that SaveRGV's claims are barred by sovereign immunity because the Open Beaches provision in the Texas Constitution does not create a

private cause of action, and it prohibits private enforcement by private citizens. C.R. 300-03. According to the County, "[o]nly constitutional provisions that provide for a cause of action can be considered to be 'self-enacting' and susceptible to waiver of immunity." C.R. 301; *see also* RR, pp. 14-15 (County's counsel arguing that SaveRGV "will not be able to allege a sustainable cause of action under Article 1, Section 33 of the Texas Constitution" and that SaveRGV's "action is clearly an attempt to enforce the constitutional provisions for the open beaches protection in Article 1, Section 33"). The Attorney General and GLO presented similar arguments in their pleas to the jurisdiction. C.R. 158-59 (AG's plea to jurisdiction); C.R. 505-06 (GLO's plea to jurisdiction).

As an initial matter, Appellees have mischaracterized SaveRGV's claims. SaveRGV's lawsuit did not allege a private right of enforcement of a constitutional provision or statute. Nor did SaveRGV seek damages against any of the Appellees for violations of constitutional or statutory rights.

Thus, the cases cited by the County in support of its jurisdictional argument are inapposite, because they all involved claims for damages against the government. C.R. 300-01. *See, e.g., City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995) (holding that claim for damages against the City based on violation of constitutional rights was barred); *Steele v. City of Houston*, 603 S.W.2d 786, 791 (Tex. 1980) (holding that plaintiff's claim for damages against city was not barred

by sovereign immunity); *Ware v. Miller*, 82 S.W.3d 795, 804 (Tex. App.—Amarillo 2002, pet. denied) (holding that court had jurisdiction to resolve declaratory judgment claims but sovereign immunity barred plaintiff's claim for damages); *Nueces County v. Ferguson*, 97 S.W.3d 205, 218 (Tex. App.–Corpus Christi 2002, no pet.) (holding that there is a distinction between suits in which a declaration against the State is sought and suits seeking money damages against the State; suits seeking declarations are not considered suits for damages, and so sovereign immunity is waived). SaveRGV's lawsuit was not one for damages; SaveRGV sought declaratory relief.

Similarly, the cases cited by the GLO and the Attorney General in support of their pleas are inapposite, because those cases sought to enforce specific statutes. *See, e.g., Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 620 S.W.3d 458, 463 & 471 (Tex. App.—Dallas 2021, pet. granted) (plaintiff sought to enforce Insurance Code provisions via private cause of action against private party); *Kessling v. Friendswood Indep. Sch. Dist.*, 302 S.W.3d 373, 385 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (plaintiff requested declaratory judgment and injunctive and mandamus relief requiring district to adopt an accounting system that conforms to Education Code); *Witkowski v. Brian, Fooshee & Yonge Prop.*, 181 S.W.3d 824, 826 (Tex. App.—Austin 2005, no pet.) (plaintiff sought to recover

damages against private party under federal statutory scheme).[9] Here, SaveRGV sought to challenge, as unconstitutional, certain statutory provisions, not enforce them via a private cause of action.

Appellees' attempts to re-characterize SaveRGV's lawsuit notwithstanding, SaveRGV's petition presented the trial court with a familiar claim: a request for a judicial declaration, declaring certain statutes unconstitutional. The determination of the constitutionality of a statute is, without question, an issue fit for judicial review by the district court. *See, e.g., Abbott v. G.G.E.,* 463 S.W.3d 633, 647-48 (Tex. App.—Austin 2015, pet. denied)*; Juliff Gardens, L.L.C. v. Texas Comm'n on Envtl. Quality,* 131 S.W.3d 271, 278 (Tex. App.—Austin 2004, no pet.).

B. Statutes that violate the Texas Constitution are void, and courts have jurisdiction to declare such statutes void.

Appellees argued to the trial court that because SaveRGV has no private right of enforcement, they could not challenge the constitutionality of certain Open Beaches Act statutory provisions that allow for beach closures. Conflating the concept of a "self-enacting" constitutional provision with a "private right of enforcement," the County further argued that without a private right to enforce a

[9] The Attorney General also cited, in support of its plea to the jurisdiction, *Abbott v. G.G.E.*, 463 S.W.3d 633 (Tex. App.—Austin 2015, pet. denied). C.R. 159. But this case actually supports SaveRGV's claims, not the Attorney General's arguments. In that case, the court of appeals affirmed the trial court's denial of a plea to the jurisdiction, holding that it is "well recognized that declaratory relief is the proper remedy when challenging the constitutionality of a statute." *Id.* at 647-48 (internal quotations and citations omitted).

