

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DEMOCRATIC PARTY, GILBERTO HINOJOSA,) AU:17-CV-01186-LY
)
Plaintiffs,)
)
v.) AUSTIN, TEXAS
)
REPUBLICAN PARTY OF TEXAS, JAMES R. DICKEY,)
ROLANDO B. PABLOS,)
)
Defendants.) DECEMBER 20, 2017

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LEE YEAKEL

APPEARANCES:

FOR THE PLAINTIFFS: CHAD W. DUNN (TELEPHONIC)
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Proceedings recorded by computerized stenography, transcript
produced by computer.

15:24:23 1 (In chambers)

15:24:23 2 THE COURT: Good afternoon.

15:24:29 3 MR. DUNN: Good afternoon.

15:24:30 4 MR. SOTO: Good afternoon, Your Honor.

15:24:30 5 THE COURT: Thank you-all for being available. I've
15:24:32 6 got a court reporter here present with me, so let me just, for
15:24:40 7 the parties, announce who you are. For the Texas Democratic
15:24:42 8 Party?

15:24:42 9 MR. DUNN: This is Chad Dunn, Your Honor.
15:24:44 10 Good afternoon.

15:24:44 11 THE COURT: And for the Republican Party of Texas?

15:24:47 12 MR. GOBER: This is Chris Gober.

15:24:49 13 THE COURT: And for the Secretary of State?

15:24:52 14 MR. SOTO: Esteban Soto.

15:24:54 15 THE COURT: All right. Well, I have now inherited
15:25:01 16 Cause Number 17-CV-1186, and I will be your judge on it. I
15:25:07 17 have got in front of me the plaintiff's original complaint, the
15:25:10 18 application for temporary restraining order, the application
15:25:17 19 for preliminary injunction and permanent injunction, and
15:25:17 20 request to schedule an immediate hearing.

15:25:18 21 I agree that there is some urgency with this case,
15:25:30 22 and I'm calling to see if we can get our arms around this and
15:25:33 23 do this in some rational fashion -- that being I could go ahead
15:25:37 24 and rule on the temporary restraining order just on the
15:25:39 25 pleadings in front of me because I don't have any time to set

15:25:44 1 you for an immediate hearing on the temporary restraining order
15:25:49 2 because I have sentencings all day tomorrow. And the reason
15:25:53 3 that I now have this case is because Judge Sparks is
15:25:56 4 unavailable, and then we're into Christmas. My suggestion is
15:26:07 5 that we go directly to a preliminary injunction hearing and
15:26:11 6 that we do it next week.

15:26:14 7 So we'll start -- I'll start with the plaintiff
15:26:20 8 because the plaintiff is making the request. Mr. Dunn, what is
15:26:23 9 your reaction to that.

15:26:27 10 MR. DUNN: Your Honor, we appreciate you interrupting
15:26:32 11 what I'm sure is a busy schedule to address this issue in short
15:26:35 12 order. We of course are available next week for a hearing.
15:26:37 13 The concern that I have that unfortunately at this moment I'm
15:26:41 14 not able to inform the Court on better -- perhaps the Secretary
15:26:44 15 of State's office can -- but my fear is that we hold off on
15:26:48 16 considering any order until next week and then we're faced with
15:26:52 17 the argument or perhaps even the factual circumstance that some
15:26:58 18 county or counties have irrevocably prepared their ballots at
15:27:05 19 that point. And so that's my primary concern.

15:27:07 20 THE COURT: Well, that could of course have already
15:27:09 21 happened based on the time line.

15:27:11 22 Mr. Soto, what do you have to add to that, if
15:27:17 23 anything?

15:27:18 24 MR. SOTO: Yes, Your Honor. My fear is that ship has
15:27:20 25 already sailed. So by tomorrow they will have to draw names

15:27:28 1 for the ballots. I'm not aware of the status for all the
15:27:33 2 counties in Mr. Farenthold's district, but they may have --
15:27:35 3 they had the option to have already done that. So some of
15:27:38 4 those counties could have already drawn names for the ballots.
15:27:42 5 So my fear is that process has already started.

