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SUPREME COURT OF TEXAS
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Nos. 24-0237, 24-0407, 24-0457

In the Supreme Court of Texas

TEXAS GENERAL LAND OFFICE AND DAWN BUCKINGHAM, IN HER OFFICIAL CAPACITY AS THE TEXAS LAND COMMISSIONER,
Petitioners,

v.

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

CAMERON COUNTY,
Petitioner,

v.

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

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

v.

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

On Petitions for Review
from the Thirteenth Court of Appeals, Corpus Christi–Edinburg

PETITIONERS' CONSOLIDATED BRIEF ON THE MERITS ON THE FACIAL-VALIDITY STANDARD AND THE CONSTITUTIONALITY OF H.B. 2623 (2013)

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

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Statement of the Case

Nature of the Case:	SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas, Inc. (collectively, "Plaintiffs") sued the Texas General Land Office ("GLO"), the Texas Land Commissioner, and Cameron County under the Uniform Declaratory Judgments Act ("UDJA"), Tex. Civ. Prac. & Rem. Code ch. 37. CR.87-114, 133-43. They sought declarations that House Bill 2623 (2013) violates Article I, Section 33 of the Texas Constitution, both facially and as applied, by authorizing the temporary closure of public beaches for space-flight activities. CR.106-10, 138-39. The Attorney General intervened to defend the challenged statutes. CR.29-40.
Trial Court:	445th Judicial District Court, Cameron County The Honorable Gloria M. Rincones
Disposition in the Trial Court:	The trial court granted pleas to the jurisdiction filed by the GLO and the Commissioner, CR.521-25, the Attorney General, CR.526-29, and Cameron County, CR.530-32.
Parties in the Court of Appeals:	Plaintiffs were the appellants. The GLO and the Commissioner, Cameron County, and the Attorney General were the appellees in separate appeals that the court consolidated for record and briefing purposes.
Disposition in the Court of Appeals:	Reversed and remanded. *SaveRGV v. Tex. Gen. Land Off.*, Nos. 13-22-00358-CV, 13-22-00359-CV, 13-22-00360-CV, 2024 WL 385656 (Tex. App.—Corpus Christi–Edinburg Feb. 1, 2024, pet. pending) (mem. op.) (per Silva, J., joined by Contreras, C.J., and Longoria, J.). The court of appeals denied the Attorney General, GLO, and the Commissioner's motion for rehearing and Cameron County, GLO, and the Commissioner's motion for en banc reconsideration.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.001(a).

Issues Presented

In 2013, the Texas Legislature passed House Bill 2623, which amended the Open Beaches Act to authorize temporary closures of public beaches for space-flight activities. Plaintiffs sued under the UDJA for declarations that H.B. 2623 violates Article I, Section 33 of the Texas Constitution, which dedicates a "permanent easement" in favor of the public "to access and use a public beach." The defendants and the Attorney General filed pleas to the jurisdiction based (in part) on their immunity from suit, citing the principle that the UDJA does not waive that immunity "if the constitutional claims are facially invalid." *Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015). Here, they explained, Plaintiffs' claims are facially invalid because they rest on the incorrect premise that Section 33 renders void any statute that infringes access to a public beach to any extent under any circumstances. The court of appeals refused to consider that argument, however, reasoning that the facial-validity standard applies to constitutional challenges to government *conduct* but not to constitutional challenges to *statutes*.

The issues presented are:

1. Whether the UDJA waives immunity from suit for a constitutional challenge to a statute even when the challenge is facially invalid.

2. Whether Plaintiffs' constitutional challenges to H.B. 2623 are facially invalid—and thus jurisdictionally barred—because they are based on an incorrect construction of Article I, Section 33 of the Texas Constitution.

Introduction

Just last year, this Court reaffirmed that although the UDJA waives sovereign immunity "when a state law's constitutional validity is under review," "'immunity from suit is not waived if the constitutional claims are facially invalid.'" *State v. Zurawski*, 690 S.W.3d 644, 661 (Tex. 2024) (quoting *Abbott v. Mex. Am. Legis. Caucus, Tex. House of Representatives* (*MALC*), 647 S.W.3d 681, 698 (Tex. 2022)). The defendants and the Attorney General invoked that settled rule here, arguing that Plaintiffs' UDJA claims challenging the constitutionality of H.B. 2623 are facially invalid and therefore jurisdictionally barred. But the Thirteenth Court of Appeals refused to consider that argument because it believed that the facial-validity standard applies only to constitutional challenges to government *conduct*, not to constitutional challenges to *statutes*. That asserted distinction directly conflicts with *Zurawski* and *MALC*. The court's error warrants at least a per curiam reversal and remand.

This Court should go further, however, and render judgment dismissing Plaintiffs' suit. Their claims are premised on the remarkable notion that under Article I, Section 33 of the Texas Constitution, *any* infringement of the public's access to public beaches—to any extent and for any length of time—is unlawful. That reading of Section 33 is both facially invalid and untenable. Although public entities strive to keep beaches open, they must occasionally limit beach access to protect the public from natural disasters, such as hurricanes, and manmade hazards, such as oil spills. Because Plaintiffs' argument would deprive the Legislature of the means to protect Texans and Texas beaches, it is not a viable construction of the Constitution, and thus challenges based on that construction fall outside the UDJA's immunity waiver.

Statement of Facts

The court of appeals correctly stated the nature of the case. *See supra* p. xi.

I. Legal and Factual Background

A. The Open Beaches Act

1. The Open Beaches Act ("OBA"), Tex. Nat. Res. Code ch. 61, establishes "the policy of the State of Texas for enjoyment of public beaches along the Gulf of Mexico," *Severance v. Patterson*, 370 S.W.3d 705, 713 (Tex. 2012).[1] A "public beach" covered by the OBA can encompass two distinct areas: the "wet beach" and the "dry beach." *Id.* at 714.

The wet beach is the area from the mean low tide line to the mean high tide line. *Id.* All wet beaches are public beaches because the State owns that property and holds it in trust for the public. *Id.* at 714, 718.