"self-enacting" constitutional provision, "there is no jurisdiction for a cause of action" that challenges the constitutionality of certain statutes. *See, e.g.,* C.R. 301-02. But these arguments are without merit. As explained above, the law is well-settled: district courts possess the requisite jurisdiction to determine the constitutionality of a statute, via a request for declaratory relief. *See, e.g., Patel*, 469 S.W.3d at 75-76.

Moreover, the Constitution itself acknowledges that statutes that violate the Texas Bill of Rights are void: "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void." Tex. Const. art. I, § 29. In other words, the State has no power to commit acts contrary to the guarantees found in the Bill of Rights; the Bill of Rights acts as a check on government power. Tex. Const. art. 1, § 29. This includes the constitutional provision that acknowledges the public's unrestricted right to use and access public beaches—the government cannot commit acts contrary to the constitutional provision that guarantees to the public the unrestricted right to use and access public beaches.

Contrary to Appellees' arguments in support of their pleas to the jurisdiction, courts have long recognized that the Texas Bill of Rights is, indeed, self-executing. Section 29 of the Bill of Rights has been interpreted as follows:

> any provision of the Bill of Rights is *self-executing* to the extent that anything done in violation of it is void. … When a law conflicts with rights guaranteed by Article 1, the Constitution declares that such acts are void because the Bill of Rights is a limit on State power. … The framers of the Texas Constitution articulated what they intended to be the means of remedying a constitutional violation. The framers intended that a law contrary to a constitutional provision is void. There is a difference between voiding a law and seeking damages as a remedy for an act. A law that is declared void has no legal effect. … Such a declaration is different from seeking compensation for damages, or compensation in money for a loss or injury. Thus, suits for equitable remedies for violation of constitutional rights are not prohibited.

City of Beaumont v. Bouillion, 896 S.W.2d 143, 148–49 (Tex. 1995) (citations omitted) (emphasis added); *accord City of Fort Worth v. Jacobs,* 382 S.W.3d 597, 598 (Tex. App.—Fort Worth 2012, pet. dism'd) (holding sovereign immunity is waived where plaintiff seeks equitable relief for constitutional violations).

Appellees' arguments to the trial court regarding self-executing constitutional provisions and private rights of enforcement are simply misplaced and do not apply here. To the contrary, SaveRGV's lawsuit is precisely what the Texas Bill of Rights envisioned: SaveRGV's lawsuit sought to "check" the Open Beaches Act's provisions that authorize the closure of Boca Chica Beach for space flight activities, and it sought to "check" the County's and the State's authority to commit acts contrary to the public's constitutional right to access and use public beaches. Were SaveRGV to prevail in its lawsuit, the challenged statutes would be considered "void" to the extent they conflict with the Texas Bill of Rights; the district court possesses the requisite jurisdiction to render such relief.

Appellees' arguments, were they adopted, would effectively immunize the government from suits claiming a statute is unconstitutional because it violates the constitutional provision that guarantees the public the right to access and use public beaches. There could be no "check" on government power, even if it was contrary to the Texas Bill of Rights' Open Beaches provision. This presents an illogical conclusion, and it is contrary to Section 29 of the Texas Bill of Rights.

III. Appellants demonstrated that they have standing to purse their claims.

Appellees argued to the trial court, by their pleas to the jurisdiction, that SaveRGV lacked standing to pursue their claims. They claimed that no member could demonstrate standing to sue in their own right, because no member could demonstrate an injury in fact.

The standing doctrine identifies suits appropriate for judicial resolution. *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001). Standing assures there is a real controversy between the parties that will be determined by the judicial declaration sought. *Id.* (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517–18 (Tex.1995)). "[T]o challenge a statute, a plaintiff must [both] suffer some actual or threatened restriction under the statute" and "contend that the statute unconstitutionally restricts the plaintiff's rights." *Garcia*, 893 S.W.2d at 518.

So long as any of the Appellants demonstrate standing to pursue their claims, the case should proceed, and the plea to the jurisdiction should be denied:

> [W]here there are multiple plaintiffs in a case, who seek injunctive or declaratory relief (or both), who sue individually, and who all seek the same relief[,] ... the court need not analyze the standing of more than one plaintiff—so long as that plaintiff has standing to pursue as much or more relief than any of the other plaintiffs.

