

2015CI04796
CAUSE NO. _____

**DAUGHTERS OF THE REPUBLIC OF
TEXAS,**

Plaintiff,

VS.

**TEXAS GENERAL LAND OFFICE,
AND, IN HIS OFFICIAL CAPACITY,
GEORGE P. BUSH AS GLO COMMISSIONER,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

407TH

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, the Daughters of the Republic of Texas ("DRT," "Daughters" or "Plaintiff"), files this action against the Texas General Land Office (GLO) and Commissioner George P. Bush, in his official capacity (the "Commissioner"), and as grounds for relief the DRT respectfully shows the following:

NATURE OF ACTION

1. This lawsuit is about an extraordinarily-significant organization of women, unfailingly loyal to Texas, who seek relief from the Court for governmental encroachment in the form of an unlawful attempt to take the organization's private property. The Daughters of the Republic of Texas request a declaratory judgment and other remedies necessary to affirm its ownership and to retain possession of the 38,000-item collection of historical Texas artifacts and other items it has collected and preserved for years (the "Library Collection").
2. In 1905, Clara Driscoll and the DRT saved the Alamo from almost certain destruction by purchasing the Alamo for the State of Texas. For the last 110 years, the DRT has tirelessly and selflessly served the State as the caretaker of the Alamo. In addition to watching over the

Alamo, the DRT has also encouraged historical research since the 1940s by preserving and maintaining its Library Collection in the DRT Library.

3. For decades Texans have entrusted their treasured family icons to the Daughters by donation or loan for their safekeeping in the DRT Library, which was renamed the Alamo Research Center, on the grounds near the Alamo. These items have been carefully archived and are part of the DRT's established Library Collection, access to which is free and open to the public and frequently used for research by grateful historians and writers.

4. In alarming fashion, the Defendants have now unilaterally declared that Texas is the rightful owner of the DRT's Library Collection. This attempt by the Defendants to illegally claim ownership of the DRT's Library Collection is an unconstitutional taking by the State of private property.

5. Soon after the Commissioner stripped the DRT from its century-long role of caring for the Shrine it saved, his team in San Antonio and Austin notified the DRT of the GLO's imminent intent to "transition" the DRT's private Library Collection to the State of Texas. The GLO ordered the DRT, through the DRT Library Director, to cancel its special appointments with library patrons. The GLO then ordered the DRT to close down the entire library on weekends to all patrons, visitors and researchers, except for one Saturday a month, demanding that no one be in the library during those times. The GLO further warned the DRT that the San Antonio Police Department would begin making "special patrols" around the DRT Library premises, apparently believing the DRT would attempt to remove its Library Collection to another location. The DRT consequently faces the threat that it will find a padlock placed on the door barring access to its collection, contrary to the Defendants' public promise that the DRT would always have a special place of honor at the Alamo. The DRT, indeed all Texans, deserve better treatment.

6. Similar to other organizations, museums and libraries across the State who safeguard and preserve Texas history, the DRT obtained and grew its collection through generous donations from families and communities desiring that their historical Texas treasures remain protected and secure for generations to come. Donors understandably are deliberately selective of the conservator and curator who will oversee their family's historical items and artifacts. Private organizations like the DRT establish relationships with their donors and maintain communications long after the gift is made, assuring the donors of the organizations' honor and continuing appreciation and safekeeping of the gifted item. For a State agency to arbitrarily override these careful choices would immediately chill the long legacy in Texas of generous donors giving these items to a private organization for preservation, and would sadly and unnecessarily lead to lost opportunities for Texans to view and enjoy the colorful history of our State.

7. Consequently, after much thought and with reluctance the DRT brings this action and asks the Court to declare that the DRT owns the DRT Library Collection, and further for the Court to declare the determination of ownership by the GLO to be invalid and/or to be an *ultra vires* action by the GLO and/or the Commissioner.