The dry beach is the area from the mean high tide line to the vegetation line. *Id.* at 714. A dry beach *may* be a public beach. *Id.* at 715. For example, if the State owns title to a dry beach, it is a public beach. *Id.* If a dry beach is privately owned, however, it could still be a public beach if "a right to public use has been established on it." *Id.*

2. The Legislature enacted the OBA in 1959 in response to this Court's decision in *Luttes v. State*, 324 S.W.2d 167 (Tex. 1958). *Severance*, 370 S.W.3d at 718. *Luttes* confirmed that the State does not hold the dry beach as part of the public trust unless the State owns title to the dry beach. *Id.* Some Texans feared that ruling could

[1] Pending legislation would amend the OBA to refer to the "Gulf of America." Tex. H.B. 2246, §§ 11.23-.49, 89th Leg., R.S. (2025); Tex. S.B. 1717, §§ 11.23-.48, 89th Leg., R.S. (2025).

encourage private dry beach owners to fence off their property and thereby impair access to public beaches. *Id.*

To address that concern, the OBA provides that it is Texas's public policy that the public has the "unrestricted right of ingress and egress" to and from wet beaches, state-owned dry beaches, and privately owned dry beaches to the extent the public has acquired an easement or other right to use them. Tex. Nat. Res. Code § 61.011(a); *accord Severance*, 370 S.W.3d at 718-19. And to implement that policy, the OBA prohibits any person from creating "any obstruction, barrier, or restraint" that interferes with the public's rights. Tex. Nat. Res. Code § 61.013(a).

Those provisions do not "create any new rights." *Severance*, 370 S.W.3d at 719. Rather, as this Court has explained, the OBA guarantees rights to access public beaches where those rights *already* exist:

> The OBA does not alter *Luttes*. It enforces the public's right to use the dry beach on private property where an easement exists and enforces public rights to use State-owned beaches. Therefore, the OBA, by its terms, does not create or diminish substantive property rights.

Id.

The OBA also does not contemplate that the public's access to public beaches will remain uninterrupted for all time and under all circumstances. For example, it does not prevent governmental entities from building or maintaining a "barrier" or "other structure" as an aid to "safety" or other "lawful purpose" under state or federal law. Tex. Nat. Res. Code § 61.022(a). It also allows limitations on "mass gatherings" on the beach "to protect the public health, safety, and welfare." *Id.* § 61.252(a). And it provides that the public's right to use public beaches, although

generally "inviolate," remains subject to a county commissioners court's orders regulating that use under the OBA. *Id.* § 61.130.

3. The OBA tasks the Texas Land Commissioner with enforcing the prohibition on interference with public-beach access. *Id.* § 61.011(c). It also directs the Commissioner to promulgate rules, consistent with the OBA's policies, on certain matters. *Id.* § 61.011(d). Among those matters are local governments' "reasonable exercises of the police power." *Id.* § 61.011(d)(4).

B. Texas Constitution Article I, Section 33

In 2009, the Legislature adopted a resolution to "add" the rights described in the OBA "to the Texas Constitution." H. Comm. on Land & Res. Mgmt., Bill Analysis, Tex. H.R.J. Res. 102, 81st Leg., R.S. (2009). The People approved the amendment, which became Article I, Section 33. *Severance*, 370 S.W.3d at 713 n.8.

Consistent with the Legislature's goal, the first part of Section 33 closely tracks the OBA's text. Section 33 defines "public beach" in terms similar to the OBA's definition. *Compare* Tex. Const. art. I, § 33(a), *with* Tex. Nat. Res. Code § 61.001(8).[2] And like the OBA, Section 33 declares that "the public, individually and collectively" has an "unrestricted right to use" and "a right of ingress to and egress from" a public beach. *Compare* Tex. Const. art. I, § 33(b), *with* Tex. Nat. Res. Code § 61.011(a). The section then "dedicate[s]" that right "as a permanent easement in favor of the public." Tex. Const. art. I, § 33(b). The section's remaining

[2] As with the OBA, pending legislation proposes a constitutional amendment that, if approved, would change Section 33 to refer to the "Gulf of America." Tex. H.R.J. Res. 128, § 1, 89th Leg., R.S. (2025); Tex. S.J. Res. 63, § 1, 89th Leg., R.S. (2025).

provisions authorize the Legislature to enact laws to protect the public's rights of access and use and the public-beach easement, *id.* § 33(c), and caution that the section "does not create a private right of enforcement," *id.* § 33(d).

C. OBA amendments regarding space-flight activities

In 2013, the Federal Aviation Administration ("FAA") was considering approval of a private launch site for space flights near Boca Chica Village in Cameron County. S. Rsch. Ctr., Bill Analysis, Tex. H.B. 2623, 83d Leg., R.S. (2013). For safety reasons, areas within a certain radius of a launch site must be closed to the public before a launch. *Id.* Because those areas could include public beaches, *id.*, the Legislature passed H.B. 2623, which amended the OBA to authorize the temporary closure of public beaches to accommodate nearby space-flight activities, Act of May 9, 2013, 83d Leg., R.S., ch. 152, 2013 Tex. Gen. Laws 589.

Under H.B. 2623, the county commissioners court and the GLO oversee the closure process. On a primary or backup launch date, the commissioners court may temporarily close "a beach in reasonable proximity to the launch site" or "access points to the beach" to "protect the public health, safety, and welfare." Tex. Nat. Res. Code § 61.132(c). That authority has limits. For example, the commissioners court may not close a beach on certain holidays or summer weekends without the GLO's approval. Tex. Nat. Res. Code § 61.132(d), (f)(1). Also, the commissioners court must comply with the county's plans for beach access and dune protection that the GLO has certified. *Id.* § 61.132(e). Finally, the commissioners court must follow the GLO's rules and any memorandum of agreement between the GLO and the

county on closures for space flights. *Id.* § 61.132(f)(2)-(3); *see also id.* § 61.011(d)(11) (H.B. 2623 provision authorizing GLO rulemaking on this subject).

D. FAA approval of SpaceX's Texas launch site

In July 2014, the FAA issued its Record of Decision approving the issuance of licenses and permits for a launch site near Boca Chica Village operated by non-party Space Exploration Technologies Corp. ("SpaceX"). CR.182-215. The decision requires SpaceX to implement a security plan to ensure that unauthorized persons do not enter "the FAA-approved hazard area" during launch operations. CR.185. That plan includes closing Boca Chica Beach to the public "for safety and security reasons" under H.B. 2623. CR.191. The FAA determined that temporarily closing the beach and other public spaces "would not substantially reduce [their] use or enjoyment" because "impacts from closures during launches would be intermittent and temporary." CR.191.

