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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 24-0237

IN THE SUPREME COURT OF TEXAS

TEXAS GENERAL LAND OFFICE and DAWN BUCKINGHAM, M.D.,
IN HER OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER,
Petitioners,

v.

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

On Petition for Review from the Court of Appeals
for the Thirteenth District of Texas at Corpus Christi/Edinburg

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SAVERGV, SIERRA CLUB, and CARRIZO/COMECRUDO NATION OF TEXAS, INC.'S RESPONSE TO PETITION FOR REVIEW

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[1] Petitioners correctly identified counsel for the parties to this specific Supreme Court proceeding. But at the trial court, there were two additional defendants: Cameron County and the Attorney General, who intervened in the lawsuit. All three defendants were Appellees in the Court of Appeals' proceedings, and all three have filed petitions for review at the Texas Supreme Court. Accordingly, to ensure compliance with Texas Rule of Appellate Procedure 53.2(a), Respondents have listed all parties and their counsel who appeared and participated in the trial court and appellate court proceedings.

2 This suit originally named as a defendant George P. Bush, in his official capacity as Texas Land Commissioner. Dr. Buckingham succeeded Mr. Bush in that office in 2023 and was automatically substituted as a party. Tex. R. App. P. 7.2(a).

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Citations to the Court of Appeals' opinion will be to Appendix 4. E.g., App.4, p.#.

AG	Attorney General of Texas
County	Cameron County
CR	Clerk's Record
GLO	General Land Office[3]
HB2623	House Bill 2623
OBA	Open Beaches Act
PTJ	Plea to the Jurisdiction
SpaceX	Space Exploration Technologies Corp.
UDJA	Uniform Declaratory Judgments Act

[3] GLO will refer to both the Texas General Land Office and Dr. Buckingham in her official capacity as Texas Land Commissioner, collectively, unless a distinction between the two is necessary for clarity.

ISSUES PRESENTED

1. Does sovereign immunity deprive a trial court of jurisdiction to resolve a lawsuit challenging the constitutionality of certain, specific 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. 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 Texas Declaratory Judgment Act?

3. 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?

INTRODUCTION

This Court should deny GLO's Petition for Review, because this case presents no novel legal issues important to the jurisprudence of the State. Despite GLO's attempts to mischaracterize the nature of Respondents' claims, the appellate court correctly acknowledged that Respondents "seek a declaratory judgment that the statutes and rule in question are invalid and violative of Texas Constitution, article I, § 33. In other words, [Respondents] are challenging the validity of a statute, which is expressly permitted by the UDJA and under long-standing precedent." App.4, p.16.

Indeed, 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. *Patel v. Texas Dep't of Licensing and Regulation*, 469 S.W.3d 69, 76 (Tex. 2015).

This Court need not grant GLO's Petition only to reiterate these longstanding, well-established legal principles.

STATEMENT OF FACTS[4]

The voting public and their elected representatives have long recognized Texans' essential right to access Texas public beaches. The Texas Legislature passed the OBA in 1959 to ensure the public's right to free and unrestricted access to the shoreline along the Gulf Coast. Open Beaches Act, 56th Leg., 2d C.S., ch. 19, 1959 Tex. Gen. Laws 108.

In 2009, Texas voters voted, overwhelmingly, to amend the Texas Constitution to guarantee public beach access. Tex. Const. art. I, § 33. This constitutional amendment provides, in relevant part: "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).

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). And because the constitutional amendment is part of Texans' Bill of Rights, it acts as a limit on the general powers of State government. *Id.*, § 29.

[4] Respondents offer the following limited additional facts to ensure an accurate account of Respondents' pleadings. Because this case presents an appeal of the trial court's Orders granting GLO's plea to the jurisdiction and dismissing all of Respondents' claims, the relevant standard of review requires the reviewing court to accept the allegations in Respondents' 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).

In May 2013, the Legislature passed HB 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). Among the key provisions of HB 2623 is Section 61.132, "Closing of Beaches for Space Flight Activities."

Section 61.132 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 . . . ." OBA § 61.132(a). Only one location fits this narrow description: Cameron County, which includes the SpaceX launch site, located near Boca Chica public beach.

Boca Chica Beach is a roughly 8-mile stretch of sandy, undeveloped, public beach, located about twenty miles east of Brownsville. Texas State Highway 4 is the only road that reaches the Beach. CR.99. Under HB2623, Cameron County has been, regularly, closing Boca Chica Beach and State Highway 4 to allow SpaceX to conduct space flight activities near the Beach.

Boca Chica Beach falls within OBA'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. Respondents, thus, filed a lawsuit seeking a

judicial declaration that HB2623 violates the provision in the Bill of Rights that guarantees the public access to and use of Texas public beaches. CR.6-29.

SUMMARY OF ARGUMENT

Respondents' lawsuit presented the trial court with a familiar legal issue: Do certain statutes violate the Texas Bill of Rights? And they sought a classic equitable remedy: a judicial declaration under the UDJA.

Recognizing well-established legal principles, the appellate court correctly held that the trial court possessed jurisdiction to determine the constitutionality and validity of the challenged statutes, and that under the UDJA, the court could render the equitable relief requested by Respondents. The appellate court further held that sovereign immunity is waived in this type of a lawsuit, under longstanding legal precedent. And finally, the appellate court properly recognized that Respondents need not rely on a private right of enforcement to demonstrate standing to pursue their constitutional challenge and obtain the requested equitable relief.

Courts have long-recognized their authority to determine whether certain statutes are void for violating the Bill of Rights. *See, e.g., City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995). No express private right of enforcement is necessary to render this form of equitable relief. In fact, Section 29 of the Bill of Rights expressly provides the authority to render the equitable relief Respondents seek by their lawsuit. *Id.*

Although Section 33(d) states that it creates no private right of enforcement, it does not abrogate a party's right to seek equitable relief, such as a declaration that

certain statutes contravene Section 33 of the Constitution; nor does it abrogate the core function of the judiciary to interpret and apply the Constitution and declare all acts contrary to it void. *See Patel*, 469 S.W.3d at 123 (Willett, J., concurring).