Patel, 469 S.W.3d at 77-78 (quoting *Heckman*, 369 S.W.3d at 152 n.64).

The Texas Supreme Court has adopted the United States Supreme Court's standard for associational standing: "an association has standing to sue on behalf of its members when '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993) (quoting *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

There is no dispute that the three Appellants satisfied the second and third elements of the associational standing test. Appellants' pleadings demonstrated that each of the Appellant organizations sought to protect interests that are germane to the organizations' purposes. C.R. 91 (describing SaveRGV's purpose), 136 (describing Sierra Club's purpose), & 138 (describing Carrizo/Comecrudo Nation's purpose). And Appellants' request for declaratory relief does not require the participation of individual members. None of the Appellees challenged these elements of the associational standing test, by their pleas to the jurisdiction.

Instead, Appellees argued that SaveRGV could not satisfy the first element of the associational standing test; they argued that the organizations did not include members with standing to sue in their own right. The County and the AG also argued that SaveRGV could not satisfy the associational standing test because SaveRGV is not a traditional membership organization and thus, it has no members.

A. SaveRGV satisfied the "indicia of membership" test.

If this Court determines that Sierra Club or the Carrizo/Comecrudo Nation satisfies the associational standing test, then, the Court need not reach the issue of whether SaveRGV satisfies the associational standing test. *Patel*, 469 S.W.3d at 77-78. In any event, a review of the factual allegations in SaveRGV's pleadings, which must be accepted as true, reveals that SaveRGV demonstrated the "indicia of membership," which is the test that applies here.

The "indicia of membership test" is the test that courts apply to determine whether a purported association or organization has "members," whose interests it can represent in court. *Friends of the Earth, Inc. v. Chevron Chem. Co*., 129 F.3d 826, 828 (5th Cir.1997). Corporate formalities and formal membership structure are not constitutional requirements for associational standing. *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 344-45 (1977); *Friends of the Earth*, 129 F.3d at 828. In determining whether the relationship between an association and its members is sufficiently close for constitutional standing, courts do not "exalt form over substance." *See Friends of the Earth*, 129 F.3d at 828. Instead, the association

must demonstrate that the individuals it seeks to represent possess sufficient "indicia of membership." *Id.* (citing *Hunt*, 432 U.S. at 344–45).

In *Friends of the Earth*, the Fifth Circuit Court of Appeals found associational standing even though a non-profit environmental organization did not have formal membership requirements. *Id*. at 827. The court reasoned that the organization's members joined voluntarily, considered themselves members, elected the organization's governing body, and financed the organization's activities. *Id*. at 829.

Similarly, here, SaveRGV's pleading allegations demonstrated that its members volunteer on behalf of SaveRGV, in furtherance of the goals and objectives of the organization. The individuals named in SaveRGV's First Amended Petition consider themselves members and serve or have served on the board of directors. C.R. 103-06. They have also devoted time and resources, including financial resources, in furtherance of SaveRGV's advocacy efforts. C.R. 103-06.

Moreover, SaveRGV presented the trial court with a sworn declaration from a member of SaveRGV, Jim Chapman. C.R. 339. By this declaration, Chapman explained that SaveRGV has participated in a number of federal proceedings, and in doing so, SaveRGV established that it satisfied the constitutional associational standing test to participate in such proceedings. C.R. 340-41. *See Vecinos para el Bienestar de la Comunidad Costera v. Federal Energy Regulatory Commission*, 6 F.4th 1321 (D.C. Cir. 2021).

Accepting SaveRGV's pleadings as true, construing their pleadings liberally in favor of jurisdiction, and indulging every reasonable inference in favor of SaveRGV, as the supreme court has instructed, it is apparent that SaveRGV has satisfied the "indicia of membership test" that courts apply to determine whether an organization has members it can represent in court.

B. SaveRGV alleged sufficient facts to demonstrate that at least one member had standing to pursue the declaratory judgment claims.

