IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BAY AREA UNITARIAN UNIVERSALIST CHURCH; DRINK HOUSTON BETTER, LLC d/b/a ANTIDOTE COFFEE; PERK YOU LATER, LLC, *Plaintiffs*, v. KIM OGG, District Attorney for Harris County, in her official capacity; ED GONZALEZ, County Sheriff for Harris County, in his official capacity; PETE BACON, Acting Chief of Police for the Webster Police Department, in his official capacity; TROY FINNER, Chief of the Houston Police Department, in his official capacity, *Defendants.*	CIVIL ACTION NO. 4:20-cv-3081

PLAINTIFFS' OPPOSITION TO DEFENDANT TROY FINNER'S MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

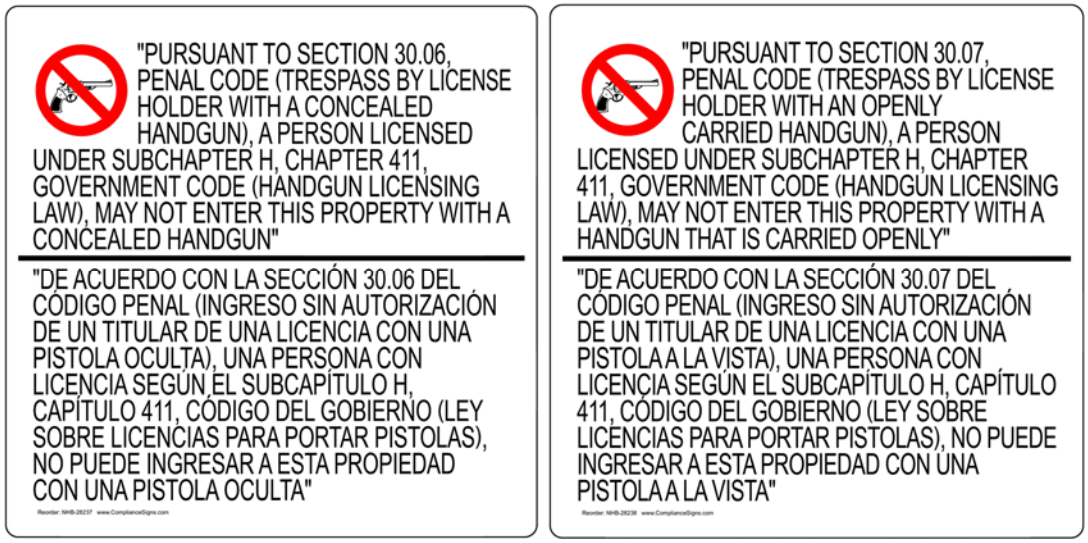
Plaintiffs challenge the constitutionality of a pair of Texas statutes that impose burdensome signage requirements on property owners who wish to exclude those carrying firearms from their premises but impose no such heightened requirements on property owners wishing to exclude would-be trespassers for any other reason. Seeking a declaration that the notice requirements of these laws are unconstitutional, as well as an injunction against their enforcement, Plaintiffs have sued the local officials who actually enforce the challenged laws, in their official capacities. Plaintiffs also sued the Texas Attorney General, but after he invoked sovereign immunity, Plaintiffs dismissed him from the case. On motions to dismiss, the Court ruled that Plaintiffs have standing to sue the remaining defendants. And the Court rejected those defendants' subsequent motion to take an interlocutory appeal, in which they reiterated their standing arguments and asserted that only the Attorney General can defend this lawsuit.

Now that this case has been transferred in the wake of Judge Gilmore's retirement, Chief Troy Finner of the Houston Police Department has dusted off those same meritless arguments and resubmitted them to this Court, now in the form of a motion for judgment on the pleadings. Tellingly, this time around, none of the other defendants has joined in his motion. His arguments are no more persuasive now than they were when Judge Gilmore rejected them.

