

Nos. 24-0237, 24-0407, 24-0457

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**IN THE SUPREME COURT OF TEXAS**

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

v.

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

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CAMERON COUNTY,  
*Petitioner,*

v.

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

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

v.

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

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On Petitions for Review from the  
Thirteenth Court of Appeals at Corpus Christi, Texas

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**BRIEF OF AMICUS CURIAE SOUTH TEXAS ENVIRONMENTAL JUSTICE NETWORK  
IN SUPPORT OF RESPONDENTS**

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## TABLE OF CONTENTS

Table of Authorities .....	iv
Record Citations and Shorthand References .....	xiii
Interest of Amicus Curiae .....	xiv
Introduction.....	1
Summary of Argument .....	6
Argument .....	10
I. The Legislature has enabled, and Petitioners have allowed, SpaceX to use Boca Chica Beach as its private blast zone. ....	10
A. Adjacent to the launch pad, Boca Chica Beach is a necessary component of SpaceX’s operations. ....	10
B. Because SpaceX chose to put its facility on a small parcel next to Boca Chica Beach, it needed the beach itself for its blast zone.....	16
C. SpaceX’s operations at Boca Chica Beach continue to expand, and the pace of beach closures accelerates.....	23
D. SpaceX’s routine use of Boca Chica Beach is a substantial and unmistakable intrusion on the public’s constitutional right to use and access the beach. ....	29
E. The FAA license is not preemptive. ....	33
F. The State should pursue economic development, but must adhere to constitutional constraints. ....	34
II. The new statute adding the Texas Space Commission and the City of Starbase as additional decisionmakers means more closures and makes this case an improper vehicle for review.....	35
III. Petitioners contend that the Legislature enacted HB 2623 under its police powers, but the Legislature invited and enabled the very dangers it purports to address. ....	38
A. The Legislature passed HB 2623 to give SpaceX use of Boca Chica Beach. ....	38
B. HB 2623 lacks any findings about public safety. ....	40

C.	The Legislature created dangers to the public to benefit a single private commercial enterprise.....	41
IV.	Section 33 necessarily limits legislative power.....	44
A.	Section 33 bestows a “permanent easement” and an “unrestricted right” to use and access public beaches.....	44
B.	Petitioners’ efforts to show Section 33 is not “absolutist” shed no light on Section 33’s meaning. ....	45
C.	Despite Section 33’s grant of a permanent easement to the People, Petitioners avoid key property and takings principles in favor of a superficial analysis. ....	47
D.	Rational basis does not apply.....	53
V.	The County/GLO’s separate objection fails: Plaintiffs’ lawsuit does not present a Section 33(d) “private right of enforcement.”.....	56
	Prayer .....	62
	Certificate of Compliance.....	63
	Certificate of Service.....	64
	Appendix	

## TABLE OF AUTHORITIES

### Cases

<i>Abbott v. Mex. Am. Legis. Caucus</i> , 647 S.W.3d 681 (Tex. 2022).....	44, 52
<i>In re Abbott</i> , 628 S.W.3d 288 (Tex. 2021) (orig. proceeding).....	54
<i>Accident Fund Ins. Co. of Am. v. Tex. Dep’t of Ins.</i> , 707 S.W.3d 110 (Tex. 2025) .....	37
<i>In re Allcat Claims Serv., L.P.</i> , 356 S.W.3d 455 (Tex. 2011) (orig. proceeding).....	57
<i>Barshop v. Medina Cnty. Underground Water Conservation Dist.</i> , 925 S.W.2d 618 (Tex. 1996).....	40
<i>City of Beaumont v. Bouillion</i> , 896 S.W.2d 143 (Tex. 1995).....	9, 59
<i>City of Coll. Station v. Turtle Rock Corp.</i> , 680 S.W.2d 802 (Tex. 1984).....	41
<i>Collingsworth Cnty. v. Allred</i> , 40 S.W.2d 13 (Tex. 1931) (orig. proceeding).....	59
<i>DeWitt Cnty. Elec. Coop., Inc. v. Parks</i> , 1 S.W.3d 96 (Tex. 1999).....	48-49
<i>DuPuy v. City of Waco</i> , 396 S.W.2d 103 (Tex. 1965).....	41, 49
<i>Entergy Gulf States, Inc. v. Summers</i> , 282 S.W.3d 433 (Tex. 2009).....	58
<i>Hogan v. S. Methodist Univ.</i> , 688 S.W.3d 852 (Tex. 2024).....	53-54
<i>Jordan v. State</i> , 51 Tex. Crim. 531, 103 S.W. 633 (1907).....	51

<i>Lombardo v. City of Dall.</i> , 73 S.W.2d 475 (Tex. 1934).....	41
<i>Marcus Cable Assocs., L.P. v. Krohn</i> , 90 S.W.3d 697 (Tex. 2002).....	48
<i>Monsanto Co. v. Cornerstones Mun. Util. Dist.</i> , 865 S.W.2d 937 (Tex. 1993).....	61
<i>Perez v. City of San Antonio</i> , 715 S.W.3d 709 (Tex. 2025).....	54-55
<i>Republican Party of Tex. v. Dietz</i> , 940 S.W.2d 86 (Tex. 1997).....	47, 52, 60
<i>Robinson v. Crown Cork &amp; Seal Co.</i> , 335 S.W.3d 126 (Tex. 2010).....	34, 40-42, 44, 50-51, 55
<i>Sears v. Bayoud</i> , 786 S.W.2d 248 (Tex. 1990).....	54
<i>Severance v. Patterson</i> , 370 S.W.3d 705 (Tex. 2012).....	48-49
<i>Spann v. City of Dall.</i> , 235 S.W. 513 (Tex. 1921).....	41, 51
<i>Tex. Dep’t of Ins. v. Stonewater Roofing, Ltd. Co.</i> , 696 S.W.3d 646 (Tex. 2024).....	55-56
<i>Tex. Dep’t of State Health Servs. v. Crown Distrib. LLC</i> , 647 S.W.3d 648 (Tex. 2022).....	53, 56
<i>TGS-NOPEC Geophysical Co. v. Combs</i> , 340 S.W.3d 432 (Tex. 2011).....	58
<i>Travelers’ Ins. Co. v. Marshall</i> , 76 S.W.2d 1007 (Tex. 1934).....	52
<i>United States v. Jimenez-Shilon</i> , 34 F.4th 1042 (11th Cir. 2022) .....	56
<i>Webster v. Comm’n for Law. Discipline</i> , 704 S.W.3d 478 (Tex. 2024).....	53

## Constitutional Provisions, Statutes & Regulations

14 C.F.R. § 417.107 .....	12
14 C.F.R. § 417.111 .....	12
14 C.F.R. § 420.5 .....	12
14 C.F.R. § 420.21 .....	12
14 C.F.R. § 420.23 .....	12
14 C.F.R. § 420.27 .....	12
TEX. CONST. art. I, § 2.....	61
TEX. CONST. art. I, § 6-a.....	52
TEX. CONST. of 1845, art. I, § 21.....	60
TEX. CONST. of 1861, art. I, § 21.....	60
TEX. CONST. of 1866, art. I, § 21.....	60
TEX. CONST. of 1869, art. I, § 23.....	60
TEX. CONST. art. I, § 29.....	60
TEX. CONST. art. I, § 30.....	52
TEX. CONST. art. I, § 33.....	6, 44-46, 57
TEX. CONST. art. I, § 34.....	52
TEX. CONST. art. I, § 35.....	52
TEX. CONST. art. XVII, § 1 .....	62
TEX. GOV'T CODE § 482.105.....	35
TEX. GOV'T CODE § 482.107.....	35-36, 60
TEX. GOV'T CODE § 482.201 .....	36
TEX. NAT. RES. CODE § 61.132.....	30-31, 39, 40, 42

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Acts 2013, 83d R.S., ch. 152, General and Special Laws of Texas..... 40

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H.B. 2623, 83d Leg., R.S. (2013) ..... 39

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24, 2013).....23, 39

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11, 2009)..... 58

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Proposed for November 2009 Ballot, H.J.R. 102 (Aug. 20, 2009) ..... 58

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Constitutional Amendment Election, Proposition 9* (H.J.R. 102)  
(Nov. 3, 2009).....61-62

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Amendment No. 9 (H.J.R. 102) (2009)..... 58

TEX. SENATE JOURNAL, 81st Leg., R.S. (May 27, 2009) ..... 61

**Texas Space Commission & Cameron County Orders**

Cameron County Commissioners’ Court, Order No. 2019O3002 (Mar.  
14, 2019)..... 20

Public Notice of Cameron County Order to Temporarily Close Boca  
Chica Beach and State Highway 4 (Sept. 10, 2020)..... 31

Public Notice of Cameron County Order to Temporarily Close Boca  
Chica Beach and State Highway 4 (Dec. 6, 2023)..... 31

Cameron County Order to Temporarily Close Boca Chica Beach and  
State Highway 4 (Feb. 29, 2024) ..... 31

Order Closing Boca Chica Beach and State Hwy 4; July 30, 2025  
from 7am to 7pm (July 28, 2025) ..... 30

Order Closing Boca Chica Beach and State Hwy 4; July 31, 2025 from 7am to 7pm (July 28, 2025) .....	29
County’s Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 Between 7:00 A.M. to 7:00 P.M.....	20, 29
Amended - County’s Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 between 7:00 a.m. to 9:00 p.m. ....	30
Texas Space Commission Order No. 2025-01 (Sept. 23, 2025) .....	36

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E. Lipton, <i>SpaceX’s Assault on a Fragile Habitat: Four Takeaways From Our Investigation</i> , N.Y. TIMES (July 7, 2024), <a href="https://tinyurl.com/3y768umw">https://tinyurl.com/3y768umw</a> .....	13, 16, 24, 27

E. Lipton, <i>Wildlife Protections Take a Back Seat to SpaceX's Ambitions</i> , N.Y. TIMES (July 7, 2024), <a href="https://tinyurl.com/4p7e3h7s">https://tinyurl.com/4p7e3h7s</a> .....	11, 15, 16-17, 21-22, 26, 28
G. Davila, <i>Remembering Boca Chica Beach—Before Elon Musk Came to Town</i> , TEX. OBSERVER (Feb. 10, 2025), <a href="https://tinyurl.com/2p9wvx4m">https://tinyurl.com/2p9wvx4m</a> .....	31
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<i>SpaceX Finally Receives FAA Approval for Up to 25 Starship Launches Annually</i> , SATNEWS (May 6, 2025), <a href="https://tinyurl.com/bdfscycx">https://tinyurl.com/bdfscycx</a> .....	27
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V. Lopez, <i>Space X Launches Text Notification System for Beach Closures</i> , CBS 4/NBC 23 (June 27, 2021), <a href="https://tinyurl.com/2zw25j87">https://tinyurl.com/2zw25j87</a> .....	31
W. Harwood, <i>SpaceX Pulls Off Unprecedented Feat, Grabs Descending Rocket With Mechanical Arms</i> , CBS NEWS (Oct. 14, 2024), <a href="https://tinyurl.com/yc92shkd">https://tinyurl.com/yc92shkd</a> .....	24
<b>Federal Agency Materials</b>	
FAA, <i>Addendum to the 2019 Written Re-Evaluation of the 2014 Final Environmental Impact Statement for the SpaceX Texas Launch Site</i> (Dec. 2, 2020).....	26
FAA, <i>Boca Chica Launch Site: History of the SpaceX Starship Super Heavy</i> , <a href="https://tinyurl.com/yc3zx7mk">https://tinyurl.com/yc3zx7mk</a> (last visited Sept. 7, 2025).....	23-24
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FAA, <i>Finding of No Significant Impact and Record of Decision for Tiered Environmental Assessment for SpaceX Starship 25 Heavy Updates to Airspace Closures</i> (May 15, 2025).....	25
FAA, <i>Record of Decision: SpaceX Texas Launch Site, Cameron County, Texas</i> (July 2014).....	12, 23, 26, 43
FAA, <i>SpaceX Starship Super Heavy Project at the Boca Chica Launch Site</i> , <a href="https://www.faa.gov/space/stakeholder_engagement/spacex_starship">https://www.faa.gov/space/stakeholder_engagement/spacex_starship</a> (last updated Oct. 3, 2025).....	25
FAA, <i>Tiered Environmental Assessment for Updates to Airspace Closures for the Flight 9 Mission Profile of the SpaceX Starship-Super Heavy Vehicle at the SpaceX Boca Chica Launch Site in Cameron County, Texas</i> (May 2025) .....	25
<b>Other Authorities</b>	
Blue Origin, <i>About Blue Origin</i> , <a href="https://www.blueorigin.com/about-blue">https://www.blueorigin.com/about-blue</a> (last visited Sept. 15, 2025).....	15
Blue Origin, <i>The Latest from Blue</i> , <a href="https://www.blueorigin.com/news">https://www.blueorigin.com/news</a> (last visited Sept. 15, 2025).....	15
<i>Blue Origin Facilities: An Overview</i> , NEW SPACE ECONOMY, <a href="https://tinyurl.com/yp3rtb57">https://tinyurl.com/yp3rtb57</a> (last visited Sept. 15, 2025).....	15
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Cameron County Judge Eddie Treviño, Jr., <i>SpaceX Local Economic Impact Release</i> (June 18, 2024), <a href="https://tinyurl.com/yhn4v8sw">https://tinyurl.com/yhn4v8sw</a> .....	12

Cape Canaveral Space Force Museum, <i>Mother Nature and Space Technology</i> , <a href="https://tinyurl.com/534rt4nf">https://tinyurl.com/534rt4nf</a> (last visited Sept. 5, 2025).....	13
City of Starbase, <i>City Commission and Staff</i> , <a href="https://cityofstarbase-texas.com/city-commission-and-staff">https://cityofstarbase-texas.com/city-commission-and-staff</a> (last visited Oct. 6, 2025) .....	36
Email from B. Winton, Lower Rio Grande Valley National Wildlife Refuge, to M. Orms, U.S. Fish & Wildlife Service (Mar. 25, 2019), <a href="https://tinyurl.com/22vh347w">https://tinyurl.com/22vh347w</a> .....	30
Kennedy Space Center, <i>Kennedy Creating New Master Plan</i> (Mar. 12, 2012), <a href="https://tinyurl.com/3yu3z8wn">https://tinyurl.com/3yu3z8wn</a> .....	13
Letter from Cameron County District Attorney Luis V. Saenz to S. Patel of SpaceX (June 11, 2021), <a href="https://tinyurl.com/2ssz59xy">https://tinyurl.com/2ssz59xy</a> .....	30
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Memorandum of Agreement between GLO & Cameron County (GLO Contract No. 2013C08253) (Sept. 1, 2013) .....	27
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CR[page#]	Amended Clerk’s Record
Op. at *[page#]	<i>SaveRGV v. Tex. Gen. Land Off.</i> , Nos. 13-22-00358-CV, 13-22-00359-CV, 13-22-00360-CV, 2024 WL 385656 (Tex. App.—Corpus Christi Feb. 1, 2024, pets. filed)
Section 33	Open Beaches Amendment, TEX. CONST. art. I, § 33
HB 2623	Texas House Bill 2623, 2013 Regular Session (Act of May 9, 2013, 83d Leg., R.S., ch. 152, <a href="https://tinyurl.com/2hpb7bph">https://tinyurl.com/2hpb7bph</a> ), amending Natural Resources Code Sections 61.001 and 61.011(d), and adding Section 61.132. <i>See</i> CR97-98; Op. at *1.
Plaintiffs	Plaintiff SaveRGV; Intervenors Sierra Club and Carrizo/Comecrudo Nation of Texas, Inc.
Petitioners	Texas General Land Office; Dawn Buckingham, M.D., in Her Official Capacity as the Texas Land Commissioner; Cameron County; Texas Attorney General Ken Paxton
County	Cameron County
GLO	Texas General Land Office and Commissioner of the General Land Office
SpaceX	Space Exploration Technologies Corp.
TSC	Texas Space Commission
FAA	Federal Aviation Administration
Pet’rs.Br.	Petitioners’ Consolidated Brief on the Merits on the Facial-Validity Standard and the Constitutionality of H.B. 2623 (2013)
County/GLO.Br.	Petitioners Cameron County and Texas General Land Office and Dawn Buckingham, in Her Official Capacity as the Texas Land Commissioner’s Brief on the Merits on the Construction of Subsection (d) of Section 33, Article I, Texas Constitution

## INTEREST OF AMICUS CURIAE

The South Texas Environmental Justice Network (“STEJN”) organizes and advocates for the people and environment of South Texas, with a particular focus on low-income and indigenous people and communities of color. STEJN works to inform and engage the local community about industries that pose a risk to the shared environment. <https://sotxejn.org/about/> (last visited Oct. 5, 2025). STEJN also works to protect land sacred to the Carrizo Comecrudo Tribe of Texas. <https://sotxejn.org/2024/08/08/protecting-sacred-lands-sacred-sites/>. STEJN’s projects include disaster-relief work such as distributing hurricane recovery kits in *colonias*, building community networks to assist neighbors in times of need, and providing meeting space for community social and environmental justice groups. *See, e.g.*, <https://sotxejn.org/2024/08/08/just-recovery/>.