II. Procedural Background

A. Proceedings in the trial court

In 2021, SaveRGV, an organization advocating for environmental causes in the Rio Grande Valley, sued the GLO, the Commissioner, and Cameron County. CR.5-28. In its live pleading, SaveRGV complained that the defendants had closed Boca Chica Beach for up to 450 hours per year to allow SpaceX to launch spacecraft and other vehicles. CR.89. To stop the closures, SaveRGV sought declarations under the UDJA that H.B. 2623 violated Article I, Section 33, both facially and as applied to Boca Chica Beach. CR.106-10. SaveRGV also sought declarations that certain

directives adopted pursuant to H.B. 2623 were likewise unconstitutional. CR.108-111. Those directives included the GLO's amended Rule 15.32, which certified the County's dune-protection and beach-access plan; the Memorandum of Agreement between the GLO and the County governing beach and access-point closures; and the Cameron County Commissioners Court's order authorizing closures of Boca Chica Beach and the highway leading to it. CR.108-111.

Sierra Club, another environmental advocacy group, and Carrizo/Comecrudo Nation of Texas, Inc., an organization representing a Native American tribe, intervened as plaintiffs and asserted identical claims. CR.133-43.

The Attorney General intervened to defend the constitutionality of H.B. 2623. CR.29-40. He then filed a plea to the jurisdiction in which he argued, among other things, that Plaintiffs' claims are not "viable," and therefore do not trigger the UDJA's waiver of his and the defendants' immunity from suit, because they are "based on the false premise that Section 33 provides the public an absolute right to access the public beach without any oversight or regulation by the State." CR.162; *accord* CR.481-82 (citing *Klumb.*, 458 S.W.3d at 13).

Cameron County also filed a plea to the jurisdiction in which it argued, among other things, that Article I, Section 33 "permits the Legislature to regulate the public's access to public beaches." CR.302. For their part, the GLO and the Commissioner joined the Attorney General's and the County's pleas, CR.489-95, and filed their own plea, CR.496-517.

The trial court granted the three pleas to the jurisdiction in separate orders. CR.521-32. Plaintiffs appealed all three orders. CR.533-57.

B. Proceedings in the court of appeals

The Thirteenth Court of Appeals reversed and remanded. *SaveRGV*, 2024 WL 385656, at *7.

Relevant here, the court of appeals held that immunity does not bar Plaintiffs' suit because (1) "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"; and (2) Plaintiffs "seek a declaratory judgment that the statutes . . . in question are invalid and violative of Texas Constitution, article I, § 33." *Id.* at *6. "In other words," the court explained, Plaintiffs "are challenging the validity of a statute, which is expressly permitted by the UDJA and under long-standing precedent." *Id.* For that reason alone, the court concluded that "Cameron County and the GLO's immunity is waived." *Id.*

The Attorney General had argued that, for the UDJA's immunity waiver to apply, the court of appeals was required to go further and determine that Plaintiffs' claims are also "viable." *Id.* at *7. And here they are not, the Attorney General urged, because Plaintiffs' suit "fails on its face"—that is, it is facially invalid because it is based on an incorrect understanding of what Article I, Section 33 means. *Id.* But the court refused to entertain the argument. *Id.* It reasoned that, under *Klumb*, that sort of argument applies to constitutional challenges to government "actions" but not to "a challenge to the constitutionality of a statute." *Id.*[3]

[3] The court also rejected the remaining arguments against jurisdiction. *SaveRGV*, 2024 WL 385656, at *4-6, *7. Other merits briefs will address those issues.

The Attorney General, GLO, and the Commissioner moved for rehearing. They argued that the panel's holding on viability contravened this Court's decision in *MALC*, which held that the UDJA does *not* waive immunity for a "facially invalid" constitutional challenge to a *statute*. Mot. for Reh'g at 1 (quoting *MALC*, 647 S.W.3d at 698). The court of appeals denied the motion without explanation.[4]

Summary of the Argument

I. The court of appeals erred in refusing to consider the argument that Plaintiffs' claims are jurisdictionally defective because they are facially invalid. This Court has repeatedly held that governmental defendants retain immunity from suit for facially invalid constitutional claims. And it has specifically held that this rule applies to constitutional challenges to statutes. The court of appeals strayed from that precedent in holding that the facial-validity standard applies only to challenges to governmental conduct. The Court should therefore reverse and, at least, instruct the court of appeals to perform the required jurisdictional analysis on remand.

II. The Court may also decide the underlying jurisdictional issue itself in lieu of a remand. Doing so would be appropriate here because that issue presents a pure question of law, involves a matter of constitutional significance, and has a straightforward resolution.

Plaintiffs' claims hinge entirely on their facially invalid theory that Article I, Section 33 of the Texas Constitution prohibits any law that infringes in any way on the

[4] Cameron County, the GLO, and the Commissioner moved for en banc reconsideration on other grounds. The court of appeals denied that motion as well.

public's rights to access and use public beaches. That theory clashes with the relevant constitutional text as construed in the context of Section 33 as a whole and in the light of external contextual factors that inform its meaning. The rights described by Section 33 are and always have been subject to reasonable regulations to protect the beachgoing public. The statutes challenged here, which allow only temporary beach closures to ensure public safety during nearby rocket launches, fit well within what is constitutionally permissible.

Because Plaintiffs' reading of Section 33 is incorrect, their claims based on that reading are facially invalid. That, in turn, means that the UDJA does not waive the defendants' and the Attorney General's immunity from suit. The Court should therefore render judgment dismissing this case for lack of subject-matter jurisdiction.

Standard of Review

The Court reviews orders on pleas to the jurisdiction de novo. *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021).

Argument

I. The Court of Appeals Wrongly Held That the UDJA Waives Immunity for a Constitutional Challenge to a Statute Regardless of Whether the Claim Is Facially Valid.

The Court should grant review and reverse because the court of appeals refused to consider the facial validity of Plaintiffs' constitutional claims in analyzing whether immunity is waived for this suit. That refusal and the court's reasons for it squarely conflict with decisions from this Court and other courts of appeals.