GLO's reading of Section 33(d) would allow the government to avoid judicial review of any statutes or actions that contravene Section 33 of the Bill of Rights. This would turn the Separation of Powers provision in the Texas Constitution on its head. *See id*. at 76. There is simply no caselaw that supports this proposition, and it cannot be what Texas voters intended when they adopted Section 33. Otherwise, "all the reservations of particular rights or privileges [in the Constitution] would amount to nothing." *Id*. at 123 (Willett, J., concurring) (internal quotation and citation omitted).

GLO seeks to avoid the aforementioned longstanding legal precedent by mischaracterizing Respondents' claims and arguing that they are not viable. GLO maintains that Respondents' claims would leave the government without the means to regulate beach access to protect Texas citizens, and the appellate court should have determined that this "is not a viable construction of the Amendment, and challenges based on that construction must fail." *Pet.-Br.*, p.14.

But Respondents sought to challenge a statute that allows for beach closures for space flight activities, not the general authority of the government to protect the public from natural events. The appellate court correctly rejected GLO's attempts to

mischaracterize the nature of Respondents' claims and determined that Respondents' pleadings presented viable, valid constitutional challenges.

This Court need not disturb the appellate court's decision, which was based on longstanding legal precedent.

ARGUMENT

I. Respondents' pleadings demonstrated a waiver of sovereign immunity.

The UDJA has historically been relied on when challenging the constitutionality of a statute or other law. Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; *see, e.g., Patel*, 469 S.W.3d at 76. As this Court has made clear, "sovereign immunity is inapplicable in a suit against a governmental entity that challenges the constitutionality of a statute and seeks only equitable relief." *Patel*, 469 S.W.3d at 76 (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009)).

Respondents' lawsuit challenged the constitutionality of certain statutes and sought only equitable relief, and the Court of Appeals, relying on this Court's opinion in *Heinrich*, agreed that sovereign immunity was waived, here, because Respondents sought "a declaratory judgment that the statutes and rule in question are invalid and violative of Texas Constitution, article I, § 33. In other words, [Respondents] are challenging the validity of a statute, which is expressly permitted by the UDJA and under long-standing precedent." App.4, p.16.

Confoundingly, GLO argues that the appellate court was wrong because: "Although the Petitioners filed a plea to the jurisdiction arguing that they were entitled to sovereign immunity, the Court of Appeals held that it need not address that claim at the plea-to-the-jurisdiction stage." *Pet.-Br.*, p.15; *see also* p.16 (erroneously claiming that the Court of Appeals' decision did not address

jurisdiction). But the appellate court squarely addressed GLO's sovereign immunity argument in its opinion: "Longstanding case law holds that the UDJA, which requires the inclusion of the relevant governmental unit as a party, waives immunity for suits seeking to have a statute declared unconstitutional." App.4, p.16 (citing *Heinrich*, 284 S.W.3d at 373 n.6). GLO is simply displeased with the appellate court's decision—but this does not present a valid basis for granting its Petition.

II. Respondents presented the trial court with viable claims.

GLO argues in its Petition, for the first time, that Respondents' claims were facially invalid,[5] and because the appellate court's opinion failed to address this argument, its Petition should be granted. Relying on a number of distinguishable and irrelevant cases, GLO argues that the appellate court was wrong in failing to examine the "viability" of Respondents' claims, including the merits of those claims.

A. To determine the viability of Respondents' claims, the appellate court was not required to reach the merits of those claims.

As this Court explained in *Patel*, "claims against state officials—like all claims—must be properly pleaded in order to be maintained," but the claims need not "be viable on their merits to negate immunity." 469 S.W.3d at 77. Respondents satisfied this burden. They plainly cited the constitutional provision that was violated

[5] The GLO uses the terms "facially invalid" and "viability" interchangeably. *Pet.-Br.*, p.12. For purposes of these arguments, any distinction between the two terms is irrelevant here, because Respondents' claims were both facially valid and viable.

by the Legislature's enactment of HB2623, explained how the bill violates the constitutional provision, and described how their members have been aggrieved by the challenged statutes and by actions taken pursuant to those statutes.

B. Reviewing courts must construe plaintiffs' pleadings liberally in favor of the pleaders' intent.

GLO strains to recharacterize Respondents' claims—in a manner unsupported by the Respondents' pleadings—in support of its argument that Respondents' claims are not viable. This Court should reject the GLO's mischaracterization of Respondents' claims and properly construe Respondents' pleadings liberally in their favor.

When reviewing a trial court's ruling on a plea to the jurisdiction, 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. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004) (holding that plaintiffs need not "put on their case simply to establish jurisdiction").

1. GLO mischaracterizes Respondents' claims.

GLO describes Respondents' claims as "Respondents' interpretation of a statute," *Pet.-Br.*, p.18, which is in turn described as "an absolutist theory" and an "all-or-nothing rule." *Id.*, pp.19-20. Respondents' claims, argues GLO, threaten to "endanger[] all the laws the Legislature employs to protect public safety on or near beaches." *Id.* (citing Tex. Gov't Code § 311.023, which allows consideration of consequences of construction of a particular statute). Finally, GLO concludes that the appellate court had an obligation to assess the validity of Respondents' legal position and, had it done so, it would have held that Respondents' challenge is facially invalid and upheld the trial court's decision. *Id.*, p.19.

GLO's argument reflects a mischaracterization of Respondents' claims and a misapplication of relevant law. Applying the well-established legal tenets that plaintiffs' pleadings should be construed liberally in favor of the pleaders' intent, this Court should reject GLO's arguments. The court of appeals correctly construed Respondents' pleadings and determined that they presented a viable claim, as described more fully below.

2. Respondents challenged two statutory provisions as unconstitutional, because they violated Section 33 of the Texas Bill of Rights.

By their First Amended Petition, Respondents sought to have two statutes—Sections 61.132 and 61.011(d)(11) of the OBA—declared unconstitutional. They alleged that the two statutes are facially unconstitutional and unconstitutional as

applied, because the statutes conflict with Section 33 of the Texas Bill of Rights. CR 111.