Boca Chica Beach is a roughly eight-mile stretch of sandy, undeveloped, public beach, located about twenty miles east of Brownsville at the end of State Highway 4. It lies between the lower Laguna Madre and the mouth of the Rio Grande, where the river meets the Gulf. Boca Chica Beach provides the community—and tourists—access to a secluded sanctuary for swimming, birding, surfing, hiking, and family and community gatherings. *See, e.g.*, Visit Brownsville, *Boca Chica Beach*, <https://visitbtx.com/members/boca-chica-beach/> (last visited Sept. 8, 2025); Google Map of Boca Chica Beach, <https://tinyurl.com/8rddjy6b> (last visited Sept. 8, 2025).

The fees for preparing this brief were paid by Texas Campaign for the Environment.

## INTRODUCTION

SpaceX chose to locate its rocket launch facility on a small, 350-acre tract at the southernmost tip of Texas—large enough for its vertical launch area but inadequate for the “blast radius” necessary to contain the explosive forces, enormous heat, gases, propellants, and shrapnel that accompany launches.<sup>1</sup> Consequently, SpaceX needed to gain permission from its neighbors to use their property as a blast zone, *i.e.*, physically invade their property with an explosion and its residue. Most landowners would refuse or charge an enormous price. But SpaceX chose a neighbor—the State of Texas—that said yes and did not charge a penny.

A significant obstacle remained. The State property in SpaceX’s blast zone included Boca Chica Beach—a popular public recreation area. The Federal Aviation Administration required SpaceX, as a condition for a launch permit, to ensure the safety of people within the blast zone. Deciding the solution was to close the public beach during launches, SpaceX solicited the Legislature’s help. Rather than instructing SpaceX to find a more suitable place to build its facility, the Legislature acquiesced, passing legislation that allowed the County and the GLO to close the public beach upon SpaceX’s request.

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<sup>1</sup> By contrast, another space-exploration company (Blue Origin) built its launch facility on a 400,000-acre tract in West Texas.

The Legislature—and SpaceX—ignored a formidable constitutional barrier. Under the Open Beaches Amendment, beachgoers—the People—own a permanent right of access—an easement—over Boca Chica Beach. But HB 2623 treats beachgoers as if they are licensees, free to use the beach only if the State (and SpaceX) allows it. Although the State is the fee owner, it does not own every stick in the property-rights bundle. Whether and to what degree the Amendment allows the Legislature—at the behest of a private company—to burden, erode, preempt, and possibly nullify the People’s right to use and access the beach is a substantial and undecided legal question.

Despite uncertainty about the statute’s validity, SpaceX pushed forward with constructing its facility. At the time, SpaceX told the Legislature that it planned to conduct just 12 launches annually. It began launches in 2019 with a commitment to a maximum of 180 hours of beach closures annually. But by October 2021, Boca Chica Beach was being closed more than twice as much: 450 hours each year. Operations continued to expand. By 2022, the FAA presumed that Boca Chica Beach would be shut down for SpaceX for 800 hours every year—almost 4½ times more than the company’s original commitment. In the six years the facility has operated, SpaceX has increased Boca Chica Beach closures from about 18 days to approximately 80 days annually—*a 344% increase*.

This result was foreseeable. In enacting HB 2623, the Legislature included *no restrictions* on how often Boca Chica Beach can be closed. The County can approve an endless number of closures. The FAA has no role in beach closures; its only task is to administer SpaceX's launch facility license and authorize space-flight activities.

With no ceiling on Boca Chica Beach closures, the number keeps increasing. The FAA recently authorized an exponential jump in SpaceX's rocket launches and landings. SpaceX can now conduct *25 rocket launches* each year (up 400% from the original 5) and *50 rocket landings* (up 233% from 15). More launches and landings, and the associated rocket development and testing operations, guarantee even more closures of Boca Chica Beach.

Local accountability—initially installed in theory through the County's decision-making authority—can now be circumvented. Since the petitions were filed, the Legislature enacted a new law granting beach-closure authority to the recently created Texas Space Commission. On September 23, 2025, the TSC delegated its closure authority to the newly incorporated City of Starbase, whose elected officials are all SpaceX employees or otherwise connected to SpaceX. Because of the close connection, it stands to reason that Starbase will rubber-stamp SpaceX's closure requests. This raises a legitimate question whether the State has effectively ceded control of public property to a private company.

If this was just any state land, the Legislature might have some leeway. But the Open Beaches Amendment gives the public beach special constitutional status. The People's permanent easement across the beach cannot be hijacked, and Plaintiffs have a strong case for the statute's facial invalidity. Moreover, because this is a property right enshrined in the Constitution, dismissal on the pleadings is singularly *inappropriate*. Plaintiffs should be afforded the opportunity to develop facts supporting their as-applied challenge, *e.g.*, the severity of the burden on the People's easement rights and the degree of control over public land the State has surrendered to a private company. These facts are in flux, propelled by the recent statutory enactment and expanding SpaceX operations that enable and portend ever-more-frequent beach closures.

These developments mean new, additional defendants (the Space Commission, the TSC Board, Starbase, and Starbase's officials), new claims (including an unconstitutional delegation of authority), and new theories of constitutional violation (like inverse condemnation). Even though the underlying issues are undeniably important, review at this early stage is premature, especially given the recent legislative enactment. A fully developed record is needed.

To justify dismissal on the pleadings, Petitioners blithely invoke "public safety" and "police powers," as if those concepts automatically veto a constitutional property right. This argument deserves to be met with skepticism. The statute at

issue did not respond to a pre-existing public-safety threat; it *created* one. This is not a hurricane or other Act of God where beach closure would be justified as an exercise of police power. This is a premeditated scheme by a private company, with the State's help, to take control of public land for its own profit, impairing the public's constitutional right in the process. The State cites no authority that it may create a public-safety threat and then invoke police power as a means to preempt constitutional rights.

Moreover, if the statute is ultimately held unconstitutional, any threat to public safety will evaporate. SpaceX's FAA launch license depends on its ability to close the beach. Absent the statute allowing beach closures, SpaceX cannot conduct launches. The Court need not be troubled by that possibility. Like any business, SpaceX has the right to pursue profit. But its bold land grab carried inherent risk of legal invalidity. It is SpaceX's job to manage its own business risk. And, if it ultimately loses its gamble, the loss will be mitigated by years of profitable operation and rocket development in the interim. SpaceX's sunk costs are no reason to deny Plaintiffs a full and fair opportunity to litigate their claims.

## SUMMARY OF ARGUMENT

The Bill of Rights secures the public's right to use and access the State's public beaches:

The public, individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.

TEX. CONST. art. I, § 33(b).

Petitioners attempt to minimize these broad rights in service of their position that Plaintiffs' challenges to HB 2623 are invalid on their face. But Section 33's guarantee, and its restrictions on any role for the Legislature, undermine Petitioners' various attempts to justify HB 2623 and evade Plaintiffs' claims.

Petitioners first contend that Plaintiffs' claims are facially invalid because they are an "absolutist" challenge. *See, e.g.*, Pet'rs.Br. at xii, 15-16, 21-22. But Respondents have never said the right to access the beach is absolute. For example, the beach could legitimately be closed in response to an Act of God that threatens public safety (e.g., a hurricane). A private company's operations that create dangerous conditions on the beach, with the state's complicity, are categorically different.

Second, Petitioners urge the Court to consider the merits of Plaintiffs' claims, but their analysis is superficial and incomplete. They do not explore the meaning of Section 33. Rather, they devote their energy to defending a straw-man argument:

that Section 33 did not abrogate the Legislature’s police powers. Plaintiffs do not argue the Legislature lacks power to protect public health, safety, and welfare. Rather, they question whether the Legislature may enable a private company to create a public safety risk on the beach which must then be mitigated through beach closure.

The facts on the ground right now—without the benefit of yet-to-happen discovery—vividly illustrate how HB 2623 denies the public access and use of Boca Chica Beach. Closures of Boca Chica Beach have exponentially grown since SpaceX operations began, and they promise to increase. Cumulatively, they give SpaceX routine and unrestricted use of Boca Chica Beach as part of its operational footprint—a direct, substantial, and marked encroachment on the public’s permanent easement.

Petitioners suggest that the closures are “reasonable regulations” to protect the public’s safety, but that presumes the Constitution permits the public beach to be used as part of a blast zone in the first place. Their interpretation would deprive Section 33 of any meaning. They also invoke a rational-basis standard in an attempt to bullet-proof the statute. But the Court has already adopted a textualist approach to constitutional guarantees.

Petitioners’ superficial analysis does not aid the Court. This is uncharted territory: No appellate court has yet construed Section 33 and determined the

substance of its guarantee, proper scope, restrictions on the Legislature, test for determining noncompliance, or how it should be enforced. The Court should decline Petitioners' invitation to decide these large questions based on cursory briefing and an undeveloped record.

There is a live constitutional dispute that should be litigated and decided. But that should occur only after Plaintiffs have an opportunity to develop a record. Only after discovery regarding SpaceX's intrusion on the public's rights under the Open Beaches Amendment—for example, the extent of SpaceX's reliance on Boca Chica Beach, the frequency and length of closures, the extent of the denial of public access, and impacts on beachgoers, naturalists, families, organizations (like STEJN), and the community—can it be determined if HB 2623, as applied, violates Section 33. In addition, only after Plaintiffs add the new defendants who have been empowered to order beach closures and add their new claims based on the recently enacted law to the existing lawsuit can it be decided whether the Legislature acted constitutionally when it gave SpaceX use of Boca Chica Beach.

Last, the County and GLO separately urge the Court to treat Plaintiffs' claims as the "private right of enforcement" disallowed by Section 33(d). The court of appeals rightly rejected that argument—an argument the Attorney General abandoned in the court of appeals and declined to join here. This lawsuit is exactly the type of challenge that Section 29 of the Bill of Rights contemplates, and that the

Court recognized in *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148-49 (Tex. 1995).

The petitions should be denied.

## ARGUMENT

### **I. The Legislature has enabled, and Petitioners have allowed, SpaceX to use Boca Chica Beach as its private blast zone.**

Discovery has not yet begun in this case, but a review of just the information publicly available at this time shows the viability of Plaintiffs' constitutional claims.

#### **A. Adjacent to the launch pad, Boca Chica Beach is a necessary component of SpaceX's operations.**

The SpaceX facility consists of a “vertical launch area” and a “launch and landing control center.” FAA, *Commercial Space Operations: Boca Chica Launch Site*, <https://tinyurl.com/mr374a9f> (last updated July 24, 2025). The vertical launch area is next to Boca Chica Beach and the eastern end point of State Highway 4, which provides the only access to the beach. *Id.* The launch area is on the beach:



E. Lipton, *Wildlife Protections Take a Back Seat to SpaceX's Ambitions*, N.Y. TIMES (July 7, 2024), <https://tinyurl.com/4p7e3h7s> (image: <https://tinyurl.com/4upc4u2d>).

Coming from the west, like the vantage point in the photo, the two-lane state highway travels past the control center on its left, and about two miles later passes the vertical launch facility on its right while approaching Boca Chica Beach, where the road ends.

This image similarly shows the vertical launch area's proximity to Boca Chica Beach:



<sup>2</sup> FAA, Figure 2-2, Location of the Vertical Launch Area and Launch and Landing Control Center, *Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch*

Although the FAA is the licensing authority, the agency did not require SpaceX to locate its facility at Boca Chica Beach. A commercial applicant for a private launch facility, not the FAA, drives the application process for a license, choosing the location, size, particular space vehicles, and nature of operations. *See* CR180-82; FAA, *Commercial Space Transportation Licenses: Getting Started with Licensing*, <https://tinyurl.com/53n6w6by> (last visited Oct. 5, 2025).<sup>3</sup> SpaceX chose the site.

The FAA will not approve a launch license if the site lacks a sufficient radius of area around the launch pad that is closed to the public and secured and controlled by the licensee.<sup>4</sup> Instead of a location where it could acquire the land surrounding the launchpad for a controlled area for rocket activities and testing, SpaceX bought parcels adjacent to Boca Chica Beach—a public beach. But its purchases aggregated into just a 350-acre area of land<sup>5</sup>—tiny for a rocket launch area.

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*Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas*, at 15 (June 2022), <https://tinyurl.com/yc2cs5up>.

<sup>3</sup> *See also* FAA Compilation of 14 C.F.R., Chapter III, Parts 400-460, <https://tinyurl.com/y2ct7fxx> (last visited Sept. 14, 2025).

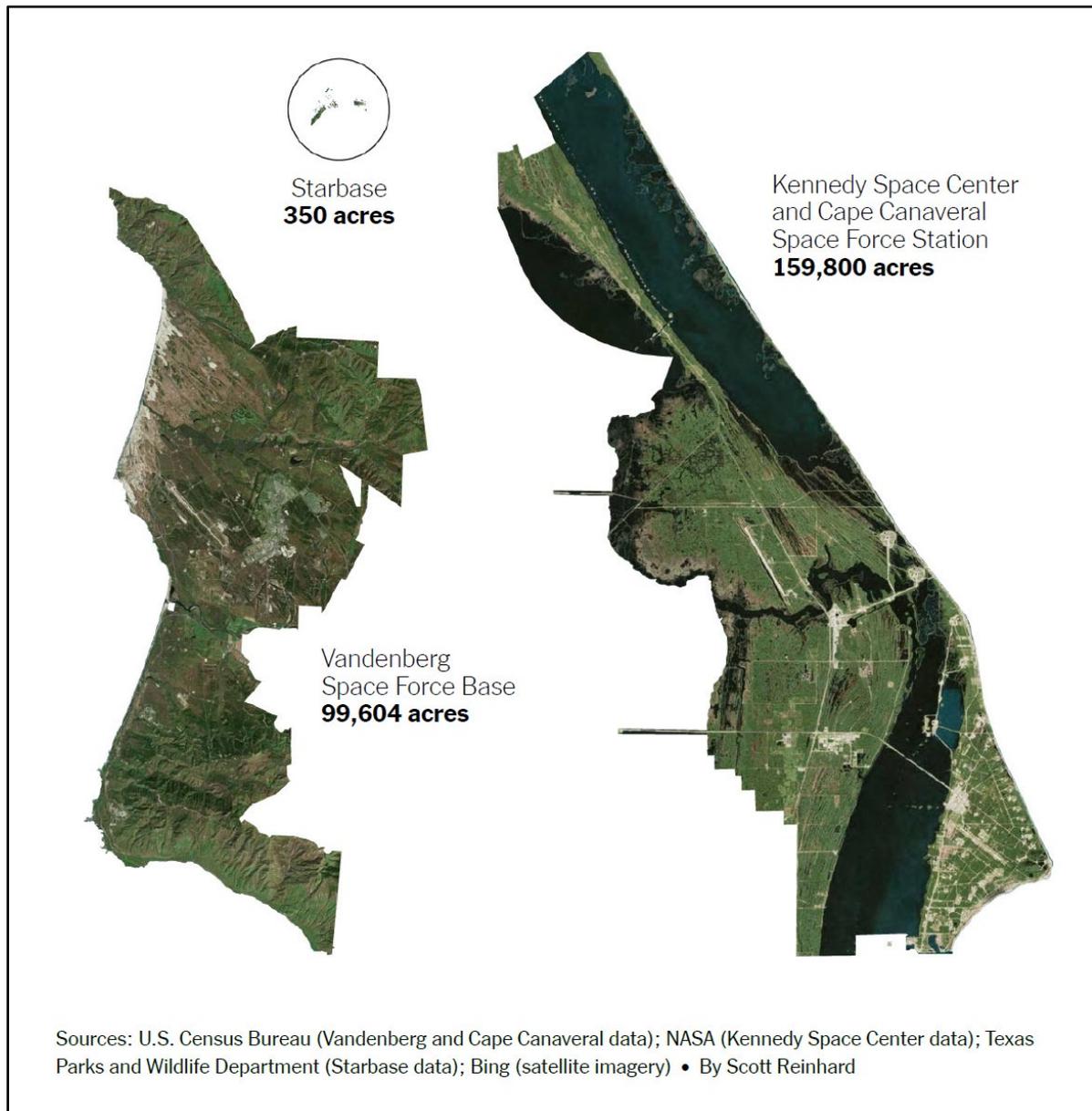
<sup>4</sup> *See, e.g.*, 14 C.F.R. §§ 420.5, .21, .23, .27; *id.* §§ 417.107, .111; *see also* CR186; FAA, *Final Environmental Impact Statement SpaceX Texas Launch Site*, at ES-27 (May 2014), <https://tinyurl.com/2x8dnyjv>.

<sup>5</sup> Cameron County Judge Eddie Treviño, Jr., SpaceX Local Economic Impact Release, at 2 (June 18, 2024), <https://tinyurl.com/yhn4v8sw>. The facility is now 350 acres, but at the time the FAA originally issued SpaceX its license, it was just 68.9 acres. *See* FAA, *Record of Decision: SpaceX Texas Launch Site, Cameron County, Texas*, at 3 (July 2014), <https://tinyurl.com/3thhfjic>.