15:27:49 6 THE COURT: All right. Anything from the Republican
15:27:52 7 Party before I move on, Mr. Gober?

15:27:55 8 MR. GOBER: I just think that I would agree with the
15:27:58 9 concerns of waiting. I don't think anybody here wants to be in
15:28:02 10 a situation where we might cause a delay in the primary, but --
15:28:10 11 at least in that district. But I do -- will say there is some
15:28:12 12 additional complexity because I intend to file a motion to
15:28:15 13 dismiss under the Texas Citizens Participation Act, which is an
15:28:19 14 anti-SLAPP lawsuit. So I think a lot of those issues are
15:28:24 15 whether the plaintiffs can essentially meet their threshold in
15:28:30 16 the anti-SLAPP lawsuit. It's going to be a preliminary matter
15:28:34 17 that needs to be dealt with as well before we move on to the
15:28:37 18 merits.

15:28:38 19 THE COURT: Well, I'm not nearly as concerned about
15:28:40 20 the merits right now as I am examining the emergency relief.
15:28:45 21 And I understand the problem that the ship may already have
15:28:50 22 sailed, but I'm not prepared to grant emergency relief without
15:28:55 23 a developed record and without hearing from the parties.

15:29:01 24 I suspect you don't need much in the way of evidence.
15:29:06 25 You ought to be able to do it by proffer. This is primarily a

15:29:10 1 statutory matter that we're dealing with. It's a ruling on the
15:29:16 2 law. I don't think extended testimony or, for that matter, any
15:29:21 3 testimony is necessary. You ought to be able to agree on the
15:29:27 4 facts. What are your reactions to that? Again, I'll start
15:29:31 5 with Mr. Dunn.

15:29:35 6 MR. DUNN: Well, first a reaction and then a bit of a
15:29:37 7 reply to some of the other arguments. The first reaction is
15:29:40 8 that it doesn't seem to me that the facts here are really in
15:29:44 9 dispute. So we agree with the Court on that. It comes down to
15:29:47 10 the -- to the federal legal issues.

15:29:49 11 But what I would say is that it was just a number of
15:29:52 12 hours ago this day that the withdrawal was supposedly
15:29:56 13 effectuated. So it seems to me that preservation of the status
15:30:00 14 quo could be achieved today as well.

15:30:06 15 THE COURT: Well, let me ask the Secretary of State
15:30:10 16 this. You know, I'm requested to enter a temporary restraining
15:30:15 17 order that effectively tells all kinds of party officials --
15:30:30 18 and I have a question as to whether this is anything the
15:30:34 19 Secretary of State has a role in anyway. It appears to me to
15:30:36 20 be party matter.

15:30:39 21 But I don't know that I'm inclined to do something
15:30:46 22 that affects 254 counties without hearing more than what I get
15:30:51 23 out of some thin pleadings and the argument that we have to
15:30:57 24 preserve the status quo. We have had cases in the past that
15:31:02 25 have not prolonged primaries, but they've been expensive for

15:31:06 1 the counties because they've had to reprint ballots. I mean,
15:31:09 2 it's not a perfect world.

15:31:11 3 I'm not inclined to just fly off the handle and
15:31:14 4 enjoin something unless everybody is in agreement with it, and
15:31:18 5 I presume that neither the Republican Party nor the Secretary
15:31:23 6 of State are in agreement with granting a temporary restraining
15:31:26 7 order. Am I correct?

15:31:31 8 MR. SOTO: Yes, Your Honor. And just to piggyback
15:31:36 9 off that, Your Honor, you're exactly right. Our response to
15:31:39 10 the first lawsuit is the same response we would have to this
15:31:42 11 one, that the Secretary of State's Office does not have a role
15:31:45 12 in this process. And we not only do not have a role, we do not
15:31:49 13 have authority under state law to take the actions that they
15:31:55 14 want us to take. So, essentially, this is a party matter, and
15:31:57 15 the Secretary of State's office argues that we are not a proper
15:32:00 16 party to this.