Chief Finner may prefer not to defend Texas's unconstitutional laws. But under a century of binding precedent from *Ex parte Young* onward, a suit in equity challenging an unconstitutional state statute is properly brought not against the state itself but against the government officials who enforce that statute. Here, Chief Finner fits that description. His motion is thus meritless and should be denied.

NATURE AND STAGE OF THE PROCEEDING

Sections 30.06 and 30.07 of the Texas Penal Code establish burdensome notice requirements for private-property owners who wish to exclude those carrying licensed firearms. The Texas Penal Code allows owners who wish to exclude visitors for any other reason at all to provide notice through signs "reasonably likely to come to the attention of intruders." Tex. Penal Code § 30.05(b)(2)(C). An intruder who enters the owner's property despite the existence of such a sign has committed the crime of trespass and is subject to police removal, arrest, and prosecution. *See* Tex. Penal Code § 30.05(d). But under sections 30.06 and 30.07, written notice of the property owner's intent to exclude people with guns is not valid unless it conforms to an unnecessarily onerous government script. These statutes require signs with particular phrasing, in large block letters (at least an inch tall), in two languages, which take up at least ten square feet of space. ECF No. 1, ¶¶ 24–25, 75 ("Compl."); *see* Tex. Penal Code §§ 30.06(c)(3)(B), 30.07(c)(3)(B):



If a property owner puts up a nonconforming sign—for example, a simple pictograph, or a sign that says, "No Guns Allowed"—then an individual carrying a licensed firearm may enter the property anyway and is *not* subject to police removal, arrest, or prosecution. That means that Defendants—police and prosecutors charged with enforcing the laws where Plaintiffs' premises

are located—cannot legally remove, arrest, or prosecute individuals for disregarding nonconforming signage.

This scheme injures Plaintiffs on an ongoing basis by putting them to an unconstitutional choice: they must either post the unwieldy, government-scripted signs, in violation of their First Amendment rights, or forgo their right to exclude licensed gun carriers. Indeed, that was the whole point—the Texas state land commissioner who drafted these requirements has stated that he "intentionally made the sign's language cumbersome" so as to discourage businesses from prohibiting entry to customers carrying guns. Compl. at 2 & n.1. Plaintiffs thus face exactly the kind of Hobson's choice that the unconstitutional conditions doctrine forbids. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013).

Plaintiffs have, for now, posted some of the mandated signs rather than give up their right to exclude entirely, which means that they are suffering a First Amendment injury every day as a result of Texas's statutory scheme. Plaintiffs seek to invalidate the burdensome signage requirements of sections 30.06 and 30.07 so that they can exercise their right to exclude by posting less-intrusive signs, such as simple pictographs—as Texas allows for providing notice to any other type of trespasser. Defendants could then be called upon to give force to Plaintiffs' right to exclude by removing, arresting, and potentially prosecuting individuals who ignore Plaintiffs' signs and bring unwanted firearms onto Plaintiffs' premises.

Accordingly, Plaintiffs filed this lawsuit seeking (i) a declaration that the heightened notice requirements of sections 30.06 and 30.07 of the Texas Penal Code are unconstitutional and (ii) an injunction against their enforcement. Compl. at 29–30. Because Plaintiffs' properties are located in the cities of Houston and Webster, in Harris County, Plaintiffs' complaint named as defendants (in their official capacities) the local officials charged with enforcing these laws: the District

Attorney of Harris County, Kim Ogg; the Sheriff of Harris County, Ed Gonzalez; the Acting Chief of the Webster Police Department, Pete Bacon; and the Chief of the Houston Police Department, now Troy Finner. *Id.* at 1. Plaintiffs' complaint also originally named as defendants the Attorney General for the State of Texas and the Presiding Officer for the Texas Commission on Law Enforcement (the "State Officials"). *Id.* [1]

All Defendants then moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b). *See, e.g.*, ECF No. 42. The Court granted in part and denied in part each of Defendants' motions. ECF No. 68, at 28 ("Order"). Relevant here, the Court ruled that Plaintiffs have standing to proceed against each of the Defendants, *id.* at 9–19, and that Plaintiffs' complaint states a claim against each of the Defendants for as-applied violations of the First Amendment, *id.* at 22–27 (ruling that "Plaintiffs have stated a compelled speech claim," "an unconstitutional conditions claim," and "a plausible free association claim"). The Court also held that the State Officials are not immune from suit for Plaintiffs' federal-law claims. *Id.* at 19–21.