Rocket launch sites are typically vast facilities. Vandenberg Space Force Base in California and Kennedy Space Center in Florida “are enormous, secure facilities with tens of thousands of acres within their confines.” E. Lipton, *SpaceX’s Assault on a Fragile Habitat: Four Takeaways From Our Investigation*, N.Y. TIMES (July 7, 2024), <https://tinyurl.com/3y768umw>. Kennedy Space Center, which SpaceX also uses, is **144,000 acres**—over 400 times larger than the Boca Chica facility. *See, e.g.*, Kennedy Space Center, *Kennedy Creating New Master Plan* (Mar. 12, 2012), <https://tinyurl.com/3yu3z8wn>. Vandenberg Space Force Base, from which SpaceX puts satellites into space, encompasses **99,604 acres**—284 times bigger than the Boca Chica launch facility. *See, e.g.*, U.S. Space Force, Vandenberg Space Force Base, *The History and Heritage of Vandenberg Space Force Base and Space Launch Delta 30*, <https://tinyurl.com/mhne892j> (last visited Sept. 5, 2025). Also dwarfing the SpaceX Boca Chica site, Cape Canaveral Space Force Station covers a **16,000-acre** area. *See, e.g.*, Cape Canaveral Space Force Museum, *Mother Nature and Space Technology*, <https://tinyurl.com/534rt4nf> (last visited Sept. 5, 2025). Elsewhere in Texas, SpaceX uses a much larger property than the Boca Chica site for its rocket development and test facility. In McGregor (McLennan County), SpaceX operates on land that is 12 times larger, using **4,300 acres** at what was the Bluebonnet Ordinance Plant during World War II. *See, e.g.*, M. Lively, *McGregor*

*Residents Excited for Second SpaceX Facility*, KCEN-TV 6 (July 12, 2021), <https://tinyurl.com/r62rm92f>.

This visual comparison illustrates the unusually small size of the Starbase (Boca Chica) SpaceX facility, reminiscent of U.S. maps that show a hulking Alaska next to the tiny specks of Hawaii:



E. Lipton, *Wildlife Protections*, *supra*, <https://tinyurl.com/4p7e3h7s> (image: <https://tinyurl.com/4ffdr9nx>).

The operations of Blue Origin, another private space company, provide yet another contrasting example. An American space technology company, Blue Origin develops reusable rocket technology for satellite launches, space stations, lunar missions, and space tourism. Blue Origin, *About Blue Origin*, <https://www.blueorigin.com/about-blue> (last visited Sept. 15, 2025); Blue Origin, *The Latest from Blue*, <https://www.blueorigin.com/news> (last visited Sept. 15, 2025); E. Howell, *Blue Origin: Everything You Need to Know About the Private Spaceflight Company*, SPACE.COM (Nov. 21, 2023), <https://tinyurl.com/22fp4mjc>. In addition to operations in Washington, Florida, and Alabama, Blue Origin has a Texas facility. *Blue Origin Facilities: An Overview*, NEW SPACE ECONOMY, <https://tinyurl.com/yp3rtb57> (last visited Sept. 15, 2025). For its launch facility in West Texas, about 25 miles north of Van Horn (Culberson County), Blue Origin purchased over **400,000 acres** of property in a remote area to address control and safety. *See, e.g.*, E. Lagatta, *What Is Launch Site One? What to Know About Texas Site of Blue Origin Spaceflights*, EL PASO TIMES (June 18, 2025), <https://tinyurl.com/9am43rv2>; M. Jackson, *What Jeff Bezos' Purchase of 400,000-Acre Texas Ranch Did for the Town of Van Horn*, YAHOO! FINANCE (Aug. 1, 2024),

<https://tinyurl.com/y3uy34wz>. Blue Origin thus built a launch facility on property over *1100 times larger* than the SpaceX Boca Chica facility.

**B. Because SpaceX chose to put its facility on a small parcel next to Boca Chica Beach, it needed the beach itself for its blast zone.**

Boca Chica Beach not only flanks the SpaceX property on one side, public lands almost completely fence it in. See E. Lipton, *Wildlife Protections, supra* (explaining that site is “encircled primarily by government-owned state parks and federal wildlife refuge areas”), <https://tinyurl.com/4p7e3h7s>. Because SpaceX’s parcel was small and surrounded by beach and wetlands, its officials nicknamed the site the “doughnut hole.” *Id.*

Assuming those “surrounding state parks and federal wildlife preserves would serve as natural buffers,” SpaceX chose “to buy a tiny piece of property in the middle of public lands.” E. Lipton, *Four Takeaways, supra*, <https://tinyurl.com/3y768umw>. Boca Chica Beach does serve as a buffer, but only because the Legislature enacted HB 2623. At the Legislature’s behest, SpaceX relies on the public beach to create the FAA-required “closure area” for rocket launches, landings, testing, and research—barring STEJN members, Boca Chica residents, Texas families, and tourists from the beach. CR186.

SpaceX always intended to use Boca Chica Beach. “[F]rom the start, according to interviews with executives involved in SpaceX’s land purchase, Mr. Musk’s plan was to use federal and state lands alongside the small piece of property

the company initially purchased, knowing that rocket mishaps would most likely send debris flying.” E. Lipton, *Wildlife Protections, supra*, <https://tinyurl.com/4p7e3h7s>. The Legislature implemented this plan for SpaceX through HB 2623. Elon Musk, SpaceX’s founder and CEO, commented at a 2018 news conference: “We’ve got a lot of land with nobody around and so if it blows up, it’s cool.” *Id.* (quoting E. Musk Press Conference (Feb. 6, 2018), <https://tinyurl.com/mvecww7u>).

But SpaceX does not, in fact, have “a lot of land.” The People of Texas have a lot of land, which includes Boca Chica Beach. The only reason “nobody [is] around” is because the Legislature passed a law that allows, on SpaceX’s schedule, beachgoers to be barred from their own public beach.

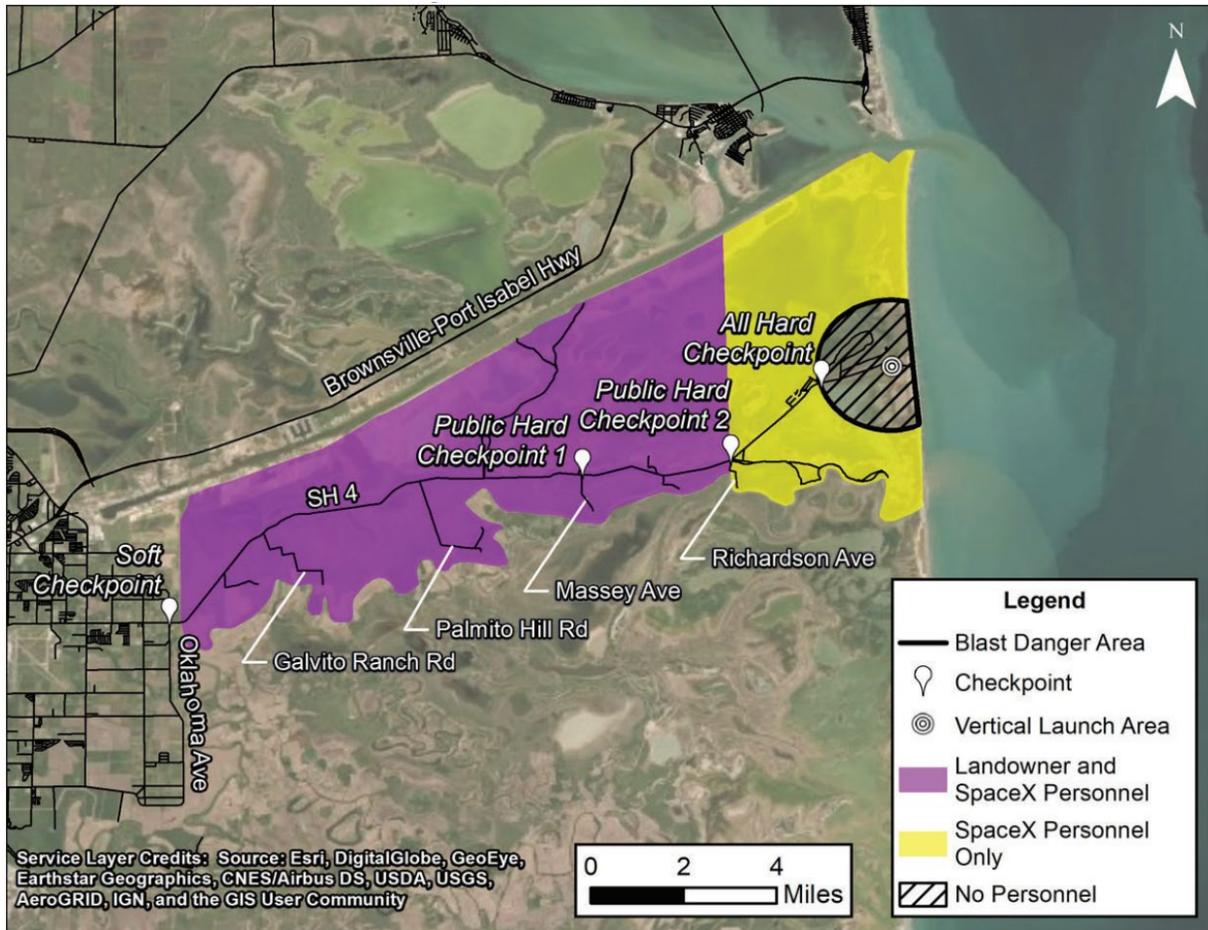
Both the Legislature and SpaceX knew that the tiny “doughnut hole” was inadequate for SpaceX’s operations. Only with the adjacent beach did SpaceX have the physical space needed to make the doughnut hole work and enlarge its operational footprint to have a sufficient blast “radius” around the launch pad to satisfy FAA requirements. CR186.

The entire Boca Chica Beach is closed as part of the secured area for SpaceX space flight activities, as seen in the image below. The beach closure begins at the Rio Grande, and stretches northward past State Highway 4’s termination point to the top of Boca Chica Beach:



CR257; see also Cameron County, *Boca Chica & Highway 4 Closures Information* (same image), <https://www.cameroncountytexas.gov/spacex/> (last visited Sept. 19, 2025).

The depiction below shows the total “closure area,” with the beach at the eastern end. The purple and yellow areas shown below are all shut down for SpaceX’s operations:



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The “blast danger area” is indicated in black, repeating diagonals inside the yellow zone. The “blast danger area” includes Boca Chica Beach and the launch pad itself. Even SpaceX personnel cannot be inside its radius. *See id.* The yellow zone surrounds the blast danger area, includes Boca Chica Beach, and extends westward to a hard checkpoint just west of the SpaceX control center area—approximately two

<sup>6</sup> FAA, Figure 2-4, Access Restriction Area, 2022 *Final Programmatic Environmental Assessment*, *supra*, at 26, <https://tinyurl.com/yc2cs5up>.

miles from the launch site and Boca Chica Beach. CR186, 234.<sup>7</sup> No one is permitted to pass through this checkpoint to access or use Boca Chica Beach on days when SpaceX is conducting rocket launches, landings, or testing. *See, e.g.,* County’s Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 Between 7:00 A.M. to 7:00 P.M. (“SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day.”) (attached as Appendix 7); CR247 (Order dated Mar. 24, 2022) (“In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4.”).<sup>8</sup>

When the beach is closed to the public, it becomes part of SpaceX’s operational zone. Numerous explosions and testing calamities have confirmed the operational hazards and beach’s function as a blast zone. Not only are rockets inherently dangerous, SpaceX’s Starship rockets are particularly so because they are still under development, resulting in midair and launchpad explosions and other

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<sup>7</sup> The purple zone extends about 14-16 miles west of the State Highway 4 terminus at Boca Chica Beach. The general public cannot enter the purple zone—only residents and SpaceX employees can pass through this checkpoint. *See* CR186, 217.

<sup>8</sup> Under Section 61.132(c) of the Natural Resources Code, a commissioners’ court may close public beaches near a launch site. The Cameron County Commissioners’ Court delegated its responsibility to the Cameron County Judge, who routinely issues notices and orders closing Boca Chica Beach. *See* Cameron County Commissioners’ Court, Order No. 2019O3002 (Mar. 14, 2019) (“authoriz[ing]” the Cameron County Judge to “execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or the beach at Boca Chica Beach in connection with space flight activity, nor in the future.”) (attached as Appendix 1).

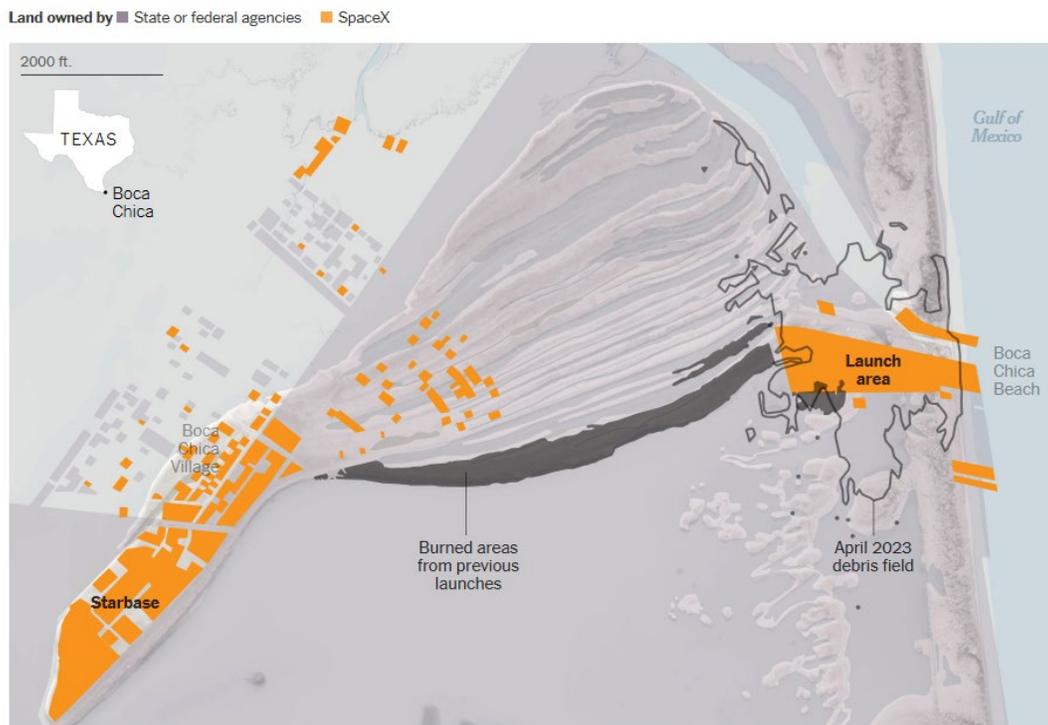
hazardous events as testing and experimentation continues. For example, the first test launch of the Starship rocket in April 2023

unleashed an enormous burst of mud, stones and fiery debris across the public lands encircling Mr. Musk’s \$3 billion space compound. Chunks of sheet metal and insulation were strewn across the sand flats on one side of a state park. Elsewhere, a small fire had ignited, leaving a charred patch of park grasslands—remnants from the blastoff that burned 7.5 million pounds of fuel.

E. Lipton, *Wildlife Protections*, *supra*, <https://tinyurl.com/4p7e3h7s>; see also, e.g.,

G. Davila, *SpaceX Is Grounded After Rocket Explosion Caused Extensive Environmental Damage*, TEX. PUB. RADIO (Apr. 27, 2023) (noting that same blast spread pieces of concrete up to 3/4 of a mile away), <https://tinyurl.com/mr2bz83w>.

The depiction below shows the debris field from that explosion—which plainly includes Boca Chica Beach:



E. Lipton, *Wildlife Protections*, *supra*, <https://tinyurl.com/4p7e3h7s> (image: <https://tinyurl.com/5exst7a8>). Boca Chica Beach is firmly within SpaceX's zone of operations.

Incidents continue. In June 2025, a SpaceX Starship rocket exploded in a massive fireball on a test during launch preparations.



The Legislature has essentially privatized Boca Chica Beach for SpaceX's use as a blast zone.

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<sup>9</sup> J. Yoon, *SpaceX Starship Rocket Explodes Before Test*, N.Y. TIMES (June 19, 2025) (still from video of explosion), <https://tinyurl.com/537yw4uh>; *see also id.* (video of explosion), <https://nyti.ms/4kKGZ1F>.

**C. SpaceX’s operations at Boca Chica Beach continue to expand, and the pace of beach closures accelerates.**

Since its arrival in Texas, SpaceX has made two fundamental changes to its operational plans, exponentially increasing closures of Boca Chica Beach and deepening SpaceX’s reliance on the beach as part of its operational footprint.