A. The UDJA waives immunity for a constitutional challenge to a statute only if the claim is facially valid.

The defendants in this case and the Attorney General possess immunity from suit. *See Matzen*, 659 S.W.3d at 388 (noting that immunity from suit protects "state officials" "in their official capacities"); *Lubbock Cnty. Water Control & Improvement Dist. v. Church & Akin, L.L.C.*, 442 S.W.3d 297, 300 & n.4 (Tex. 2014) (noting the same for "state-level governmental entities" and "counties"). That immunity deprives a trial court of subject-matter jurisdiction over claims against them. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012).

The UDJA generally waives that immunity for claims challenging the validity of statutes, including a claim that a statute is unconstitutional. *See* Tex. Civ. Prac. & Rem. Code § 37.006(b); *Zurawski*, 690 S.W.3d at 661. But that waiver is limited in two key respects. *First*, the waiver only "extends to 'the relevant governmental entities.'" *MALC*, 647 S.W.3d at 697 n.7 (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009)). *Second*, the waiver does not apply "if the claim appears 'facially invalid.'" *Id.* at 699 (quoting *Klumb*, 458 S.W.3d at 13).

The facial-validity requirement, which is central to this appeal, is a jurisdictional hurdle for *any* constitutional claim against a defendant with immunity from suit. In *Andrade v. NAACP of Austin*, this Court explained that a state official "retains immunity from suit" for a constitutional challenge "unless the [plaintiffs] have pleaded a *viable* claim." 345 S.W.3d 1, 11 (Tex. 2011) (emphasis added). The Court reaffirmed that rule in *Klumb*, equating a "viable" claim to one that is "facially valid": "While it is true that sovereign immunity does not bar a suit to vindicate

constitutional rights, *Heinrich*, 284 S.W.3d at 372, immunity from suit is not waived if the constitutional claims are facially invalid." 458 S.W.3d at 13 (citing *Andrade*, 345 S.W.3d at 11). Since then, this Court has repeatedly held that a constitutional challenge that is non-viable or facially invalid does not overcome a governmental defendant's immunity from suit. *Zurawski*, 690 S.W.3d at 661; *Hartzell v. S.O.*, 672 S.W.3d 304, 319 n.21 (Tex. 2023); *Matzen*, 659 S.W.3d at 389; *Perez v. Turner*, 653 S.W.3d 191, 198 (Tex. 2022); *MALC*, 647 S.W.3d at 698; *Tex. S. Univ. v. Villarreal*, 620 S.W.3d 899, 905 (Tex. 2021).

In two of those decisions, *MALC* and *Zurawski*, the Court confirmed that this rule applies specifically to a UDJA claim challenging the constitutionality of a *statute*: "Although the UDJA generally waives immunity for declaratory-judgment claims challenging the validity of statutes, [this Court] ha[s] held that 'immunity from suit is not waived if the constitutional claims are facially invalid.'" *MALC*, 647 S.W.3d at 698 (quoting *Klumb*, 458 S.W.3d at 13); *accord Zurawski*, 690 S.W.3d at 661 n.35 (citing *MALC*, 647 S.W.3d at 698-99). So, when a plaintiff challenges a statute's constitutionality, a defendant with immunity may contest jurisdiction by attacking the claim's facial validity. *MALC*, 647 S.W.3d at 699. The court must then determine, as a jurisdictional matter, whether the claim is facially valid—an inquiry that "hinges on [the] interpretation of the provisions at issue" and necessarily "touches the merits." *Id.* at 698, 699. In *MALC*, the Court applied those principles and concluded that the plaintiffs' claims that two statutes reapportioning legislative districts violated Article III, Section 28 of the Texas Constitution were "facially invalid and thus barred by sovereign immunity." *Id.* at 703.

The First Court of Appeals used that template in holding that the UDJA did not waive immunity for a constitutional challenge to a pension statute. *City of Houston v. Hous. Firefighters' Relief & Ret. Fund*, 667 S.W.3d 383, 401 (Tex. App.—Houston [1st Dist.] 2022, pet. denied). There, the plaintiff argued that the defendant city was not immune from suit because the plaintiff had sought "a declaration that S.B. 2190 was invalid because it was unconstitutional as applied" and "the UDJA provides a limited waiver of immunity for suits challenging the validity of a statute." *Id.* at 395. But that "alone" was not "sufficient to waive the City's governmental immunity," the First Court explained, because such a claim does not "waive governmental immunity if it is facially invalid." *Id.* at 396 (citing *MALC*, 647 S.W.3d at 698). The court then determined that the claim was based on an incorrect reading of the Constitution, *id.* at 396-401, which, in turn, meant that the "constitutional claim is facially invalid" and "immunity is not waived," *id.* at 401.

The Fifteenth Court of Appeals followed suit in holding that the UDJA did not waive immunity for constitutional challenges to an Election Code provision. *Eriksen v. Nelson*, 708 S.W.3d 302, 311-12 (Tex. App. [15th Dist.] 2025, no pet.). Citing *MALC*, the court explained that although "[t]he UDJA generally waives immunity for declaratory-judgment claims challenging the constitutionality of statutes," "the plaintiff must do more than merely label a cause of action and assert the existence of a constitutional violation." *Id.* at 308. Specifically, "[i]f the constitutional claim is facially invalid, immunity from suit is not waived." *Id.* (citing *MALC*, 647 S.W.3d at 698). The court then determined that the law-of-the-case doctrine barred most of the claims at issue and the remaining claim failed to meet the constitutional standard

for vagueness. *Id.* at 308-12. Because the plaintiff "ha[d] failed to assert a viable constitutional challenge," the court "conclude[d] that his claims [were] barred by sovereign immunity." *Id.* at 312.

B. The court of appeals departed from this Court's precedent by refusing to review the facial validity of Plaintiffs' claims.

Unlike the First Court in *Houston Firefighters* and the Fifteenth Court in *Eriksen*, the Thirteenth Court did not examine the facial validity of Plaintiffs' claims here. Instead, it determined that, "at this stage of the proceeding," it need not resolve the jurisdictional arguments that Plaintiffs "failed to plead 'viable' constitutional claims" and that their suit "fails on its face." *SaveRGV*, 2024 WL 385656, at *7. The court gave two reasons for refusing to do so, and both are wrong.

