

**Affirmed and Memorandum Opinion filed August 31, 2023.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-22-00678-CV**

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**PATRICE VIEIRA, Appellant**

**V.**

**JOYCE HUDMAN, IN HER OFFICIAL CAPACITY AS BRAZORIA COUNTY CLERK; "MATT" SEBESTA JR., IN HIS OFFICIAL CAPACITY AS BRAZORIA COUNTY JUDGE; DONALD "DUDE" PAYNE, IN HIS OFFICIAL CAPACITY AS BRAZORIA COUNTY COMMISSIONER PRECINCT 1; RYAN CADE, IN THIS OFFICIAL CAPACITY AS BRAZORIA COUNTY COMMISSIONER PRECINCT 2; STACY ADAMS, IN HIS OFFICIAL CAPACITY AS BRAZORIA COUNTY COMMISSIONER PRECINCT 3; AND DAVID LINDER, IN HIS OFFICIAL CAPACITY AS BRAZORIA COUNTY COMMISSIONER PRECINCT 4, Appellees**

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**On Appeal from the 149th District Court  
Brazoria County, Texas  
Trial Court Cause No. 118937-CV**

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**MEMORANDUM OPINION**

Pro se appellant Patrice Vieira appeals from the final judgment of the trial

court, which dismissed her claims that Brazoria County’s electronic-voting system violated her constitutional rights for want of subject-matter jurisdiction. We agree with the trial court’s conclusion that it lacked jurisdiction and affirm.

## I. BACKGROUND

Vieira filed a pro se suit against six Brazoria County officials<sup>1</sup> (county officials) in their official capacities in August 2022 arguing that the electronic system of voting in Brazoria County exposes votes to “manipulation by unauthorized persons” and violated—and will continue to violate—certain provisions of the Election Code and certain of her federal and state constitutional rights, including her rights to due process and equal protection. Vieira sought declaratory and injunctive relief “barring [the county officials] from using computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election indefinitely until proper investigations and reconciliation of the elections for 2020 general, 2021 special, and 2022 primaries are conducted.”

The county officials filed a plea to the jurisdiction asserting that the trial court lacked subject-matter jurisdiction because, among other things, Vieira did not have standing and had failed to plead sufficient facts to overcome the county officials’ governmental immunity. After a hearing, the trial court granted the county officials’ plea to the jurisdiction and rendered judgment dismissing Vieira’s lawsuit with prejudice. Vieira now appeals.<sup>2</sup>

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<sup>1</sup> Joyce Hudman, in her official capacity as Brazoria County Clerk; L.M. “Matt” Sebesta Jr., in his official capacity as Brazoria County Judge; Donald “Dude” Payne, in his official capacity as Brazoria County Commissioner Precinct 1; Ryan Cade, in his official capacity as Brazoria County Commissioner Precinct 2; Stacy Adams, in his official capacity as Brazoria County Commissioner Precinct 3; and David Linder, in his official capacity as Brazoria County Commissioner Precinct 4.

<sup>2</sup> Only Patrice Vieira’s name appears in the original and first amended petitions as a

## II. ANALYSIS

Vieira raises two issues on appeal, one of which has ten discrete subparts.<sup>3</sup>

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party. In the notice of appeal, Vieira added two other names as “petitioners,” Kevin Henry and Brittany Darbonne. After the trial court had signed the final judgment, Vieira filed a second amended petition adding those two names as plaintiffs, but they did not sign the second amended petition in which they were listed. In any event, Vieira was the only plaintiff at the time of the final judgment, and therefore is the only appellant in this court.

We note that the notice of appeal states the intent of “petitioners” “to appeal directly to the Supreme Court of Texas, the dismissal of the above cause by Honorable Terri Holder under the TEX. CIV. PRAC. & REM. CODE § 51.014(4), TEX. GOV. CODE §§ 23.301 and 23.302.” None of these statutes apply to this appeal, and the notice of appeal does not comply with Texas Rule of Appellate Procedure 25.1(d)(2) (requiring appellant to state date of judgment or order appealed from). Because the trial court stated, “The Court, therefore, ORDERS that all claims asserted by Plaintiff Patrice Vieira against Defendants be, and hereby are, dismissed with prejudice,” we conclude this is an appeal from a final judgment, and this court has jurisdiction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.012.

<sup>3</sup> We quote the two issues and ten subparts:

1. Appellant brought this cause as Emergency Petition. The clerks/courts did not treat the petition as such under TEX. GOV. CODE §§ 23.101, 23.301, 23.302.
2. Appellant filed a constitutional challenge to election statute.

