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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

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

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RESPONDENTS' CONSOLIDATED RESPONSE BRIEF ON THE MERITS

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

ACRONYMS AND SHORTHAND REFERENCES

Citations to the Court of Appeals' opinion will be to *Op.*, p.#.

Citations to Petitioners' Consolidated Brief on the Merits will be as follows: *Pet.-Br.*, p.#. Citations to the Brief on the Merits submitted by the County and the GLO will be as follows: *Cty-Br.*, p.#.

AG	Attorney General of Texas
County	Cameron County
CR	Clerk's Record
GLO	Texas General Land Office (including the Commissioner of the GLO)
HB2623	House Bill 2623
OBA	Open Beaches Act
PFR	Petition for Review
SpaceX	Space Exploration Technologies Corp.

ISSUES PRESENTED

1. When a plaintiff alleges that specific statutory provisions are impermissibly inconsistent with and violate a provision of the Texas Bill of Rights, both on their face and as applied, has the plaintiff presented the district court with a viable constitutional claim within its jurisdiction?
2. Does sovereign immunity deprive a trial court of jurisdiction to resolve a lawsuit challenging the constitutionality of certain, specific statutes and seeking declaratory relief?
3. In an appeal of a trial court's decision dismissing a case for want of jurisdiction, should this Court—a Court of final review—reach the merits of the dispute, without first allowing the lower courts to exercise their jurisdiction and address the merits of Plaintiffs' claims?

INTRODUCTION

In their effort to capture the attention of this Court, Petitioners have exaggerated the nature of the claims presented by Plaintiffs' lawsuit—mischaracterizing a basic constitutional challenge to two statutes as a broad attempt to strike down *any* act, regulation, or governmental oversight that might affect the public's ability to visit a beach. *See, e.g., Pet.-Br.*, p.7.

To be clear, Plaintiffs did not allege that *any* infringement of the public's access to public beaches—to any extent and for any length of time—is unlawful. *But see id.,* p.1. Rather, Plaintiffs maintained that two statutes—enacted via HB2623 in 2013—violate the public's constitutional right to access public beaches. These statutes allow Cameron County to close Boca Chica Beach (a public beach) to accommodate SpaceX's space flight activities; they do not address natural disasters, such as hurricanes, or manmade disasters, such as oil spills. The Texas Disaster Act addresses those disaster events; Plaintiffs have not challenged that Act.

Construing the pleadings liberally in favor of jurisdiction reveals that Plaintiffs' pleadings presented the trial court with a basic, viable, facially valid constitutional challenge. This is not a case that requires delving into the merits to determine jurisdiction—despite Petitioners' hyperbolic revisionist rendition of Plaintiffs' claims. Thus, the appellate court correctly refused to determine the merits

of Plaintiffs' claims for the purpose of determining whether the trial court had jurisdiction in the first instance.

Moreover, even if the Court were to reach the merits of Plaintiffs' claims, as Petitioners urge the Court to do, the result would not change: Plaintiffs' pleadings alleged facially valid claims that are within the trial court's jurisdiction and should be finally resolved by the trial court before being presented to this Court for review.

This case does not present any novel issues for the Court to resolve. The Court should deny the Petitions for Review.

STATEMENT OF FACTS

For brevity, Plaintiffs[1] will not repeat the Statement of Facts included in their responses to the Petitions for Review. Instead, Plaintiffs offer the following summary of the allegations and the relief requested in their district court pleading, which have been mischaracterized by Petitioners from the outset of these proceedings.

Plaintiffs, in their First Amended Petition, requested relief solely in the form of declaratory judgment on certain discrete claims. CR.108-111. Specifically, they asked that two statutes be declared unconstitutional, both as applied and on their face.

Plaintiffs' pleading alleged the following:

- OBA Section 61.132, authorizing a county (with GLO's approval) to close a public beach for space flight activities, is in direct conflict with the Texas Constitution's guarantee that the public shall have the unrestricted right to use and access a public beach.
- Article I, Section 33 of the Texas Constitution, guarantees the public an unrestricted right to use and access Texas public beaches and dedicates a permanent easement in favor of the public. And it authorizes the Legislature to enact laws that "protect the right of the public to access and use a public

[1] "Plaintiffs" is used as short-hand for Respondents SaveRGV, Sierra Club, and Carrizo/Comecrudo Nation of Texas.

beach and to protect the public beach easement from interference and encroachments." Tex. Const. art. I, § 33(c).

- Section 61.132, which allows the routine closure of a public beach and of the only road that provides access to the public beach, is in direct contravention of the directive to the Legislature to protect the public's constitutional right to access and use a public beach. Rather than protecting public beach access, this law plainly interferes with public beach access.
- Section 61.132 of the OBA interferes with the public's beach-access easement because the public cannot access and use the beach if it is closed for space flight activities.
- Cameron County's repeated closure of Boca Chica Beach and the only access road thereto, under the authority of Section 61.132 of the OBA, violates Section 33 of the Texas Constitution, because it denies the public access to the Beach. A conservative estimate of the number of hours that Boca Chica Beach was closed or inaccessible in 2021, based on the notices of closure provided by the County, is over 500, with a beach or access point closure occurring on over 100 separate days.
- Accordingly, Plaintiffs requested declaratory judgment that Section 61.132 of the OBA is unconstitutional on its face and as applied because it irreconcilably conflicts with Article I, Section 33 of the Texas Constitution.

- Section 61.011(d)(11) provides: "The [GLO] commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only . . . the closure of beaches for space flight activities." OBA § 61.011(d).
- Plaintiffs alleged that authorizing the closure of public beaches for space flight activities, via promulgation of state agency rules, violates the guarantee of public beach access in Article I, Section 33 of the Texas Constitution.
- The GLO has applied Section 61.011(d)(11) of the OBA by certifying and adopting, via its rules, Cameron County's amended Beach Access and Dune Protection Plan, which allows unlimited beach closures. The GLO's adoption of the County's amended Plan, as authorized by Section 61.011(d)(11) of the OBA, violates the Texas Constitution's guarantee of the public's right to access public beaches.
- Similarly, the Memorandum of Agreement between GLO and Cameron County, and the County commissioners court Order, authorizing the County Judge to order the closure of Boca Chica Beach and/or State Highway 4, to allow for space flight activities, also violated the Texas Constitution.
- Accordingly, Plaintiffs requested declaratory judgment that Section 61.011(d)(11) of the OBA, on its face and as applied, violates Article I, Section 33 of the Texas Constitution.