"The Texas standing requirements parallel the federal test for Article III standing, which provides that a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Tex. Propane Gas Assoc. v. City of Houston*, 622 S.W.3d 791, 799 (Tex. 2021) (quoting *In re Abbott*, 601 S.W.3d 802, 807 (Tex. 2020)). The plaintiff's alleged injury must be "actual or imminent, not conjectural or hypothetical." *Id*. When challenging a statute, a plaintiff must suffer some actual or threatened restriction under the statute and contend that the statute unconstitutionally restricts the plaintiff's rights. *Patel*, 469 S.W.3d at 77 (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995)).

In this case, SaveRGV presented a constitutional challenge to certain statutes. Among the statutes that SaveRGV has challenged is Section 61.132 of the Open Beaches Act, entitled: "*Closing of Beaches* for Space Flight Activities." Tex. Nat. Res. Code § 61.132 (emphasis added). The constitutional provision upon which they

rely provides: "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) (emphasis added). As alleged in SaveRGV's First Amended Petition, and in the Petition in Intervention filed by Sierra Club and the Carrizo/Comecrudo Nation, the organizations' members have been impacted by the beach closures, and their injuries are directly traceable to the unconstitutional amendment to the Open Beaches Act, which authorizes regular closure of Boca Chica Beach and its only access route statutes that authorize the beach closures. The requested relief would redress the members' injuries.

For some members, restrictions on access to the Beach have impacted their right to recreate at the Beach. Other members rely on access to the Beach for purposes of their employment responsibilities. And still other members rely on access to the Beach to help fulfill the objectives of their respective organizations—*e.g.*, conservation and protection of wildlife habitat and the natural areas of the Rio Grande Valley.

As explained in their pleadings, members of the Carrizo/Comecrudo Nation of Texas consider the Beach and its surroundings sacred to their community and their ancestral traditions. And Juan Mancias, a member of the Carrizo/Comecrudo Nation, has been turned away from the Beach when the County closed the Beach,

ostensibly for space flight activities, affecting Mancias' ability to engage in spiritually sacred practices. C.R. 138-39, 322-23.

Similarly, Mary Helen Flores, a member of Sierra Club, was turned away as recently as March 2022, when she attempted to visit Boca Chica Beach to celebrate her birthday, as she has done throughout her life. C.R. 136-37. And Mr. Chapman, a member of SaveRGV, was prevented from accessing the Beach on at least one time-sensitive occasion, during a king tide (an extreme high tide), because the County closed the Beach ostensibly for space flight activities. C.R. 341.

These injuries were not self-inflicted, as Appellees described them. Instead, Mr. Mancias, Ms. Flores, and Mr. Chapman suffered actual restrictions on their constitutionally guaranteed right to access Boca Chica Beach, and this restriction, or injury, occurred because the County was allowed to close the Beach for space flight activities under the challenged statutes and because the GLO authorized the County to do so.

Construing SaveRGV's pleadings in favor of jurisdiction and indulging every reasonable inference in favor of SaveRGV, it is apparent that they have alleged sufficient facts to demonstrate standing to pursue their lawsuit. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Serv.,* 528 U.S. 167, 183 (2000) (holding that "plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be

lessened' by the challenged activity"). Their members have been adversely affected and aggrieved by the beach closures, and they have a direct stake in the outcome of the litigation. *See United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 689 n.14 (1973). Further, their injuries are particularized and distinct from members of the general public, who may have a mere interest in the issue of the beach closures. *See F.E.C. v. Akins,* 524 U.S. 11, 24 (1998); *United States v. Students Challenging Regulatory Agency Procedures,* 412 U.S. 669, 686–88, (1973); *Andrade v. NAACP*, 345 S.W.3d 1, 7 (Tex. 2011) (all holding that a grievance is not too generalized, for purposes of standing, merely because it is widely shared by many).

IV. The district court possessed the requisite jurisdiction to render the declaratory relief sought by SaveRGV, declaring certain statutes void and declaring certain actions taken pursuant to those statutes invalid.

By their pleas to the jurisdiction, Appellees argued that the Declaratory Judgment Act ("UDJA") does not confer jurisdiction on the district court to render the relief requested by SaveRGV.[10] They correctly noted that the UDJA is a procedural device for deciding cases already within the court's jurisdiction. Such is

[10] Both the AG and the GLO included this argument as part of their discussion regarding SaveRGV's standing to pursue their claims. For clarity, SaveRGV has separated this argument from the standing arguments, discussed above.

the case here; SaveRGV presented the trial court with a dispute within its jurisdiction.