DISCOVERY LEVEL

8. Pursuant to TEX. R. CIV. P. 190.4, discovery shall be conducted under Level 3.

PARTIES

9. Plaintiff Daughters of the Republic of Texas is a 501 (c) (3) non-profit organization duly formed and existing under the laws of the State of Texas with its principal place of business in Austin, Texas.

10. Defendant the Texas General Land Office is an administrative agency of the State of Texas. Service of process may be accomplished by personal delivery of the citation to Commissioner George P. Bush, at 1700 N. Congress Ave., Suite 935, Austin, Texas 78701-1495.

11. Defendant George P. Bush is sued in his official capacity as Commissioner of the Texas General Land Office. Service upon Commissioner Bush may be accomplished by personal delivery of citation to him, at 1700 N. Congress Ave., Suite 935, Austin, Texas 78701-1495.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction to enter declaratory judgments to declare rights, status and other legal relations regarding those persons over whom this court has personal jurisdiction. Plaintiff is seeking relief under the Texas Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE §§ 37.001 – 37.012, from an improper determination made by the GLO and/or the Commissioner regarding the ownership of certain library collection in the DRT Library Collection. Accordingly, this Court has jurisdiction over this action, which is brought pursuant to the authorization granted in TEX. CIV. PRAC. & REM. CODE §§ 37.003 – 37.004 to declare that the ownership determination is invalid, or is an *ultra vires* action by the GLO and/or the Commissioner.

13. The Court has personal jurisdiction over the parties because all are residents of the State of Texas.

14. Pursuant to TEX. R. CIV. P. 47(c)(2), Plaintiff at this time seeks non-monetary relief and the expedited actions process of TEX. R. CIV. P. 169 does not apply.

15. Venue is proper in Bexar County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 because all or a substantial part of the acts or omissions giving rise to the claims asserted herein occurred in Bexar County, Texas.

FACTUAL BACKGROUND

16. Shortly before the turn of the 20th Century, the Daughters of the Republic of Texas was recognized by the State of Texas as a corporate entity. Its charter includes the following purposes: (1) “to perpetuate the memory and spirit of the men and women who have achieved and maintained the independence of the Texas,” and (2) “to encourage historical research into the earliest records of Texas, especially those relating to the revolution of 1835 and the events which followed; to foster the preservation of documents and relics and to encourage the publication of records of individual service of soldiers and patriots of the Republic.” In addition, the DRT’s charter provides that DRT may “have and hold by purchase, grant, gift, or otherwise ... personal property consisting of books, manuscripts and other historical records relating to the early history of Texas, and relics.” The DRT maintained the Alamo, kept it free and open to the public, and hosted millions of visitors to the Shrine over the ensuing decades.

17. Because the Alamo was the site of the epic siege and final assault in 1836 during the Texas Revolution, it was not uncommon for visitors to ask questions about the history and events that transpired on the grounds of the Alamo. On October 12, 1945, the DRT established the DRT Library close to the Shrine. The DRT Library was initially endowed with a collection of materials donated to the DRT by San Antonio native and Dallas physician William E. Howard. His donation, the William E. Howard Collection, was indisputably made to the DRT, not to the State, and the gift was memorialized by an agreement between Dr. Howard and the DRT. The purpose for his donation was: “To encourage historical research into the earliest records of Texas, and to foster the preservation of documents and relics, and to collect source materials for the history of Texas.”

18. Shortly thereafter, the Texas legislature declined the DRT's request for funds to construct a new library building. Consequently, Mrs. Sallie Ward Beretta donated substantial funds to honor her late husband, Mr. John King Beretta, a close friend of Dr. Howard's. Those funds and other donated funds were used to build the library on grounds near the Alamo and that still today contains the largest portion of the DRT's Library Collection.

19. Since its original construction, the building has been remodeled and sections have been added on. The additions include a customized vault that precisely controls climate and humidity for its historic contents, and a state-of-the art fire suppression system. All funds used for updating the building have been raised or acquired by the DRT, at no expense to the State. Signage prominently displayed identifies the building as "The Daughters of the Republic of Texas Library, erected 1950."