15:32:07 17 MR. GOBER: Your Honor, this is Chris Gober. Going
15:32:09 18 back to your point on issues of law versus fact. In
15:32:13 19 paragraph 41 of the complaint, the Democratic Party alleges
15:32:18 20 that they prepared for a campaign involving Mr. Farenthold, and
15:32:22 21 unlawful removal of him would cause the Democratic Party
15:32:27 22 economic damages, kind of a crucial piece of their complaint.
15:32:30 23 You know, even if -- even if they had standing -- which we
15:32:33 24 obviously are going to object to that -- but even if they were
15:32:40 25 proved to have standing and they wanted to show harm, it

15:32:42 1 would -- they're alleging economic damages. That would allow
15:32:46 2 us to conduct discovery into the Democratic Party's plan, into
15:32:52 3 their proposed campaign activities involving Mr. Farenthold and
15:32:56 4 that ballot, and conduct discovery how that's changed and how
15:32:59 5 they've been harmed so they can prove -- prove those economic
15:33:02 6 damages.

15:33:04 7 THE COURT: How long do you think it would take to
15:33:06 8 conduct a preliminary injunction hearing in this case?

15:33:16 9 MR. GOBER: The hearing itself?

15:33:17 10 THE COURT: Yes. How much time do you need if I
15:33:23 11 schedule you for a hearing on the request for preliminary
15:33:26 12 injunction?

15:33:26 13 MR. GOBER: Would we be allowed to I guess conduct
15:33:29 14 some kind of discovery or have witnesses to determine --

15:33:33 15 THE COURT: Well, there's not going to be any
15:33:35 16 discovery. And I've already told you I don't think you need
15:33:39 17 witnesses, but I'm not opposed to that. If I schedule you for
15:33:44 18 a hearing on a request for preliminary injunction, how much
15:33:47 19 time do you need to try that? And I -- you know, I think if
15:33:54 20 you-all sit down, you can stipulate to facts in this case. I
15:33:59 21 don't see any disputed facts in this case. How long do you
15:34:05 22 need to present it to me?

15:34:09 23 MR. DUNN: Your Honor, from the plaintiff's
15:34:10 24 perspective, it seems to me it would take half a day, if that
15:34:13 25 long.

15:34:13 1 THE COURT: Why? How could it take half a day?

15:34:18 2 MR. DUNN: Well, I mean, that's why I said "if that
15:34:20 3 long." It seems to me there's an argument on the law, so
15:34:23 4 however --

15:34:24 5 THE COURT: All right.

15:34:25 6 MR. DUNN: -- long it takes to do that, which doesn't
15:34:26 7 seem very long.

15:34:28 8 THE COURT: Mr. Gober?

15:34:29 9 MR. GOBER: I was thinking two hours at most. I
15:34:33 10 think it's mostly going to be focused on standing, and then we
15:34:36 11 get to go home.

15:34:37 12 THE COURT: I think it is, too.

15:34:45 13 All right. The request for temporary restraining
15:34:47 14 order is denied. I am scheduling you for a hearing on the
15:34:51 15 request for a preliminary injunction for Tuesday,
15:34:55 16 December the 26th, at 10 o'clock in the morning in my courtroom
15:35:03 17 with the belief that we will get through by noon.

15:35:08 18 I urge you-all to sit down and stipulate to what you
15:35:12 19 can stipulate to and present this so I can get an order out as
15:35:17 20 quickly as possible so whoever is aggrieved may proceed east to
15:35:23 21 New Orleans and ask for additional relief. And I want to hear
15:35:31 22 during the argument the question of standing here. I think it
15:35:40 23 is a -- it's thin on why the federal courts should be involved
15:35:48 24 in this, but I'm willing to hear from everybody on it. So
15:35:54 25 that's what we'll do.

15:35:55 1 I realize I have ruined your Christmases, but that's
15:36:02 2 what happens when you're lawyers. Tell your families I'm
15:36:04 3 sorry. But if you can make a lot of progress on this tomorrow,
15:36:09 4 you can have a good weekend and then we'll argue it Tuesday.
15:36:12 5 But that's the best I can do for you.

15:36:20 6 Anything else while I have you on the phone?

15:36:28 7 (No response)

15:36:29 8 THE COURT: All right. Thank you-all.

15:36:31 9 (End of transcript)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
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