For instance, Section 61.132 of the OBA (one of the challenged statutes) is entitled: "*Closing of Beaches* for Space Flight Activities." Tex. Nat. Res. Code § 61.132 (emphasis added). "Space flight activities," in turn, is defined in the Texas Civil Practice and Remedies Code Chapter 100A, titled, "Limited Liability for Space Flight Activities," thusly:

> "Space flight activities" means activities and training in any phase of preparing for and undertaking space flight, including:
>
> (A) the *research, development, testing, or manufacture of a launch vehicle, reentry vehicle, or spacecraft*; . . . .

Tex. Civ. Prac. & Rem. Code § 100A.001(3); Tex. Nat. Res. Code § 61.001(4-a) (cross-referencing definition of "space flight activities" in Tex. Civ. Prac. & Rem. Code § 100A.001).

Section 61.132(c) authorizes Cameron County to routinely close its public beach for space flight activities (as defined above) and to prohibit the public from accessing it via the only public road to the beach.

Section 33 of the Texas Bill of Rights 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). 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) (emphasis added).

Respondents alleged, in their trial-court pleadings, that Section 61.132 of the OBA 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. Rather than protecting public beach access, this law plainly interferes with, encroaches on, and impedes public beach access, according to Respondents' pleading allegations. And so, Respondents sought a declaratory judgment that Section 61.132 of the OBA is unconstitutional.

The appellate court properly construed Respondents' pleadings and determined that it need not reach the merits of Respondents' claims to determine that Respondents' pleadings invoked the trial court's jurisdiction.

C. The cases cited by the GLO are not applicable here.

GLO relies on a number of cases in support of its contention that the appellate court should have addressed the merits of Respondents' claims and determined that they are not viable or are facially invalid. But the cited cases do not support GLO's position here.

First, *Klumb v. Houston Municipal Employees Pension System*, 458 S.W.3d 1 (Tex. 2015), did not involve a constitutional challenge to a statute. Instead, the

plaintiffs in *Klumb* raised due course of law and equal protection claims. Because plaintiffs' pleadings failed to address the threshold requirements to pursue those claims, this Court held that their pleadings conclusively negated the existence of subject-matter jurisdiction. *Id.* at 17.

Here, Respondents challenged the constitutionality of certain statutes—arguing that they irreconcilably conflict with Section 33 of the Texas Bill of Rights. The Court's analysis in *Klumb* simply does not apply here.

The GLO's reliance on *Abbott v. Mexican American Legislative Caucus*, 647 S.W.3d 681 (Tex. 2022), is similarly misplaced. In that case, plaintiffs challenged as unconstitutional certain laws that reapportioned legislative districts. Defendants raised a number of jurisdictional arguments, including sovereign immunity.

After addressing the validity of one of the constitutional challenges raised by plaintiffs—whether the challenged statutes violated Article III, § 26 of the Texas Constitution—this Court determined that the claim was not barred by sovereign immunity. According to the Court, it is possible that the State may be able to justify noncompliance with Article III, § 26, at the merits stage of the proceeding. But that possibility does not render plaintiffs' claim invalid for purposes of whether immunity has been waived. *Id.* at 700.

Conversely, this Court held that plaintiffs' claim that the reapportionment statutes violated Article III, § 28 of the Texas Constitution was not a valid or viable

claim. Section 28 addresses when the Legislature may reapportion legislative districts, following a decennial census. *Id.* at 701. Plaintiffs alleged that the Legislature violated this constitutional provision because it reapportioned legislative districts during a special session following the census, instead of during the next regular session. This Court held that Section 28 was intended to ensure that the Legislature exercises its legislative power in a timely fashion, not to foreclose the Legislature from exercising this power at another time. *Id.* at 702. And so, this Court held that plaintiffs' claim that the Legislature's act of reapportioning districts during a special session violated Article III, Section 28 was invalid. *Id.* at 703.

This case is not helpful to GLO for a number of reasons. First, plaintiffs' claim was that a legislative act (reapportionment of legislative districts) failed to comply with certain constitutional requirements governing how and when the Legislature may exercise this legislative power. Where it appeared, from the plaintiffs' pleadings, that the legislative act violated a constitutional provision (Article III, Section 26), the Court determined that the claim was valid—notwithstanding that the State may still prevail at the merits phase of the proceedings. Where it appeared that there was no constitutional provision prohibiting the Legislature's authority to act as it did when it did, this Court held that plaintiffs' pleadings failed to allege that the Legislature's conduct contravened a constitutional limitation or provision.

Here, Respondents' claim is that the challenged statutes are prohibited by Section 33 of the Texas Bill of Rights. This requires a simple comparison of the statutory language with Section 33. The challenged statute allows the government to close a public beach and access to it for "space flight activities." Section 33 recognizes that the public has an "unrestricted right" to use and access public beaches, and it limits the Legislature's authority to enact laws to protect the right of the public to access and use a public beach. A cursory comparison of the plain text of the challenged statute and the relevant constitutional provision, undeniably, suggests that the statute is constitutionally infirm.

GLO's reliance on *City of South Padre Island v. Surfvive*, 2022 WL 2069216 (Tex. App.—Corpus Christi June 9, 2022, pet. denied) (mem. op.) is unavailing. The case involved competing motions for summary judgment, in addition to a plea to the jurisdiction. The court of appeals held that plaintiffs "did not *present evidence* to rebut the presumption that the ordinance is constitutional," and so, the trial court erred in granting its motion for summary judgment. By contrast, this case involves a trial court's granting of a plea to the jurisdiction, not summary judgment.

Finally, *City of Houston v. Houston Firefighters' Relief and Retirement Fund*, 667 S.W.3d 383 (Tex. App.—Houston [1st Dist.] 2022, pet. denied), is irrelevant here. The case involved a claim by the firefighters' pension fund (the "Fund") that a statutory amendment imposing a new valuation procedure that must be used in

setting the city's contribution rate to the Fund was unconstitutional. The Fund argued that the Texas Constitution vests its Board with the "exclusive authority" to select all the actuarial assumptions used to determine the City's contribution rates. But the constitutional provision relied on by the Fund included no such exclusivity language. *Id.* at 398. And so the appellate court determined the Fund's as-applied constitutional challenge was facially invalid.