- Plaintiffs further requested that the GLO's adoption of the County's Beach Access and Dune Protection Plan via its rules, the Memorandum of Agreement, and the Cameron County commissioners court Order be declared invalid.

CR.107-111.

In sum, Plaintiffs requested declaratory judgment regarding the constitutionality of two specific statutes and the validity of several actions taken under the authority of those statutes.

SUMMARY OF ARGUMENT

The court of appeals was presented with a run-of-the-mill jurisdictional issue—does the trial court have jurisdiction to issue a judicial declaration regarding the constitutionality of HB2623 vis-à-vis Section 33 of the Texas Bill of Rights. Citing well-established legal precedent, the appellate court concluded that the answer is yes, a trial court has the requisite jurisdiction to determine whether specific statutory provisions conflict with the rights that the Texas public reserved for themselves via the Texas Bill of Rights.

Petitioners' complaints regarding the appellate court's decision are based on their own exaggerated version of Plaintiffs' claims. Petitioners argue that the appellate court got it wrong, because the court should have taken a deeper dive into the merits of Plaintiffs' lawsuit and determined that the challenged statutes are not subject to review to determine their constitutional validity, because Section 33 was not intended to limit the Legislature's authority to regulate beach access. *Pet.-Br.*, p.23. But to get to this conclusion, Petitioners mischaracterize Plaintiffs' claims. Instead of focusing on the specific statutes that are the subject of Plaintiffs' lawsuit and the specific relief requested, Petitioners' argument rests on a strawman—that is, Petitioners ascribe to Plaintiffs an interpretation of Section 33 that prohibits *any* oversight or regulation of public beach access, under any circumstances. *Id.*, p.7. And according to Petitioners, Plaintiffs seek a judicial declaration that Section 33

renders void *any* law that conflicts with this "absolutist" interpretation. *Id.*, p.16. Were Plaintiffs to prevail, Petitioners maintain that governmental entities could not close a public beach even during catastrophes such as oil spills and hurricanes. *Id*., p.18.

The appellate court refused to adopt Petitioners' mischaracterization of Plaintiffs' claims and focused instead on the specific claims and requested relief in Plaintiffs' pleadings. *See Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 149 (Tex. 2012). Based on this proper standard of review, the appellate court determined that Plaintiffs' pleadings presented viable, valid claims within the trial court's jurisdiction.

Petitioners now argue to this Court that the appellate court erroneously failed to delve into the merits of Plaintiffs' claims and failed to recognize the facial invalidity of Plaintiffs' lawsuit—or rather, the invalidity of the Petitioners' characterization of Plaintiffs' lawsuit. But Petitioners' theory is not supported by well-established caselaw. While this Court has recognized that courts must, on occasion, touch on the merits of a case to determine whether jurisdiction has been invoked, this is not such a case. *See Abbott v. Mexican Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 699 (Tex. 2022) ("*MALC*") (holding that reviewing court goes no further into the merits than necessary to determine jurisdiction). A plain reading of Plaintiffs' pleadings illustrates this: the lawsuit seeks

a comparison of certain OBA statutory provisions with Section 33 of the Bill of Rights and a judicial declaration that the challenged statutory provisions conflict with the Bill of Rights provision. This exercise is not a complicated one, for purposes of demonstrating jurisdiction.

The appellate court was right not to countenance Petitioners' attempt to distort Plaintiffs' claims; it focused its review on the pleadings themselves, and correctly held that the pleadings invoked the trial court's jurisdiction.

Similarly, the appellate court correctly recognized that Plaintiffs' claims were not tantamount to a private right of enforcement, rejecting the County's and the GLO's mischaracterization of the lawsuit. (AG did not join the County and GLO in this argument. *See Op.*, p.14, n.5.) Neither has presented any valid legal reason to reverse the appellate court's conclusion.

ARGUMENT

I. Petitioners fail to present the Court with a compelling reason to grant their Petitions for Review.

This Court should deny the Petitions for Review because Petitioners' arguments are based on a mischaracterization of Plaintiffs' pleadings. Review of Plaintiffs' pleadings reveals they presented the district court with a valid, viable, conventional constitutional challenge to two statutes—based on a plainly written provision in the Texas Bill of Rights. Further, Petitioners fail to present this Court with a novel issue that requires clarification; instead, Petitioners invite this Court to reiterate well-established law. Finally, the Legislature recently enacted another beach-closure law applicable to Boca Chica Beach; remand to the district court would allow Petitioners to amend their pleadings and seek a determination as to whether this new legislation runs afoul of the Texas Bill of Rights too.

A. Petitioners' arguments are based on a mischaracterization of Plaintiffs' pleadings.

Petitioners' fundamental argument to this Court is that Plaintiffs' claims are facially invalid, and thus, the governmental entities retained immunity from suit. *Pet.-Br.*, p.9. But this argument is not based on Plaintiffs' pleadings; rather, this argument is based on Petitioners' own interpretation of the pleadings—an interpretation that is at odds with the claims presented and the relief requested in Plaintiffs' Petition.

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); *see also 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"). Petitioners, however, urge this Court to do the opposite. They urge the Court to interpret Plaintiffs' pleadings in a manner that stretches their claims so broadly so as to encompass *any* law, regulation, or government oversight that touches on public beach access, in any way, including governmental actions in response to natural or manmade catastrophic events. *See, e.g., Pet.-Br.*, pp.1, 18. Based on this hyperbolic interpretation of Plaintiffs' claims, Petitioners argue that Plaintiffs' lawsuit is not viable and facially invalid.

Plaintiffs' claims and requested relief, as presented in their trial-court pleadings, were specific. They challenged only those statutory provisions that were enacted by the Legislature in 2013—amendments to the OBA that authorized the closure of Boca Chica Beach for space flight activities. Act of May 9, 2013, 83d Leg., R.S., ch. 152, 2013 Tex. Gen. Laws 589 ("HB2623"). They requested that these statutory provisions be declared void because they irreconcilably conflict with

Section 33 of the Bill of Rights. Tex. Const. art. I, § 33. They also sought judicial declarations declaring invalid certain governmental actions that were taken under the authority of the challenged statutes. And importantly, Plaintiffs alleged that the challenged statutes were unconstitutional as applied, which raises factual issues for the trial court to resolve.