20. The DRT has maintained a skilled and experienced library staff, including a professional archivist. The DRT Library has been extensively used by visitors with an interest in Texas history, and for educational and research purposes, both professional and casual. It has always operated under the control of the DRT and has always been identified as the DRT Library

21. The DRT has gratefully accepted thousands of donations or loans of historic items from hundreds of donors. Many of the donors are members of historically prominent Texas families who donated their items to the DRT based on the DRT's long and successful history of caring and preserving its collection of artifacts. A substantial portion of the donations and loans are premised on written agreements containing particular conditions or contingencies for the transfer, and for the return of the item if the condition or contingency is triggered. If a condition or contingency was triggered, the DRT has quickly complied with the agreement and desires of the donor by returning the specified item to the donor or his or her heirs or assignees.

22. In 2011, after 106 years of serving as a trustee of the Alamo, the state passed legislation transferring custodianship from the DRT to the Texas General Land Office. The 2011 legislation required the GLO to “enter into an agreement with the Daughters of the Republic of Texas for the management, operation, and financial support of the Alamo complex,” including the “contents” of the Alamo complex. The parties in fact entered into an agreement, but that agreement failed to adequately account for items maintained within the DRT Library. The agreement provided that the parties would inventory the contents of the DRT Library, identify which of the contents is owned by the DRT and which by the State, and then enter into a separate agreement governing the management and disposition of those contents.

23. As addressed, a dispute between the DRT and the GLO has arisen over the ownership of the DRT Library Collection. This ownership dispute must be resolved in order to allow for the continued preservation and maintenance of the collection. That collection now consists of approximately 38,000 separate items, including books, maps, flags, and other artifacts associated with the history of the City of San Antonio, Bexar County, the Alamo, and the State of Texas.

24. The GLO has stated its presumptions that all items in the DRT Library, including the Library Collection, are owned by the State, even though for decades the State never included these items on its annual property inventory records provided to the Daughters. Nor has the State ever disputed any “omission” of these items. Nevertheless, the GLO has demanded that unless the DRT provides documentation *satisfactory to the GLO* that an artifact or relic in the Library Collection was deliberately given to the DRT, the GLO shall claim ownership.

25. The GLO applied this set of biased presumptions that plainly favored the State when it implemented a similarly unfair methodology of reviewing items contained in the DRT Library. The GLO examined merely a sampling of the items in the Library, and the DRT’s related

documentation for those items, regarding the provenance of the entire 38,000-item collection. The GLO then used the results of its sampling to extrapolate its conclusion that it was not “satisfied” by the DRT’s documentation of ownership of 77.34% of the items in the Library Collection. The State claimed ownership of those items. The DRT disputes the GLO’s conclusion as patently erroneous. Its underlying presumptions and the methodology of its sampling review were intentionally skewed to permit the GLO and the State to assert ownership of the highest number of items within the collection, despite glaring evidence to the contrary that demonstrated the DRT’s ownership of the items.

26. A Professor Emeritus of Archival Science at the University of Texas, and retired Director of the Texas State Archives, reviewed the DRT’s records of ownership of the items in its Library Collection. His written report expressly disputes the GLO’s ownership claims. Defendants summarily dismissed this eminent authority’s scholarly research into the ownership of this important historical collection.

27. The DRT will show that it created the DRT Library Collection, grew the collection, maintained the collection, and has had possession of the collection since it was created. Moreover, the vast majority of the donors who have gifted items to the collection over the past 70 years were well aware that they were entrusting their special Texas icons to the DRT, and not to the State, at the time of their gift. While there are occasions where individual items are entrusted to the DRT without transferring ownership, such occasions are clearly documented, including those few occasions where a donor intended that his or her gift be donated to the State rather than to the DRT. The DRT will show that with the exception of those few individual materials, the items that comprise the DRT Library Collection are owned by the DRT.