Constitutional Issues:

- a. If the electronic voting systems are not lawfully certified in compliance with voting system standards, does it impede the Appellants’ lawful vote in elections? TEX. CONST. art VI § 4, U.S. CONST. amend 15.
- b. If the electronic voting systems and their various devices are not lawfully certified, does it cause the Appellants to cast illegal ballots? 52 U.S.C. § 10307(a), Due Process Clause.
- c. Since Texas officials presented uncertified voting systems as certified, did they abridge the Appellants federally protected right to vote, as well as affronted TEX. PEN. CODE § 37.03, § 37.09, § 37.10, 18 U.S.C. § 245[.]
- d. Would it dilute the expressed intent and effectiveness of the Appellants’ voice if the electronic voting systems and their various devices are vulnerable to hacking, tampering, and algorithmic preprogramming? TEX. CONST. art. VI § 4, Right to Vote Clause.
- e. If the electronic voting systems are unreliable mechanisms for accurately collecting, retaining, and communicating the expression of the Appellants’ vote, is it acceptable to injure the Appellants’ voice and will under the Constitutional premise of the consent of the governed[.]? Declaration of Independence, Guarantee Clause.

However, all the issues she raises are general constitutional or legal questions. Because Vieira is a pro se appellant and we review pro se briefs liberally, we construe her appellate briefing to raise a single appellate issue that the trial court erred in granting the county officials' plea to the jurisdiction.<sup>4</sup> *See Harrison v. Reiner*, 607 S.W.3d 450, 457 (Tex. App.—Houston [14th Dist.] 2020, pet. denied). However, pro se litigants must comply with all applicable rules of procedure and substantive law. *Burbage v. Burbage*, 447 S.W.3d 249, 258 (Tex. 2014) (explaining that courts may not stray from procedural rules simply because litigant represents themself).

Vieira argues on appeal that she has standing to bring her declaratory-relief claims and broadly asserts that governmental immunity is not applicable to constitutional violations. Appellate review, here, is confined to the sole question decided by the trial court: whether it has subject-matter jurisdiction to adjudicate

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f. Were Constitutionally protected free and fair elections negatively impacted by Texas officials' modification of election laws? TEX. ELEC. CODE § 276.019 and TEX. CONST. art. I § 28.

g. If the acting representative servants were unlawfully elected as a result of unreliable, unlawful vote collection devices are they acting in their official capacity? TEX. CONST. art. I § 19 and § 29.

h. Would they not, then, be impersonating public servants? TEX. PEN. CODE § 37.11.

i. The “elected” officials within the Texas courts prevent a fair hearing of cases involving the election. Where can Appellants find an objective perspective without being denied redress of grievances? TEX. CONST. art. I § 3, § 13 § 27, and U.S. CONST. amend 1.

j. What is the Constitutional remedy for the usurpation of the Appellants' role as the underlying governmental authority, and for forcing the Appellants to participate in their own servitude through fraudulent policies, systems, and measures? TEX. CONST. art. I § 29, U.S. CONST. amend 13 § 1 and U.S. CONST. amend. 10.

<sup>4</sup> Because all Vieira's enumerated appellate issues relate to the substantive merits of her claims, we will not address them.

Vieira's claims.<sup>5</sup> Therefore, we begin with the threshold matter of whether Vieira has standing to bring her suit.<sup>6</sup>

#### **A. Standard of review**

Standing is a prerequisite to subject-matter jurisdiction, and subject-matter jurisdiction is essential to a court's power to decide a case. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). A plea to the jurisdiction is a procedural vehicle used to challenge the court's subject-matter jurisdiction over a claim. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 232 (Tex. 2004).

We review a plea challenging the trial court's jurisdiction de novo. *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007). In reviewing a plea to the jurisdiction, we do not consider the merits of the underlying claim; we consider only the plaintiff's pleadings and the evidence pertinent to the jurisdictional inquiry. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). When a plea to the jurisdiction challenges the claimant's pleadings, we determine whether the claimant pleaded facts that affirmatively demonstrate the trial court's jurisdiction, construing the pleadings liberally and in favor of the claimant. *Miranda*, 133 S.W.3d at 226. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate

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<sup>5</sup> The county officials present four issues in their appellate briefing but did not file a notice of appeal. Therefore, we will only address those issues raised by the county officials that are necessary to answer the question of whether the trial court erred in granting their plea to the jurisdiction.