When presented in the correct context—based on the specific claims raised in Plaintiffs' pleadings—most of Petitioners' arguments to this Court dissolve or are rendered irrelevant, such as their argument regarding the meaning of the term "unrestricted," as it appears in Section 33. *Pet.-Br.*, pp.18-19. The appellate court was correct in resolving the jurisdictional issues presented by focusing on Plaintiffs' pleadings, instead of Petitioners' egregious mischaracterization of those pleadings. *See MALC*, 647 S.W.3d at 699 (reviewing court goes no further into the merits than necessary to determine jurisdiction). A deeper dive into the merits of the lawsuit was unnecessary in this case, because the issues presented were not complicated, and Section 33—the constitutional provision that forms the basis of Plaintiffs' constitutional challenge—is plainly written. But even if the appellate court had evaluated the merits of Plaintiffs' claims, Petitioners' arguments would still fail, because they are based on their own strained interpretation of Plaintiffs' pleadings, not on the specific claims raised in those pleadings.

B. The appellate court correctly determined that Plaintiffs' pleadings presented viable and valid claims for relief.

As Petitioners acknowledge in their Brief on the Merits, this Court has already "repeatedly held that a constitutional challenge is non-viable or facially invalid does not overcome a governmental defendant's immunity from suit." *Pet.-Br.*, p.12. There is no compelling reason for this Court to reiterate this settled legal principle. Here, the appellate court correctly determined that Plaintiffs' claims were viable and facially valid, and so, governmental immunity does not apply; its holding did not run afoul of *Klumb, MALC*, and related caselaw.

Petitioners take issue with the appellate court's summary of the legal principles reflected in *Klumb v. Houston Municipal Employees Pension System,* 458 S.W.3d 1 (Tex. 2015), regarding the reviewing courts' role in evaluating whether a constitutional challenge is facially valid. *Pet.-Br.*, p.14. In Petitioners' view, the appellate court refused to examine whether Plaintiffs presented viable, facially valid claims, because the court misinterpreted and misapplied this Court's holding in *Klumb* and in *MALC. See id.* (arguing that appellate court determined that it need not resolve whether Plaintiffs failed to plead viable constitutional claims or whether Plaintiffs' suit fails on its face); *see also AG's PFR*, p.8 (arguing that "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").

Although the appellate court was perhaps inartful in explaining the reach of *MALC* and *Klumb*, the appellate court did not misapply those holdings. Nor did the

court refuse to examine whether Plaintiffs' claims were viable and valid. Instead, the court held, "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." *Op.*, p.18 & n.7 (refusing to decide what test should be applied to the constitutionality of the challenged statutes).

To place the appellate court's holding in context, it's worth reviewing the arguments presented by the AG in his appellate brief.[2] There, AG cited *Klumb* in support of his argument that Plaintiffs "cannot plead a viable claim because they have not alleged sufficient facts to sustain a facial challenge, fail to overcome the presumption of constitutionality, and have not demonstrated House Bill 2623 operates unconstitutionally in every application." *AG's Second Amended Brief*, No. 13-22-00360-CV, pp.21-22 (arguing Plaintiffs "must plead a claim of a constitutional violation"). AG also argued that Plaintiffs' pleadings were "deficient" and thus not viable, because Plaintiffs "failed to affirmatively plead how sections 61.132 and 61.011(d)(11) of the Texas Natural Resources Code arbitrarily interfere with Article I, Section 33" and failed to "plead facts demonstrating the statutes always operate unconstitutionally."[3] *Id.*, p.23. Finally, AG argued that any infringement of the

[2] AG was the only Appellee that cited *Klumb* in its appellate brief.
[3] It's worth noting that Plaintiffs also included an "as applied" constitutional challenge in their pleadings, though AG's arguments focused almost exclusively on the facial constitutional challenge to the statutes.

public's right to access the beach is "rationally related" to "legitimate interests in protecting public safety, stimulating the Texas economy, and ensuring Texas remains a hub for the space industry." *Id.*, pp.28-29.

In light of these arguments, the appellate court's holding makes sense. AG invoked *Klumb* in support of his argument that Plaintiffs' pleadings were deficient. Thus, the appellate court resolved the issue by focusing on Plaintiffs' pleadings. With regard to AG's argument that the challenged statutes are constitutionally valid because they are rationally related to legitimate governmental interests, the appellate court correctly explained that it need not "determine the merits of appellants' constitutional arguments at this stage of the proceeding," and *Klumb* does not hold otherwise. *Id.*, p.18 & n.7. The appellate court went no further than necessary to resolve the arguments presented by AG and to determine jurisdiction. *See MALC*, 647 S.W.3d at 699.

Petitioners argue to this Court that Plaintiffs' claims "hinge entirely on their facially invalid theory that [Section 33] prohibits any law that infringes in any way on the public's rights to access and use public beaches." *Pet.-Br.*, pp.9-10. According to Petitioners, "Plaintiffs' reading of Section 33 is incorrect," and so, "their claims based on that reading are facially invalid." *Id.*, p.10. In other words, Petitioners' facial-validity argument is based on their own exaggerated mischaracterization of Plaintiffs' pleadings and on their own interpretation of Section 33—

mischaracterizations that the appellate court correctly disregarded. As explained elsewhere in this Brief, Petitioners' arguments collapse upon an evaluation of the specific claims raised in Plaintiffs' pleadings.

In any event, the appellate court's decision was not wrong in determining that it need not address the merits of Plaintiffs' claims at this juncture. Indeed, this Court has held that viability does not depend on the merits of the claim, but rather the simple adequacy of the pleadings. *See Patel v. Texas Dep't of Licensing & Regul.,* 469 S.W.3d 69, 78 (Tex. 2015) (holding that properly pled UDJA claims—that is, without "basic pleading defects"—challenging constitutionality of statutes were viable, and thus sovereign immunity was overcome). Here, there were no defects in the Plaintiffs' pleadings.

Because Plaintiffs presented viable, facially valid claims within the jurisdiction of the trial court, the Petitions for Review should be denied.

C. A remand to the trial court would allow Plaintiffs to present potential new claims, based on newly enacted beach closure laws.