First, SpaceX abandoned its plan to launch Falcon rockets at Boca Chica. CR67, 184-85, 217, 234-35 (reflecting FAA approved Falcon 9 and Falcon Heavy orbital vertical launch vehicles, and smaller suborbital launch vehicles, for a total of 12 launches per year); House Research Org., Bill Analysis, at 2-4, H.B. 2623, 83d Leg., R.S. (Apr. 24, 2013) (expectation was twelve annual Falcon launches), <https://tinyurl.com/mrjbjaxy>.<sup>10</sup> The Falcons are SpaceX’s workhorses, used primarily to launch satellites into space. *See, e.g.*, CR185; R. Pearlman, *SpaceX Launches Starlink Satellites, Lands Falcon Rocket for 500th Time*, SPACE.COM (Sept. 5, 2025), <https://tinyurl.com/mvwh9r32>; *Starship VS Falcon 9: SpaceX Spacecraft Comparison*, ORBITAL TODAY (June 10, 2024), <https://tinyurl.com/2u87mbed>. SpaceX instead launches and lands different, much larger rockets—Starship rockets. FAA, *Boca Chica Launch Site: History of the SpaceX Starship Super Heavy Project* (SpaceX “decided to use the launch site to

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<sup>10</sup> *See also, e.g.*, FAA, *2014 Record of Decision, supra*, at 1-6, <https://tinyurl.com/3thhfjic>.

conduct Starship/Super Heavy test operations and orbital launches.”), <https://tinyurl.com/yc3zx7mk> (last visited Sept. 7, 2025).<sup>11</sup>

Starship is the largest rocket system ever built. *See, e.g.,* J. Roulette, *SpaceX’s Starship Passes Development Rut, Deploys First Mock Satellites*, REUTERS (Aug. 27, 2025), <https://tinyurl.com/mr3nu4rw>. It towers over the biggest Falcon and weighs nearly four times as much. J. Amos, *Biggest Ever Rocket Is Assembled Briefly in Texas*, BBC NEWS (Aug. 6, 2021) (“Standing roughly 120m (400ft) in height, the SpaceX rocket dwarfs any previous launch system.”), <https://tinyurl.com/3shcyvh8>. Its first-stage engines produce 16.7 million pounds of thrust—more than double the output of the Saturn V rocket used for NASA’s Apollo moon missions. E. Lipton, *Wildlife Protections, supra*, <https://tinyurl.com/4p7e3h7s>.

Starship rockets are intended to be reusable, which means operations include both launches *and* landings. After being launched, the lower stage of the Starship rocket descends (the Starship Superheavy booster) to the launch site to be caught by mechanical arms and re-used. W. Harwood, *SpaceX Pulls Off Unprecedented Feat, Grabs Descending Rocket With Mechanical Arms*, CBS NEWS (Oct. 14, 2024), <https://tinyurl.com/yc92shkd>. The upper stage (the Starship spacecraft) is also

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<sup>11</sup> “The F.A.A. initially wasn’t expecting operations of this scale or a rocket of this power.” E. Lipton, *Four Takeaways, supra*, <https://tinyurl.com/3y768umw>.

intended to return and land vertically for reuse. *Starship VS, supra*, <https://tinyurl.com/2u87mbed>. SpaceX's change to Starship rockets not only multiplied the number of operational events, it resulted in a far larger vertical tower (at 440 feet) than the one envisioned for Falcon rockets. See M. Williams, *Musk Hopes "Mechazilla" Will Catch and Assemble the Starship and Super Heavy Boosters for Rapid Reuse*, UNIVERSE TODAY (Aug. 20, 2021), <https://tinyurl.com/yuyu89ss>; J. Amos, *Biggest Ever Rocket, supra*, <https://tinyurl.com/3shcyvh8>. A taller tower and greater propulsion produce a larger blast radius.

The second fundamental change is the FAA's recent authorization of an increased launch and landing "cadence," which will substantially increase beach closures.<sup>12</sup>

The closures had already far exceeded SpaceX's original proposal and FAA authorization. By 2022, the FAA assumed annual beach closures of **500 hours** for

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<sup>12</sup> See FAA, *SpaceX Starship Super Heavy Project at the Boca Chica Launch Site* ("The FAA is announcing the availability of the Final Tiered Environmental Assessment (Final Tiered EA) and Mitigated Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the SpaceX Starship/Super Heavy Vehicle Increased Cadence at the SpaceX Boca Chica Launch Site in Cameron County, Texas (Final Tiered EA and Mitigated FONSI/ROD)."), [https://www.faa.gov/space/stakeholder\\_engagement/spacex\\_starship](https://www.faa.gov/space/stakeholder_engagement/spacex_starship) (last updated Oct. 3, 2025); see also FAA, *Tiered Environmental Assessment for Updates to Airspace Closures for the Flight 9 Mission Profile of the SpaceX Starship-Super Heavy Vehicle at the SpaceX Boca Chica Launch Site in Cameron County, Texas* (May 2025), <https://www.faa.gov/media/94821>; FAA, *Finding of No Significant Impact and Record of Decision for Tiered Environmental Assessment for SpaceX Starship Super Heavy Updates to Airspace Closures* (May 15, 2025), <https://www.faa.gov/media/94816>.

licensed activities and **300 hours** for “anomalies”<sup>13</sup>—hours *almost 4½ times* higher than the original license, putting beach closures at **800 hours** or approximately **80 days a year**.<sup>14</sup> In other words, by 2022, Boca Chica Beach closings had increased **344%** from the original commitment of 180 hours.

Now they will increase even more. In May 2025, the FAA approved an exponentially larger number of launches and landings, with the license condition still in place that Boca Chica Beach be closed for launches, landings, testing, and research.<sup>15</sup> Now, SpaceX can conduct **25 Starship Rocket launches** annually,

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<sup>13</sup> FAA, *2022 Final Programmatic Environmental Assessment*, *supra*, at 12, 24, 83, 94-95, 154, 171, <https://tinyurl.com/yc2cs5up>.

<sup>14</sup> The beach closures have grown from the start. In its original 2014 authorization, the FAA assumed that beach closures would be limited to 180 hours per year. CR235 (“The total number of closures and closure hours would total an annual **maximum of 180 hours** of closure per year.”) (emphasis added); *see also* E. Lipton, *Wildlife Protections*, *supra* (noting when “SpaceX first sought permission from the Texas Legislature to close the beach..., the company initially agreed to limit closures to **180 hours a year**”) (emphasis added), <https://tinyurl.com/4p7e3h7s>.

In 2020, the FAA relied on SpaceX’s commitment to a new maximum of **300 annual hours**. *See* FAA, *Addendum to the 2019 Written Re-Evaluation of the 2014 Final Environmental Impact Statement for the SpaceX Texas Launch Site*, at 4, 6 (Dec. 2, 2020) (“SpaceX has represented that it would not exceed **300 hours** of closures per year.”) (emphasis added), <https://tinyurl.com/2s4juauc>.

No official log tracks the number of days or hours that the County has closed Boca Chica Beach for SpaceX, and the County does not maintain prior closure orders on its website. CR102; Cameron County, *Boca Chica & Highway 4 Closures Information*, <https://www.cameroncountytexas.gov/spacex/> (last visited Sept. 19, 2025). But by the time this lawsuit was filed in October 2021, beach closures were averaging **450 hours each year**, which is about 38 days annually—150% more than SpaceX’s 2014 proposal and 50% more than SpaceX’s 2020 promise to the FAA. *See* CR8.

<sup>15</sup> FAA, *2014 Record of Decision*, *supra*, at 4, <https://tinyurl.com/3thhfjic>.

jumping up from the 5 originally permitted. L. Kolodny, *SpaceX Gets FAA Permission for Fivefold Increase in Starship Launches From Texas*, CNBC (May 6, 2025), <https://tinyurl.com/3phexj54>. The FAA also approved an increase in landings. SpaceX can now perform **25 Starship Rocket landings** each year (**up from 10**) and **25 Super Heavy Rocket landings (up from 5)**. B. Garcia, *SpaceX Wins Federal Approval to Launch More Rockets in South Texas*, TEX. TRIBUNE (May 16, 2025), <https://tinyurl.com/4m6yn4da>; *SpaceX Finally Receives FAA Approval for Up to 25 Starship Launches Annually*, SATNEWS (May 6, 2025), <https://tinyurl.com/bdfscycx>. With the green light for a five-fold increase in annual launches (from 5 to 25) and an over three-fold increase in annual landings (from 15 to 50), Boca Chica Beach’s closures will dramatically increase.<sup>16</sup> The escalation in annual launches and landings will necessarily balloon the number of days that Boca Chica Beach is closed.<sup>17</sup>

The increased cadence also translates to expanded facilities, which threaten a larger impact radius. A second launchpad next to Boca Chica Beach is already under

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<sup>16</sup> Elon Musk has stated that “he hopes to one day launch his Starships...a thousand times a year.” E. Lipton, *Four Takeaways*, *supra*, <https://tinyurl.com/3y768umw>.

<sup>17</sup> See Memorandum of Agreement between GLO & Cameron County, at I.I.C, III.A (GLO Contract No. 2013C08253) (Sept. 1, 2013) (authorizing beach closures for all space flight cycles permitted by FAA license and requiring that “[t]he County **shall approve** all requested Primary and Backup Closure Dates...upon timely submission by an Applicant to the County”) (emphasis added)), <https://tinyurl.com/3ku8xn6w>.

construction. See, e.g., R. Weber, *Starbase Making Progress on Second Launch Pad*, NASASPACEFLIGHT.COM (Feb. 7, 2025), <https://tinyurl.com/2xrf9pw6>.

When SpaceX pitched the Boca Chica location as a launch site, it quaintly promised a “small, eco-friendly footprint” and that the surrounding area would be “left untouched”:

## Small, Eco-Friendly Footprint

- Minimal launch rate (~1 per month) with each launch being audible for < 3 minutes
- Minimal infrastructure:
  - Actual construction takes place on < 5 acres and the entire land parcel is < 50 acres
  - Surrounding area is left untouched and, like Cape Canaveral, provides for an excellent wildlife habitat
  - The site will likely be powered through solar panels/batteries
- Clean fuel
  - Liquid oxygen and RP1 (Rocket propellant is cleaner and better refined than jet fuel)
  - Toxic propellants are not used on launch vehicle (unlike many other LV's)
- Have great relationships with environmental groups at Vandenberg, Cape Canaveral, and Kwajalein, all of which are on or adjacent to environmental preserves/habitats.
- No federally designated historical or archeological sites on the proposed land (unlike for Spaceport America in New Mexico)
- Founder Elon Musk
  - Also owns Tesla (electric car company) and Solar City (solar panel install company)

*Caption: Osprey perched outside SpaceX's integration hanger at the Cape Canaveral launch site. SpaceX's facility will not include the massive launch infrastructure seen in the background.*

17-Feb-12      SpaceX Proprietary and Confidential      Page 4

18

The reality on the ground sharply contradicts the promised plan for a solar-powered facility with a “minimal launch rate” of about one monthly launch from a less-than-fifty-acre facility. *Id.*

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<sup>18</sup> E. Lipton, *Wildlife Protections*, *supra*, <https://tinyurl.com/4p7e3h7s> (image: <https://tinyurl.com/53bdss52>).

The drive to expand operations will only continue. More and more launches and landings on SpaceX's postage stamp next to Boca Chica Beach will occur, as will more and more beach closures as the beach functions as a necessary extension of SpaceX's vertical launch site. In accordance with the Legislature's arrangement, Boca Chica Beach is entrenched as part of SpaceX's operational footprint.

**D. SpaceX's routine use of Boca Chica Beach is a substantial and unmistakable intrusion on the public's constitutional right to use and access the beach.**

Petitioners urge the Court to dismiss Plaintiffs' constitutional claims as non-viable. Not only are the claims viable, the publicly known facts available now—without the benefit of discovery—are substantial proof that HB 2623 violates the Texas Constitution.

The routine beach closures may be “temporary,” Pet'rs.Br. at 10, but they are frequent and extended, barring the public from the beach for entire days. Closures are typically 8-12 hours and occur during daylight hours—precisely when everyone wants to go to the beach. *See, e.g.*, CR246-56 (various 2022 orders); County's Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 Between 7:00 A.M. to 7:00 P.M. (attached as Appendix 7).<sup>19</sup> Denying the public access for approximately 80 days annually—which *approaches one-quarter of the*

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<sup>19</sup> *See also, e.g.*, Order Closing Boca Chica Beach and State Hwy 4; July 31, 2025 from 7am to 7pm (July 28, 2025) (attached as Appendix 6).

*year*—cannot be dismissed as a de minimis or tolerable intrusion. *See supra* Section I.C. And the closures promise to escalate. *See supra* Section I.C. The Legislature imposed no limit on how many times or how often Boca Chica Beach is closed. The County has the power to grant an unlimited number of closures and the GLO can waive the statute’s few calendar restrictions. *See* TEX. NAT. RES. CODE § 61.132(c), (d), (f). Once the Legislature authorized extensive closures, Section 33 was contravened. Today’s reality was foretold by the terms of HB 2623.

HB 2623 places SpaceX’s demands above the People’s constitutional rights. Whether Boca Chica Beach is closed 80 days annually, or a somewhat higher or lower number, the total tally is undeniably substantial. The closures have imposed a severe loss on the public’s ability to use Boca Chica Beach. Until now, generations of Rio Grande Valley residents—including STEJN members—regularly visited the free beach to gather with family and friends, swim, fish, and barbecue.<sup>20</sup> *See, e.g.,*

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<sup>20</sup> An associated barrier to the public’s use of the beach is the frequent changes, lack of notice, and unpredictability in closures. Closures are often on short notice or no notice and subject to change. *See, e.g.,* CR20 (March 2021 orders); CR246-56 (2022 closure orders); Order Closing Boca Chica Beach and State Hwy 4; July 30, 2025 from 7am to 7pm (July 28, 2025) (attached as Appendix 5); Amended - County’s Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 between 7:00 a.m. to 9:00 p.m. (attached as Appendix 8); Letter from Cameron County District Attorney Luis V. Saenz to S. Patel of SpaceX (June 11, 2021) (giving notice of potential criminal violations in SpaceX security’s blocking access on public roads when no closure order in effect), <https://tinyurl.com/2ssz59xy>; Letter from Save RGV to Cameron County District Attorney Luis V. Saenz and Cameron County Judge Eddie Treviño, Jr., at 1 (June 3, 2021) (“closure hours are often changed, canceled, or added to/subtracted from, with barely a few hours’ notice, and sometimes with no notice at all”), <https://tinyurl.com/2u3m9mpw>; Email from B. Winton, Lower Rio Grande Valley National Wildlife Refuge, to M. Orms, U.S. Fish & Wildlife Service (Mar. 25, 2019) (complaining about no notice and failure to comply with 14-day advance notice requirement), <https://tinyurl.com/22vh347w>. In July 2021, for example, most public notices were

G. Davila, *Remembering Boca Chica Beach—Before Elon Musk Came to Town*, TEX. OBSERVER (Feb. 10, 2025), <https://tinyurl.com/2p9wvx4m>.<sup>21</sup>

Despite the routine and increasing beach closures, Petitioners urge the Court to dismiss Plaintiffs’ claims as patently insufficient. This Court should not put on blinders to the undeniable reality that the State has permitted beach closures so a private business can regularly perform inherently dangerous activities. The public is barred every day a launch, landing, or testing occurs. Boca Chica Beach could be closed every single day of the year. Nothing in HB 2623 prevents a total closure of Boca Chica Beach to the public—a result surely forbidden by Section 33.

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provided only hours before closing the beach. CR101-02. The closures do not use consistent time frames. *See, e.g.*, Public Notice of Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Dec. 6, 2023) (attached as Appendix 3).

The County’s same-day beach closure text alert system advises only when the beach is open and closed in real time, and does not provide an advance schedule. *See* V. Lopez, *Space X Launches Text Notification System for Beach Closures*, CBS 4/NBC 23 (June 27, 2021), <https://tinyurl.com/2zw25j87>. Further complicating the public’s ability to use the beach is the statutory system of scheduling beach closures for both a launch date *and* a backup date. *See* TEX. NAT. RES. CODE § 61.132(b); *see, e.g.*, CR246. In practice, SpaceX frequently requests multiple back-up dates, which means more than two closures in the same week. *See, e.g.*, CR247-54; Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Feb. 29, 2024) (attached as Appendix 4); Public Notice of Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Sept. 10, 2020) (attached as Appendix 2). Operational obstacles prompt cancellations and new closures, adding further uncertainty. *See, e.g.*, J. Wattles, *SpaceX Scrubs Attempt to Launch Starship Megarocket After Months of Mishaps*, CNN (Aug. 24, 2025), <https://tiyahoonurl.com/p9tn4k9r>.

<sup>21</sup> *See also* FAA, *2022 Final Programmatic Environmental Assessment, supra*, at 89 (explaining that beach is “notable” for its “quiet, natural setting” and used for “swimming, snorkeling, surfing, fishing, bird watching, and kite surfing”), <https://tinyurl.com/yc2cs5up>.