First, the court incorrectly reasoned that *Klumb* is distinguishable. *Id.* The court acknowledged *Klumb*'s holding that the "fail[ure] to plead 'viable' constitutional claims" against a defendant with immunity is a jurisdictional defect that requires dismissal. *Id.* But it deemed that holding inapplicable here because "*Klumb* did not involve a challenge to the constitutionality of a *statute*, but rather involved a challenge to [the defendant's] *actions* (its classification of employees) under the Texas Constitution." *Id.* (emphases added). That distinction is immaterial. This Court did not limit its holding in *Klumb* to the specific type of constitutional claim at issue in that case. Rather, the Court held more broadly that in "a suit to vindicate constitutional rights," immunity is not waived if "the constitutional claims" are "facially invalid." 458 S.W.3d at 13. More importantly, in *MALC* the Court explicitly *confirmed* that *Klumb*'s facial-validity test governs a UDJA claim challenging the

constitutionality of a statute. 647 S.W.3d at 698 (citing *Klumb*, 458 S.W.3d at 13); *accord Zurawski*, 690 S.W.3d at 661 (citing *MALC*, 647 S.W.3d at 698-99).

Second, the court inaccurately suggested that the jurisdictional pleas prematurely sought to "determine the merits" of Plaintiffs' claims. *SaveRGV*, 2024 WL 385656, at *7. That rationale also clashes with *MALC*. There the Court explained that the jurisdictional facial-validity inquiry necessarily "touches the merits," *MALC*, 647 S.W.3d at 699, but it does not equate to "resolving the merits," *id.* at 700 n.9; *see also Chambers-Liberty Cntys. Navigation Dist. v. State*, 575 S.W.3d 339, 345 (Tex. 2019) (noting that "the jurisdictional inquiry may unavoidably implicate the underlying substantive merits of the case"). The Court also demonstrated that, at this stage, a court may permissibly decide that a constitutional challenge to a statute is facially invalid because it is based on a flawed construction of the constitutional provision that the statute allegedly violates. *MALC*, 647 S.W.3d at 701-03 (rejecting the plaintiffs' reading of Article III, Section 28 and holding that their statutory challenges based on that reading were facially invalid). That is precisely the nature of the facial-validity argument here.

At a minimum, then, this Court should reverse the court of appeals' judgments and remand this case with instructions that the court of appeals determine, as a jurisdictional matter, whether Plaintiffs' constitutional challenges are facially invalid.

II. Plaintiffs' Claims Are Facially Invalid, So This Court Should Render Judgment Dismissing Them for Lack of Jurisdiction.

Although a reversal and remand would be appropriate, the Court can and should resolve the underlying jurisdictional issue itself "in the interest of judicial

economy." *Rusk State Hosp.*, 392 S.W.3d at 97. The facial validity of Plaintiffs' claims hinges entirely on the proper interpretation of Article I, Section 33 of the Texas Constitution, a question of law that this Court would decide de novo even if the court of appeals had reached it. *Harris Cnty. Hosp. Dist. v. Tomball Reg'l Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009). And because Section 33 governs beaches in multiple court of appeals districts, an authoritative construction of that provision from this Court is necessary to ensure that courts apply it uniformly going forward.

Also, the Court should decide this issue now because its resolution is uncomplicated. As Plaintiffs conceded in the court of appeals, their claims depend on an absolutist theory that Section 33 renders "void" any "statute that infringes upon the public's guaranteed right of access to public beaches." Reply Br. at 30. That novel reading conflicts with Section 33's text, context, and relevant extrinsic factors that inform its meaning. So, as in *MALC* and *Houston Firefighters*, because Plaintiffs' claims rest on a misreading of the Texas Constitution, they are facially invalid and cannot support a waiver of immunity from suit. *See MALC*, 647 S.W.3d at 701-03; *Hous. Firefighters*, 667 S.W.3d at 396-401.

A. Article I, Section 33 does not prohibit laws regulating beach access and use for public-safety reasons.

Article I, Section 33 provides that the public has "an unrestricted right to use" and "a right of ingress to and egress from" a public beach, and it dedicates those rights as a "permanent easement" for the public. Tex. Const. art. I, § 33(b). Plaintiffs claim that H.B. 2623 violates that provision by authorizing the temporary closure of beaches during nearby rocket launches. CR.106-10.

Whether Plaintiffs' claims are facially invalid "hinges on" the proper "interpretation of the [constitutional] provision[] at issue." *MALC*, 647 S.W.3d at 698. "In construing the Constitution, as in construing statutes, the fundamental guiding rule is to give effect to the intent of the makers and adopters of the provision in question." *Harris Cnty. Hosp. Dist.*, 283 S.W.3d at 842; *see also MALC*, 647 S.W.3d at 698. The Court "presume[s] that the framers carefully chose the [Constitution's] language, and . . . interpret[s] their words accordingly." *Degan v. Bd. of Trs. of Dall. Police & Fire Pension Sys.*, 594 S.W.3d 309, 313 (Tex. 2020). The Court "rel[ies] heavily on the literal text." *Eddington v. Dall. Police & Fire Pension Sys.*, 589 S.W.3d 799, 805 (Tex. 2019) (quoting *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 586 (Tex. 2013)). The Court, though, does not only focus on words in isolation; it reads them in the context of the entire constitutional provision. *E.g.*, *Greater Hous. P'ship v. Paxton*, 468 S.W.3d 51, 59 (Tex. 2015); *TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011).

In addition to the text in context, the Court "*may* [also] consider [extrinsic] contextual factors." *Degan*, 594 S.W.3d at 313 (emphasis added); *see also MALC*, 647 S.W.3d at 698-99. Those factors include: "the history of the legislation, the conditions and spirit of the times, the prevailing sentiments of the people, the evils intended to be remedied, and the good to be accomplished." *Degan*, 594 S.W.3d at 313 (quoting *Harris Cnty. Hosp. Dist.*, 283 S.W.3d at 842 (internal citation omitted)); *see also MALC*, 647 S.W.3d at 698-99.

Here, the text and context of Article I, Section 33, as well as other extrinsic contextual factors, establish that its guarantee of the public's right to use and access

public beaches does not preclude the government from regulating that use and access to ensure the public's safety.

1. Section 33's description of the public's rights does not convey a right to use and access public beaches free from regulation.