The case is not analogous or relevant to the case presented here. The constitutional challenge, here, presents a classic facial constitutional challenge to a statutory provision: do the challenged statutes violate the Texas Bill of Rights? As this Court acknowledged, the core function of the judiciary is to interpret and apply the Constitution and declare all acts contrary to it void. *See Patel*, 469 S.W.3d at 123 (Willett, J., concurring). GLO's cited cases do not alter this basic legal principle.

In sum, Respondents presented viable, facially-valid claims.

III. No private right of enforcement was necessary to establish Respondents' standing to pursue their lawsuit.

GLO argues that Respondents have no standing "to bring a claim for violations of Article I, Section 33 of the Texas Constitution" because "no right of enforcement exists to enforce access to beaches." *Pet.-Br.*, pp.21-22. Here, again, GLO's argument relies on a mischaracterization of Respondents' claims. Respondents do not seek to "enforce" their access to the beach; nor do they seek

damages or compensation for violations of the Constitution. And they need not demonstrate a private right of enforcement to challenge a statute as unconstitutional.

The judiciary possesses the authority to consider the constitutionality of the statutes. Neither a private cause of action nor a private right of enforcement is necessary to invoke a district court's jurisdiction to do so.

A. The Bill of Rights is self-executing in that all laws in conflict with it are void.

The *City of Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995), case is particularly apt here. The case involved former Beaumont police department employees who sought damages from the City for violations of their rights under the free speech and assembly clauses of the Texas Constitution. *Id*. at 145, 147.

This Court held that there can be no private right of action for damages against the State for violations of Sections 8 and 27 of the Bill of Rights because "the text of the Texas Bill of Rights . . . explicitly announces the consequences of unconstitutional laws": any action taken and any statute enacted in violation of the Bill of Rights is void. *Id.* at 148. The "State has no power to commit acts contrary to the guarantees found in the Bill of Rights," the Court proclaimed. *Id*. Citing Section 29 of the Bill of Rights, the Court continued:

> [A]ny 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*. . . . A law that is declared void has no legal effect. . . . Thus, *suits for equitable remedies for violation of constitutional rights are not prohibited*.

Id. at 148-49 (emphasis added); *accord City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex. 2007).

Here, Respondents did not present the district court with a private right of action seeking compensation for constitutional violations. Nor do they seek to seize the State's enforcement authority under the OBA. *See* Tex. Nat. Res. Code § 61.013(a). Instead, Respondents sought an equitable remedy, a declaration that certain provisions of the OBA are unconstitutional and void.. No private right of enforcement is necessary to invoke a court's jurisdiction to render this equitable form of relief.

B. The GLO's cited cases are not relevant here.

GLO cites *Texas Medicine Resources, LLP v. Molina Healthcare of Texas, Inc*., 620 S.W.3d 458 (Tex. App.—Dallas 2021), *aff'd* 659 S.W.3d 424 (Tex. 2023), in support of the argument that a private cause of action must be clearly supported by statutory text. But this case involves physicians seeking to enforce Insurance Code provisions against a health maintenance organization (a private party) for inadequate payment for the physicians' services. *Id*. at 462. It is not analogous to Respondents' case, which presents a claim against governmental entities alleging that certain statutes are void because they violate the Bill of Rights.

Similarly, *Kessling v. Friendswood Indep. Sch. Dist*., 302 S.W.3d 373 (Tex. App.—Houston [14th Dist.] 2009, pet. denied), is also unhelpful here. In *Kessling*, the plaintiff sued the school district, requesting a declaratory judgment and injunctive and mandamus relief requiring the district to adopt an account system that conforms to the Education Code. *Id*. at 377. The appellate court affirmed the trial court's dismissal of the plaintiff's Education Code claims for want of jurisdiction because the Education Code does not include any provision authorizing a private right of action for complaints concerning a school district's failure to follow required accounting practices. *Id*. at 386. This case, again, involves enforcement of specific statutes—statutes that do not provide a private cause of action. Respondents do not seek to enforce any statutes.

Finally, GLO cites *Witkowski v. Brian, Fooshee & Yonge Properties*, 181 S.W.3d 824 (Tex. App.—Austin 2005, no pet.), in support of the argument that a right of enforcement must be present in the statutory text to support a cause of action. In that case, plaintiffs (low-income housing tenants) sued low-income housing property owners for damages, alleging violations of a federal statutory scheme and contractual breaches, which ultimately resulted in the tenants' eviction from their homes. *Id*. at 826-27. The trial court granted summary judgment in favor of the defendants, and the court of appeals affirmed. In reaching their decision, the court explained that the challenged statutes that formed the basis of the plaintiffs' lawsuit

did not include a private right of enforcement that would support plaintiffs' claim for damages, and so, the trial court properly granted summary judgment in favor of the defendants. *Id*. at 831-32. This case is also distinguishable, because it involved a lawsuit for damages against private parties, based on the attempted enforcement of certain federal statutes. Respondents' lawsuit does not seek damages, it is not against a private party, and it does not seek to enforce any statute.

C. Courts possess jurisdiction to render the equitable relief requested by Respondents, as this Court has repeatedly recognized.

For over a century, courts have recognized their authority to determine whether certain statutes are void for violating the Bill of Rights. *See, e.g., Denison v. State*, 61 S.W.2d 1017, 1019 (Tex. App.—Austin), *writ ref'd*, 61 S.W.2d 1022 (1933). No express private right of enforcement is necessary to render this form of equitable relief.

The court of appeals correctly held that under long-standing precedent, Respondents presented claims within the trial court's jurisdiction, had standing to do so, and that immunity was waived.

PRAYER

For the above reasons, Respondents ask this Court to deny GLO's Petition for Review. Respondents also request such further relief to which they may show themselves justly entitled.

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 Response to Petition for Review contains 4454 words, excluding the portions of the document 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 October 3, 2024, a true and correct copy of the foregoing document was served to the following counsel of record via electronic mail.

/s/ Marisa Perales
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Index of Appendix

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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AS TEXAS LAND COMMISSIONER

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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

NUMBER 13-22-00358-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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

v.