In the 2025 regular legislative session, the Legislature amended the Government Code to empower new decisionmakers to close Boca Chica Beach. Act of June 2, 2025, 89th Leg., R.S., § 6 (H.B.5246), eff. Sep. 1, 2025. In updating and revising the charge for the Texas Space Commission and the Texas Aerospace Research and Space Economy Consortium, the Legislature expanded the Texas

Space Commission ("TSC") Board of Directors' authority to include closing public beaches. The Legislature did not eliminate the OBA provisions establishing authority for Cameron County and the GLO that are challenged in this lawsuit, but instead added additional beach-closure authority to the Space Commission's enabling legislation in the Texas Government Code.

Under the new law, the Texas Space Commission Board of Directors "shall" order closure of Boca Chica Beach "as necessary to promote space-related industries and further commission activities." H.B.5246, 89th Leg., R.S., § 6 (adding Tex. Gov't Code § 482.107 (a)(8)). This law also allows closure of a "highway, venue or area," with city approval. *Id.*

This new law created a separate and independent closure opportunity. Cameron County is no longer the only source for beach closures. This separate closure opportunity lacks any limits on when and how often the TSC Board may close a public beach or access highway to the beach. The only limit is that the closures must be "temporar[y]," but the term is not defined.

This new law provides another reason to deny the Petitions for Review. The Court should allow this case to return to the trial court for the parties to address the merits, including whether this new law presents the same constitutional infirmities as the challenged OBA provisions in Plaintiffs' existing lawsuit. Doing so would

allow this Court to resolve any meritorious issues later, in an efficient manner—after the new beach closure law has been made effective and implemented.

II. Dismissal is not warranted here, because Plaintiffs' pleadings present a viable dispute regarding the constitutionality of HB2623.

Petitioners urge this Court to dismiss Plaintiffs' lawsuit—instead of remanding to the appellate court—and invite the Court to provide an "authoritative construction" of the constitutional provision at issue in this case. Petitioners essentially seek a decision from the Court regarding the merits of Plaintiffs' claims.

This Court should decline to do so, as it is unnecessary for purposes of resolving the issue presented by this appeal—which is whether the trial court possessed the requisite jurisdiction to resolve Plaintiffs' claims. The appellate court properly determined that the trial court should have exercised its jurisdiction and remanded Plaintiffs' lawsuit to that court. This Court should deny the Petitions for Review and await the trial court's final judgment before analyzing the merits of Plaintiffs' claims. *See VanDevender v. Woods*, 222 S.W.3d 430, 433 (Tex. 2007) ("the cardinal principle of judicial restraint" is that "if it is not necessary to decide more, it is necessary not to decide more").

In the alternative, Plaintiffs urge that dismissal of their claims is not warranted, for the reasons discussed below.

A. Petitioners' proposed "rational-basis" constitutional analysis is inapplicable here.

Avoiding the plain text of Section 33 of the Bill of Rights, Petitioners argue that implicit in Section 33 is the recognition of the government's authority to impose reasonable regulations affecting the public's right to access public beaches. Accordingly, Petitioners maintain that a "rational-basis review" of HB2623 is appropriate, citing *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627 (Tex. 2008), for support. *Pet.-Br.*, p.30.

In *Combs*, two insurance companies alleged that the Comptroller's interpretation of certain tax statutes violated their equal-protection rights. To resolve the dispute, the Court applied a rational-basis analysis. *Combs*, 258 S.W.3d at 639 (acknowledging that federal equal-protection analysis applies to equal-protection challenges under Texas Constitution).

Petitioners fail to explain why a federal equal-protection analysis should apply here to resolve a claim based on a state constitutional right that finds no analog in the federal Constitution. Petitioners' entreaty to this Court to apply a federal equal-protection, rational-relationship analysis should be rejected. *See Davenport v. Garcia*, 834 S.W.2d 4, 19 (Tex. 1992) (proposing more traditional textual and historical tools for purposes of construing a constitutional provision) (citing *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989)).

While there is no direct precedent from this Court regarding how to determine whether a statute conflicts with Section 33, the Court has employed textual and

historical analyses when analyzing other provisions in the Texas Bill of Rights. *See, e.g., Hogan v. Southern Methodist Univ.*, 688 S.W.3d 852, 856 (Tex. 2024) (courts interpret Texas Constitution based on plain meaning of text as understood by those who ratified it); *Tex. Dep't of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648, 677-78 (Tex. 2022) (Young, J., concurring) (same). A textual analysis is particularly apt here, in light of Section 33's direct and unambiguous language. *Crown Distrib.*, 647 S.W.3d at 677.

Further, Petitioners attempt to justify HB2623's infringement on the constitutional right to access public beaches by invoking the government's police powers. This Court's jurisprudence is well-developed regarding the limits of police powers in the context of a constitutional analysis. *Robinson v. Crown Cork & Seal Co*., 335 S.W.3d 126, 162 (Tex. 2010) (Willett, J., concurring).

B. Section 33's plain text supplies the dimensions of the public's constitutional right.

Petitioners argue that Plaintiffs' challenge to HB2623 is invalid because Plaintiffs' claims "hinge entirely" on a flawed construction of Section 33. *See, e.g., Pet.-Br.*, pp.9, 10, 15, 16. In Petitioners' view, Plaintiffs construe Section 33 as granting the public the right to "[occupy] public beaches at all times and under any circumstances, even at the risk of the public's health, safety, and welfare." *Pet.-Br.*, p.21. Having set up this strawman, Petitioners interpret Section 33 as allowing the Legislature to impose reasonable regulations affecting the public's beach-access

right and easement, and HB2623, allowing beach closures for space flight activities, falls within that authority. But in making this argument, Petitioners again mischaracterize Plaintiffs' claims. More importantly, Petitioners ignore the plain text of Section 33.

1. Plain Text

This Court has recognized that when interpreting the Texas Constitution, courts should "rely heavily on its literal text" and "give effect to its plain language." *Republican Party of Tex. v. Dietz*, 940 S.W.2d 86, 89 (Tex. 1997); *In re Abbott*, 628 S.W.3d 288, 296 (Tex. 2021) ("We strive to interpret the Texas Constitution based on the plain meaning of the text as it was understood by those who ratified it."). The Court's "bottom-line task is to identify what the constitutional provision would have meant to those who ratified it." *Hogan*, 688 S.W.3d at 857.