Under HB 2623, a private commercial entity now routinely controls state property to which the Texas Constitution guarantees the public access. This control is in direct contravention of Section 33's text and purpose. *See* Resp'ts.Br. at 26-27; *see also* Pet'rs.Br. at 24-25 (conceding that amendment was intended to prevent private development from blocking public's access to public beaches). As the ballot measure's sponsor explained at the time, the intent of Section 33 was to prevent exactly what happened here. Without the amendment, "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." M. Galvez, *A Constitutional Right to the Beach?: Prop 9*, HOUS. PUB. MEDIA (Oct. 20, 2009), <https://tinyurl.com/jmnxzy5r>.

This backdrop confirms that Petitioners' interpretation of Section 33 subverts its guarantee. Under their interpretation, FAA-licensed launch facilities could be built up and down the coast next to public beaches, and aerospace companies would be free to obtain beach closures on their operational schedules. Closing the beach, in Petitioners' view, could never be a constitutional violation, no matter the frequency and duration.

Petitioners' argument that the claims are facially invalid distorts existing immunity jurisprudence. Plaintiffs have raised serious questions about whether our

Constitution permits HB 2623, and these questions should be heard and resolved on a full factual record.

**E. The FAA license is not preemptive.**

Perhaps in an attempt at a presumption of regularity—or maybe even distraction from the weighty constitutional question here—Petitioners reference the FAA’s role as a regulator of SpaceX’s operations. Pet’rs.Br. at 5-6, 30. But to be clear, Petitioners have never suggested that FAA action or regulations preempt the Open Beaches Amendment.

The FAA license is not a loophole in the Texas Constitution, nor can it paper over what the Legislature chose to do here. The FAA did not suggest, choose, or insist on the location next to a public beach. It also did not require Boca Chica Beach to be closed nor direct the State to shut down the beach.<sup>22</sup> But the FAA’s ever-increasing authorizations demonstrate that SpaceX’s choice of location and configuration is incompatible with the People’s continued exercise of their constitutional right to use the beach. Those growing authorizations confirm that there is a live constitutional dispute that should be litigated and decided on the merits.

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<sup>22</sup> See, e.g., FAA, *2022 Final Programmatic Environmental Assessment*, *supra*, at 23 (“The FAA does not have a role in approving road and beach access restrictions.”), <https://tinyurl.com/yc2cs5up>.

**F. The State should pursue economic development, but must adhere to constitutional constraints.**

None of this suggests that the State should not pursue economic development for the State and for Texans, or that it shouldn't support the growth of the State's aerospace industry.

The State has a range of tools available to attract and encourage economic development, including tax incentives, tax rebates, grants, low-interest and forgivable loans, infrastructure improvements, educational programming, work force training, and public-private partnerships. But constitutional constraints remain in place. "The Texas Constitution places limits on government encroachments, and does so on purpose. Our Bill of Rights is not mere hortatory fluff; it is a purposeful check on government power." *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 164 (Tex. 2010) (Willett, J., concurring).

The State cannot give away public beaches, state property, or constitutional rights to commercial players to use for private profit. If the State was convinced that the only way to ensure that SpaceX built its launch facility in Texas was to locate the launch pad next to Boca Chica Beach and regularly close down the beach for SpaceX's use as part of its facility footprint, the proper course was to pursue a repeal of the Open Beaches Amendment. It was up to *voters* to decide whether their constitutional easement should yield to the SpaceX project. The State was not free to pretend the Amendment did not exist.

## **II. The new statute adding the Texas Space Commission and the City of Starbase as additional decisionmakers means more closures and makes this case an improper vehicle for review.**

The Legislature’s recent enactment authorizing new governmental entities, the Texas Space Commission<sup>23</sup> and the City of Starbase,<sup>24</sup> to close Boca Chica Beach portends more shutdowns. *See* TEX. GOV’T CODE § 482.107(a)(8) (effective Sept. 1, 2025). Devoid of frequency or calendar restrictions and lacking any standards or prerequisites for beach closures, the new law appears to establish an even easier mechanism to close Boca Chica Beach. *See id.*<sup>25</sup> In turn, it is sure to exacerbate the constitutional harm to beachgoers.

With the new law, the Legislature granted the TSC authority to close public beaches, with the local municipality’s (now, Starbase’s) approval. *See* Resp’ts.Br. at 16-18.<sup>26</sup> The new law imposes a broad imperative in favor of beach closures. The TSC “shall” close Boca Chica Beach “as necessary to promote space-related

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<sup>23</sup> The TSC came into being in 2024. P. Prazan, *Businesses Eye a Future in Space as New Texas Space Commission Launches*, NBC/DFW (Sept. 11, 2024), <https://tinyurl.com/y9v7kdem>. Its Board includes nine directors; the Governor, Lieutenant Governor, and Speaker of the House each appoint three directors. TEX. GOV’T CODE § 482.105(a).

<sup>24</sup> The City of Starbase was voted into existence in May 2025. *See* Resp’ts’ Letter Br. at 2 (Oct. 3, 2025).

<sup>25</sup> The new law requires the closures be “temporar[y],” but does not define the term. TEX. GOV’T CODE § 482.107(a)(8).

<sup>26</sup> The Legislature did not repeal the Natural Resources Code provisions challenged in this lawsuit. Instead, it amended the TSC’s enabling legislation to authorize the TSC to order three types of physical spaces closed with municipal approval—certain highways, particular venues, and public beaches on the Gulf like Boca Chica Beach. TEX. GOV’T CODE § 482.107(a)(8).

industries and further commission activities, including implementing the strategic plan,”<sup>27</sup> and “notwithstanding any other law.” TEX. GOV’T CODE § 482.107(a)(8).

Not only is the new closure authority incredibly broad and explicitly focused on the commercial space industry’s interests, the TSC has already delegated its authority to the City of Starbase in a standing order. *See* Texas Space Commission Order No. 2025-01 (Sept. 23, 2025), <https://tinyurl.com/bdze84pe> (attached as Appendix 9). Thus, now Starbase has authority to both request and grant beach closures. Starbase did not even exist as a city until a few months ago; it has attributes of a “company town” and will presumably rubber-stamp SpaceX requests. *See* Resp’ts’ Letter Br. at 2 (Oct. 3, 2025). Starbase’s City Commission and Mayor, elected as unopposed candidates, are all affiliated with Space-X.<sup>28</sup> By all appearances, the TSC has given a SpaceX-aligned set of city officials control of the

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<sup>27</sup> The TSC must develop a strategic plan and update it biannually. TEX. GOV’T CODE § 482.201. Its inaugural strategic plan is still in development. *See* Texas Space Commission (TSC) Draft Strategic Plan – Public Input Form (collecting public input for plan), <https://tinyurl.com/3uz2w2sz> (last visited Oct. 4, 2025).

<sup>28</sup> *See, e.g.,* B. Garcia, *Everything We Know About the 3 People Who Want to Run Starbase, Texas’ Next City*, TEX. TRIBUNE (May 2, 2025) (explaining that Mayor Bobby Peden has worked for SpaceX since 2013, is vice-president of SpaceX’s Texas Test and Launch, and his home is owned by SpaceX; Commissioner Jenna Petrzelka was manager of operations engineering at Starbase until July 2024 and is married to a SpaceX vice-president; Commissioner Jordan Buss is senior director of Environmental Health and Safety for SpaceX), <https://tinyurl.com/4rjwync7>; *see also* City of Starbase, *City Commission and Staff*, <https://cityofstarbase-texas.com/city-commission-and-staff> (last visited Oct. 6, 2025).

Starbase city leaders assumed their positions on May 29, 2025, appointed a city manager, and held their first public meetings. B. Garcia, *Starbase, Texas’ Newest City, Has Liftoff; Seeks \$1.5 Million Loan from Elon Musk’s SpaceX*, TEX. TRIBUNE (May 30, 2025), <https://tinyurl.com/2evdm5yb>.

beach. Such a naked transfer of power over what is the People's beach is an important change that deserves factual development in the trial court, as Plaintiffs explain. *See* Resp'ts' Letter Br. (Oct. 3, 2025).

This fundamental change in when, how, and who will close Boca Chica Beach for SpaceX's use means new defendants and new claims will be added to the lawsuit, rendering review now inappropriate. *See id.* at 2. The Court should not impede this case's return to the trial court for Plaintiffs to add their new claims and to add the TSC, the TSC Board, the City of Starbase, and Starbase's officials as new defendants, and for the parties to address the merits. It would be premature to consider jurisdiction over constitutional challenges to closures of Boca Chica Beach without the new law, the new decisionmakers, and development of the interplay between the old and new laws.

In addition, the new law may render the challenged statutes of little significance by displacing the GLO and County's role in beach closures, undermining the current call for review. If the challenge to the Natural Resources Code provisions remains relevant and any errors are committed in the case's resolution on the merits, the Court can resolve, if needed, any grant-worthy issues later. As it stands, this case is an incomplete and premature vehicle. *See, e.g., Accident Fund Ins. Co. of Am. v. Tex. Dep't of Ins.*, 707 S.W.3d 110, 111, 115 (Tex. 2025) (Young, J., concurring) (concurring in denial of petitions raising "potentially

significant issues” because “neither petition offers the Court a suitable vehicle to engage in such review now”).

**III. Petitioners contend that the Legislature enacted HB 2623 under its police powers, but the Legislature invited and enabled the very dangers it purports to address.**

Petitioners’ central argument is that the Legislature properly enacted HB 2623 under its police-powers authority. Pet’rs.Br. at 19, 21-23, 25, 29. But Petitioners’ position—fundamental to their contention that Plaintiffs’ claims are facially invalid—is simply wrong. The Legislature can enact laws under its police-powers authority only when necessary to safeguard the public’s health, safety, and welfare. But no public safety threat existed until *after* the Legislature enacted HB 2623.

**A. The Legislature passed HB 2623 to give SpaceX use of Boca Chica Beach.**

The Legislature passed HB 2623 to give a private actor use and control of Boca Chica Beach. It was that subsequent private use that created the threat to public health and safety. The threat arose *because of* the statute.

This was SpaceX’s plan all along. SpaceX bought property near Boca Chica Beach that was too small to contain its blast radius. To solve that problem, the company set about acquiring use and control of the public beach. The Legislature fully understood SpaceX’s plan:

SpaceX is reviewing locations for a new launch site for its exclusive use. The location of the proposed launch site in Texas at Boca Chica Beach—about five miles south of South Padre Island and three miles

north of the U.S.-Mexico border—is among several locations in Florida, Georgia, and Puerto Rico in contention for the new site.... In order to be competitive for the launch site, the Legislature should take reasonable actions to ensure the location at Boca Chica Beach is a viable and attractive option for a new launch site. Above all, this requires ensuring that the affected area could be secured during scheduled launches.... CSHB 2623 is necessary for the location at Boca Chica Beach to be viable as a space launch site.... The perimeter that would have to be cleared to ensure a safe launch is not yet certain, and for this reason, the bill would give specific rulemaking authority to the land commissioner to adopt appropriate rules.

House Research Org., Bill Analysis, at 2-3, H.B. 2623, 83d Leg., R.S. (Apr. 24, 2013), <https://tinyurl.com/mrjbjaxy>.<sup>29</sup> Petitioners have conceded that HB 2623 problem-solved SpaceX’s obstacle to a launch license. *See* Pet’rs.Br. at 30 (citing CR185). Texas was competing with other states and Puerto Rico, and the Legislature wanted to secure the new launch facility for Texas. The Legislature gave SpaceX what it asked for.

The statutory text also evidences the legislative goal of facilitating the private launch facility. Section 61.132 of the Natural Resources Code is entitled “Closing of Beaches *for Space Flight Activities*.” TEX. NAT. RES. CODE § 61.132 (emphasis added). No beach closures are allowed unless a FAA-licensed private launch facility

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<sup>29</sup> *See also* Senate Bill Analysis, H.B. 2623, 83d Leg., R.S. (May 2, 2013) (“[A]reas within a certain radius of a launch site must be closed before a launch, potentially including areas of state-owned beaches.”), <https://tinyurl.com/mvrk3rrb>; House Committee on Land & Resource Management, Bill Analysis, at 1, H.B. 2623, 83d Leg., R.S. (2013) (reviewing “radius” requirement and noting that proposed law will address “closing of beaches for space flight activities”), <https://tinyurl.com/3xxxb8fm>.

is nearby. *See id.* § 61.132(a). The statutory scheme is organized around a private company’s submission of beach closure requests to the local county commissioners court. *See id.* § 61.132(b) (requiring that “person planning to conduct a launch in a county to which this section applies must submit to the commissioners court proposed primary and backup launch dates for the launch”).

**B. HB 2623 lacks any findings about public safety.**

The Court has emphasized the importance of legislative findings to justify police-powers enactments. *Compare Robinson*, 335 S.W.3d at 132, 145, 149 (reviewing absence of findings showing how legislation served a substantial public interest, and concluding that statute violated Section 16 of Bill of Rights (constitutional prohibition on retroactive laws)), *with Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 634 (Tex. 1996) (relying on legislative findings that statute at issue was “necessary to safeguard the public welfare of the citizens of this state” to uphold challenge based on Section 16 of Bill of Rights). Here, like in *Robinson*, the Legislature made no findings or statement of purpose declaring how HB 2623 served the public’s health, safety, and welfare. *See* Acts 2013, 83d R.S., ch. 152, General and Special Laws of Texas, at 589, <https://tinyurl.com/2hpb7bph>. Such a “sparse record” “falls short of what must be shown before someone is made to surrender a constitutional right.” *Robinson*, 335 S.W.3d at 161 (Willett, J., concurring).

**C. The Legislature created dangers to the public to benefit a single private commercial enterprise.**

In *Robinson*, Justice Willett observed in his concurrence that although “[d]eliminating the outer edge of police-power constitutionality has bedeviled Texas courts for over a century,” its essential elements were known. 335 S.W.3d at 162 (Tex. 2010) (Willett, J., concurring). First, “police power draws from the credo that ‘the needs of the many outweigh the needs of the few.’” *Id.* Second, police power is

cabined by something contrarian and Texan: distrust of intrusive government and a belief that police power is justified only by urgency, not expediency. That is, there must exist a societal peril that makes collective action imperative: “The police power is founded in public necessity, and only public necessity can justify its exercise.”

*Id.* (quoting *Spann v. City of Dall.*, 235 S.W. 513, 515 (Tex. 1921)). Petitioners’ authorities concerning police powers say nothing to the contrary and recognize that police power is limited to “promot[ing] health and the general welfare.” *Lombardo v. City of Dall.*, 73 S.W.2d 475, 476 (Tex. 1934) (quoting VERNON’S ANN. CIV. ST. art. 1011a ) (cited by Pet’rs.Br. at 21-22).<sup>30</sup>

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<sup>30</sup> See also *City of Coll. Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 805 (Tex. 1984) (under city’s police powers, it could “promote the health, safety, and general welfare of its people” through ordinances) (cited by Pet’rs.Br. at 21-22); *DuPuy v. City of Waco*, 396 S.W.2d 103, 107 n.3 (Tex. 1965) (characterizing “police power” as “involv[ing] the regulation of...property to prevent the use thereof in a manner that is detrimental to the public interest”) (cited by Pet’rs.Br. at 21).

No emergency or exigency existed on Boca Chica Beach until the Legislature came on the scene. *Cf. Robinson*, 335 S.W.3d at 162 (Willett, J., concurring) (“It has been said that police power is limited to enactments having reference to the comfort, safety, or the welfare of society, and usually it applies to the exigencies involving the public health, safety, or morals.”) (quotation and citation omitted). The statute did not respond to a public-safety danger; it created one.

Only after the Legislature created the necessary operational radius for SpaceX to conduct space-flight activities next to Boca Chica Beach—undisputably dangerous activities involving gases, propellants, chemicals, explosive forces, shrapnel, and debris<sup>31</sup>—did any danger exist. Rather than exercising its police powers to combat existing hazards to the public, the Legislature invited those hazards by enacting HB 2623. The State should not be permitted to shield itself from constitutional claims with police powers when it enabled the very dangers that need mitigation.

The Legislature authorized beach closures only if a FAA-approved launch facility is nearby. TEX. NAT. RES. CODE § 61.132(a). In the absence of a rocket launch facility, there is no need to bar the public’s access—confirming the obvious:

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<sup>31</sup> *See, e.g.*, CR197.

no threat to public safety existed until SpaceX built its launch facility next to Boca Chica Beach, which it could not do without HB 2623.<sup>32</sup>

In Petitioners' view, the Legislature is free to facilitate inherently dangerous activities next to a public beach, and then rely on those dangerous activities to legislate a bar on public access. Under this circular reasoning, the Legislature causes the problem, but can then insist that the constitutional constraints be lifted to protect the public from the problem. It is both sinner and savior.

Under Petitioners' view, police power is mere post-hoc pretext and would prevent anyone from ever bringing a facially valid challenge to HB 2623. Their reasoning disallows any constitutional line to be drawn—or crossed—a position that denies the judiciary's role to determine whether HB 2623 complies with our Constitution.

HB 2623 was not a valid exercise of police-powers authority. This foundation for Petitioners' theory of facial invalidity fails and cannot justify denying Plaintiffs the opportunity to develop their claims.