The UDJA has historically been relied on when challenging the constitutionality of a statute, ordinance, or other law. Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *see, e.g., Patel*, 469 S.W.3d at 76; *City of Laredo v. Laredo Merchants Ass'n*, 550 S.W.3d 586 (Tex. 2018); *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994); *Abbott v. G.G.E.,* 463 S.W.3d at 647-48; *Juliff Gardens*, 131 S.W.3d at 277-78; *Rylander v. Caldwell*, 23 S.W.3d 132, 136 (Tex. App.—Austin 2000, no pet.). So too, by its lawsuit, SaveRGV sought a declaration from the trial 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.

Moreover, suits under the UDJA are not limited to cases where the parties have a cause of action separate and apart from the UDJA. *Bexar Metro. Water Dist. v. City of Bulverde*, 156 S.W.3d 79, 88-89 (Tex. App.—Austin 2004, pet. denied); *City of Waco v. Texas Natural Res. Conservation Comm'n*, 83 S.W.3d 169, 177 (Tex. App.—Austin 2002, pet. denied). So long as the pleadings present the trial court with a justiciable controversy between the parties that may be resolved by the requested declaratory relief, the case may proceed. By their pleadings, challenging the constitutionality of certain statutes and seeking declaratory relief, SaveRGV (1)

presented the trial court with a justiciable controversy between the parties, ripe for adjudication; and (2) sought a declaration that will actually resolve that controversy. *See Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 163–64 (Tex. 2004); *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995); *Garcia*, 893 S.W.2d at 517–18. This type of legal challenge falls squarely within the trial court's jurisdiction.

Finally, the Attorney General argued to the trial court that SaveRGV failed to present a viable constitutional claim, citing *Andrade v. NAACP of Austin*, 345 S.W.3d 1 (Tex. 2011), for support. But the Texas Supreme Court in *Patel*, considered a similar argument and rejected it. 469 S.W.3d at 77.

In *Patel*, several eyebrow threaders sued the State alleging that statutes and regulations regarding cosmetology licensing were unconstitutional. *Id*. at 74. The trial court had denied the State's plea to the jurisdiction but granted summary judgment to the State on the merits. *Id*. at 77. On appeal, in addressing the jurisdictional issue of viability, the Supreme Court distinguished *Andrade* from the case before it. *Id*. The Court explained that *Andrade* "stands for the unremarkable principle that claims against state officials—like all claims—must be properly pleaded in order to be maintained, not that such claims must be viable on their merits to negate immunity." *Id*. (emphasis added). The Court held that the plaintiffs in *Patel* properly pleaded their claims and thus, the pleading was sufficient to withstand a jurisdictional challenge. *Id.*

The Attorney General was thus mistaken in conflating the issue of the viability of the pleadings with jurisdiction. SaveRGV properly pleaded a challenge to the constitutionality of a statute. The Attorney General did not identify any pleading defects in SaveRGV's pleadings. And so the trial court should not have granted the AG's plea to the jurisdiction on the basis of *Andrade*. SaveRGV pleaded a viable claim challenging the constitutionality of a statute.

Conclusion & Prayer

For the reasons described above, this Court should reverse the trial court's decision, granting Appellees' pleas to the jurisdiction and dismissing all of Appellants' claims, and remand this matter to the trial court for further proceedings.

Respectfully submitted,

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Certificate of Compliance

Based on a word count run by the computer program used to prepare this document, this brief contains 8378 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ *Marisa Perales*
Marisa Perales

Certificate of Service

By my signature below, I, Marisa Perales, certify that on January 13, 2023, a true and correct copy of the foregoing document is served via electronic service on parties through counsel of record, listed below:

/s/ *Marisa Perales*
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TAB 1

RECEIVED 6/10/2022 4:52 PM
2021-DCL-05887 / 65348514
LAURA PEREZ-REYES
Cameron County District Clerk
By Vilma Garcia Deputy Clerk

CAUSE NO. 2021-DCL-05887

SAVERGV	§	IN THE DISTRICT COURT
	§	
VS.	§	CAMERON COUNTY, TEXAS
	§	
TEXAS GENERAL LAND OFFICE;	§	
GEORGE P. BUCH, In His Official Capacity	§	
As the Texas Land Office Commissioner,	§	
and CAMERON COUNTY	§	445th JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS TEXAS GENERAL LAND OFFICE'S AND GEORGE P. BUSH, IN HIS OFFICIAL CAPACITY AS THE TEXAS LAND OFFICE COMMISSIONER'S, PLEA TO THE JURISDICTION

After considering Defendants Texas General Land Office's and George P. Bush, in His Official Capacity as the Texas Land Office Commissioner's, Plea to the Jurisdiction, the response (if any), any subsequent briefing, the legally admissible and competent evidence (if any), the law, and arguments of counsel, the Court is of the opinion that the Plea to the Jurisdiction is meritorious.