The Court's objective in this case, then, is to discern what Texas voters understood they were voting for when they ratified Section 33 of the Texas Bill of Rights. That is: what rights were they preserving? *See id.* at 856-57; *Crown Distrib.*, 647 S.W.3d at 677-78 (Young, J., concurring) (acknowledging that judiciary's role is to enforce and protect rights that Texas voters have preserved via Texas Constitutional amendments).

Relevant to this case, Section 33(a) includes Boca Chica Beach in the definition of public beach. Tex. Const. art. I, § 33(a). This is undisputed.

Accordingly, the plain language of Section 33 preserves for the public, "individually and collectively," "an unrestricted right to use and a right of ingress to and egress from" Boca Chica Beach. *Id.* § 33(b). Further, this right "is dedicated as a permanent easement in favor of the public." *Id.*

The plain text unambiguously reflects that Texan voters intended to reserve for the public the guaranteed right to access Boca Chica Beach, when they overwhelmingly ratified[4] Section 33 of the Bill of Rights. *See Crown Distrib.*, 647 S.W.3d at 677 ("our Constitution *also* recognizes far lesser-known rights, like public beach access"). Section 33 is an example of an individual liberty reserved for the public via "carefully written, detailed, well-known, expressly stated, unambiguous" language. *Id.*

Adding clarity to the right that Texans reserved for themselves and that the judiciary must protect, Section 33 defines the limits of the Legislature's authority to enact laws regarding public beach access: it 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." Tex. Const. art. I, § 33(c). Laws that do not fulfill this function—of protecting the public's right to access and use a public

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

beach—are prohibited. That this guarantee is included within the Bill of Rights demonstrates that it was intended to restrict the authority of the government, not empower the government or expand its authority. *See Hogan*, 688 S.W.3d at 858 ("something was deliberately placed beyond the scope of the legislative power by those who framed and ratified constitution"); *Patel v. Texas Dep't of Licensing and Regulation*, 469 S.W.3d 69, 121 (Tex. 2015) (Willett, J., concurring) (Bill of Rights acts as "a powerful check on government power"); *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148 (Tex. 1995) ("[G]uarantees found in the Bill of Rights are excepted from the general powers of government.").

Plaintiffs' lawsuit seeks to have the judiciary determine whether HB2623 is consistent with the plain text of Section 33 of the Bill of Rights. Plaintiffs maintain that the two are not reconcilable, and thus, HB2623 must be declared void.[5] *Bouillion*, 896 S.W.2d at 148-49.

For example, among the statutory provisions enacted by HB2623 is OBA Section 61.132, entitled: "Closing of Beaches for Space Flight Activities." OBA § 61.132. This statute grants Cameron County the authority to close Boca Chica Beach and highway access to the Beach to facilitate SpaceX's space flight activities. Although the statute contemplates "temporary" closures, the statute includes no limits on the number of hours Boca Chica Beach may be closed, per year, for

[5] Plaintiffs' lawsuit also alleges that HB2623 is unconstitutional as applied.

SpaceX's activities. There are no provisions in the statute that protect the beach easement from interference; nor are there provisions that protect the public's right to access and use Boca Chica Beach. Thus, Plaintiffs maintain that the statute violates Section 33 of the Bill of Rights, and that the judiciary must step in to protect the public's right and declare the statute void.

To resolve this claim, Plaintiffs need not rely on an "absolutist" theory that Section 33 prohibits *any* law, regulation, or government oversight that touches on public beach access, in any way, including governmental actions in response to natural or manmade catastrophic events. *See Pet.-Br.*, pp.1, 7, 18. The plain text of Section 33 provides the answer: allowing the County to close Boca Chica Beach for space flight activities does not "protect the right of the public to access and use a public beach" or "protect the public beach easement from interference and encroachments." Tex. Const. art. I, § 33(b).

2. Context

The context surrounding the adoption of Section 33 is also instructive in discerning what the public understood when they ratified Section 33. *See Hogan*, 688 S.W.3d at 857.

The context surrounding the ratification of Section 33 is also instructive in discerning what the public understood when they ratified Section 33. *See Hogan*, 688 S.W.3d at 857.

The ballot language presented to Texas voters in 2009 was as follows: "The constitutional amendment to protect the right of the public, individually and collectively, to access and use the public beaches bordering the seaward shore of the Gulf of Mexico."[6] Tex. H.R.J. Res. 102, 81st Leg., R.S., 2009 Tex. Gen. Laws 5660. Texas State Representative Richard Raymond, who wrote the bill that became the ballot measure, explained what was intended by the proposition:

> Someday, if some big corporation wanted to get a piece of South Padre Island, or Galveston Island, or Mustang Island, that the way the law stood, they could try to go lobby the legislature. So I thought, if we take this law, and put it into the Constitution, it would take two thirds of the legislature to approve it, and it would have to be put before the voters, and they would have to approve it.[7]

Neither the Legislature nor the voters could have predicted, in 2009, that the Legislature would be considering a statute that would allow beach closures for space flight activities. Certainly, no such statute existed at the time the constitutional amendment was placed on the election ballot.

Nevertheless, the intent of Section 33 was to protect public beach access from interference by private interests. SpaceX is a private interest, and it chose to site its launch facilities near a public beach. To facilitate SpaceX's space flight activities,

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[6] https://lrl.texas.gov/LASDOCS/81R/HJR102/HJR102_81R.pdf.

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

the Legislature enacted HB2623, allowing the closure of Boca Chica Beach. Thus, SpaceX is an example of the very type of private interest that Section 33 was intended to address, and HB2623 is an example of the type of law that Section 33 was intended to prevent—one that impedes the public's right to access a public beach for the benefit of a private interest.

Even the legislative history summarized in Petitioners' Brief supports the notion that Section 33 was intended to prevent the Legislature from enacting laws that interfere with the public's right to access a public beach for the benefit of a private interest. *Pet.-Br.*, pp.24-25. Supporters of the proposition recognized that Section 33 "would strengthen the Open Beaches Act" as it existed in 2009, before HB2623 was enacted, "by enshrining it in the Texas Constitution and by putting it to a public vote to demonstrate the extent of support among Texas voters for open beaches." H. Rsch. Org., Focus Report, pp.21-22 (Aug. 20, 2009).

> In addition to securing open beaches against any future legislative or judicial action that could undermine this important legal principle, approval of Proposition 9 would be a vote of support for open beaches in Texas. . . . A vote to secure open beaches would send a strong message that the state's residents wish to preserve access to these resources for present and future generations. Adding the amendment to the first article in the Constitution, the Texas Bill of Rights, would affirm that access to and use of public beaches in Texas is a fundamental right.