TEXAS GENERAL LAND OFFICE AND DAWN BUCKINHAM, M.D., IN HER OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER, **Appellees.**

On appeal from the 445th District Court of Cameron County, Texas.

NUMBER 13-22-00359-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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

v.

CAMERON COUNTY, **Appellee.**

On appeal from the 445th District Court of Cameron County, Texas.

NUMBER 13-22-00360-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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

v.

TEXAS ATTORNEY GENERAL, **Appellee.**

On appeal from the 445th District Court of Cameron County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Longoria and Silva
Memorandum Opinion by Justice Silva

Appellants SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas, Inc. (the Tribe), filed a suit seeking a declaratory judgment that Texas Natural Resources Code §§ 61.011(d)(11), and 61.132, which permit the closure of beaches for space flight activities, violates the Texas Constitution's Open Beaches Amendment. *See* TEX. CONST. art. I, § 33(c). Appellants also sought a declaratory judgment that § 15.32(d) of Title 31 of the Texas Administrative Code, which provides for the closure of the beach and associated access points for space flight activities, violates the Open Beaches Amendment. *See id.* Appellees Cameron County, the Texas General Land Office (GLO), Dawn Buckingham, M.D. in her official capacity as the Texas Land Commissioner (Commissioner),[1] and the Texas Attorney General each filed a plea to the jurisdiction, arguing, among other things, that appellants lacked standing. The trial court granted each appellee's plea to the jurisdiction, dismissing appellants' claims.

By three issues, which we reorder and construe as two, appellants argue that the trial court erred by granting the pleas to the jurisdiction because (1) appellants demonstrated that they had standing; and (2) governmental immunity is waived in cases challenging the constitutionality of a statute, such as here. We reverse and remand.

I. BACKGROUND

The Texas Constitution provides that "[t]he 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

[1] When this suit originated, George P. Bush was the Texas Land Commissioner. However, Dawn Buckingham, M.D., was elected as the Texas General Land Office Commissioner on November 8, 2022, and took office on January 10, 2023. *See* TEX. R. APP. P. 7.2(a) (automatically substituting public officers if the office holder changes before final disposition).

public." *Id.* art. I, § 33(b). This provision, commonly referred to as the Open Beaches Amendment, permits 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" but "does not create a private right of enforcement." *Id.* art. I, § 33(c), (d). In 2013, the legislature enacted Texas Natural Resources Code § 61.132, which permits the commissioners in a county bordering the Gulf of Mexico or its tidewater to temporarily close a beach in reasonable proximity to a space flight launch site or access points to the beach in the county on launch dates. TEX. NAT. RES. CODE ANN. § 61.132.

According to SaveRGV's first amended petition, following the passage of § 61.132, appellees have allowed the closure of Boca Chica Beach in Cameron County for up to 450 hours per year to allow Space Exploration Technologies Corporation (SpaceX) to conduct activities related to space flight launches. Such closures prompted SaveRGV to file a suit seeking declaratory judgment that § 61.132 violates the Open Beaches Amendment and is thus unconstitutional. Moreover, SaveRGV asserted that Texas Natural Resources Code § 61.011(d)(11), which allows the Commissioner to promulgate rules for the closure of beaches for space flight launches, violated the Open Beaches Amendment.[2] *See id.* § 61.011(d)(11). Consistent with its challenge to §§ 61.011(d)(11) and 61.132, SaveRGV also challenged § 15.32(d) of Title 31 of the Texas Administrative Code, which "provide[s] for the closure of a beach and associated access points during

[2] Appellants asserted facial and as-applied constitutional challenges to both statutes. *See Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 702 (Tex. 2014) (explaining the distinction between facial and as-applied challenges to the constitutionality of a statute).

space flight activities as consistent with state law." 31 TEX. ADMIN. CODE § 15.32(d) (2023) (Tex. Gen. Land Off., Certification Status of Cameron County Dune Protection and Beach Access Plan). Lastly, SaveRGV challenged the constitutionality of a memorandum of agreement between the GLO and Cameron County, as well as a Cameron County Commissioner's Court order permitting the closure of Boca Chica Beach and State Highway 4 for space flight launches.

SaveRGV describes itself as

> 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. . . . SaveRGV is not a membership organization, but it is led, guided, and funded by persons who recreate in, reside near, and otherwise regularly use the Boca Chica Beach; these individuals bear the indicia of membership.

SaveRGV alleged that its "members reside, recreate, use, and otherwise regularly access Boca Chica Beach" and they "have all been impacted by the frequent closure of the [b]each and of the [s]tate [h]ighway that provides the only access to the [b]each." SaveRGV described how the closures have impacted four specific members; it went on to allege that "[o]n several occasions, members of SaveRGV have attempted to visit the [b]each, only to be turned away by local law enforcement enforcing the County's closure of the [b]each or of State Highway 4."

Sierra Club and the Tribe filed a petition in intervention, joining SaveRGV's request for declaratory relief. Sierra Club alleged that its "members include residents of Cameron County who regularly recreate and otherwise rely on Boca Chica Beach for a variety of activities." The Tribe alleged that it is a Texas non-profit membership organization whose

purposes include serving "the cultural, social, educational, spiritual, linguistic, economic, health, and traditional needs of its members and descendants of the Carrizo/Comecrudo Nation of Texas and other indigenous or Native American groups."

According to Sierra Club,

> its corporate purposes are to explore, enjoy, and protect the wild places of the earth, to practice and promote the responsible use of the earth's ecosystems and resources, to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives.

Sierra Club described how the beach closures have affected one member in particular who attempted to visit Boca Chica Beach on her birthday but was turned back due to beach closure.

Appellees each filed pleas to the jurisdiction, seeking to have appellees' suit dismissed. The Attorney General argued that (1) appellants lacked standing; (2) sovereign immunity forecloses appellees' facial constitutional challenge; and (3) appellants could not allege a viable constitutional challenge. Cameron County argued in its plea that (1) the Open Beaches Amendment does not create a private right of enforcement by its own terms, *see* TEX. CONST. art. I, § 33(d); and (2) appellants lacked standing. The GLO and Commissioner argued in their plea that (1) appellants lacked standing; (2) appellants could not demonstrate an injury-in-fact; (3) any alleged injury was not traceable to acts or omissions by the GLO or Commissioner; (4) the Open Beaches Amendment does not create a private right of enforcement by its own terms, *see id.*; (5) claims against the GLO and Commissioner were redundant and thus only the GLO should remain, if any; and (6) sovereign immunity protects the GLO and Commissioner from suits seeking declaratory relief.