Section 33 provides that the public's "right to use" and "right of ingress to and egress from" public beaches are "unrestricted" and are "dedicated" to the public "as a permanent easement in favor of the public." Tex. Const. art. I, § 33(b). In Plaintiffs' view, this text means that any law that "interferes with, encroaches on, and impedes public beach access" in any way "is unconstitutional." Resp. to Paxton Pet. for Rev. at 11. But such a hyper-literal interpretation would ignore important context derived from Section 33 as a whole.

a. "Unrestricted" simply means "not restricted." *Unrestricted*, Webster's Third New International Dictionary Unabridged (2002). To restrict someone or something is "to set bounds or limits" so as to "check free activity, motion, progress, or departure of" that person or thing. *Restrict*, Webster's Third New International Dictionary Unabridged (2002). If the adjective "unrestricted" in Subsection (b) meant that the government may never limit or regulate the public's right to access and use public beaches in any way, the government could not close a public beach even during catastrophes such as hurricanes or oil spills.

That cannot be right because such a reading "would defy a reasonable understanding" of the word as used here. *Morath v. Lampasas ISD*, 686 S.W.3d 725, 738 (Tex. 2024). Courts should not use a term's plain, commonly understood meaning if it would "lead[] to absurd or nonsensical results." *Pedernal Energy, LLC v.*

Bruington Eng'g, Ltd., 536 S.W.3d 487, 491 (Tex. 2017). In the legal sense, absurd means "unthinkable or unfathomable." *In re T.V.T.*, 675 S.W.3d 303, 309 (Tex. 2023) (per curiam).

It is unthinkable or unfathomable that the framers of Article I, Section 33 intended the public's right to access and use public beaches to be unreachable by the government's exercise of its police powers to protect the public's health, safety, and general welfare. Furthermore, it is common sense that natural and manmade events may pose a potentially serious risk to the lives and health of civilians on a public beach just as they may anywhere else, and that the government may therefore limit access to a public beach under those circumstances to protect the public from such danger. To suggest otherwise would be absurd.

b. Not only would it be absurd to read the term "unrestricted" in this hyper-literal sense, but it would also give the word a meaning that is inconsistent with the rest of Article I, Section 33's language. Courts should resist rulings anchored in hyper-technical readings of isolated words or phrases because the meaning of words read in isolation is frequently contrary to their meaning read contextually. *See In re Dallas County*, 697 S.W.3d 142, 158 (Tex. 2024) (orig. proceeding). Courts "must tether [them]selves 'to the fair meaning of the text,' not 'the hyperliteral meaning of each word in the text.'" *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 356 (2012)). Thus, an undefined term or phrase in a constitutional provision should not be given a meaning that is inconsistent with its other terms. *Cf., e.g.*, *TxDOT v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002)

(stating that courts should not give an undefined statutory term a meaning out of harmony or inconsistent with other provisions).

Subsection (b) describes the public's right to access and use public beaches as constituting an "easement." Easement is not defined, but it is well established that the Texas Constitution "is to be interpreted in the light of the common law." *Morrow v. Corbin*, 62 S.W.2d 641, 647 (Tex. 1933); *see also Am. Nat'l Ins. Co. v. Arce*, 672 S.W.3d 347, 365 (Tex. 2023) (Young, J., concurring) (explaining that the Court "'construe[s] statutory language against the backdrop of common law'" and "[t]his principle applies to all positive law—not just statutes, but constitutional texts, too" (quoting *Marino v. Lenoir*, 526 S.W.3d 403, 409 (Tex. 2017)). Thus, "[t]he common law limits and determines the meaning of words and phrases used in the Constitution when the context or some other provision of the instrument or some previous enactment existing when the Organic Law was framed does not determine them." *Morrow*, 62 S.W.2d at 647.

Under Texas common law, "an easement is a nonpossessory interest [in land] that authorizes its holder to use the property for only particular purposes." *Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002). *See generally* 1 Jon W. Bruce et al., *The Law of Easements & Licenses in Land* § 1.1 (2025) ("An easement is commonly defined as a nonpossessory interest in land of another" and "the nonpossessory feature of an easement differentiates it from an estate in land."). Furthermore, an easement does not transfer rights by implication "'except what is reasonably necessary' to fairly enjoy the rights expressly granted." *Marcus Cable*, 90 S.W.3d at 701 (quoting *Coleman v. Forister*, 514 S.W.2d 899, 903 (Tex. 1974)); *see also State*

v. Brownlow, 319 S.W.3d 649, 656 (Tex. 2010) (noting that easement rights "do not encompass rights foreign to the purpose for which the easement is granted").

Here, Section 33's easement grants the public only access to and use of public beaches. Occupying public beaches at all times and under any circumstances, even at the risk of the public's health, safety, and welfare, is not a right that is reasonably necessary to fairly enjoy the easement over a public beach. To the contrary, using a public beach when doing so may endanger oneself and others is "foreign to the purpose" for which Section 33's easement exists. *Brownlow*, 319 S.W.3d at 656.

Indeed, under Texas common law, easement rights generally are not absolute. Rather, "those rights are subject to reasonable regulation." *Dykes v. City of Houston*, 406 S.W.2d 176, 181 (Tex. 1966). And the public's easement "is held subject to the valid exercise of the police power." *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984) (citing *Lombardo v. City of Dallas*, 73 S.W.2d 475, 478 (Tex. 1934)). "The police power may be loosely described as the power of the sovereign to prevent persons under its jurisdiction from conducting themselves or using their property to the detriment of the general welfare." *DuPuy v. City of Waco*, 396 S.W.2d 103, 107 n.3 (Tex. 1965). Beyond any doubt, the State, its agencies, and its subdivisions "may validly . . . exercise [their] police power[s] to impose reasonable regulations on coastal property." *Severance*, 370 S.W.3d at 725.

Accordingly, "unrestricted" read in context does not grant the public an unlimited right to access and use a public beach. Even the public's generally unrestricted right remains an *easement* right, which is not absolute and must yield to the police power under certain circumstances.

c. Additionally, the easement in Subsection (b) is "dedicated as a permanent easement in favor of the public." "Dedication" simply refers to the "creation of an easement for public use." *Dedication*, Black's Law Dictionary (9th ed. 2009). It does not imply that the easement is exempt from any kind of regulation. To repeat, "[t]he insistence that the right of property or the unrestricted use of property is not subject to the police power has long since been determined adversely to that contention." *Lombardo*, 73 S.W.2d at 478.