28. The Defendants' ownership claim of the Library Collection is also contrary to Texas statutory law governing Texas historical artifacts. Chapter 441 of the Texas Government Code expressly precludes the Defendants from attempting to procure possession or ownership of the items that have always been maintained by the DRT in its Library Collection.

29. In terminating the DRT's management contract for the Alamo, the GLO and the Commissioner now intend to take physical possession of the DRT's Library Collection. Defendants' conduct demonstrates they have acted without legal authority, and they continue to do so. Their conduct, if allowed, will continue to harm the DRT, and would divest the DRT of its private property for public use by the State, contrary to the Texas Constitution and contrary to the statutory laws of this State.

CLAIM FOR DECLARATORY JUDGMENT

30. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

31. Pursuant to § 37.001 of the Texas Civil Practice & Remedies Code, the DRT requests that this Court enter judgment declaring that, with the exception of certain individual items as referenced herein, the historic items and artifacts that comprise the DRT Library Collection are owned by the DRT and that the ownership determination made by the GLO is invalid and/or that the actions of the GLO and/or the Commissioner are *ultra vires*. Plaintiff further requests a declaratory judgment that Defendants' actions in seeking to recover ownership or possession of items in the Library Collection constitute a violation of Chapter 441 of the Texas Government Code, which expressly delineates rights related to historical artifacts, or that the court otherwise declare the rights of the parties under that Chapter, and that the Court further make appropriate declarations of ownership rights and other rights that are consistent with the Texas Constitution.

ATTORNEYS' FEES

32. Plaintiff incorporates the preceding paragraphs as if fully set forth herein..

33. Pursuant to Chapter 37 of the Texas Practice and Remedies Code, the DRT is entitled to recover from the Defendants its reasonable and necessary attorneys' fees incurred in the prosecution of its claims for declaratory relief, together with costs of court, out-of-pocket expenses incurred in connection with this action, as well as conditional awards in the event of any post-verdict proceedings and appeals. *See* TEX. CIV. PRAC. & REM. CODE § 37.009.

34. All conditions precedent to the recovery of fees have been performed or occurred.

CONCLUSION AND PRAYER

WHEREFORE, the DRT prays that the GLO and the Commissioner be cited to appear and answer, and that on final trial, the Court enter declaratory judgments as set forth herein, that the DRT be awarded its attorneys' fees, that costs of court be taxed against Defendants, and for such other relief to which Plaintiff may be entitled.

Respectfully submitted,



Lamont A. Jefferson
State Bar No. 10607800
lamont.jefferson@haynesboone.com
Lisa S. Barkley
State Bar No. 17851450
lisa.barkley@haynesboone.com

HAYNES AND BOONE, LLP
112 E. Pecan, Suite 1200
San Antonio, Texas 78205
Telephone: (210) 978-7413
Telecopier: (210) 554-0413

ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET

407TH

CAUSE NUMBER (FOR CLERK USE ONLY): 2015CI04796 COURT (FOR CLERK USE ONLY):
Bexar County District Clerk

STYLED Daughters of the Republic of Texas v. Texas General Land Office and, in his official capacity, George P. Bush as GLO Commissioner

Accepted By: Lisa Morales

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: Lisa S. Barkley		Email: lisa.barkley@haynesboone.com		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner	
Address: Haynes and Boone, LLP, 112 East Pecan, Ste 1200		Telephone: 210-978-7427		<input checked="" type="checkbox"/> Pro Se Plaintiff/Petitioner	
City/State/Zip: San Antonio, TX 78205		Fax: 210-554-0427		<input checked="" type="checkbox"/> Title IV-D Agency	
Signature:		State Bar No: 17851450		<input checked="" type="checkbox"/> Other: _____	
		Plaintiff(s)/Petitioner(s): Daughters of the Republic of Texas		Additional Parties in Child Support Case:	
		Defendant(s)/Respondent(s): Texas General Land Office, and in his official capacity, George P. Bush as GLO Commissioner		Custodial Parent: _____	
		[Attach additional page as necessary to list all parties]		Non-Custodial Parent: _____	
				Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract		Injury or Damage		Real Property	
<input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____		<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____		<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____	
<input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		<input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____		<input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	
		<input type="checkbox"/> Other Injury or Damage: _____		<input type="checkbox"/> Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <input type="checkbox"/> Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	
Employment		Other Civil		Post-judgment Actions (non-Title IV-D)	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order	
				<input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	
				Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Tax		Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
		<input type="checkbox"/> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees					
<input checked="" type="checkbox"/> Less than \$100,000 and non-monetary relief					
<input type="checkbox"/> Over \$100,000 but not more than \$200,000					
<input type="checkbox"/> Over \$200,000 but not more than \$1,000,000					
<input type="checkbox"/> Over \$1,000,000					