Accordingly, it is hereby ORDERED that Defendants Texas Land Office and George P. Bush, in His Official Capacity as the Texas Land Office Commissioner's, Plea to the Jurisdiction is GRANTED in all respects.

It is FURTHER ORDERED that Plaintiff SaveRGV's and Intervenors Sierra Club and Carrizo/Comecrudo Nation of Texas, Inc.'s claims against them, including but not limited to, the challenges to GLO's amendment to its Rule 15.32 and the Memorandum of Agreement between the GLO and Cameron County are hereby dismissed with prejudice.

SIGNED this 30th day of June, 2022.

FILED 4 o'clock P M
LAURA PEREZ-REYES - DISTRICT CLERK

JUN 30 2022

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By _____ Deputy

GLORIA M. RINCONES
HONORABLE JUDGE PRESIDING

TAB 2

RECEIVED 6/15/2022 2:42 PM
2021-DCL-05887 / 65474727
LAURA PEREZ-REYES
Cameron County District Clerk
By Vilma Garcia Deputy Clerk

CAUSE NO. 2021-DCL-05887

SAVERGV, *Plaintiff.* v. TEXAS GENERAL LAND OFFICE, GEORGE P. BUSH, IN HIS OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER; and CAMERON COUNTY, *Defendants.*	§ § § § § § § § § § § § §	IN THE DISTRICT COURT CAMERON COUNTY, TEXAS 445TH JUDICIAL DISTRICT

ORDER GRANTING TEXAS ATTORNEY GENERAL'S PLEA TO THE JURISIDCTION

Pending before the Court is Texas Attorney General's Plea to the Jurisdiction to Plaintiff SaveRGV's First Amended Petition. Upon due consideration of the motion, the subsequent briefing, the evidence, and the law, the Court is of the opinion that the motion is meritorious.

It is hereby ORDERED that Texas Attorney General's Plea to the Jurisdiction is GRANTED.

It is FURTHER ORDERED that Texas Attorney General's Plea to the Jurisdiction hereby dismissing SaveRGV and Intervenors' facial challenges to Sections 61.32 and Section 61.011(d)(11) of the Texas Natural Resources Code is GRANTED.

SIGNED this ____ day of June 30, 2022.

GLORIA M. RINCONES
HONORABLE JUDGE PRESIDING

cc: 6/30/2022

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FILED 4 o'clock P M
LAURA PEREZ-REYES - DISTRICT CLERK

JUN 30 2022

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By _____ Deputy

TAB 3

RECEIVED 6/17/2022 4:18 PM
2021-DCL-05887 / 65565781
LAURA PEREZ-REYES
Cameron County District Clerk
By Vilma Garcia Deputy Clerk

Cause No. 2021-DCL-05887

SaveRGV	§	**IN THE 445th DISTRCT COURT**
Plaintiff,	§	
	§	
V.	§	**OF**
	§	
Texas General Land Office, George P. Bush,	§	
and Cameron County,	§	**CAMERON COUNTY, TEXAS**
Defendants.	§	

ORDER GRANTING DEFENDANT CAMERON COUNTY'S PLEA TO THE JURISDICTION

Upon consideration of Defendant Cameron County's Plea to the Jurisdiction, the Response by Plaintiff and Intervenors, all pleadings, briefing, and authorities and arguments of counsel, the Court finds that the Plea to the Jurisdiction is meritorious.

Accordingly, it is hereby ORDERED that Defendant Cameron County's Plea to the Jurisdiction is GRANTED in all respects.

It is FURTHER ORDERED that all claims by Plaintiff SaveRGV and Intervenors Sierra Club and Carrizo/Comecrudo Nation of Texas, Inc. against Defendant Cameron County are hereby dismissed with prejudice.

SIGNED this 30 day of June, 2022.