The State Officials immediately noticed an appeal of the Court's ruling on sovereign immunity under the collateral order doctrine. ECF No. 77. Rather than continue to litigate the State Officials' immunity, Plaintiffs voluntarily dismissed them from the case. ECF No. 81.[2]

Chief Finner and the other Defendants then moved the Court under 28 U.S.C. § 1292(b) to certify its order for an interlocutory appeal, arguing, among other things, that the Court's ruling as to standing was doubtful. *See, e.g.*, ECF No. 84, at 6–8 ("Police Mot."). Additionally, on September 29, 2021, Chiefs Finner and Bacon filed a "Notice of Constitutional Question,"

[1] When the complaint was filed, the Chief of the Houston Police Department was Art Acevedo. As the new police chief, Finner has replaced Acevedo as a defendant in this action. *See* Fed. R. Civ. P. 25(d).

[2] On the State Officials' motion, the Fifth Circuit subsequently dismissed their appeal. *Bay Area Unitarian Universalist Church v. Paxton*, No. 21-20491 (5th Cir. Oct. 15, 2021).

notifying the Texas Attorney General (who had just been dismissed from the case) that this lawsuit questions the constitutionality of a Texas statute and inviting him to intervene. ECF No. 85; *cf.* 28 U.S.C. § 2403(b). The Court denied Defendants' § 1292(b) motions, ECF No. 99, and the Attorney General declined to intervene, *cf.* Fed. R. Civ. P. 5.1(c) ("the attorney general may intervene within 60 days after the notice is filed"). The Court thus set a scheduling order for this case to proceed to discovery and trial. ECF No. 108.

Chief Finner has now filed the instant motion for judgment on the pleadings, insisting that this case cannot proceed without the Attorney General and arguing, now for a third time, that Plaintiffs lack standing. ECF No. 115 ("Mot.").

ISSUES PRESENTED

The first issue presented is whether this case must be dismissed because the Texas Attorney General is no longer named as a defendant. The framework for deciding this question is provided by Federal Rule of Civil Procedure 19. *Abbott v. BP Expl. & Prod. Inc.*, 781 F. Supp. 2d 453, 460 (S.D. Tex. 2011). Under this framework, Chief Finner bears the burden of both proving that the Attorney General should be joined and proving that, if he cannot be joined, this case should be dismissed. *Id.* at 461.

The second issue presented is whether Judge Gilmore's ruling that Plaintiffs have standing to pursue their claims was correct. On "a facial challenge to subject matter jurisdiction, the court examines whether the allegations in the pleadings, which are assumed to be true, are sufficient to invoke the court's subject matter jurisdiction." *Russell v. City of Houston*, 808 F. Supp. 2d 969, 972 (S.D. Tex. 2011).

ARGUMENT

I. THE ATTORNEY GENERAL IS NOT A REQUIRED PARTY, AND HIS ABSENCE FROM THIS CASE DOES NOT REQUIRE DISMISSAL.

To prevail on a motion to dismiss for failure to join a necessary party, the movant "must show that there is at least one party: (1) who should be joined if feasible (a necessary party), [and] (2) whose joinder is not feasible, and (3) in whose absence the action cannot proceed in equity and good conscience (an indispensable party)." *James v. Valvoline, Inc.*, 159 F. Supp. 2d 544, 550 (S.D. Tex. 2001). "The burden is on the movant to show that an absent party is necessary, cannot be joined and is, finally, indispensable such that the action should be dismissed." *Id.*

Chief Finner has failed to carry his burden of demonstrating that the Attorney General should be joined, much less that he is indispensable.