Id.

Supporters further recognized that "[f]or 50 years, the Texas open beaches act has served as one of the strongest coastal access laws in the nation. The proposed

amendment would strengthen that law by clarifying its intent to protect the public's right to free and unrestricted access to public beaches and by placing the law in the Texas Constitution, thus protecting it from future tampering." *Analyses of Proposed Constitutional Amendments*, *Nov. 3, 2009, Election,* Tex. Leg. Council, p.50. Although supporters also mentioned lawsuits arising after Hurricane Ike, *see Pet.-Br.*, p.25, the comments in support of the proposition reflect an understanding that a constitutional amendment would strengthen the public's right to access beaches and protect it from future legislative or judicial actions that might undermine that right. HB2623 is a legislative action that tampers with and undermines the public's right to access Boca Chica Beach.

The OBA, as it existed in 2009 (when Section 33 was ratified) is also instructive in recognizing what Section 33 was intended to enshrine as a fundamental constitutional right. Throughout the OBA, the public's right to access public beaches is emphasized, as is the prohibition of the government to restrict access. For instance, Section 61.011 declares the public policy of the State, which mirrors the language in Section 33(b); it also directs the GLO Commissioner to "strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement." OBA § 61.011(c).

This was the state of the law when Texas voters chose to strengthen the OBA by ratifying Section 33. The OBA was considered the most comprehensive set of

public beach access laws in the nation, *Severance v. Patterson*, 370 S.W.3d 705, 733 (Tex. 2012) (Medina, J., dissenting), and the voting public decided to enshrine public beach access in the Bill of Rights, so that it would be recognized as a fundamental, constitutionally protected right, and so that the right would be dedicated as a permanent easement in favor of the public.

3. History of Open Beaches

It's also worth mentioning that the OBA has been in place since 1959, and though it has been amended since then, the policy behind the OBA has remained the same: "that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches." OBA § 61.011(a). The OBA codified the public's pre-existing right to access public beaches, such as the state-owned Boca Chica Beach. *Severance,* 370 S.W.3d at 739. Like Section 33, the OBA was intended to "guard[] the right of the public to use public beaches against infringement by private interests." *Severance*, 370 S.W.3d at 719. This history of the OBA reflects that the plain text of Section 33 means what it says: that the voters intended to preserve their right to public beach access by adding it to the Bill of Rights, so as to limit the Legislature's authority to impede public beach access for the benefit of private interests. *See Crown Distributing*, 647 S.W.3d at 679 (recognizing that history is an important tool in discerning the public's understanding of the constitutional right it was preserving).

4. Easement

Also relevant to the plain text and contextual analysis of Section 33 is the fact that Texas voters fortified their right to public beach access by bestowing unto the public a permanent easement. *See Severance*, 370 S.W.3d at 721 ("an easement 'in general terms implies a grant of unlimited reasonable use such as is reasonably necessary and convenient and as little burdensome as possible to the servient owner'") (quoting *Coleman v. Forister*, 514 S.W.2d 899, 903 (Tex.1974)). An easement holder is the dominant estate owner, and the land burdened by the easement is the servient estate. Thus, "the property owner may not interfere with the easement holder's right to use the servient estate for the purposes of the easement." *Id.*

Here, the public possesses the dominant estate. And so, the state may not interfere with the public's right to use the public beach—certainly not for the benefit of SpaceX, an entity that has no role in this relationship between the state and the public.

5. Plain textual analysis of Section 33

Section 33 is unambiguous in defining the fundamental right that the public reserved for itself—access to public beaches, which is dedicated as a permanent easement. This constitutional amendment is a fairly recent one; so, the language is not arcane, requiring interpretation based on historical literature. Furthermore, because the constitutional amendment follows a rather well-developed history—

flowing from a pre-existing right that was codified as a statutory right—the objective of the constitutional amendment is easily discerned. Adding further clarity regarding the limits of the Legislature's authority, Section 33 specifies the types of laws that the Legislature may enact—those that protect the public's right to public beach access. Tex. Const. art. I, § 33(c); *see Bouillion*, 896 S.W.2d at 148-49 ("the State has no power to commit acts contrary to the guarantees found in the Bill of Rights").

Taken together, there can be no real question that Section 33 was intended to limit the Legislature's power to enact laws that interfere with or impede the public's easement and its fundamental right to access the public beach—particularly, if doing so is for the benefit of a private development. And HB2623 does just that—it allows the County and GLO to deny the public access to Boca Chica Beach for the benefit of SpaceX, so that it may conduct its space flight activities.

C. HB2623's impacts on public beach access cannot be justified as a reasonable exercise of police power.

Petitioners argue that Section 33 does not expressly or implicitly forbid the Legislature from enacting laws regulating beach access. *Pet.-Br.*, p.23 (quoting *Mumme v. Marrs*, 40 S.W.2d 31 (Tex. 1931)). According to Petitioners, Section 33(c) does not displace the Legislature's pre-existing authority to enact reasonable regulations regarding the public's easement, based on the government's police power to protect public welfare. But this argument ignores the plain text of Section 33.

Furthermore, HB2623 cannot be reasonably interpreted as a valid exercise of police power.

1. Mumme is inapplicable here.

Mumme involved a constitutional challenge to a law redistributing school funds towards rural counties. In upholding the challenged statute, the Court explained that "the provisions of article 7, the educational article of the Constitution, have never been regarded as limitations by implication on the general power of the Legislature to pass laws upon the subject of education." *Mumme*, 40 S.W.2d at 33. Importantly, the constitutional provision invoked by the plaintiffs—Article 7, Section 5—was not in the Bill of Rights.

This holding, however, is not relevant to the constitutional challenge presented here, in part, because Section 33 is included in the Bill of Rights. Ample precedent exists acknowledging that the "guarantees found in the Bill of Rights are excepted from the general powers of government; the State has no power to commit acts contrary to the guarantees found in the Bill of Rights." *Bouillion*, 896 S.W.2d at 148-49. This is the very purpose of the Bill of Rights.