2015
DPS
3/23/15
16

FILED
DONNA KAY MCKINNEY
DISTRICT CLERK
BEXAR COUNTY
MAR 23
2015 MAR 23 PM 2:27
RECEIVED
DEPUTY



Donna Kay M^cKinney
Bexar County District Clerk

Request for Process

Cause Number: 2015-CI-04796

District Court : 407th

2

Style: Daughters of the Republic of Texas

Vs. Texas General Land Office and George P. Bush

FEF DAIT

Request the following process: (Please check all that Apply)

- ☒ Citation ☐ Notice ☐ Temporary Restraining Order ☐ Notice of Temporary Protective Order
☐ Temporary Protective Order ☐ Precept with hearing ☐ Precept without a hearing ☐ Writ of Attachment
☐ Writ of Habeas Corpus ☐ Writ of Garnishment ☐ Writ of Sequestration ☐ Capias ☐ Other: _____

CRT

1.

Name: Texas General Land Office

Registered Agent/By Serving: George P. Bush, Commissioner

Address 1700 N. Congress Ave., Suite 935, Austin, TX 78701-1495

Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

2.

Name: George P. Bush

Registered Agent/By Serving: George P. Bush in his official capacity as Commissioner of the Texas General Land Office

Address 1700 N. Congress Ave., Suite 935, Austin, TX 78701-1495

Service Type: (Check One) ☒ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

3.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

4.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

Title of Document/Pleading to be Attached to Process: Plaintiff's Original Petition

Name of Attorney/Pro se: Lisa S. Barkley

Bar Number: 17851450

Address: 112 E. Pecan, Suite 1200

Phone Number: (210)978-7413

San Antonio, Texas 78205

Attorney for Plaintiff ☒ Defendant _____ Other _____

****IF SERVICE IS NOT PICKED UP WITHIN 14 BUSINESS DAYS, SERVICE WILL BE DESTROYED****

CAUSE NO. 2015CI04796

DAUGHTERS OF THE REPUBLIC OF	§	IN THE DISTRICT COURT
TEXAS,	§	
Plaintiff	§	
	§	
v.	§	407 TH JUDICIAL DISTRICT
	§	
TEXAS GENERAL LAND OFFICE,	§	
AND, IN HIS OFFICIAL CAPACITY	§	
GEORGE P. BUSH AS GLO	§	
COMMISSIONER,	§	
Defendants.	§	BEXAR COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

The Office of the Attorney General, on behalf of Defendants the Texas General Land Office, and George P. Bush, in his official capacity as GLO Commissioner, files this Answer to Plaintiff's Original Petition and would show as follows:

I. STATEMENT OF THE CASE

It is unfortunate that DRT chose to file this case. For over 100 years, DRT has held the Alamo and its contents in trust for the benefit of the State. During this time, generous Texans and others donated important historical artifacts related to the Alamo and Texas history to the State through the DRT as trustee. In this lawsuit, DRT now wrongly asserts that it owns all or most of these items. While the State recognizes that Texans should be forever grateful for the hard work and dedication of DRT and its members, who volunteered significant time and energy to preserve relics of Texas history for generations to come, the State cannot allow DRT to take ownership of state property. It simply cannot be disputed that the historic artifacts DRT has put at issue in this suit belong in San Antonio at the Alamo—preserved and accessible to the public

and historians—so that future generations can learn and appreciate Texas history and the history of the Alamo.