A. The Attorney General is not a necessary party.

No authority requires the presence of a state attorney general in a lawsuit such as this. Rather, federal law provides a carefully crafted mechanism to give state attorneys general the *option* to appear in a suit challenging the constitutionality of a state statute, without so requiring. Specifically, 28 U.S.C. § 2403(b) provides that in these circumstances, a state attorney general must receive notice of lawsuits challenging the constitutionality of state statutes. Once an attorney general learns of such a constitutional challenge, it is the attorney general's decision whether to intervene. *See* 28 U.S.C. § 2403(b); Fed. R. Civ. P. 5.1(c). And if the attorney general chooses not to intervene, the case continues without him. *See, e.g.*, *ODonnell v. Harris County*, 227 F. Supp. 3d 706, 741 n.23 (S.D. Tex. 2016) (Rosenthal, C.J.) ("Rule 5.1 requires notice to, not joinder of, a state attorney general when a state statute is facially challenged."), *aff'd in part, rev'd in part*, 892 F.3d 147 (5th Cir. 2018); *State Farm Life Ins. Co. v. Bryant*, No. 3:18-CV-1628-L, 2019 U.S. Dist. LEXIS 227336, at *65 (N.D. Tex. May 16, 2019) ("This rule does not require the joinder of the

Texas Attorney General or any other party."); *id.* at *66 ("Intervention by the state attorney general under Rule 5.1 … is not mandatory.").[3]

Accordingly, it is commonplace for a Texas statute to be challenged—and held unconstitutional—despite the absence of the Texas Attorney General from the lawsuit. *See, e.g.*, *Serafine v. Branaman*, 810 F.3d 354, 358–59, 362 (5th Cir. 2016); *cf. Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 539 (2021) (allowing challenge to Texas statute to proceed while simultaneously *dismissing* Texas Attorney General as defendant). Chief Finner's unsupported assertion that "[t]he remaining Defendants are neither authorized nor equipped to interpret or defend the constitutionality of the challenged Statutes," Mot. at 9, is thus plainly incorrect. Government officials other than state attorneys general interpret and defend statutes in litigation all the time. And Chief Finner's statement that he is unable to "rewrite" state laws, Mot. at 4, is beside the point. The Texas Attorney General can't rewrite state laws either. Plaintiffs are not asking any Defendant, or this Court, to *rewrite* state law; they're asking for an injunction against the unconstitutional *enforcement* of state laws. For that, all *Ex parte Young* requires is that the defendant "ha[ve] some connection with the enforcement of the [challenged] act." *Air Evac EMS, Inc. v. Tex. Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 519 (5th Cir. 2017) (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). Here, that requirement is met as to Chief Finner (and the other Defendants) because, as the Court already held, "they are responsible for enforcing the Acts." Order at 15. The dismissal of the Attorney General from the case—and his decision not to intervene thereafter—is irrelevant.

[3] Whether § 2403(b) even applies in this case is doubtful. *See Spring v. Caldwell*, 92 F.R.D. 7, 9 (S.D. Tex. 1981) (holding § 2403(b) inapplicable because Houston Police Chief was a party).

Chief Finner asserts that "[t]he Court deemed Plaintiffs' as-applied First Amendment challenge valid against the State Officials only, and none was stated or deemed sufficiently pled against either the County Officials or the Municipal Defendants." Mot. at 9. This assertion, which lacks any citation, is simply false. In fact, the Court ruled explicitly that "Chiefs Acevedo and Bacon fail[ed] to establish that Plaintiffs do not state a First Amendment claim against them." Order at 22. Similarly, Chief Finner claims that "[t]he Court determined the County Officials and Municipal Defendants were proper ancillary parties, for prospective injunctive relief only." Mot. at 9. This claim too lacks both a citation and any basis in the record. From the beginning, Plaintiffs have always sought declaratory and injunctive relief only, *see* Compl. at 1, 3, 29–30, and nothing in the complaint or the Court's opinion differentiates between "primary" and "ancillary" defendants, *cf.* Mot. at 8–9.