The trial court granted each plea to the jurisdiction without explaining its basis for doing so. These appeals followed.

II. STANDARD OF REVIEW

"A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plea challenges the trial court's subject matter jurisdiction over a pleaded cause of action. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Subject matter jurisdiction is a question of law; therefore, when the determinative facts are undisputed, we review the trial court's ruling on a plea to the jurisdiction de novo. *Id.* A plaintiff has the burden to affirmatively demonstrate the trial court's jurisdiction. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019).

III. APPLICABLE LAW

A. Standing

1. Generally

Standing, as a component of subject matter jurisdiction, is never presumed and cannot be waived. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). When determining whether a party has standing, we may look to analogous federal jurisprudence. *See Heckman v. Williamson County*, 369 S.W.3d 137, 151–52 (Tex. 2012). To have standing, (1) a plaintiff must have suffered an injury in fact, (2) the injury must be fairly traceable to the defendant, and (3) the injury must likely be redressable by a favorable decision from the court. *Id.* at 154–55 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, (1992)).

To constitute an injury in fact, there must be "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 154 (cleaned up). The plaintiff themself must have personally suffered the injury rather than the public at large. *Id.* at 155. "Constitutional harms—whether actual or imminent—are sufficient." *Id.* Moreover, the plaintiff's injury must be fairly traceable to the challenged action of the defendants, not an "injury that results from the independent action of some third party not before the court." *Id.* Finally "[t]o satisfy redressability, the plaintiff need not prove to a mathematical certainty that the requested relief will remedy his injury—he must simply establish a 'substantial likelihood that the requested relief will remedy the alleged injury in fact.'"[3] *Id.* at 155–56 (quoting *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000)).

"To 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." *Patel v. Tex. Dep't of Lic. & Regul.*, 469 S.W.3d 69, 77 (Tex. 2015) (cleaned up). "Where 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 (cleaned up).

2. Associational Standing

An association has standing to sue on behalf of its members when "'(a) its

[3] Appellees did not challenge redressability as an element of standing.

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.'" *Tex. Ass'n of Bus.*, 852 S.W.2d at 447 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). However, an association does not need to have formal membership to have associational standing, so long as the individuals associated therewith bear "all the indicia of membership." *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 828 (5th Cir. 1997) (citing *Hunt*, 432 U.S. at 344–45). "Under the indicia-of-membership test, we consider whether an organization's purported 'members' (1) elect the organization's leaders, (2) serve in the organization's leadership, (3) finance the organization's activities, (4) associate voluntarily with the organization, and (5) provide sworn testimony of membership." *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 37 F.4th 1078, 1084 n.7 (5th Cir. 2022) (citing *Hunt*, 432 U.S. at 344–45).

B. Sovereign Immunity

Sovereign immunity protects the State of Texas and its political subdivisions from liability for negligence. *Univ. of Tex. Med. Branch at Galveston v. York*, 871 S.W.2d 175, 177 (Tex. 1994). However, immunity may be waived by constitutional or statutory provisions. *Id.* If a political subdivision of the State enjoys sovereign immunity, the trial court does not have subject matter jurisdiction. *Miranda*, 133 S.W.3d at 225–26. Whether a court has subject matter jurisdiction is a question of law, which we review de novo. *Id.* at 226. A waiver of immunity must be clear and unambiguous. *Oncor Elec. Delivery Co. LLC v. Dall. Area Rapid Transit*, 369 S.W.3d 845, 849 (Tex. 2012).

Under the UDJA, "[a] person . . . whose rights, status, or other legal relations are

affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a). If a statute, ordinance, or franchise is alleged to be unconstitutional, "the attorney general of the state must . . . be served with a copy of the proceeding and is entitled to be heard." *Id.* § 37.006(b). This provision of the UDJA waives sovereign immunity for suits challenging the constitutionality of a statute. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009) (first citing TEX. CIV. PRAC. & REM. CODE ANN. § 37.006(b); then citing *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697–98 (Tex. 2003) ("[I]f the Legislature requires that the State be joined in a lawsuit for which immunity would otherwise attach, the Legislature has intentionally waived the State's sovereign immunity."); and then citing *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994)); *see also Swanson*, 590 S.W.3d at 552 (noting that the UDJA provides "a limited waiver [of immunity] for challenges to the validity of an ordinance or statute").

Under the APA, "[t]he validity or applicability of a rule . . . may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff." TEX. GOV'T CODE ANN. § 2001.038(a). "The state agency must be made a party to the action." *Id.* § 2001.038(c).

IV. ANALYSIS

A. Standing

By their first issue, appellants argue that they possessed standing to pursue their claim. In contrast, appellees contend, through a multifaceted argument, that appellants

lack standing to bring their suit. Specifically, appellees argue that appellants lack standing because: (1) their members did not suffer an injury-in-fact;[4] (2) their challenge to Texas Natural Resource Code §§ 61.011(d)(11) and 61.132 and the Cameron County Commissioners' Court order fails because the alleged injury is not traceable to any action by the appellees; (3) Texas Constitution Article I, § 33 does not create a private right of enforcement; and (4) the UDJA does not provide a separate basis for standing.