That Section 33 includes a provision clarifying the types of laws that the Legislature is permitted to enact—*i.e.*, those that protect the constitutional right to public beach access and to protect the public easement—does not mean that the Legislature maintains general authority to enact *any* type of statute, including laws

that plainly allow the government to close the public beach and access to the beach for the benefit of a private company. "*Something* was deliberately placed beyond the scope of the legislative power by those who framed and ratified" Section 33. *See Hogan*, 688 S.W.3d at 858. In this case, that "something" was the power of the legislature to enact laws, such as HB2623, that allow the government to deny the public access to public beaches—for the purpose of allowing a nearby private company to engage in activities that may present a hazard to the public and to the beach itself. This is the opposite of protecting the public's easement and its constitutional right.

2. OBA did not countenance public beach closures for the benefit of a nearby company's space flight activities.

Petitioners argue that because OBA, as it existed before enactment of HB2623, allowed the government to place some limits on public beach access, this demonstrates that Section 33 was not intended to displace this "pre-existing authority to enact any 'reasonable regulation' of the public's easement." *Pet.-Br.*, p.23. But the examples cited by Petitioners in support of this argument are not analogous to HB2623. None expressly allows for closure of the public beach or access to the beach. *Cf.* OBA § 61.132 ("Closing of Beaches for Space Flight Activities").

Indeed, Section 61.011—a statute cited by Petitioners in support of their argument that the OBA allows regulation of public beach access—includes the

following directive: "The [GLO] commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement." OBA § 61.011(c).

Further, the Act prohibits persons from impeding the public's access to the protected public beach areas: "It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach." OBA § 61.013(a); *see also id.* § 61.014(b) ("No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to the public beach as guaranteed by this subchapter."). Together, these statutes demonstrate that the OBA—as it existed in 2009 when Section 33 was ratified and before HB2623 was enacted—sought to ensure protection of public beach access, not restrictions to access.

Furthermore, subsection 61.011(d) (as it existed before 2013), directing the GLO Commissioner to promulgate certain rules, furthers the policies of the OBA—as it must. *Id.* § 61.011(d) ("The commissioner shall promulgate rules, consistent with the policies established in this section," referring to public beach access policy).

In furtherance of that policy and consistent with Subsection 61.011(d)(9), the GLO Commissioner may order the removal of such structures, improvements, obstructions, barriers, or hazards on the public beach that constitute an imminent hazard to safety. *Id.* § 61.0183(a)(2).

Similarly, the OBA provisions cited by Petitioners regarding counties' authority to regulate the use of public beaches do not authorize the denial of access to public beaches or closure of the beaches. Petitioners cite OBA Section 61.122(a) as an example of the Act allowing counties to regulate motor vehicle traffic on public beaches. *Pet.-Br.*, p.26. But the OBA also places restrictions on the county's authority to ensure protection of public beach access: "No local government may regulate vehicular traffic so as to prohibit vehicles from an area of public beach. . . in any manner inconsistent with the policies of Section 61.011 of this code." OBA § 61.022(b); *see also id.* § 61.122(e) (regulation of motor vehicle traffic is subject to OBA § 61.022).[8]

The other subsections of OBA Section 61.122 cited by Petitioners simply do not authorize the county to close public beaches or otherwise encroach on the public's easement. OBA Section 61.130—which provides that the public's right to use public beaches is subject to orders of the commissioners court, as authorized by

[8] Further, a county's authority to regulate vehicular traffic on public beaches is derived from the Texas Constitution. Tex. Const. art. 9, § 1-A.

Section 61.122—does not authorize the county to impose orders denying the public access to the public beach. *See also* OBA § 61.015(a) (requiring counties with public beaches to "adopt a plan for *preserving and enhancing access to and use of* public beaches"). Similarly, allowing a county to require a permit and fee for mass gatherings does not equate to authorizing a county to close a public beach for space flight activities. *See also* OBA § 61.011(b) (county may assess fees so long as they do not limit public access to and use of public beaches).

In sum, the OBA, as it existed before Section 33 was ratified, did not authorize the Legislature or local governments to deny public beach access; to the contrary, the OBA required protection of the public's access and easement. That was the state of the law in 2009 when Section 33 was ratified and remained the state of the law until 2013, when the Legislature adopted HB2623. HB2623 is not only inconsistent with Section 33; it is also inconsistent with the OBA as it existed when Section 33 was ratified.

3. Public safety was not the Legislature's objective when it enacted HB2623.

Recognizing that HB2623 interferes with the public's constitutional right and easement, Petitioners attempt to rationalize HB2623 by claiming that the Legislature was exercising its police power to protect the public's safety. *Pet.-Br.*, p.19. But HB2623 is antithetical to the concept of police power. As explained in Justice Willett's concurrence in *Robinson*, "police power draws from the credo that 'the

needs of the many outweigh the needs of the few.'" *Robinson,* 335 S.W.3d at 162. Here, the public beach closures address the needs of the few—namely, SpaceX—at the expense of the many—the public.

When police power is invoked to justify the abridgement of constitutional guarantees, a convincing, strong public-welfare showing must be made. *Id.* None of the reasons offered by Petitioners satisfy this significant burden.

The main reason offered by Petitioners in support of HB2623 is that it's necessary to protect the public during launches. But the beach closures facilitate the launches, resulting in the very hazardous conditions that Petitioners claim require the protection of the public. The beach closures create the very circumstance that Petitioners rely on to justify denying the public access to the beach. Without beach closures, there can be no launches, and without launches, there is no need to deny the public access to the beach, nor encroachment on their easement.

Indeed, the launch of space vehicles does not necessitate infringing on the public's constitutional right or its easement; the launches do not require proximity to a public beach. SpaceX could have sited its facility elsewhere; that it *chose* to site its launch facility along Boca Chica Beach and its access road does not justify the denial of the public's constitutional right.

Further, Petitioners also argue that the government must be able to close a public beach in response to natural or manmade events that present a serious risk to

the lives and safety of residents on the beach. *Pet.-Br.*, p.19. But Plaintiffs challenged HB2623, which authorizes beach closures to allow space flight activities, not in response to manmade and natural disaster events. The Texas Disaster Act of 1975, Tex. Gov't Code §§ 418.001-.310, already authorizes the government to take action in response to natural and manmade disaster events, and that Act is not the subject of Plaintiffs' lawsuit.