GLORIA M. RINCONES
HONORABLE JUDGE PRESIDING

FILED 1 o'clock P M
LAURA PEREZ-REYES - DISTRICT CLERK

JUN 30 2022

DISTRICT COURT OF CAMERON COUNTY, TEXAS

By Deputy

cc: 06/30/2022
Hon. John Bedecarre
Hon. Marisa Perales
Hon. Jaime A Saenz
Hon. Oscar H Lopez
Hon. James P Allison
Hon. Oscar H Lopez
Hon. Caroline A Merideth
Hon Courtney Corbello

TAB 4

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article I. Bill of Rights (Refs & Annos)

Vernon's Ann.Texas Const. Art. 1, § 33

§ 33. Access and use of public beaches

Effective: December 1, 2009

Currentness

Sec. 33. (a) In this section, "public beach" means a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right of use or easement to or over the area by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law.

(b) 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.

(c) The legislature may 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.

(d) This section does not create a private right of enforcement.

Credits

Adopted Nov. 3, 2009, eff. Dec. 1, 2009

Vernon's Ann. Texas Const. Art. 1, § 33, TX CONST Art. 1, § 33
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 5

V.T.C.A., Natural Resources Code § 61.001

§ 61.001. Definitions

Effective: September 1, 2013

Currentness

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Construction" means causing or carrying out any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure.

(3) "Department" means the Parks and Wildlife Department.

(4) "Land office" means the General Land Office.

(4-a) "Launch" and "space flight activities" have the meanings assigned by Section 100A.001, Civil Practice and Remedies Code.

(5) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(6) "Littoral owner" means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.

(7) “Local government” means a municipality, county, or any other political subdivision of the state.

(7-a) “Meteorological event” means atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(8) “Public beach” means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Credits

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, § 4, eff. June 7, 1991; Acts 2013, 83rd Leg., ch. 152 (H.B. 2623), § 1, eff. May 24, 2013; Acts 2013, 83rd Leg., ch. 1086 (H.B. 3459), § 1, eff. Sept. 1, 2013.

Notes of Decisions (1)

V. T. C. A., Natural Resources Code § 61.001, TX NAT RES § 61.001
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 6

V.T.C.A., Natural Resources Code § 61.011

§ 61.011. Policy and Rules

Effective: June 14, 2019

Currentness

(a) It is declared and affirmed to be the public policy of this state 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.

(b) The legislature recognizes that, in order to provide and maintain public facilities and public services to enhance access to and safe and healthy use of the public beaches by the public, adequate funds are required to provide public facilities and public services. Any local government responsible for the regulation, maintenance, and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches.

(c) The commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement.

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, the use on a public beach of a golf cart, as defined by Section 551.401, Transportation Code, for the transportation of a person with a physical disability, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;

(4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including procedures for expedited review of beach access and use plans under Section 61.015;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches;

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect;

(8) the determination of the line of vegetation or natural line of vegetation;

(9) the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(10) the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section;

(11) the closure of beaches for space flight activities; and

(12) the temporary suspension under Section 61.0171 of the determination of the “line of vegetation” or the “natural line of vegetation.”

(e) Repealed by Acts 2003, 78th Leg., ch. 245, § 9.

(f) Chapter 2007, Government Code, does not apply to rules adopted under Subsection (d)(7).

TAB 7

V.T.C.A., Natural Resources Code § 61.132

§ 61.132. Closing of Beaches for Space Flight Activities

Effective: May 24, 2013

Currentness

(a) 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.

(b) A person planning to conduct a launch in a county to which this section applies must submit to the commissioners court proposed primary and backup launch dates for the launch.

(c) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date, subject to Subsection (d).

(d) The commissioners court may not close a beach or access points to the beach on a primary launch date consisting of any of the following days without the approval of the land office:

(1) the Saturday or Sunday preceding Memorial Day;

(2) Memorial Day;

(3) July 4;

(4) Labor Day; or

(5) a Saturday or Sunday that is after Memorial Day but before Labor Day.

(e) The commissioners court must comply with the county's beach access and use plan adopted and certified under Section 61.015 and dune protection plan adopted and certified under Chapter 63 when closing a beach or access point under this section.

(f) The land office may:

(1) approve or deny a beach or access point closure request under Subsection (d);

(2) enter into a memorandum of agreement with the commissioners court of a county to which this section applies to govern beach and access point closures made under this section; and

(3) adopt rules to govern beach and access point closures made under this section.