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<sup>32</sup> Indeed, the FAA issued SpaceX its license only *after* the legislation was enacted and effective. See FAA, *2014 Record of Decision*, *supra*, at 4 (as part of SpaceX's "Security Plan," which was a condition of license, "Boca Chica Beach would be closed to the public"), <https://tinyurl.com/3thhfjic>; FAA, *2014 Final Environmental Impact Statement*, *supra*, at ES-12 (noting that the Governor signed HB 2623 into law on May 14, 2013, allowing public access to Boca Chica Beach to be closed during launch operations and space flight activities), <https://tinyurl.com/2x8dnyjv>.

**IV. Section 33 necessarily limits legislative power.**

**A. Section 33 bestows a “permanent easement” and an “unrestricted right” to use and access public beaches.**

Section 33 confers broad rights on the public:

The public, individually and collectively, has an *unrestricted* right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a *permanent easement* in favor of the public.

TEX. CONST. art. I, § 33(b) (emphasis added). This provision in the Bill of Rights has force and meaning. The Texas Constitution always constrains the Legislature’s police powers—an uncontroversial proposition that Petitioners ignore. *See Robinson*, 335 S.W.3d at 159 (Willett, J., concurring) (“The Legislature’s police power cannot go unpoliced.”). Yet Petitioners refuse to recognize any substantive meaning for Section 33. Nor do they analyze the limits of the Legislature’s police powers here—a conspicuous omission. The Court should not dismiss the claims based on such a superficial analysis.

The novel question to be answered here is whether the public’s permanent easement, enshrined in the Texas Bill of Rights, paired with the “unrestricted right,” limits the Legislature’s power to close the beach at SpaceX’s request. Because the facial-invalidity inquiry “hinges on our interpretation of the provisions at issue,” *Abbott v. Mex. Am. Legis. Caucus*, 647 S.W.3d 681, 698 (Tex. 2022), and those

provisions have yet to be explored by Texas courts, the Court cannot conclude that Plaintiffs' constitutional challenge is facially invalid.

**B. Petitioners' efforts to show Section 33 is not "absolutist" shed no light on Section 33's meaning.**

Petitioners devote themselves to showing that Section 33 did not abrogate *all* legislative police-powers authority and that it did not confer *absolute* rights. Pet'rs.Br. 16-28. But this is a straw-man argument.

Plaintiffs do not seek a declaration that they can use and access the beach 24-7, including when conditions are dangerous—like Petitioners claim. They instead seek a declaration that HB 2623 violates Section 33 by giving a private business the use of Boca Chica Beach in violation of the public's constitutional easement. *See* Resp'ts.Br. at 3-6, 10-12.

Intent on showing legislative discretion within Section 33, Petitioners emphasize that Section 33(c) uses permissive language. Pet'rs.Br. at 22-23; *see also* TEX. CONST. art. I, § 33(c) ("The legislature *may* enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.") (emphasis added). But Petitioners ignore Section 33(c)'s function as an *exception* to the restrictive guarantee that appears just before, in Section 33(b). Section 33(c)'s "may" statement exists only in conjunction with Section 33(b)'s broad guarantee, resulting in a narrow exception. Section 33(c) allows the Legislature to pass laws *only* when they "protect the right of the public to

access and use a public beach” or “protect the public beach easement from interference and encroachments.” *Id.*

This opening for the Legislature is not only narrow, it is qualitatively restricted. It does not explicitly allow for public safety restrictions, which should make the Court think twice about Petitioners’ argument that police powers trump all else. In addition, in no universe does HB 2623’s dedication of a public beach for SpaceX’s use come within Section 33(c)’s narrow scope. HB 2623 neither “protect[s] the right of the public to access and use a public beach” nor “protect[s] the public beach easement.” *Id.*

Petitioners also rely on Section 33’s origin in the Open Beaches Act. They contend that the OBA always “recognized and approved” “reasonable police-power regulation,” so Section 33 should be understood to do so as well. Pet’rs.Br. at 25. But they ignore the reality that their cited OBA provisions *further* the constitutional guarantee of beach access. *See* Pet’rs.Br. at 26-27 (collecting OBA provisions). Those provisions ensure orderly beach use, access, and maintenance, and they prevent barriers to beach access. Moreover, “reasonable” regulation does not include giving a private company control of the beach to the public’s detriment.

**C. Despite Section 33’s grant of a permanent easement to the People, Petitioners avoid key property and takings principles in favor of a superficial analysis.**

Section 33 confers a permanent easement on the public, making the tenets of property law fundamental to discerning Section 33’s meaning and scope. As Petitioners rightly recognize, the choice to include a term from the common law brings with it the “old soil.” Pet’rs.Br. at 27 (quoting ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 73 (2012)). By structuring Section 33 as a right *and* a permanent easement, the drafters and ratifiers deliberately adopted an easement’s attributes. Founded in both property and contract, Texas law fiercely protects easements, and placing the easement in the “compact” between government and Texas citizens (the Bill of Rights) deepens that commitment. *Republican Party of Tex. v. Dietz*, 940 S.W.2d 86, 91 (Tex. 1997). Black-letter easement law is vital to determining Section 33’s scope and application, but Petitioners avoid its fundamental principles.

Petitioners cite the uncontroversial proposition that easements are rarely absolute. Pet’rs.Br. at 20-21, 29-30. But this tells us nothing about this easement’s scope. They note that easements can *imply* only limited rights, but Plaintiffs seek only what the Section 33’s permanent easement *expressly* grants. Easement law tells us that an easement authorizes its holder—here, the public—to use the property for its express purposes and precludes interference from the property owner. *See, e.g.*,

*Marcus Cable Assocs., L.P. v. Krohn*, 90 S.W.3d 697, 700-01 (Tex. 2002); *DeWitt Cnty. Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 103 (Tex. 1999). These well-established principles ground the public’s rights here. Beach closures directly contravene this easement’s express purpose. Denying the public access to serve a private company breaches the easement.

Petitioners invoke the proposition that an easement holder cannot claim a right “foreign” to an easement’s purpose and then invent a “foreign” right by saying that Plaintiffs assert a right to occupy the beach at all times even when it is dangerous. Pet’rs.Br. at 21, 29. In Petitioners’ telling, such a right is “foreign” to the purpose of accessing and using the beach. But Plaintiffs do not invoke such an absolute right. The question here has never been whether the public has a right to use and access the beach in dangerous circumstances.

Petitioners also contend that the People’s constitutional easement bends to the Legislature’s will under its police powers. Pet’rs.Br. at 21-22. But they undertake no police-powers analysis to back up their conclusory declaration. They instead cite inapposite authorities addressing home-rule cities’ ability to regulate private property for health, safety, and welfare reasons, returning repeatedly to this authority to claim a legislative prerogative to impose “reasonable regulations.” Pet’rs.Br. at 21-22. They also cite this Court’s passing observation in *Severance v. Patterson*, 370 S.W.3d 705, 725 (Tex. 2012), in which the Court held that the State lacked an

easement across private property on Galveston's West Beach when there was no proof of an easement, that: "the State...may validly address nuisances or otherwise exercise its police power to impose reasonable regulations on coastal property." Pet'rs.Br. at 21. But Petitioners *omit* the end of the Court's sentence, which is the critical piece. The Court stated that the State can do so *only* "consistent with constitutional precepts." *Severance*, 370 S.W.3d at 725. Whether ever-increasing beach closures are "consistent with constitutional precepts" and are "reasonable" are questions central to this case, which deserve further factual development and legal briefing. The parties have yet to join issue on these (and other) substantive questions that bear on the meaning of Section 33 and its application to HB 2623, further demonstrating that this case is an inappropriate vehicle at this stage.

Because Petitioners defend HB 2623 with police powers, the principles of takings law are also important to interpretation of Section 33. But Petitioners utterly ignore that assertions of police power can constitute a taking. *See, e.g., DuPuy*, 396 S.W.2d at 106-10 (holding that government construction diminished an access easement and caused a taking) (cited by Pet'rs.Br. at 21). The standards for regulatory and physical takings provide instructive measures for determining if Section 33's guarantee has been violated. Even without the benefit of discovery, the information available today about the beach closures indicates they are tantamount

to a taking of the easement or a revised easement in SpaceX’s favor—proving the viability of the constitutional challenge. *See supra* Section I.

Across their brief, Petitioners voice what they present as a truism: if Section 33 did not wholly eliminate the Legislature’s police-powers authority, it is free to impose “reasonable regulations.” Pet’rs.Br. at 10, 22-23, 25, 27, 30. The broad exception they propose ignores the textual constitutional restraints. Even if the Legislature retains some authority to legislate based on police powers, no *carte blanche* exists to ignore constitutional constraints, particularly those in the Bill of Rights. A court must determine the constitutional constraints imposed on the challenged legislation. *See, e.g., Robinson*, 335 S.W.3d at 135, 143-50 (holding that statute violated Section 16 of the Bill of Rights even though enacted under legislative police power).

Under Petitioners’ theory, a hypothetical church in the same situation as Boca Chica Beach—that is, a church next door to a newly installed rocket launch site—would not have a facially valid claim under the First Amendment or Article I, Section 6 of the Texas Constitution because neither constitutional provision abrogates the Legislature’s police-powers authority. No one could challenge a statute like this, which tracks current Natural Resources Code Section 61.132 (c) and (d):

(c) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a ~~beach~~ **church or place of worship** in reasonable proximity to the launch site or access points to

the beach in the county on a primary or backup launch date, subject to Subsection (d).

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

- (1) Christmas Eve or Christmas Day;
- (2) Easter Sunday;
- (3) Good Friday;
- (4) Palm Sunday;
- (5) Ash Wednesday.

Under Petitioners' reasoning, the Legislature could bar use of a church property during space flight activities without facing a constitutional challenge.

But of course, that cannot be the correct result. The mere existence of police powers does not sweep away, as Petitioners imply, constitutional constraints. “[P]olice power must bow to constitutional commands: ‘as broad as [police power] may be, and as comprehensive as some legislation has sought to make it, still it is subsidiary and subordinate to the Constitution.’” *Robinson*, 335 S.W.3d at 162 (Willett, J. concurring) (quoting *Jordan v. State*, 51 Tex. Crim. 531, 103 S.W. 633, 634 (1907)); *see also Spann*, 235 S.W. at 515 (“The police power is subject to the limitations imposed by the Constitution upon every power of government.”). Constitutional challenges require sorting out how constitutional restraints and governmental powers coexist, where the lines are, and if they have been crossed.

Yet Petitioners utterly ignore Section 33(b)'s unambiguous restraints on governmental powers. Although they assert that the Legislature has “all legislative power” “not expressly or impliedly forbidden” by the Texas or U.S. Constitutions, they suggest no meaning for the “express” guarantee in Section 33(b). Pet’rs.Br. at 22 (quoting *MALC*, 647 S.W.3d at 702). Section 33(b) is a part of the Bill of Rights, which imposes “*express limitations of power*” on the Legislature. *Travelers’ Ins. Co. v. Marshall*, 76 S.W.2d 1007, 1009 (Tex. 1934) (emphasis in original).

Petitioners do not explain how the Bill of Rights loses its restrictive force in this case. If their view is correct, and the Bill of Rights does not “serve[] as a shield against the powers and laws of government,” *Republican Party of Tex*, 940 S.W.2d at 89-90, then all of the Bill of Rights is flexible and can be displaced by the Legislature. Rights such as Section 6-a’s Religious Service Protections, Section 30’s Rights of Crime Victims, Section 34’s Right to Hunt, Fish, and Harvest Wildlife, and Section 35’s Right of Certain Facility Residents to Designate Essential Caregiver—all ratified by voters in the recent past—would be amenable to legislative revision. *See* TEX. CONST. art. I, §§ 6-a, 30, 34, 35. It is unthinkable that Section 33(b) is no obstacle to legislative transgression of a fundamental right in service of private profit.

Petitioners ultimately fail to give Section 33 any meaning, eliminating any credibility for their conclusion that Plaintiffs’ claims are invalid on their face.

**D. Rational basis does not apply.**

After repeatedly equating the existence of *any* police-powers authority with a legislative power to impose “reasonable regulations,” Petitioners take the next—and in their view, conclusive—step in their novel syllogism. They contend that the supposed power to adopt “reasonable regulations” means that HB 2623 must be measured by a rational-basis test. Petitioners then quickly conclude that HB 2623 easily passes that test, rendering, in their telling, Plaintiffs’ constitutional claims facially invalid. Pet’rs.Br. at 30.

But a rational-basis test has no place here. Petitioners’ only authority is an equal-protection case, unaccompanied by any explanation how it extends to Section 33. Pet’rs.Br. at 30.

Petitioners ignore this Court’s commitment to a textualist implementation of constitutional provisions. *See, e.g., Webster v. Comm’n for Law. Discipline*, 704 S.W.3d 478, 490 (Tex. 2024) (deciding “original public meaning” of the phrase “judicial power” in article V, § 1 of the Texas Constitution); *Hogan v. S. Methodist Univ.*, 688 S.W.3d 852, 855-60 (Tex. 2024) (unanimously assessing possible violation of Texas Constitution’s bar on retroactive laws according to textual and historical reading); *see also Tex. Dep’t of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648, 675-81 (Tex. 2022) (Young, J., concurring) (suggesting that such an analysis is necessary for proper application of the Texas Constitution’s due course

of law provision).<sup>33</sup> Petitioners’ invocation of the rational-basis test is directly at odds with the Court’s instruction that “our 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.

In *Perez v. City of San Antonio*, 715 S.W.3d 709, 717-23 (Tex. 2025), the Court undertook that task, analyzing the Texas Religious Services Clause to determine the nature of its prohibition on governmental restrictions on religious services. The Court rejected the application of a means-end test and the strict-scrutiny standard traditionally applicable to Free Exercise Clause challenges. Based on the clause’s text and historical context, the Court concluded that the clause imposes a “categorical bar.” *Id.* at 718. The Court discerned the bar from the clause’s “historical context” which “confirms that those who proposed and approved the Clause understood that it would provide greater protection by categorically forbidding certain prohibitions and limitations on religious services *regardless of the government’s interest in those prohibitions and limitations.*” *Id.* at 721 (emphasis added). The Court separately considered the clause’s scope, identifying

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<sup>33</sup> See also, e.g., *In re Abbott*, 628 S.W.3d 288, 296 (Tex. 2021) (orig. proceeding) (noting in assessing meaning of the phrase “compel the attendance of absent members” in Article III, section 10 that “we strive to interpret the Texas Constitution based on the plain meaning of the text as it was understood by those who ratified it”); *Sears v. Bayoud*, 786 S.W.2d 248, 251 (Tex. 1990) (“[I]n construing a constitutional provision, this Court has always given effect to the intention of the framers and ratifiers of the provision.”).

its basic parameters according to its text and historical setting. *Id.* at 725.<sup>34</sup> The same textualist approach should be used to determine the meaning and scope of Section 33’s guarantee. *See* Resp’ts.Br. at 18-30 (reviewing textual analysis of Section 33).

Petitioners’ reliance on the rational-basis test utterly ignores the serious doubts about such means-end testing. In *Robinson*, for example, the Court cautioned against the judiciary making reasonableness assessments and weighing interests in assessing the constitutional prohibition against retroactive laws. “[T]he intent of the prohibition against retroactive laws is to foreclose these kinds of considerations to the Legislature in enacting laws and to the judiciary in reviewing them.” 335 S.W.3d at 146. There, the Court required a “compelling public interest to overcome the heavy presumption against retroactive laws.” *Id.*

In *Texas Department of Insurance v. Stonewater Roofing, Ltd.*, 696 S.W.3d 646 (Tex. 2024), Justice Young’s concurrence questioned whether tiers of scrutiny used in First Amendment analysis are “moored in the Constitution’s text and original meaning” and reviewed questions about their proper role, observing that such an

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<sup>34</sup> The Court declined to “comprehensively define” the clause’s scope because Texas had recently adopted the constitutional provision, no Texas appellate court had yet interpreted it, and such an endeavor was not required to resolve the certified question presented to the Court. *Id.* at 725. The same prudential considerations counsel a return to the trial court here. No appellate opinions have yet addressed Section 33’s parameters and application. The parties should be permitted to litigate the substantive constitutional issues and develop the specific dispositive questions in this case.

inquiry ““risks...judges upholding or invalidating...laws at will—without respect to the original public meaning of the’ relevant constitutional provision.” *Id.* at 670-71 (quoting *United States v. Jimenez-Shilon*, 34 F.4th 1042, 1051-52 (11th Cir. 2022) (Newsom, J., concurring)) (collecting authorities); *see also* JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 174 (2018) (“A grave threat to independent state constitutions...is lockstepping: the tendency of some state courts to diminish their constitutions by interpreting them in reflexive imitation of the federal courts’ interpretation of the Federal Constitution.”).

Under Petitioners’ theory—which extends rational-basis review to Section 33 without any limiting principle or rationale—all legislation should be assessed by such means-end testing. Petitioners invite the Court to depart from its own opinions and extend the rational-basis test in a way that intrudes on the judiciary’s role to enforce the concrete “textually expressed” rights that Texans have enshrined in their Constitution. *Crown Distrib.*, 647 S.W.3d at 667-68 (Young, J., concurring).