Next, Chief Finner argues that he can "never [be] properly sued under *Ex parte Young* because [he is] not an arm of the state." Mot. at 10 (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978), and *Los Angeles County v. Humphries*, 562 U.S. 29, 39 (2010)); *see also* Mot. at 9 (citing *Monell*, 436 U.S. at 690). That makes no sense. *Ex parte Young* provides that state sovereign immunity is no bar to a suit against a state official for injunctive relief; it nowhere says that such relief can be obtained *only* against state officials. *See Young*, 209 U.S. at 155–56. If Chief Finner is correct that he is just a local official and is not acting as an "arm of the state," then he is not protected by the Eleventh Amendment at all. *See, e.g.*, *Cutrer v. Tarrant Cnty. Loc. Workforce Dev. Bd.*, 943 F.3d 265, 269–70 (5th Cir. 2019). Plaintiffs can sue Chief Finner in his official capacity regardless of whether he is considered a state or city official. *See McNeil v. Cmty. Prob. Servs., LLC*, 945 F.3d 991, 994–95 (6th Cir. 2019) ("[P]laintiffs can sue the sheriff, and it makes no difference whether he acts for the State or the county. If he acts for the State, *Ex parte Young*

permits this injunction action against him. If he acts for the county, neither sovereign immunity, qualified immunity, nor any other defense stands in the way ….”). Chief Finner cites *Monell*, but the question whether a municipal official may be sued for injunctive relief under *Ex parte Young* is distinct from the question whether the same individual qualifies as a state actor for purposes of a § 1983 suit for damages. *See Monell*, 436 U.S. at 690 (addressing the latter question); *Humphries*, 562 U.S. at 39 (applying *Monell*). Whether or not Chief Finner is considered a state official for *Monell* purposes under § 1983, Plaintiffs can seek equitable relief against him in his official capacity. *See Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 475 (5th Cir. 2020) (en banc) (“Green Valley has a cause of action against [defendants] *at equity*, regardless of whether it can invoke § 1983.”).

Chief Finner cites *Echols v. Parker*, 909 F.2d 795 (5th Cir. 1990), a § 1983 case, for the proposition that an award of attorney’s fees in a successful constitutional challenge to a state statute “must be taxed against the state.” Mot. at 9. That may be true, but *Echols* says nothing about whether and when a local official is a proper defendant under *Ex parte Young*; nor does it at all suggest that a state is a necessary party in such a suit.[4]

The other cases cited by Chief Finner are similarly inapt. In *Diamond v. Charles*, 476 U.S. 54 (1986), the Supreme Court held that an intervenor “whose own conduct is neither implicated nor threatened by a criminal statute has no judicially cognizable interest in the statute’s defense.” *Id.* at 56. So, in that case, where a state had declined to seek Supreme Court review of a decision

[4] In *Echols*, plaintiffs challenged the constitutionality of a Mississippi law and named as defendants a district attorney, a county attorney, and a local judge. 909 F.2d at 797. After entering judgment declaring the statute unconstitutional, the district court “directed the State of Mississippi to pay the plaintiffs’ attorney’s fees since the local officials involved had been sued in their official capacity for enforcing an unconstitutional State policy”—even though the state was “not a named party to the suit.” *Id.* On appeal, the Fifth Circuit approved of this decision. *Id.* at 801. Accordingly, if the Court awards Plaintiffs attorney’s fees in this case upon final judgment, *Echols* would support those fees’ being awarded against the State of Texas rather than against the City of Houston, the City of Webster, or Harris County. *Echols* also makes clear that “when a state statute directs the actions of an official, as here, the officer, be he state or local, is acting as a state official.” *Id.*

upholding an injunction against that state's law, the Court ruled that a *private citizen* lacked standing to appeal that decision on his own. *See id.* at 57–58, 61, 64. But this holding is irrelevant to whether Chief Finner, a public official responsible for enforcing the statutes at issue in this case, can defend their constitutionality without the Attorney General's involvement. He can. *See supra* at 6–7; Order at 15. Moreover, *Diamond* certainly does not mean that only a state attorney general may defend the constitutionality of a state statute.