II. GENERAL DENIAL

In accordance with Rule 92, Defendants generally deny each and every allegation in Plaintiff's Original Petition and demand strict proof thereof.

CONCLUSION

WHEREFORE, Defendants the Texas General Land Office, and George P. Bush, in his official capacity as GLO Commissioner, respectfully request that the Court enter judgment against the Plaintiff, holding that Plaintiff take nothing by its action.

Respectfully Requested,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Chief – General Litigation Division

/s/ Erika M. Kane
Erika Kane
Texas Bar No. 24050850
Sean Flammer
Texas Bar No. 24059754
Assistant Attorneys General
General Litigation Division-019
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX
erika.kane@texasattorneygeneral.gov
sean.flammer@texasattorneygeneral.gov

*Attorneys for Defendants the
Texas General Land Office, and
George P. Bush, GLO Commissioner*

CERTIFICATE OF SERVICE

The undersigned certifies that the forgoing document has been served on the following via certified mail, return receipt requested, on April 10, 2015.

Lamont A. Jefferson
Lisa S. Barkley
HAYNES AND BOONE, LLP
112 E. Pecan, Suite 1200
San Antonio, TX. 78205
lamont.jefferson@haynesboone.com
lisa.barkley@haynesboone.com
Attorneys for Plaintiff

/s/ Erika M. Kane
Erika M. Kane
Assistant Attorney General

PRIVATE PROCESS

Case Number: 2015-CI-04796



2015CI04796 S00002

DAUGHTERS OF THE REPUBLIC OF TEXAS

VS.

TEXAS GENERAL LAND OFFICE ET AL

(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
407th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: TEXAS GENERAL LAND OFFICE
BY SERVING GEORGE P BUSH, COMMISSIONER

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 23rd day of March, 2015.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 24TH DAY OF MARCH A.D., 2015.

PETITION

LISA S BARKLEY
ATTORNEY FOR PLAINTIFF
112 E PECAN ST 1200
SAN ANTONIO, TX 78205-1512

Destroy



Donna Kay McKinney
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

spoke to Pamela 4/6/15

By: *Eneyda Contreras-Imperial*, Deputy

OFFICER'S RETURN

I received this citation on _____ at _____ o'clock ____ M. and: () executed it by delivering a copy of the citation with the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____ M. at: _____ or () not executed because _____ Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____, County, Texas

By: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO this _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ (County).

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

Declarant

FILE COPY (DK002)

PRIVATE PROCESS

Case Number: 2015-CI-04796



2015CI04796 S00003

DAUGHTERS OF THE REPUBLIC OF TEXAS

VS.

TEXAS GENERAL LAND OFFICE ET AL

(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
407th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: GEORGE P BUSH, COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 23rd day of March, 2015.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 24TH DAY OF MARCH A.D., 2015.

PETITION

LISA S BARKLEY
ATTORNEY FOR PLAINTIFF
112 E PECAN ST 1200
SAN ANTONIO, TX 78205-1512

Destory



Donna Kay McKinney
Bexar County District Clerk
101 W. Nueva, Suite 217
San Antonio, Texas 78205

Spoke to Pamela 5/6/15

By: *Eneyda Contreras-Imperial*, Deputy

OFFICER'S RETURN

I received this citation on _____ at _____ o'clock ____ M. and: () executed it by delivering a copy of the citation with the date of delivery endorsed on it to the defendant, _____ in person on the _____ at _____ o'clock ____ M. at: _____ or () not executed because _____ Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

By: _____

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO this _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my address is _____ (County).

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of Texas, on the _____ day of _____, 20____.