This faulty scaffolding for Petitioner’ facial-invalidity theory does not support dismissal.

**V. The County/GLO’s separate objection fails: Plaintiffs’ lawsuit does not present a Section 33(d) “private right of enforcement.”**

The County/GLO’s jurisdictional challenge is narrow. Their sole argument is that Plaintiffs’ lawsuit should be understood to seek the “private right of

enforcement” that Section 33(d) states it “does not create.” TEX. CONST. art. I, § 33(d); County/GLO.Br. at 8, 10-19.<sup>35</sup> But Plaintiffs’ claims do not present a Section 33 “private right of enforcement” under the ordinary meaning of the phrase.

The County/GLO claim that the pleadings champion a “private right of enforcement,” *id.*, but Plaintiffs seek only a declaration that HB 2623 violates Section 33. CR107-10; *see also* Resp’ts.Br. at 39-41. The County/GLO’s very description of the lawsuit acknowledges what Plaintiffs seek:

[E]ach paragraph in the Prayer in the Petition in Intervention requests a judgment ***declaring a violation of Article I, Section 33***[.]

County/GLO.Br. at 11 (emphasis added).

The County/GLO urge a plain-meaning reading of Section 33(d)’s statement that Section 33 “does not create a private right of enforcement,” but they ignore the words’ ordinary meaning. *Id.* at 14.<sup>36</sup> The key words are “private right.” The word “private” modifies “right,” restricting only the type of rights that may be vindicated under Section 33. Plaintiffs did not sue to enforce a private right (e.g., contract right, tort remedy, private property interest), nor did they challenge any private conduct.

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<sup>35</sup> The Attorney General declined to endorse this argument. *See* Op. at \*5 n.5; County/GLO.Br. (reflecting absence of Attorney General joinder).

<sup>36</sup> *See, e.g., In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 466 (Tex. 2011) (orig. proceeding) (“We presume the language of the Constitution was carefully selected, interpret words as they are generally understood, and rely heavily on the literal text.”).

They also did not seek a private remedy or restraint of any private actor. They simply did not bring an action to “enforc[e]” a “private right.”

The County/GLO insist that Plaintiffs’ status as private entities bars the lawsuit. This argument finds no support in the text. Section 33(d) does not include a reference to the parties that the word “private” could modify. *See, e.g., TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (omissions are presumed to be intentional); *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009) (selected text may not be rewritten).

Section 33(d)’s statement means that it does not confer a cause of action to enforce a private right. Its historical context confirms this common-sense reading. The intent was to avoid litigation and disputes over private property rights when erosion and weather events shift the defining line between private property and the public beach. *See* House Research Org., Focus Report: Constitutional Amendments Proposed for November 2009 Ballot, H.J.R. 102, at 21-22 (Aug. 20, 2009), <https://tinyurl.com/285frpju>; House Research Org., Bill Analysis, at 2-3, H.J.R. 102, 81st Leg., R.S. (May 11, 2009), <https://tinyurl.com/bdzz82ud>; *see also* Tex. Leg. Council, Analyses of Proposed Constitutional Amendments, Amendment No. 9 (H.J.R. 102), at 50-51 (2009) (explaining that amendment would ratify the State’s “rolling” beachfront and reduce post-hurricane litigation over private property rights), <https://tinyurl.com/3y7jnsp3>. Indeed, Petitioners concede that the provision

was intended to protect the public right to access public beaches against post-Hurricane Ike lawsuits and assertion of private property rights. Pet'rs.Br. at 24-25. Section 33(d) is irrelevant here.

Unable to corroborate its argument with Section 33(d)'s text, the County/GLO contend that Section 33(d) overrides Section 29 of the Texas Bill of Rights because it is purportedly a more recent and specific provision—but offer no authority or analysis. County/GLO.Br. at 16. The County/GLO ignore fundamental tenets of constitutional interpretation. An irreconcilable conflict must exist before one provision can override another, and courts harmonize provisions to avoid incompatibility. *See, e.g., Collingsworth Cnty. v. Allred*, 40 S.W.2d 13, 15 (Tex. 1931) (orig. proceeding). Moreover, no part of the Texas Constitution can be given a construction repugnant to another, if the language permits another interpretation. *Id.* No irreconcilable conflict exists here. Section 29 is not more general than Section 33(d); the provisions address distinct subject matters. Section 29 is a “means of remedying a constitutional violation,” which dictates that “a law contrary to a constitutional provision is void.” *Bouillion*, 896 S.W.2d at 149. Section 33(d), by contrast, disclaims the creation of a “private right of enforcement” for use and access of a public beach.

Section 29's role as a vital bulwark against unconstitutional laws further undermines the County/GLO's contention that enforcement of the public's rights

under Section 33 is “restricted to the State, its agencies and subdivisions.” County/GLO.Br. at 15. The first clause of Section 29 establishes that the purpose of the Bill of Rights is to “guard against transgressions of the high powers” delegated to the state government. TEX. CONST. art. I, § 29. “[T]he Bill of Rights serves as a shield against the powers and laws of government.” *Republican Party of Tex.*, 940 S.W.2d at 90. It would be absurd to read Section 33(d) to mean that only the government can protect its citizens *from the government*. The Bill of Rights was “intended to *protect citizens from governmental transgressions*.” *Id.* at 91 (emphasis added). Moreover, the Texas Constitution has always included Section 29’s protections, and Section 29 has never been amended to create any exceptions. *See* TEX. CONST. of 1869, art. I, § 23; TEX. CONST. of 1866, art. I, § 21; TEX. CONST. of 1861, art. I, § 21; TEX. CONST. of 1845, art. I, § 21. Section 33 lacks any language indicating that the People adopted an exception to their rights under Section 29.

This issue reaches beyond this case. The Legislature has passed additional legislation allowing for public beach closures. *See* TEX. GOV’T CODE § 482.107(a)(8). As new governmental entities—the TSC and City of Starbase—exercise their authority to close Boca Chica Beach, and beach closures become more frequent, it is critical to reaffirm that the Texas Constitution provides its citizens with the tools to seek judicial review and a declaration that laws violating Section

33 are void. No private right of enforcement is necessary. The Constitution itself provides the necessary tools. *See* Resp'ts.Br. at 39-41.

Here, the Legislature proposed Section 33's language and placed it in the Bill of Rights, knowing that placement meant that Section 33 curtailed certain legislative authority and that legislation in violation of Section 33 would be void. *See, e.g., Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937, 940 n.5 (Tex. 1993). The Legislature supported the amendment—and its placement in the Bill of Rights—almost unanimously. By a vote of 140 to one (with one present, not voting), the House adopted the measure. TEX. HOUSE JOURNAL, 81st Leg., R.S., at 3144 (May 11, 2009), <https://tinyurl.com/3h6efhac>. The Senate passed the resolution on a 29-2 vote. TEX. SENATE JOURNAL, 81st Leg., R.S., at 3599 (May 27, 2009), <https://tinyurl.com/5n8e5rvj>.

The electorate then voted on its ratification—a process manifesting a bedrock principle of state governance expressed in Section 2 of the Bill of Rights:

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

TEX. CONST. art. I, § 2. The voters adopted Section 33 with 76.92% voting in favor.

Office of the Secretary of State, *Race Summary Report: 2009 Constitutional Amendment Election, Proposition 9* (H.J.R. 102) (Nov. 3, 2009),

<https://tinyurl.com/yc7u4jys>; *see also* TEX. CONST. art. XVII, § 1 (amendment process).

The County/GLO cannot be correct that the voters (which include STEJN members) amended the Bill of Rights to add Section 33, but cannot enforce the rights they reserved for themselves as specific exceptions to legislative authority. That result would subvert the constitutional amendment process and the Bill of Rights, throwing into doubt the citizenry's ability to ever enforce Section 33 or the many amendments the voters have ratified into the Bill of Rights.

#### **PRAYER**

For these reasons, the Court should deny the petitions for review.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word, this brief contains 13,685 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

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## CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2025, this Brief of Amicus Curiae South Texas Environmental Justice Network in Support of Respondents was served via electronic service through eFile.TXCourts.gov on all parties through counsel of record, listed below:

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## INDEX OF APPENDICES

<b>Tab</b>	<b>Item</b>
1.	Cameron County Commissioners' Court, Order No. 2019O3002 (Mar. 14, 2019)
2.	Public Notice of Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Sept. 10, 2020)
3.	Public Notice of Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Dec. 6, 2023)
4.	Cameron County Order to Temporarily Close Boca Chica Beach and State Highway 4 (Feb. 29, 2024)
5.	Order Closing Boca Chica Beach and State Hwy 4; July 30, 2025 from 7am to 7pm (July 28, 2025)
6.	Order Closing Boca Chica Beach and State Hwy 4; July 31, 2025 from 7am to 7pm (July 28, 2025)
7.	County's Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 Between 7:00 A.M. to 7:00 P.M.
8.	Amended - County's Temporary Closure of Boca Chica Beach and State Highway 4 on August 1, 2025 between 7:00 a.m. to 9:00 p.m.
9.	Texas Space Commission Order No. 2025-01 (Sept. 23, 2025)

# **APPENDIX 1**

**ORDER NO. 201903002**

**IN THE COMMISSIONERS' COURT OF CAMERON COUNTY, TEXAS**

**ORDER AUTHORIZING COUNTY JUDGE TO SIGN ANY NECESSARY AND APPROPRIATE NOTICES OR ORDERS TO CLOSE STATE HIGHWAY 4 AND/OR THE BEACH AT BOCA CHICA IN CONNECTION WITH SPACEFLIGHT ACTIVITIES**

**WHEREAS**, on August 15, 2013, the Commissioners' Court of Cameron County, Texas, approved Order Number 201-308-0020 adopting an amendment to the Cameron County Public Beach Access and Dune Protection Plan for spaceflight activities and;

**WHEREAS**, Texas Natural Resources Code Section 61.132 permits the Texas General Land Office ("GLO") and the County to enter into a memorandum of agreement under the terms of which Boca Chica Beach may be closed temporarily for space launches and;

**WHEREAS**, Cameron County and the Texas General Land Office ("GLO") entered into a Memorandum of Agreement, contract number 2013C08253/GLO contract number 13-447-000-7916 that delineates the circumstances under which the GLO will authorize the County to close the beach and beach access points for the limited purpose of protecting Public Safety during spaceflight activities and;

**WHEREAS**, the Texas Department of Transportation has authorized a SpaceX Roadway Closure Traffic Control Plan to perform road closures on State Highway 4;

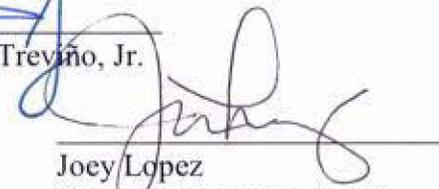
**NOW THEREFORE**, be it **ORDERED, ADJUDGED, and DECREED**, by the Commissioners' Court of Cameron County, Texas, that the Cameron County Judge is authorized to execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or the beach at Boca Chica Beach in connection with space flight activity, now or in the future.

APPROVED, this 14<sup>th</sup> day of March, 2019.

COMMISSIONERS' COURT OF CAMERON COUNTY, TEXAS.

  
Cameron County Judge Eddie Treviño, Jr.

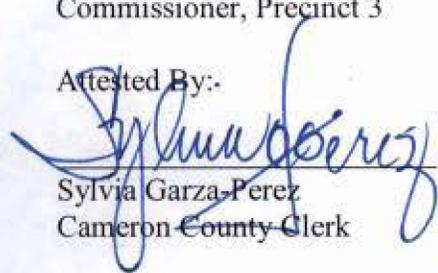
  
Sofia C. Benavides  
Commissioner, Precinct 1

  
Joey Lopez  
Commissioner, Precinct 2

  
David A. Garza  
Commissioner, Precinct 3

Absent  
Gus Ruiz  
Commissioner, Precinct 4

Attested By:-

  
Sylvia Garza-Perez  
Cameron County Clerk



## **APPENDIX 2**



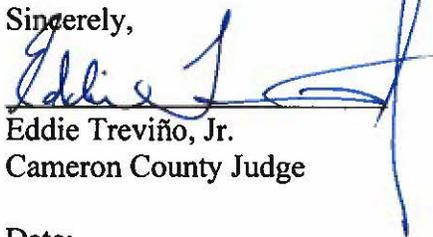
***Eddie Treviño, Jr.***  
***County Judge***

**PUBLIC NOTICE OF CAMERON COUNTY ORDER TO  
TEMPORARILY CLOSE BOCA CHICA BEACH AND STATE HIGHWAY 4**

Under the authority granted to Cameron County pursuant to Texas Natural Resources Code Section 61.132 which permits the Texas General Land Office ("GLO") and the County to enter into a memorandum of agreement under the terms of which Boca Chica Beach may be closed temporarily for space launches and in conformity with the Memorandum of Agreement, contract number 2013C08253/GLO contract number 13-447-000-7916 between the County and the GLO that delineates the circumstances under which the County is authorized to close the beach and beach access points for the limited purpose of protecting Public Health and Safety during spaceflight activities and the Texas Department of Transportation authorized a SpaceX Roadway Closure Traffic Control Plan to perform road closures on State Highway 4;

COMES NOW, Cameron County Judge Eddie Treviño, Jr., on behalf of Cameron County and the Cameron County Commissioners Court as authorized by Court Order 201903002 and hereby issues this order and gives public notice of this Order to Temporarily Close Boca Chica Beach and State Highway 4 for the purpose of protecting Public Health and Safety during space flight activities on September 17, 2020, in the time period between 9:00 p.m. C.S.T. to 6:00 a.m. C.S.T., and in the alternative on September 21, 2020, and/or September 22, 2020, from 9:00 p.m. C.S.T. to 6:00 a.m. C.S.T. of the same day. Should SpaceX not complete its planned space flight activities on September 17, 2020, then SpaceX may use the alternate dates to complete its test launch activities.

Sincerely,



Eddie Treviño, Jr.  
Cameron County Judge

Date:

September 10, 2020

Exhibit B

SPACEFLIGHT ACTIVITY BEACH CLOSURE REQUEST

Date/Time Request Submitted: 09.10.2020 / 830 AM

Launch Operator: SpaceX

Launch Name/Designation: 7.1 Testing

Launch Operator POC Contact Info (Name/Phone/Email):

Alma Walzer Santos

Davis Libbey: davis.libbey@spacex.com

Primary Closure Date: September 17, 2020

Launch Window:

Beach closure start time: 9 PM Anticipated end time: 6 AM

Backup Closure Date 1: September 21, 2020

Launch Window:

Beach closure start time: 9 PM Anticipated end time: 6 AM

Backup Closure Date 2: September 22, 2020

Launch Window:

Beach closure start time: 9 PM Anticipated end time: 6 AM

FAA License Identifier: EP 19-012

Is Primary Closure Date a Peak Day as defined in the Memorandum of Agreement? No

If YES, is Launch Operator designating as an Excused Peak Day?

If Primary Closure Date is a Peak Day, but not an Excused Peak Day, provide justification for approval:

## **APPENDIX 3**



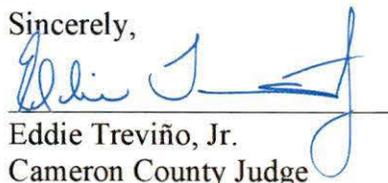
***Eddie Treviño, Jr.***  
*County Judge*

**PUBLIC NOTICE OF CAMERON COUNTY ORDER TO  
TEMPORARILY CLOSE BOCA CHICA BEACH AND STATE HIGHWAY 4**

Under the authority granted to Cameron County pursuant to Texas Natural Resources Code Section 61.132 which permits the Texas General Land Office (“GLO”) and the County to enter into a memorandum of agreement under the terms of which Boca Chica Beach may be closed temporarily for space launches and in conformity with the Memorandum of Agreement, contract number 2013C08253/GLO contract number 13-447-000-7916 between the County and the GLO that delineates the circumstances under which the County is authorized to close the beach and beach access points for the limited purpose of protecting Public Health and Safety during spaceflight activities and the Texas Department of Transportation authorized a SpaceX Roadway Closure Traffic Control Plan to perform road closures on State Highway 4;

COMES NOW, Cameron County Judge Eddie Treviño, Jr., on behalf of Cameron County and the Cameron County Commissioners Court as authorized by Court Order 2019O3002 and hereby issues this ORDER AND GIVES PUBLIC NOTICE of this Order to Temporarily Close Boca Chica Beach and State Highway 4 for the purpose of protecting Public Health and Safety during space flight activities on December 8, 2023, in the time period between 4:00 p.m. C.S.T. to 9:00 p.m. C.S.T., and in the alternative on December 11, 2023 or December 12, 2023, from 8:00 a.m. C.S.T. to 8:00 p.m. C.S.T. of the same day. Should SpaceX not complete its planned space flight activities on December 8, 2023, then SpaceX may use the alternate dates to complete its test launch activities.