1. Injury-in-Fact

Appellants argue that they did in fact suffer an injury-in-fact, not just the public at large. We agree. The Open Beaches Amendment provides the public, *individually and collectively*, with the unrestricted right to use and a right of ingress to and egress from a public beach in the form of a permanent easement. TEX. CONST., art. I, § 33(b) (emphasis added). Sierra Club and the Tribe's petition in intervention pleaded specific times their members attempted to use their permanent easement to access the public beaches but were denied due to closure for space flight launches. *See Severance v. Patterson*, 370 S.W.3d 705, 721 (Tex. 2012) ("Because the easement holder is the dominant estate owner and the land burdened by the easement is the servient estate, the property owner may not interfere with the easement holder's right to use the servient estate for the purposes of the easement."). Thus, although the beach closures affected the public at

[4] The Attorney General's plea to the jurisdiction also challenged SaveRGV's associational standing because it did not plead facts demonstrating that the individuals associated with the organization bore the indicia of membership. *See Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 828 (5th Cir. 1997) (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344–45 (1977) (holding that an association does not need to have formal membership to have associational standing, so long as the individuals associated therewith bear "all the indicia of membership")). Sierra Club, who does have a traditional membership structure, intervened in the suit. As discussed *infra*, because at least Sierra Club has standing, we do not review whether SaveRGV would have standing independently. *See Patel v. Tex. Dep't of Lic. & Regul.*, 469 S.W.3d 69, 77 (Tex. 2015).

large, the individual members pleaded an injury-in-fact specific to them, not just the public at large. *See Heckman*, 369 S.W.3d at 155.

2. Traceability

Appellees next argued in their pleas that appellants' alleged injury cannot be traced to any acts or omissions of the GLO, the Commissioner, or Cameron County, but instead to the Texas Legislature and the Cameron County Commissioner's Court. Appellants in turn argue that their injuries are directly traceable to the unconstitutional statutes and actions taken thereunder. Again, we agree with appellants. Although the legislature passed the statute that permits the closure of beaches for space flight launches, it is Cameron County itself who has actually closed the beaches. The GLO and Commissioner permitted the beach closure through the adoption of § 15.32(d) of Title 31 of the Texas Administrative Code. *See* 31 TEX. ADMIN. CODE § 15.32(d). Appellees provide no authority for their contention that Cameron County Commissioners Court is the proper defendant as opposed to the County itself. *See* TEX. R. APP. P. 38.1(i); *see also Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 844 (Tex. 2007) ("[A] suit against a state official is merely 'another way of pleading an action against the entity of which [the official] is an agent.'" (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)); *see, e.g.*, *Flores v. Cameron County, Texas*, 92 F.3d 258, 261 (5th Cir. 1996) (dismissing claims against County Judge in his official capacity as redundant of claims against Cameron County). Accordingly, we conclude that appellants' alleged injury is fairly traceable to the conduct of Cameron County and the GLO. *See Heckman*, 369 S.W.3d at 155.

3. Private Right of Enforcement

As noted, the Open Beaches Amendment states that it "does not create a private

right of enforcement." TEX. CONST. art. I, § 33(d). Appellees argued in their pleas that this provision necessarily prohibits appellants from challenging the constitutionality of the statutes and rules permitting the closure of beaches for space flight launches.[5] However, as appellants point out, they did not bring a private action to enforce their right to access the beach. Such an action would most likely take the form of an injunction against a private entity, such as SpaceX, to prohibit their space flight launches that lead to the closure of Boca Chica Beach. Instead, appellants challenge the constitutionality of the statutes, rule, memorandum of agreement, and order.

Appellees rely on *Texas Medicine Resources, LLP v. Molina Healthcare of Texas, Inc.*, which held that an insurance code provision regarding the payment for emergency care services performed by out-of-network physicians did not create a private cause of action. 659 S.W.3d 424, 435 (Tex. 2023). However, *Texas Medicine Resources* involved a group of physicians suing an insurance provider for payment under the insurance code provision being considered. *See id.* In other words, the plaintiffs brought suit against a private third-party rather than challenging the constitutionality of the statute. *See id.* at 428–30. *Texas Medicine Resources* is thus inapposite. Because appellants did not bring a private cause of action to enforce their right to access the beach, but instead brought a declaratory judgment action seeking to have the statutes and rule declared void, appellants' suit is not barred. *See* TEX. CONST. art. I, § 33(d); *see also id.* art. I, § 29 ("To guard against transgressions of the high powers herein delegated, we declare that every[]thing in this 'Bill of Rights' is excepted out of the general powers of government,

[5] Although the Attorney General abandoned this argument at oral argument, the GLO and Cameron County maintained it.

and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.").

4. UDJA Standing

Lastly, appellees now argue on appeal that "the UDJA does not provide any separate basis for standing." Because we conclude that appellants satisfied injury-in-fact and traceability, they have standing, and we need not address appellees' argument that "the UDJA does not provide any separate basis for standing." Accordingly, we sustain appellants' first issue.

B. The Commissioner

The GLO and the Commissioner next argued in their plea that the trial court properly dismissed appellants' suit against the Commissioner because claims against the Commissioner are redundant to those against the GLO. "Under Texas law, a suit against a government employee in his official capacity is a suit against his government employer with one exception: an action alleging that the employee acted *ultra vires*." *Franka v. Velasquez*, 332 S.W.3d 367, 382 (Tex. 2011) (internal citations omitted). Appellants' suit against the Commissioner is, in essence, an *ultra vires* suit: appellants allege that the Commissioner adopted the rule in question in contravention of the Texas Constitution and seek a declaration of such. *See Heinrich*, 284 S.W.3d at 372–73 ("[I]t is clear that suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity . . . . To fall within this *ultra vires* exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act."); *see also Hall v. McRaven*, 508 S.W.3d 232, 240 (Tex. 2017) ("[A]n ultra

vires suit must lie against the 'allegedly responsible government actor in his official capacity.'" (quoting *Patel*, 469 S.W.3d at 76)). Accordingly, appellants' suit against the Commissioner is not prohibited.