Declarant

FILE COPY (DK002)



NO. 2015-CI-04796

DAUGHTERS OF THE REPUBLIC OF TEXAS	\$	IN THE DISTRICT COURT
	\$	
vs.	\$	407 th JUDICIAL DISTRICT
	\$	
TEXAS GENERAL LAND OFFICE, AND, IN HIS	\$	
OFFICIAL CAPACITY GEORGE P. BUSH,	\$	
AS GLO COMMISSIONER	\$	BEXAR COUNTY, TEXAS

REPORT OF JUDICIAL APPOINTMENT AND APPROVAL OF PAYMENT OF FEE

JOSEPH CASSEB (SBN 03974500) was appointed and appeared as Mediator by agreement of the Parties:

____ Guardian/attorney ad litem to represent _____

____ Attorney ad litem to represent _____ respondent cited by publication

X Mediator (conditionally pursuant to separate written order as per TEX. CIV. PRAC. & REM. CODE 154)

Results of mediation conference: Settled _____
Not settled X
Date of Mediation July 9, 2015

_____ Auditor (172. TEX. R. CIV. P. 172)

_____ Mental Health Professionals (pursuant to separate written order and per TRCP, Rule 167a and Rule 510, TEX. R. CIV. EVID.)

_____ Receiver (pursuant to separate written order and per Texas Family Code 3.58/Rules 695 and 695a, TRCP)

_____ Master in Chancery (pursuant to separate written order and per Rules 171, TRCP)

_____ Referee in Juvenile Court (pursuant to Family Code, 51.04g)

FEE CHARGED BY APPOINTED:

\$ 1,650.00
\$ 1,650.00

PAID BY/BILLED TO Plaintiff
PAID BY/BILLED TO Defendant

SIGNED AND SUBMITTED FOR COURT APPROVAL this 10th day of July, 2015.

APPOINTEE - Joe Casseb
(jcasseb@goodelaw.com)

APPROVED AND ORDERED this 6 day of JULY, 2015.

JUL 10 2015

JUDGE PRESIDING

TOTAL P.001



2015CI04796 -D407

CAUSE NO. 2015-CI-04796**DAUGHTERS OF THE REPUBLIC OF
TEXAS,****Plaintiff,****VS.****TEXAS GENERAL LAND OFFICE,
AND, IN HIS OFFICIAL CAPACITY,
GEORGE P. BUSH AS GLO COMMISSIONER,****Defendants.**§
§
§
§
§
§
§
§
§
§
§**IN THE DISTRICT COURT****407TH JUDICIAL DISTRICT****BEXAR COUNTY, TEXAS**

TEMPORARY RESTRAINING ORDER

On August 24, 2014, this Court considered the Verified Application for Temporary Restraining Order ("Application") of Plaintiff Daughters of the Republic of Texas (the "DRT") against Defendants the Texas General Land Office and, in his official capacity, George P. Bush, as GLO Commissioner (collectively, the "GLO" or Defendants").

After reviewing the Application and considering the documents submitted in connection with the Application and hearing argument of counsel, the Court finds that there is a substantial likelihood that the Plaintiff DRT will prevail on the merits of its claims against the Defendant GLO. Unless enjoined, the GLO's wrongful control and illegal taking of the DRT's private property that the DRT has maintained for years in the DRT's Library, the GLO's refusal to allow the DRT access to and oversight over the DRT Library and its contents, and its expelling of DRT representatives and long-term employees of the DRT Library will cause and continue to cause irreparable harm to the DRT for which there is no adequate remedy at law, including, without limitation, potential loss of, and actual loss of access, control and oversight of priceless items of Texas history collected by the DRT numbering in excess of 38,000 and including rare and one-



2015CI04796 -T00007

of-a-kind paintings, photographs, manuscripts, books, and other writings and items that are largely irreplaceable, loss of confidential and proprietary information including but not limited to private and confidential curatorial records, loss of documents establishing ownership of the contents of the Library, loss of valuable work product, including but not limited to curatorial and archival records prepared and maintained by the DRT, and loss of the benefit of the bargain of its contracts. Money damages cannot adequately compensate the DRT, even if the Defendants were able to respond in payment of money damages.

