

**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.**

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**IN THE DISTRICT COURT**

**407TH**

**\_\_\_\_\_ JUDICIAL DISTRICT**

**BEXAR COUNTY, TEXAS**

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**PLAINTIFF'S ORIGINAL PETITION**

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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 20<sup>th</sup> 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,



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