Sincerely,

  
Eddie Treviño, Jr.  
Cameron County Judge

Date:

**December 6, 2023**

## **APPENDIX 4**



***Eddie Treviño, Jr.***  
***County Judge***

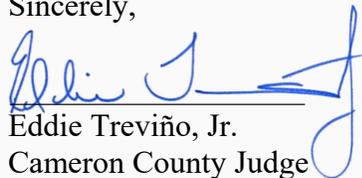
**CAMERON COUNTY ORDER TO  
TEMPORARILY CLOSE BOCA CHICA BEACH AND STATE HIGHWAY 4**

Under the authority granted to Cameron County pursuant to Texas Natural Resources Code Section 61.132 which permits the Texas General Land Office (“GLO”) and the County to enter into a memorandum of agreement under the terms of which Boca Chica Beach may be closed temporarily for space launches and in conformity with the Memorandum of Agreement, contract number 2013C08253/GLO contract number 13-447-000-7916 between the County and the GLO that delineates the circumstances under which the County is authorized to close the beach and beach access points for the limited purpose of protecting Public Health and Safety during spaceflight activities and the Texas Department of Transportation authorized a SpaceX Roadway Closure Traffic Control Plan to perform road closures on State Highway 4;

COMES NOW, Cameron County Judge Eddie Treviño, Jr., on behalf of Cameron County and the Cameron County Commissioners Court as authorized by Court Order 2019O3002 and hereby issues this Order to Temporarily Close Boca Chica Beach, State Highway 4, LBJ Blvd., Del Mar Blvd., LBJ North Road a.k.a. “Weens”, Richardson Avenue, Quick Silver Avenue, Rio Grande Drive, Tarpon Haven, Tarpon Haven Drive, and Tarpon Ben Drive and all other access points to Boca Chica Beach for the purpose of protecting Public Health and Safety during space flight activities on March 3, 2024, in the time period between 5:00 p.m. C.S.T. to March 4, 2024 3:00 a.m. C.S.T., and in the alternative on March 4, 2024 or March 5, 2024, from 8:00 a.m. C.S.T. to 8:00 p.m. C.S.T. of the same day. Should SpaceX not complete its planned space flight activities on March 3, 2024, then SpaceX may use the alternate date to complete its test launch activities.

SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day. In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4. After the closure, goes into effect, only authorized individuals will be allowed to remain between the hard and soft checkpoints. Access beyond the hard checkpoint to the beach will not be permitted during temporary closures.

Sincerely,

  
Eddie Treviño, Jr.  
Cameron County Judge

Date: February 29, 2024

## **APPENDIX 5**



**ORDER CLOSING BOCA CHICA BEACH AND  
STATE HWY 4; JULY 30, 2025, FROM 7 A.M. TO  
7 P.M.**



*Eddie Treviño, Jr.*  
*County Judge*

**For Immediate Release**

July 28, 2025

Contact: Eddie Treviño, Jr.

## County's Temporary Closure Of Boca Chica Beach And State Highway 4

On March 15, 2019, the Commissioners' Court approved an Order authorizing County Judge Eddie Treviño, Jr., to execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or Boca Chica Beach in connection with space flight activity, now or in the future.

Cameron County Judge Eddie Treviño, Jr., has ordered the temporary closure of access to Boca Chica Beach as well as State Highway 4 from FM 1419 (Oklahoma Ave.) to the entrance of Boca Chica Beach due to anticipated testing activities for SpaceX.

"I have ordered the closure of Boca Chica Beach and Hwy 4 for the purpose of protecting Public Health and Safety during SpaceX non-flight testing activities on July 30, 2025, in the time period between 7:00 a.m. C.S.T. to 7:00 p.m. C.S.T., of the same day" Treviño stated.

SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day. In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4. Individuals who provide proof of residence between the two checkpoints will be allowed to proceed through the soft checkpoint and access their homes during testing. Access beyond the hard checkpoint to the beach will not be permitted during temporary closures. The beach will be closed and those wishing to visit a beach during the closures may do so on South Padre Island at County parks: Cameron County Beach Access No. 3, Cameron County Beach Access No. 4, Cameron County Beach Access No. 4 (West) or Cameron County Beach Access No. 5 (West).

If you have any questions or concerns, please refer to the Cameron County website, [www.cameroncountytexas.gov/spacex/](http://www.cameroncountytexas.gov/spacex/).

###

## **APPENDIX 6**



**ORDER CLOSING BOCA CHICA BEACH AND  
STATE HWY 4; JULY 31, 2025, FROM 7 A.M. TO  
7 P.M.**



*Eddie Treviño, Jr.*  
*County Judge*

**For Immediate Release**

July 28, 2025

Contact: Eddie Treviño, Jr.

## County's Temporary Closure Of Boca Chica Beach And State Highway 4

On March 15, 2019, the Commissioners' Court approved an Order authorizing County Judge Eddie Treviño, Jr., to execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or Boca Chica Beach in connection with space flight activity, now or in the future.

Cameron County Judge Eddie Treviño, Jr., has ordered the temporary closure of access to Boca Chica Beach as well as State Highway 4 from FM 1419 (Oklahoma Ave.) to the entrance of Boca Chica Beach due to anticipated testing activities for SpaceX.

"I have ordered the closure of Boca Chica Beach and Hwy 4 for the purpose of protecting Public Health and Safety during SpaceX non-flight testing activities on July 31, 2025, in the time period between 7:00 a.m. C.S.T. to 7:00 p.m. C.S.T., of the same day" Treviño stated.

SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day. In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4. Individuals who provide proof of residence between the two checkpoints will be allowed to proceed through the soft checkpoint and access their homes during testing. Access beyond the hard checkpoint to the beach will not be permitted during temporary closures. The beach will be closed and those wishing to visit a beach during the closures may do so on South Padre Island at County parks: Cameron County Beach Access No. 3, Cameron County Beach Access No. 4, Cameron County Beach Access No. 4 (West) or Cameron County Beach Access No. 5 (West).

If you have any questions or concerns, please refer to the Cameron County website, [www.cameroncountytexas.gov/spacex/](http://www.cameroncountytexas.gov/spacex/).

###

## **APPENDIX 7**



# **COUNTY'S TEMPORARY CLOSURE OF BOCA CHICA BEACH AND STATE HIGHWAY 4 ON AUGUST 1, 2025 BETWEEN 7:00 A.M. TO 7:00 P.M.**

## COUNTY'S TEMPORARY CLOSURE OF BOCA CHICA BEACH AND STATE HIGHWAY 4

On March 15, 2019, the Commissioners' Court approved an Order authorizing County Judge Eddie Treviño, Jr., to execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or Boca Chica Beach in connection with space flight activity, now or in the future. Cameron County Judge Eddie Treviño, Jr., has ordered the temporary closure of access to Boca Chica Beach as well as State Highway 4 from FM 1419 (Oklahoma Ave.) to the entrance of Boca Chica Beach due to anticipated testing activities for SpaceX. "I have ordered the closure of Boca Chica Beach and Hwy 4 for the purpose of protecting Public Health and Safety during SpaceX non-flight testing activities on August 1, 2025, in the time period between 7:00 a.m. C.S.T. to 7:00 p.m. C.S.T., of the same day," Treviño stated. SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day. In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4. Individuals who provide proof of residence between the two checkpoints will be allowed to proceed through the soft checkpoint and access their homes during testing. Access beyond the hard checkpoint to the beach will not be permitted during temporary closures. The beach will be closed and those wishing to visit a beach during the closures may do so on South Padre Island at County parks: Cameron County Beach Access No. 3, Cameron County Beach Access No. 4, Cameron County Beach Access No. 4 (West) or Cameron County

Beach Access No. 5 (West). If you have any questions or concerns please refer to the Cameron County website, [www.cameroncountytexas.gov/spacex/](http://www.cameroncountytexas.gov/spacex/). ###

## **APPENDIX 8**



# **AMENDED – COUNTY’S TEMPORARY CLOSURE OF BOCA CHICA BEACH AND STATE HIGHWAY 4 ON AUGUST 1, 2025 BETWEEN 7:00 A.M. TO 9:00 P.M.**

## **AMENDMENT TO COUNTY’S TEMPORARY CLOSURE OF BOCA CHICA BEACH AND STATE HIGHWAY 4**

On March 15, 2019, the Commissioners’ Court approved an Order authorizing County Judge Eddie Treviño, Jr., to execute any and all necessary or appropriate notices or orders of temporary closure of State Highway 4, and/or Boca Chica Beach in connection with space flight activity, now or in the future.

Cameron County Judge Eddie Treviño, Jr., has ordered the temporary closure of access to Boca Chica Beach as well as State Highway 4 from FM 1419 (Oklahoma Ave.) to the entrance of Boca Chica Beach due to anticipated testing activities for SpaceX.

“I AMENDED the order of the closure of Boca Chica Beach and Hwy 4 for the purpose of protecting Public Health and Safety during SpaceX non-flight testing activities on August 1, 2025, in the time period between 7:00 a.m. C.S.T. to 9:00 p.m. C.S.T., of the same day,” Treviño stated.

SpaceX and law enforcement authorities will be coordinating to ensure that no individuals or vehicles are allowed access to these areas during these times of the day. In coordination with the County, SpaceX will establish a safety zone perimeter that will include two temporary checkpoints on Highway 4. Individuals who provide proof of residence between the two checkpoints will be allowed to proceed through the soft checkpoint and access their homes during testing. Access beyond the hard checkpoint to the beach will

not be permitted during temporary closures. The beach will be closed and those wishing to visit a beach during the closures may do so on South Padre Island at County parks: Cameron County Beach Access No. 3, Cameron County Beach Access No. 4, Cameron County Beach Access No. 4 (West) or Cameron County Beach Access No. 5 (West).

If you have any questions or concerns please refer to the Cameron County website, [www.cameroncountytexas.gov/spacex/](http://www.cameroncountytexas.gov/spacex/).

###

## **APPENDIX 9**

**TEXAS SPACE COMMISSION  
ORDER NO. 2025-01**

**TEMPORARY CLOSURE AUTHORITY — CITY OF STARBASE, TEXAS**

*A standing order issued to the City of Starbase, Texas (City) pursuant to authority granted to the Texas Space Commission (Commission) by Tex. Gov't Code § 482.107(a)(8) to grant temporary closures to promote space-related industries, promote economic development, and further Commission activities.*

**WHEREAS**, under Tex. Gov't Code §§ 482.107(a)(8) and 482.201(a), the Commission may, as necessary to promote space-related industries, promote economic development, and further Commission activities and notwithstanding any other law, issue an order—subject to approval by a municipality's governing body—to temporarily close in a municipality: (1) a highway as defined by Tex. Transp. Code § 221.001; (2) a venue as defined by Tex. Local Gov't Code § 334.001; or (3) an area specified by Tex. Nat. Res. Code § 33.203(11); and

**WHEREAS**, under Tex. Gov't Code § 424.001(4), any property, including a temporary hazard area, that is related to the operation of a launch complex authorized by the Federal Aviation Administration or any facility used for the launch, landing, recovery, or testing of spacecraft—as defined in Tex. Local Gov't Code § 507.001—is designated as critical infrastructure of the state, and as such, is subject to enhanced protections under law, including criminal penalties for trespass, damage, or disruption under Tex. Gov't Code Chapter 424, thereby underscoring the necessity of controlled access and temporary closures authorized herein to safeguard public safety and operational security in furtherance of state aerospace policy; and

**WHEREAS**, enforcement of the criminal penalties and protective provisions established under Tex. Gov't Code Chapter 424—including those related to trespass, damage, or interference with designated critical infrastructure—rests primarily with local law enforcement authorities, and accordingly, the City has a substantial governmental interest in developing, adopting, and upholding policies and operational frameworks that support the enforcement of such laws, protect public safety, and ensure the integrity of spaceflight operations occurring within its jurisdiction; and

**WHEREAS**, the City has municipal territory that includes areas designated for launch and testing activities critical to the state's aerospace objectives; and

**WHEREAS**, “space flight activities” has the meaning assigned by Tex. Civ. Prac. and Rem. Code § 100A.001; and

**WHEREAS**, portions of the City's municipal territory play a pivotal role in space-related activities in the State of Texas and United States as a whole, and additional space-related activities that may occur in or near the City in the future will significantly promote economic development; and

**WHEREAS**, the City must adopt a Beach Access & Dune Protection Plan certified by the Texas General Land Office.

**TEXAS SPACE COMMISSION  
ORDER NO. 2025-01**

**NOW, THEREFORE, BE IT ORDERED BY THE COMMISSION THAT:**

The City, through an ordinance issued by its governing body, or through an order issued by its mayor if the mayor is delegated such authority by the governing body and subject to the limitations contained herein, has the standing authority to temporarily close in a municipality a highway as defined by Tex. Transp. Code § 221.001, a venue as defined by Texas Local Gov't Code § 334.001, or an area described in Texas Nat. Res. Code § 33.203(11); and

The City shall not authorize space flight activities on the following days: (1) the Saturday or Sunday preceding Memorial Day; (2) Memorial Day; (3) July 4; (4) a Saturday or Sunday preceding Labor Day; or (5) Labor Day; and

The City shall permit such closures only as necessary for the promotion of space flight activities and aeronautics economic development consistent with the requirements in 43 Tex. Admin. Code § 22.12; and

The City shall ensure that a safety zone perimeter is established in coordination with law enforcement and entities conducting space flight activities; and

The City shall promptly, following the passage of an ordinance issued by its governing body or after the mayor issues an order if the mayor is delegated such authority by the governing body, provide notice to the public of all primary and backup launch dates or test dates and associated activities resulting in temporary closures of highways, venues, or areas—including reasonable proximity to the access points—made pursuant to this standing order; and

The City shall promptly, following the passage of an ordinance issued by its governing body, or after the mayor issues an order if the mayor is delegated such authority by the governing body, provide notice via email of all primary and backup launch dates or test dates to the Executive Director of the Commission; the Chief Clerk of the Texas General Land Office; the Pharr District Engineer of the Texas Department of Transportation; and the County Judge of Cameron County, all primary and backup launch or test dates and associated activities resulting in temporary closures of highways, venues, and areas—including reasonable proximity to the access points—made pursuant to this standing order; and

The City shall maintain adequate records of all temporary closures, make such records available to the Commission upon request, and comply with all with all Texas Local Government Records Act and Texas Public Information Act requirements; and

The City shall not permit the violation of any applicable state and federal laws or regulations; public notice requirements; safety procedures; adopted and certified beach access and use plans; any applicable dune protection plans; and federal license closure limitations, including beach closure restrictions described in the Federal Aviation Administration's environmental evaluation of the site, and this standing order does not provide an exemption from such requirements; and

This standing order shall remain in effect unless withdrawn, amended, or superseded by subsequent Commission action or by changes to applicable state law; and

**TEXAS SPACE COMMISSION  
ORDER NO. 2025-01**

The Commission may revoke, modify, or suspend this authority upon written notice to the City.

**ISSUED AND ADOPTED** this 23 day of September, 2025.



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**Gwendolyn D. Griffin, Chair**

## Automated Certificate of eService

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Gina Verlander on behalf of Melanie Plowman

Bar No. 24002777

gverlander@adjtlaw.com

Envelope ID: 106682954

Filing Code Description: Amicus Brief

Filing Description: Amicus Brief of South Texas Environmental Network in  
Support of Respondents

Status as of 10/10/2025 7:17 AM CST

### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Legal Secretary		allison.bass@allison-bass.com	10/9/2025 9:01:02 PM	SENT
Rance Craft	24035655	Rance.Craft@oag.texas.gov	10/9/2025 9:01:02 PM	SENT
James Allison	1090000	J.allison@allison-bass.com	10/9/2025 9:01:02 PM	SENT
Juan Gonzalez	8129310	juan.gonzalez@co.cameron.tx.us	10/9/2025 9:01:02 PM	SENT
Marisa Perales	24002750	marisa@txenvirolaw.com	10/9/2025 9:01:02 PM	SENT
Julia McVey		j.mcvey@allison-bass.com	10/9/2025 9:01:02 PM	SENT
Rance Craft		rance.craft@oag.texas.gov	10/9/2025 9:01:02 PM	SENT
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Irene Torres		irene.torres@rcclaw.com	10/9/2025 9:01:02 PM	SENT
Amanda Cagle		amanda.cagle@oag.texas.gov	10/9/2025 9:01:02 PM	SENT
Joe Rodriguez		joe.rodriguez@rcclaw.com	10/9/2025 9:01:02 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	10/9/2025 9:01:02 PM	SENT
Rance Craft Cherry		rance.craft@oag.texas.gov	10/9/2025 9:01:02 PM	SENT
John Redington		j.redington@allison-bass.com	10/9/2025 9:01:02 PM	SENT
Daniel N.Lopez		Daniel.n.lopez@co.cameron.tx.us	10/9/2025 9:01:02 PM	SENT
John Bedecarre		johnb@txenvirolaw.com	10/9/2025 9:01:02 PM	SENT
Amy Warr		awarr@adjtlaw.com	10/9/2025 9:01:02 PM	SENT
Melanie Plowman		mplowman@adjtlaw.com	10/9/2025 9:01:02 PM	SENT