In his prior motion for an interlocutory appeal, Chief Finner argued that "the State—and the State alone—has the right to defend the constitutionality of the State's statutes." Police Mot. at 2. That argument having failed, Chief Finner now acknowledges that a "State is not always an indispensable party to a state law constitutional challenge." Mot. at 9. But having done so, Chief Finner fails to explain why the State is an indispensable party in *this* case. His only explanation seems to be that "Plaintiffs do not challenge their actual or threatened prosecution under the challenged penal statutes," Mot. at 10, but this is simply a rephrasing of his standing arguments, *see* Mot. at 12–15, which are meritless for the reasons discussed in Part II.

The only other authorities Chief Finner cites stand for the basic proposition that indispensable parties must be joined. *See* Mot. at 9–12 (citing, *e.g.*, *Shields v. Barrow*, 58 U.S. 130, 139 (1855)). None of these cases holds that the Texas Attorney General is a necessary party in a case such as this, much less an indispensable one.

B. The Attorney General is not an indispensable party.

Even if this Court determines that the Texas Attorney General is a necessary party in this case, that still would not require dismissal. Instead, the governing legal standard under rule 19(b)—which Chief Finner fails to meaningfully address—requires the Court next to determine "whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b).; *accord Moss v. Princip*, 913 F.3d 508, 515 (5th Cir. 2019)

("[T]he court must determine whether the party is 'merely necessary' to the litigation, or in fact 'indispensable.'" (citation omitted)).[5] Equity counsels against dismissal here.

Under rule 19(b), the equitable factors to consider include (i) "the extent to which a judgment rendered in the [Attorney General]'s absence might prejudice [the Attorney General] or the existing parties," (ii) "whether a judgment rendered in the [Attorney General]'s absence would be adequate," and (iii) "whether [Plaintiffs] would have an adequate remedy if the action were dismissed for nonjoinder." Fed. R. Civ. P. 19(b).[6] None of these factors favor dismissal here. First, a judgment rendered in the Attorney General's absence would plainly not prejudice the Attorney General, who, after all, sought to be *dismissed* from this lawsuit and who *declined* to intervene in the case thereafter. Nor would it prejudice the existing parties—indeed, Chief Finner advances no arguments regarding prejudice. Second, a judgment rendered in the Attorney General's absence would be adequate because Plaintiffs are seeking a declaration that the challenged statutes are unconstitutional, and the Attorney General would undoubtedly respect such a judgment. Moreover, it is the remaining Defendants, not the Attorney General, who enforce the statutes on a day-to-day basis. *See supra* at 3–4, 7. And third, Plaintiffs would have no alternative remedy if this action were dismissed.

Accordingly, even if this Court finds that the Texas Attorney General is a necessary party in this case, he is by no means indispensable, and the case should be allowed to proceed.

[5] Plaintiffs assume that it is "not feasible" to join the Attorney General because of his prior dismissal from the case. *Cf.* Fed. R. Civ. P. 19(b).

[6] The rule also directs courts to consider "the extent to which any prejudice could be lessened or avoided," Fed. R. Civ. P. 19(b)(2), but this factor is inapplicable here because neither the Defendants nor the Attorney General will suffer any prejudice.

II. THE COURT HAS ALREADY HELD THAT PLAINTIFFS HAVE STANDING.

In the latter portion of his motion, Chief Finner once again challenges Plaintiffs' standing. Mot. at 12–15. But his arguments merely recycle those that the Court has already rejected twice in the last five months. And Chief Finner does not point to anything that has happened since then that would unsettle the Court's prior decisions. *See Rodriguez v. Shell Oil Co.*, 932 F. Supp. 177, 180 (S.D. Tex. 1996) ("The balance of [the] motion argues that remand is required because the court lacks subject matter jurisdiction. The court has previously rejected these arguments and adheres to its rulings.").[7]