C. Immunity

Appellants argue that the UDJA expressly waives sovereign immunity in suits challenging the constitutionality of a statute. *See Heinrich*, 284 S.W.3d at 373 n.6. We agree. Longstanding case law holds that the UDJA, which requires the inclusion of the relevant governmental unit as a party, waives immunity for suits seeking to have a statute declared unconstitutional. *See id.*

Appellees argue for the first time on appeal that "[s]ince [a]ppellants challenged the [a]ppellees' actions under the aforementioned provisions of the Texas Natural Resources Code, the UDJA does not waive sovereign immunity vis-à-vis [a]ppellants' claims against the [a]ppellees."[6] However, appellees misstate appellants' suit. Appellants are not challenging appellees' actions, but instead seek a declaratory judgment that the statutes and rule in question are invalid and violative of Texas Constitution, article I, § 33. In other words, appellants are challenging the validity of a statute, which is expressly permitted by the UDJA and under long-standing precedent. *See Heinrich*, 284 S.W.3d at 373 n.6; *see also Swanson*, 590 S.W.3d at 552 ("[T]he UDJA does not contain a general waiver of sovereign immunity, providing only a limited waiver for challenges to the validity of an ordinance or statute."); *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011) (per curiam) ("[T]he state may be a proper party to a declaratory judgment action

[6] Appellees do not elaborate on how appellants' pleadings challenge their actions rather than the statutes.

that challenges the validity of a statute."). Moreover, the APA provides that a party may challenge the validity or applicability of a rule and that the state agency must be made a party to the action. *See* TEX. GOV'T CODE ANN. § 2001.038(a), (c). Accordingly, Cameron County and the GLO's immunity is waived. Appellants' second issue is sustained.

D. Merits Challenge

Appellees also argued in their pleas that appellants' suit fails on its face because the challenged statutes are "plainly rational" and "do[] not violate the right to public beach access." Appellants, in turn, contend that this argument goes to the merits of their case rather than to whether the trial court possessed jurisdiction. Appellees assert that the statutes and rule provide "for the protection of the public health, safety, and welfare on dates when an FAA-approved launch is to take place." Senate Comm. On Admin., Bill Analysis, Tex. H.B. 2623, 83 Leg., RS. at 1 (2013). During oral argument, the Attorney General cited *Klumb v. Houston Municipal Employees Pension System*, wherein the Texas Supreme Court held that the plaintiffs "failed to plead a viable equal-protection claim because the board's actions are rationally related to at least two legitimate government objectives which are promoted by the challenged classification." 458 S.W.3d 1, 13–14 (Tex. 2015). There, the Texas Supreme Court reviewed the trial court's order granting the Houston Municipal Employees Pension System's (HMEPS) plea to the jurisdiction as to the plaintiff's equal protection and due process claims. *See id.* at 3–4. Ultimately, the court upheld the dismissal because the plaintiffs failed to plead "viable" constitutional claims; specifically, the court concluded that HMEPS had a rational basis for treating employees and former employees of the City of Houston differently. *See id.* However, *Klumb* did not involve a challenge to the constitutionality of a statute, but rather

involved a challenge to HMEPS's actions (its classification of employees) under the Texas Constitution equal protection clause. *See id.* 3–4 (applying TEX. CONST. art. I, § 3). Thus, to the extent appellees argue that *Klumb* stands for the proposition that we must determine the merits of appellants' constitutional arguments at this stage of the proceeding, we are unpersuaded.[7] Accordingly, *Klumb* does not compel us to uphold the dismissal of appellants' suit.

E. Redundant Remedies

Lastly, appellees argue for this first time on appeal that appellants' UDJA claims are barred by the redundant remedies doctrine because they challenged the GLO's amended rule under the APA. *See* TEX. GOV'T CODE ANN. § 2001.038 (permitting a declaratory judgment regarding the validity or applicability of an administrative rule). "Under the redundant remedies doctrine, courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels." *Patel*, 469 S.W.3d 79. "When a plaintiff files a proceeding that only challenges the validity of an administrative rule, the parties are bound by the APA and may not seek relief under the UDJA because such relief would be redundant." *Id.* However, similar to *Patel*, the appellants here challenge more than just the validity of an administrative rule—they challenge the constitutionality of statutes and the commissioner's court order as well. *See*

[7] We recognize that statutes are not always reviewed for constitutionality under a means-end test, such as rational basis, intermediate scrutiny, or strict scrutiny. For example, the United States Supreme Court rejected the application of such tests to determine the constitutionality of statutes under the Second Amendment. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022) ("[T]the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."). However, we do not decide today what test should be applied to determine the constitutionality of the challenged provisions.

id. at 80. Accordingly, the redundant remedies doctrine does not bar appellants' UDJA claims. *See id.* ("Here the Threaders challenge both rules as defined by the APA and statutes. Because the Threaders cannot attack the constitutionality of the statutes pursuant to [§] 2001.038 of the APA, their UDJA claims are not barred by the redundant remedies doctrine.").

V. CONCLUSION

Having concluded that the appellants possessed standing and that immunity was waived for each appellee, and having rejected the appellees' additional arguments supporting dismissal, we sustain appellants' sole issue. We reverse the trial court's judgment and remand this case to the trial court for further proceedings.

CLARISSA SILVA
Justice

Delivered and filed on the
1st day of February, 2024.

Tab 5

THE THIRTEENTH COURT OF APPEALS

13-22-00358-CV

SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas, Inc.
v.
Texas General Land Office and Dawn Buckingham, in her official capacity as the Texas Land Commissioner

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

JUDGMENT

THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes the judgment of the trial court should be reversed and the cause remanded to the trial court. The Court orders the judgment of the trial court REVERSED and REMANDED for further proceedings consistent with its opinion. Costs of the appeal are adjudged against appellees.

We further order this decision certified below for observance.

February 1, 2024

Tab 6

THE THIRTEENTH COURT OF APPEALS

13-22-00359-CV

SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas, Inc.
v.
Cameron County

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

JUDGMENT

THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes the judgment of the trial court should be reversed and the cause remanded to the trial court. The Court orders the judgment of the trial court REVERSED and REMANDED for further proceedings consistent with its opinion. Costs of the appeal are adjudged against appellee.

We further order this decision certified below for observance.

February 1, 2024

Tab 7

THE THIRTEENTH COURT OF APPEALS

13-22-00360-CV

SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas, Inc.
v.
Texas Attorney General

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

JUDGMENT

THE THIRTEENTH COURT OF APPEALS, having considered this cause on appeal, concludes the judgment of the trial court should be reversed and the cause remanded to the trial court. The Court orders the judgment of the trial court REVERSED and REMANDED for further proceedings consistent with its opinion. Costs of the appeal are adjudged against appellee.

We further order this decision certified below for observance.

February 1, 2024

Tab 8

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 9

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 10

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 11

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.

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Associated Case Party: Texas General Land Office

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