<sup>6</sup> In its appellate briefing, the county officials argue that Vieira's claims are moot, explaining that Vieira filed suit to change the manner in which votes were to be cast in the November 2022 election in Brazoria County. However, this argument does not account for the fact that Vieira sought declaratory relief to prevent the use of electronic-voting systems *indefinitely*, or until the issues raised by the technology were addressed and a reconciliation of previous elections was complete. Given the scope of her claims and the relief sought, Vieira's claims are not moot simply because the November 2022 election has passed.

incurable defects in jurisdiction, the issue is one of pleading sufficiency and the claimant should be afforded the opportunity to amend. *Id.* at 226–27. However, if the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the claimant an opportunity to amend. *Id.* at 227.

## **B. Standing**

Standing is a constitutional prerequisite to maintaining suit. *Texas Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 646 (Tex. 2004). Ordinarily, a citizen lacks standing to bring a lawsuit challenging the lawfulness of governmental acts. *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001). “This is because ‘[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official’s public acts under judicial review.’” *Andrade v. Venable*, 372 S.W.3d 134, 136–37 (Tex. 2012) (quoting *Bland*, 34 S.W.3d at 555).

In Texas, the standing doctrine requires a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 154 (Tex. 2012). Our high court has noted that this test parallels the federal test for standing and has looked to Supreme Court precedent to establish the three essential elements of standing:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

*Heckman*, 369 S.W.3d 137, 154–55 (Tex. 2012) (quoting *Lujan v. Defenders of*

*Wildlife*, 504 U.S. 555, 560–61 (1992)).

A plaintiff does not have standing to assert a “generalized grievance” challenging the lawfulness of government acts. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 7 (Tex. 2011) (citing *Lujan*, 504 U.S. at 573–74 (holding that citizen raising “only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy”))).

In *Andrade*, our high court addressed an analogous challenge to the use of direct-recording electronic-voting machines on the basis they violated state and federal constitutional rights because they did not generate a paper ballot. *Andrade*, 345 S.W.3d at 7. The court concluded that the plaintiffs’ constitutional challenges “amount[ed] only to a generalized grievance shared in substantially equal measure by all or a large class of citizens.” *Id.* at 15. The court further explained that “[a]ll voting systems are subject to criminal manipulation” and there was no evidence or proof of any manipulation or tampering in a Travis County election. *Id.* at 15–16.

Here, Vieira has not alleged an injury that is “concrete and particularized.” *See Heckman*, 369 S.W.3d at 154–55 (quoting *Lujan*, 504 U.S. at 560–61). Vieira’s complaints—about the conduct of the county officials in continuing to utilize the electronic-voting machines that Vieira asserts violate the Election Code—are the type of generalized grievances that the courts cannot adjudicate. *See Lujan*, 504 U.S. at 573–74. The preliminary statement to Vieira’s first amended petition highlights the generalized nature of her claims:

This action is an action to bring transparency, fairness, honesty, and exemplary quality to Texas elections and to hold responsible those government officials who violate the equal protection and due process rights of Petitioner (and all Texas citizens) guaranteed by the Texas

Constitution. Petitioner seeks redress under Texas law only. Petitioner need not, and does not, seek redress under any federal law. Petitioner (and all Texas citizens) has a fundamental legal right to the clearly established principles of election equality, integrity, accurateness, honesty, and justice.

Far from asserting disparate treatment or a particularized injury, Vieira suggests that all voters in Texas are in the same position. Thus, she has not shown that she has “suffered a particularized injury distinct from the general public.” *See Perez v. Turner*, 653 S.W.3d 191, 199 (Tex. 2022).

Second, Vieira does not allege an “actual or imminent” injury. *See Heckman*, 369 S.W.3d at 154 (quoting *Lujan*, 504 U.S. at 560). Her claimed injury is premised on the possibility that unauthorized persons and/or hostile foreign actors might be able to manipulate the outcome of elections in Brazoria County. However, Vieira never pleads that such manipulation has actually occurred or is imminent in Brazoria County. Because Vieira alleges an injury that is merely “‘conjectural’ or ‘hypothetical,’” she has not established standing. *See id.*; *see also Ramsey v. Miller*, No. 02-22-00412-CV, 2023 WL 3645468, at \*1–5 (Tex. App.—Fort Worth May 25, 2023, pet. filed) (addressing similar challenge to use of electronic-voting machines). In sum, because Vieira has not established the required elements of standing, the trial court properly dismissed her suit for want of jurisdiction.

Having determined that Vieira lacked standing to assert her claims, we need not address whether governmental immunity protected the county officials from suit. Tex. R. App. P. 47.1.



### III. CONCLUSION

We affirm the trial court's judgment as challenged on appeal.

/s/ Charles A. Spain  
Justice

Panel consists of Justices Wise, Bourliot, and Spain.