Chief Finner takes issue with the Court's conclusion that Plaintiffs have alleged an injury in the form of "the deprivation of their free speech right as a result of the Acts' heightened notice requirements," Order at 13. *See* Mot. at 13. He objects that "an injury in fact must be the result of the statute's enforcement, actual or threatened." *Id.* True enough, but as the Court recognized, that requirement is met here: "Plaintiffs' alleged injury results from the Acts' enforcement." Order at 13; *see also id.* ("An injury in fact must be the result of the statute's enforcement, actual or threatened."). It is precisely *because* the statutes are being enforced that "Plaintiffs risk losing police protection against trespassers" unless they "comply with the Acts' notice requirements." *Id.* at 14. Chief Finner has not identified any flaws in the Court's straightforward reasoning.

Rather, Chief Finner proceeds to argue that any lesser notice requirements "would violate due process." Mot. at 13. It is hard to take this argument seriously; for one thing, it carries the startling implication that Texas's current trespass laws are unconstitutional as to all unarmed trespassers. *See, e.g.*, Tex. Penal Code § 30.05(b)(2) (providing that fencing, crops, or purple paint

[7] To be sure, this Court may always examine its own jurisdiction. *See, e.g.*, *Hester Int'l Corp. v. Federal Republic of Nigeria*, 879 F.2d 170, 175 (5th Cir. 1989). At the same time, however, "a successor judge … should not overrule [an] earlier judge's order or judgment merely because the later judge might have decided matters differently." *United States v. O'Keefe*, 128 F.3d 885, 891 (5th Cir. 1997).

constitute sufficient notice to (unarmed) trespassers). In any event, however, such an argument would go to the merits of Plaintiffs' First Amendment claims, not to Plaintiffs' standing, and thus it would not support the claim that this Court lacks jurisdiction over the case.

Next, Chief Finner states that Plaintiffs have no "judicially cognizable interest in the prosecution or nonprosecution of another." Mot. at 14 (quoting *Diamond*, 476 U.S. at 64). But Plaintiffs have not claimed such an interest, nor did the Court recognize one. Instead, the Court recognized that if Plaintiffs fail to comply with the Penal Code's heightened notice requirements, they would "risk losing police protection against trespassers who violate the Acts." Order at 14. And that loss of police protection, the Court observed, would constitute an injury in fact. *Id.*

Chief Finner's response to this is that Plaintiffs are not "required to post any signage at all." Mot. at 14. "Plaintiffs may exclude whomever they wish," he says, "and those persons are subject to prosecution for trespass." *Id.* But that's simply wrong. As Plaintiffs alleged, *see* Compl. ¶ 42, and as Chief Finner's motion appears to concede, "signage is the only feasible way, and least burdensome way, to exclude protected gun carriers from [Plaintiffs'] property such that they may be subject to criminal trespass charges." Mot. at 2. And under the statutes, only signage that complies with the heightened notice requirements can give rise to a criminal trespass. *See* Tex. Penal Code §§ 30.06–30.07; *see also* Order at 14 ("posting noncompliant signs would forego police protection from the offense of trespass"). Thus, Plaintiffs *are* required to post signs that conform to the heightened notice requirements if Plaintiffs wish to avail themselves of police protection. *See* Order at 12 ("While the Acts are not directly enforceable against Plaintiffs, the Acts enumerate notice requirements that property owners must comply with to gain the protection of the Acts."). That makes out a valid claim. *See also id.* at 25–26 ("Accepting Plaintiffs' allegations as true, Plaintiffs have stated an unconstitutional conditions claim.").

Accordingly, for all the reasons previously set out in Plaintiffs' opposition to Defendants' motions to dismiss, *see* ECF No. 57, at 17–26, as well as in the Court's well-reasoned denial in part of those motions, *see* Order at 9–19, Plaintiffs have standing to pursue their remaining claims.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court deny Chief Finner's motion for judgment on the pleadings.

Dated: January 27, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2022, I electronically filed a true and correct copy of the foregoing with the Clerk of the District Court of the Southern District of Texas by using the CM/ECF system, which will send notification to all participants in the case who are registered CM/ECF users.

/s/ William R. Taylor
William R. Taylor