Nor does describing the easement as "permanent" imply that it is absolute. Its permanence merely means that the easement created may theoretically last in perpetuity. Bruce et al., *supra*, § 10:1. Just because the public's easement may endure forever, it does not follow that the scope of that easement eclipses "reasonable regulation," *Dykes*, 406 S.W.2d at 181, including the "valid exercise of the police power," *Turtle Rock Corp.*, 680 S.W.2d at 804.

2. Section 33's authorization of laws to protect the public's rights does not preclude reasonable regulation of those rights.

Subsection (c) of Section 33 authorizes 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 that authorization does not prohibit the Legislature from enacting other laws that regulate those rights and that easement to protect the public's health, safety, and general welfare.

"[T]he Legislature is vested with 'all legislative power—the power to make, alter and repeal laws—not expressly or impliedly forbidden by other provisions of the State and Federal Constitutions.'" *MALC*, 647 S.W.3d at 702 (quoting *Walker v.*

Baker, 196 S.W.2d 324, 328 (Tex. 1946) (orig. proceeding)). Subsection (c)'s provision that the Legislature "may" enact laws to protect beach access does not expressly or impliedly forbid it to enact other laws about beach access. After all, "the enumeration in the Constitution of what the Legislature *may* or shall do . . . *is not to be regarded as a limitation* on the general power of the Legislature to pass laws on the subject." *Mumme v. Marrs*, 40 S.W.2d 31, 33 (Tex. 1931) (emphases added).

Accordingly, Subsection (c) does not displace the Legislature's pre-existing authority to enact any "reasonable regulation" of the public's easement. *Dykes*, 406 S.W.2d at 181. The government can be both the protector of the public's right to be free from interference and encroachments on the public-beach easement and simultaneously the protector of the public's health, safety, and general welfare. The two roles are complimentary, not contradictory.

3. The history of Article I, Section 33 confirms that the public's rights are not absolute.

Besides the text in context of Article I, Section 33, the Court also may consider external contextual factors in ascertaining the provision's meaning. *See, e.g.*, *MALC*, 647 S.W.3d at 698-99; *Degan*, 594 S.W.3d at 313. As mentioned above, those factors include: the history of the legislation, the conditions and spirit of the times, the prevailing sentiments of the people, the evils intended to be remedied, and the good to be accomplished. *See, e.g.*, *MALC*, 647 S.W.3d at 698-99; *Degan*, 594 S.W.3d at 313. Here, those factors confirm that Section 33's purpose was to constitutionalize the public's rights to access and use public beaches that the OBA already protected—rights that were always subject to reasonable police-power regulation.

a. In 2009, House Joint Resolution 102 proposed to amend Article I of the Texas Constitution by adding Section 33. Tex. H.R.J. Res. 102, 81st Leg., R.S., 2009 Tex. Gen. Laws 5660. At that time, the OBA "provid[ed] for the public's right to free and unrestricted access to state-owned beaches along the Gulf Coast," and "[s]ome [had] argued that this right should be guaranteed by the Texas Constitution." H. Comm. on Land & Res. Mgmt., Bill Analysis, *supra*; *accord* S. Rsch. Ctr., Bill Analysis, Tex. H.R.J. Res. 102, 81st Leg., R.S. (2009). In other words, the OBA had established "an 'open beaches' policy" guaranteeing the public such access, and if passed, the constitutional amendment would too. H. Rsch. Org., Bill Analysis at 1, Tex. H.R.J. Res. 102, 81st Leg., R.S. (2009) (discussing Tex. Nat. Res. Code § 61.011); *see also Severance*, 370 S.W.3d at 713 n.8.

Supporters of Resolution 102 believed the constitutional amendment "would strengthen the 1959 [OBA] by enshrining it in the Texas Constitution." H. Rsch. Org., Bill Analysis, *supra*, at 2. And they wanted to continue protecting beaches "as public property" because they had been considered public property "since the beginning of modern society." *Id.* In particular, those supporters emphasized that "developers should not be able to build properties along the beach and restrict the public's right to access." *Id.* The amendment, they contended, "would protect the public's right to access the beach in the wake of a recent waive [*sic*] of lawsuits" involving "the removal of homes that [were] located on public beaches as a result of coastal erosion and Hurricane Ike." *Id.* Supporters understood the amendment "would not hinder the ability of the Legislature to address issues relating to natural events in the future, but would make clear the intent of Texas law to keep the beaches public." *Id.*

Opponents of Resolution 102, on the other hand, were concerned that the amendment "would lock into the Constitution a statute that ha[d] allowed the state to require property owners whose houses [were] located on public land following Hurricane Ike to remove their homes from the public beach." *Id.* They contended that the OBA "already provide[d] too much authority to the state to restrict the right of private landowners to enjoy their property, and placing this authority in the Constitution would only compound the problem by making the law much more difficult to change in the future." *Id.* at 3.

In sum, the legislative history reflects that the main concerns that prompted Section 33's passage were lawsuits arising after Hurricane Ike and the belief that aspects of the OBA should be constitutionalized to ensure that Texas beaches were kept public. There was no indication that curbing the police powers of the State, its agencies, and its subdivisions with respect to public beaches was even contemplated. The purpose of the constitutional amendment was simply to enshrine in the Texas Constitution the OBA as it then existed.

b. Section 33's origin as an effort to constitutionalize the OBA proves that its framers did not intend to abrogate the Legislature's authority to adopt reasonable police-power regulations. That is so because the OBA itself has always recognized and approved such regulation even as it codified the public's right to access and use public beaches.

When the People adopted Section 33 in 2009, the OBA—then as now—tasked the Commissioner with promulgating rules regarding the "imposition of beach access, user, or parking fees and reasonable exercises of the police power by local

governments with respect to public beaches." Tex. Nat. Res. Code § 61.011(d)(4). And the Commissioner was to promulgate rules that described "the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach[] . . . constitute[d] an imminent hazard to safety, health, or public welfare; or . . . substantially interfere[d] with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach." *Id.* § 61.011(d)(9).