The Court further finds that the DRT will suffer irreparable injury if a Temporary Restraining Order (“TRO”) is not granted against the GLO and the GLO is permitted to continue control, possession and the taking of historical one-of-a-kind artifacts and materials compiled by the DRT and owned and held by the DRT as a private Texas corporation.

The Court further finds that the harm to the DRT is imminent, and if the Court does not issue a TRO, the DRT will be irreparably injured. Loss of control over and access by the DRT to its Library collection will result in irreparable harm to the DRT. In the September 1, 2013 Second Amended Management and Operating Agreement Between Texas General Land Office and The Daughters of the Republic of Texas (the “Management Agreement”), the Defendant GLO agreed that if it terminated the Management Agreement, the DRT would have an additional 12 months after the final termination date to transfer its collection from the DRT Library to another location.¹ Consequently, even assuming for purposes of this Application that termination was proper, the DRT contractually is permitted to use its Library in its current location until July 11, 2016. The GLO’s expulsion of DRT representatives and taking control of

¹ The Court recognizes the DRT disagrees the GLO’s March 13, 2015 termination of the Management Agreement “for cause” was proper under § 2.03 of the Management Agreement.

the DRT's Library on August 24, 2015 is contrary to that agreement, and places control of the Library in the GLO, with no ability by the DRT to oversee and care for its private property.

The Court further finds that the DRT has no adequate remedy at law because the wrongful taking, control and possession of the priceless, unique and one-of-a-kind artifacts and writings are not replaceable and cannot be adequately remedied by the award of damages. Furthermore, greater injury will be inflicted upon the DRT by the denial of a TRO and injunctive relief than would be inflicted upon the GLO by the granting of such relief. By granting a TRO, the GLO will be required to abide by its legal obligations to permit the DRT access to and control of its property housed in the DRT Library.

The Court further finds that the issuance of injunctive relief will not disserve the public interest. Balancing the equities and other factors, the significant potential of irreparable harm to the DRT without the TRO and the lack of harm due to the entry of a TRO demonstrate that the relief will not disserve the public interest.


The Court further finds that counsel for the DRT has provided notice to counsel for the GLO of its intent to seek this TRO; based on the imminent and irreparable harm to the GLO, this TRO should be issued with or without the GLO's presence when the Application is presented to this Court.

Accordingly, the Court, having considered the record and being sufficiently advised, hereby orders that the following Temporary Restraining Order will remain in place for fourteen (14) days unless otherwise ordered.

It is therefore ordered that Defendants and their agents, servants, representatives and employees and those acting in active concert or participation with them, including but not limited to Texas Attorney General Ken Paxton and the Office of the Attorney General; the Alamo

Complex Management, and the Alamo Endowment, and their respective employees, agents, servants, representatives, members and officers are enjoined from directly or indirectly for a period of fourteen days from the entry of the Temporary Restraining Order, unless otherwise ordered by the Court:

1. denying or in any manner restricting full and complete access to the DRT Library and its collection to the DRT and its lawyers. Consequently, the Defendant must provide DRT personnel with keys and other necessary credentials to access the collection at the DRT's sole discretion;

~~2. interfering with attempts by the DRT to relocate the DRT Library,~~ 

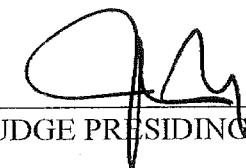
3. preventing any of the parties, or those acting in concert with the parties, from removing any item from the premises of the DRT Library absent further court order or agreement by the parties;

It is further ORDERED that the parties are permitted to engage in expedited discovery to prepare for the hearing on a temporary injunction, including but not limited to written discovery and depositions.

14. Bond is set at \$ 1000; and

15. A hearing on temporary injunctive relief be held on September 4, 2015, at 9:00 o'clock A.m.

SIGNED ON THIS 24th day of August, 2015, at 11:14 o'clock A.m.



JUDGE PRESIDING