The Disaster Act authorizes the governor to declare a state of disaster in response to (or in anticipation of) the natural and manmade events that Petitioners describe in their Brief. In fact, "disaster" is defined broadly as "the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency." *Id.* § 418.004. Local officials are also authorized to declare disasters. After declaring such a disaster, "[t]he county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area." *Id.* § 418.108(g).

The Act describes the type of urgent societal peril that necessitates the exercise of police power for the benefit of the many—for the public welfare. *Robinson*, 335 S.W.3d at 162. The existence of this Act demonstrates that the purpose of HB2623 is *not* to protect the public from such disasters, contrary to Petitioners' implication. HB2623 would be unnecessarily redundant if it were intended to authorize the government's exercise of police power in response to a disaster. Declaring HB2623 void would, thus, not limit the government's authority to continue to enforce the Disaster Act when the circumstances require it and to protect the health and safety of Texas residents in times of catastrophic events.

In sum, Petitioners have not made a convincing case that HB2623 is a proper exercise of police power and thus warrants infringing on the public's constitutional right and easement. *Id.* (holding that only public necessity justifies the exercise of police power; yet, it is still subordinate to the Constitution).

D. Plaintiffs presented facially valid and viable constitutional challenges to HB2623.

As described above, Plaintiffs' pleading—challenging HB2623 as unconstitutional on its face and as applied—presented facially valid and viable claims. Had the appellate court reached the merits of Plaintiffs' claims, its decision would not have changed: the district court's dismissal of Plaintiffs' lawsuit was erroneous and warranted reversal.

Still, the appellate court was not wrong to recognize the viability of Plaintiffs' claims without the parties having expounded on the merits of those claims. The court correctly focused on the Plaintiffs' pleading, which sought to challenge only HB2623 as unconstitutional, and it construed Plaintiffs' pleading in favor of jurisdiction, as required. The appellate court's analysis, in this case, did not require delving into the merits of the claims to determine that Plaintiffs presented viable claims within the district court's jurisdiction—namely, whether HB2623 authorizing beach closures for space flight activities irreconcilably conflicts with Section 33 of the Bill of Rights, which guarantees the public's right to access public beaches.

This Court should allow the appellate court's decision to stand, so that the district court may resolve the merits of Plaintiffs' claims.

III. The appellate court correctly recognized that Plaintiffs' pleadings did not present a private cause of action or private right of enforcement.

The County and GLO continue to argue that Plaintiffs' pleadings presented the trial court with an impermissible private right of enforcement. (AG did not join in this argument.) But the appellate court correctly held that Plaintiffs' constitutional challenge to a statute is distinct from a private cause of action.

A. Plaintiffs' claims are distinct from private causes of action.

The County and GLO argue that Plaintiffs' request for injunctive relief in their pleadings reveals that Plaintiffs' true intent is to seek a private right to enforce

Section 33, which is prohibited. But they fail to recognize that injunctive relief is a proper form of relief when a party challenges a statute as unconstitutional, as well as the actions taken under the authority of the challenged statute. *See City of Elsa v. M.A.L.*, 226 S.W.3d 390, 392 (Tex.2007) (concluding "appeals court did not err by refusing to dismiss the plaintiffs' claims [against city] for injunctive relief on alleged constitutional violations").

Further, Plaintiffs did not seek to enforce either Section 33 or the OBA by their lawsuit. Had Plaintiffs' lawsuit requested removal of an obstruction to the public beach—this perhaps would be an example of a private right of enforcement. *See, e.g., Gulf Holding Corp. v. Brazoria County*, 497 S.W.2d 614 (Tex. Civ. App.—Houston [14th Dist] 1973, writ ref'd n.r.e.). Or if Plaintiffs requested damages for violations of Section 33 of the Bill of Rights, this could be characterized as a private cause of action. *See Bouillion,* 896 S.W.2d at 144 (holding that "there is no implied cause of action for damages against governmental entities for violations of the free speech and free assembly clauses of the Texas Constitution").

Where, as here, a party challenges a statute as unconstitutional because it violates a provision of the Bill of Rights, the party is entitled to declaratory and equitable—*e.g.,* injunctive—relief. This is because the "State has no power to commit acts contrary to the guarantees found in the Bill of Rights." *Bouillion,* 896 S.W.2d at 148. Citing section 29 of the Bill of Rights, the *Bouillion* 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. There is a difference between voiding a law and seeking damages as a remedy for an act. A law that is declared void has no legal effect. Such a declaration is different from seeking compensation for damages, or compensation in money for a loss or injury. Thus, suits for equitable remedies for violation of constitutional rights are not prohibited.

Id. at 148-49 (internal citations omitted).

Although Section 33(d) states that it creates no private right of enforcement, it does not abrogate a party's right to seek equitable and declaratory relief, such as a declaration that certain statutes contravene Section 33; 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). Were it otherwise, Section 33 would be rendered meaningless.

B. The County's and GLO's argument that Plaintiffs' lawsuit will open the floodgates to endless litigation is speculative and unsupported by the facts in this case.

Finally, the County and GLO argue in their brief that the proper construction of Section 33(d) is significant for Texas counties with public beaches and the GLO. They argue that if Plaintiffs are allowed to proceed with their lawsuit, this could render other provisions in the OBA vulnerable to similar challenges, resulting in endless litigation.

Plaintiffs' lawsuit challenges only two statutory provisions, enacted by the Legislature in 2013 in HB2623. And the statutes that Plaintiffs are challenging apply to only one county, presently—Cameron County.

Furthermore, Section 33 was ratified in 2009. Thus far, this constitutional provision has not resulted in endless litigation.[9]

In short, the County and GLO offer no valid justification for dismissing Plaintiffs' lawsuit.

[9] This Court recently emphasized, in a case oft-cited by Petitioners, that it does not rule "based on lists of hypothetical future possibilities"; rather, "the judiciary dwells in the house of the concrete past." *State v. Zurawski*, 690 S.W.3d 644, 669-670 (Tex. 2024). The County's and GLO's hypothetical predictions of the implications of Plaintiffs' lawsuit are not relevant here.

PRAYER

For the above reasons, Plaintiffs ask this Court to deny the Petitions for Review and allow this case to be remanded to the trial court. Plaintiffs 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 Brief on the Merits contains 9454 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
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CERTIFICATE OF SERVICE

By my signature below, I, Marisa Perales, certify that on August 22, 2025, a true and correct copy of the foregoing document was served to the following counsel of record via electronic service.

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