In addition, in 2009, the OBA contained provisions authorizing counties to regulate the use of public beaches. *See id.* ch. 61, subch. D. For instance, the commissioners court of a county could regulate "motor vehicle traffic on any beach within the boundaries of the county," *id.* § 61.122(a), "the possession of animals on the beach within its boundaries," *id.* § 61.122(b), "swimming in passes leading to and from the Gulf of Mexico," *id.* § 61.122(c), and "the use and possession of all glass containers and products on a beach in the unincorporated area of the county," *id.* § 61.122(d).

Another way in which counties in 2009 could regulate the public's right to access and use public beaches concerned mass gatherings. Tex. Nat. Res. Code § 61.252; *see also id.* § 61.251 (defining mass gathering). "To protect the public health, safety, and welfare," a county commissioners court was authorized to issue an order regulating "mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee set by the commissioners court before the person may hold a mass gathering." *Id.* § 61.252(a). Requiring such permits surely restricts the public's right to use public

beaches, and yet, the provision allows that permitting may be necessary "[t]o protect the public health, safety, and welfare."

Finally, the OBA in 2009 stated generally that "[t]he right of the public to use the public beaches . . . [was] inviolate." *Id.* § 61.130. But at the same time, the Act recognized that this right was still "subject . . . to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village." *Id.*

These regulations inform what Section 33 means when it guarantees the public's "unrestricted" right to use and right of ingress to and egress from a public beach. Tex. Const. art. I, § 33(b). Again, the framers of Section 33 lifted that term directly from the OBA, which has always secured the public's "unrestricted" right to use and access public beaches. Tex. Nat. Res. Code § 61.011(a). Because the 2009 version of the OBA used that term alongside the provisions just discussed that authorize the Commissioner and counties to limit the public's right to use and access public beaches to some extent, "unrestricted" in the act necessarily did not mean unrestricted in any absolute sense. Rather, it meant that the public's "unrestricted" rights remained subject to the reasonable police-power regulations to protect the public's health, safety, and welfare that the OBA simultaneously recognized. When the framers of Section 33 borrowed the term "unrestricted" from the OBA, then, they imported that qualified meaning. That is so because "[i]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." Scalia & Garner, *supra*, at 73 (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947));

see also Am. Nat'l Ins. Co., 672 S.W.3d at 364-65 (Young, J., concurring) (noting that "existing statutory provisions" "can serve as a useful reference point for determining what [a] later law means").

Indeed, if the Legislature had intended instead to use the term "unrestricted" in a hyper-literal sense when it proposed Section 33, it presumably would have repealed all the OBA provisions discussed above that limit access and use of public beaches. After all, if the Constitution guaranteed an absolute and unqualified "unrestricted" right to access and use public beaches, that would nullify any statute that infringed on that right. But the Legislature did not repeal any of those OBA provisions in 2009. In fact, in the same session in which the Legislature proposed Section 33, it *expanded* section 61.022 of the OBA to authorize the Commissioner and political subdivisions to erect additional shore-protection structures that could inhibit use of and access to public beaches. Act of May 21, 2009, 81st Leg., R.S., ch. 377, § 2, 2009 Tex. Gen. Laws 915, 916 (adding Tex. Nat. Res. Code § 61.022(a)(6), (a-1)). Those contemporaneous actions show that the Legislature understood that constitutionalizing the public's "unrestricted" rights to access and use public beaches under the OBA did not abrogate governmental entities' existing authority to exercise the police power to impose reasonable limits to protect the public and public beaches.

* * * *

In sum, considering other contextual factors, the framers and adopters of Article I, Section 33 did not intend to grant the public an absolute right to access and use public beaches. The government may now, as it could then, restrict or limit that right

pursuant to its exercise of police powers to protect public health, safety, and general welfare.

B. Because Plaintiffs' challenges to H.B. 2623 depend on an incorrect construction of Article I, Section 33, they are facially invalid.

Plaintiffs' challenges to the constitutionality of H.B. 2623 hinge entirely on a reading of Article I, Section 33 under which any law that "interferes with, encroaches on, and impedes public beach access" in any respect "is unconstitutional." Resp. to Paxton Pet. for Rev. at 11. As just discussed, that reading is wrong. For that reason alone, Plaintiffs' challenges are facially invalid and therefore do not state claims within the UDJA's waiver of immunity from suit. *See MALC*, 647 S.W.3d at 701-03; *Hous. Firefighters*, 667 S.W.3d at 396-401.

Moreover, under the correct reading of Section 33, H.B. 2623 is constitutional for at least two reasons.

First, by definition, the public's "easement" under Section 33 is limited to those rights reasonably necessary to fairly enjoy the beach access and use granted by Section 33. *Marcus Cable*, 90 S.W.3d at 701. Visiting a public beach when it is potentially unsafe to do so because of nearby rocket launches is in no sense "reasonably necessary" to "enjoy" that beach. To the contrary, visiting a public beach under hazardous conditions is "foreign to the purpose" of Section 33 and, as such, falls outside the scope of the public's easement. *Brownlow*, 319 S.W.3d at 656. Accordingly, H.B. 2623's authorization to formally close a public beach during those conditions does not infringe any right the public had under Section 33 to begin with.

Second, even to the extent that H.B. 2623 implicates the public's easement rights, those rights remain subject to "reasonable" regulations. *Severance*, 370 S.W.3d at 725; *Dykes*, 406 S.W.2d at 181. The reasonableness standard equates to "rational-basis review," under which a court must determine whether the challenged law has a legitimate purpose and whether the Legislature could have reasonably believed that the law would promote that purpose. *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 639 (Tex. 2008).

H.B. 2623 easily passes rational-basis review. The State has legitimate interests in fostering the private space-flight industry—which promotes job creation and economic benefits—and in protecting the public from the potential dangers of rocket launches. S. Rsch. Ctr., Bill Analysis, Tex. H.B. 2623, 83d Leg., R.S. (2013). The Legislature could have reasonably believed that authorizing the temporary closure of public beaches to allow safe launches of rockets and other space craft would promote those purposes. Indeed, the FAA would not have approved any private rocket launches without a security plan to ensure that unauthorized persons do not enter "the FAA-approved hazard area" during launch operations. CR.185.

PRAYER

The Court should grant the petitions for review, reverse the judgments of the court of appeals, and either remand this case for further proceedings or render judgment dismissing this case for lack of jurisdiction.

Respectfully submitted.

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Certificate of Compliance

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Filing Description: 20250502 Petrs BOM_Final
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