

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

HILDA GONZALEZ GARZA, ROSBELL
BARRERA, AND MARIO MASCORRO, JR.,
Plaintiffs,

v.

STARR COUNTY, TEXAS;
OMAR ESCOBAR, in his official capacity
as District Attorney for the 229th Judicial
District; VICTOR CANALES JR.,
in his official capacity as County Attorney
for Starr County; ELOY VERA, in his
official capacity as County Judge for
Starr County; JAIME ALVAREZ, in his
official capacity as Starr County
Commissioner for Precinct 1; RAUL PEÑA,
III, in his official capacity as Starr County
Commissioner for Precinct 2; ELOY GARZA,
in his official capacity as Starr County
Commissioner for Precinct 3; RUBEN D.
SAENZ, in his official capacity for Starr
County Commissioner for Precinct 4;
RENE “ORTA” FUENTES, in his official
capacity as Sheriff for Starr County.
Defendants.

CIVIL ACTION NO. 7:18-CV-00046

**DEFENDANTS’ RESPONSE TO
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COME NOW, Defendants, STARR COUNTY, TEXAS; OMAR ESCOBAR, in his official capacity as District Attorney for the 229th Judicial District; VICTOR CANALES JR., in his official capacity as County Attorney for Starr County; ELOY VERA, in his official capacity as County Judge for Starr County; JAIME ALVAREZ, in his official capacity as Starr County Commissioner for Precinct 1; RAUL PEÑA, III, in his official capacity as Starr County Commissioner for Precinct 2; ELOY GARZA, in his official capacity as Starr County Commissioner for Precinct 3; RUBEN D. SAENZ, in his official capacity for Starr County Commissioner for Precinct 4; RENE “ORTA” FUENTES, in his official capacity as Sheriff for Starr County, and file this their Response to

Plaintiffs' Motion for Summary Judgment, and respectfully show unto the Court the following:

1. Defendants incorporate by reference their Motion for Summary Judgment (Doc. 93) in response to Plaintiffs' Motion for Summary Judgment; Starr County's Use Policy and Electioneering Regulations are constitutional as set forth therein.

2. Plaintiffs mischaracterize testimony submitted in support of their Motion for Summary Judgment and the language of the Use Policy and Electioneering Regulations. Defendants reject Plaintiffs recitation of facts and ask the Court to consider the entirety of Defendants' testimony.

Defendant specifically address the following errors or mischaracterizations:

- A. Plaintiffs argue that "Defendants cannot demonstrate a genuine nexus between the Electioneering Regulations and a compelling interest" based on the fact that the District Attorney and County Attorney considered drafting the regulations when they realized the County would hold a record number of contested races in the 2018 March Primaries. (Doc. 92-1, p.14). But the District Attorney and County Attorney specifically stated that they considered the regulations to keep order and maintain voter access to polls—both compelling interests for Starr County:

6 We sat down and we were talking about
7 how we were going to keep some assemblance of order,
8 essentially, during the whole early election period,
9 the whole election, in general, just to keep order,
10 frankly. That's kind of where it came from and grew
11 from.

(Ex. K, p.55).

15 So that sort of began a discussion
16 with Victor as to whether it would be appropriate to
17 at least draft some, propose some to see if it might
18 make voting a little bit more, I guess you could
19 say, easier for the voters to come into the polling
20 location without having to go -- put a little bit
21 of, let's say -- not say distance, but a little bit
22 more order than what we had at the polling
23 locations.

(Ex. G, p.94).

The County Attorney and District Attorney, as well as the County Judge and Commissioners—and even Plaintiff Rosbell Barrera—testified that the Starr County Courthouse had become a circus that had to be addressed. Maintaining order and access to polls is a compelling interest.

- B. Plaintiffs mislead the Court by cherry-picking quotes from depositions without any reference to the context or even the question that was before the witness. Specifically, in support of their contention that the Electioneering Regulations were intended to “limit the ability of candidates and their supporters to communicate,” they cite the following portion of District Attorney Omar Escobar’s testimony: “[T]he whole crux of this is that you’re not going to be standing there electioneering, trying to engage the voters who are trying to get in and out of the polling location.” (Doc. 92-1, p.15). But they fail to show that this was part of Mr. Escobar’s response to opposing counsel’s question concerning the north sidewalk of the Courthouse that the Electioneering Regulations reserve for pedestrians entering and exiting the building but allow passive expressions of speech:

24	Q. You're saying that in these beige sidewalk
25	areas that we're talking about, that somebody can be
1	wearing an election T-shirt if they're on their way
2	to vote?
3	A. So what is meant by prohibiting is you're
4	not going to be standing around at the sidewalk and
5	trying to engage voters there. That's what --
6	that's the whole crux of this is that you're not
7	going to be standing there electioneering, trying to
8	engage the voters who are trying to get in and out
9	of the polling location. So somebody, they might
10	have -- they happen to have a something, anything,
11	an article of clothing. It may -- you may be on the
12	sidewalk outside of the hundred-foot buffer zone
13	trying to get there.

(Ex. 1). Mr. Escobar was describing what activities are prohibited and allowed by the

Electioneering Regulations in a specific area of the Courthouse grounds, he was not testifying as to the underlying purpose for drafting the Electioneering Regulations as Plaintiffs attempt to show.

- C. Plaintiffs complain of the Electioneering Regulations’ “underbreadth” because they “permit a high school marching band to perform in the Starr County Courthouse parking lot during the voting period” and do not maintain public safety. (Doc. 92-1, p.15). But the Regulations do not allow marching bands to perform in any parking lot because the County’s Use Policy prohibits such conduct and the Regulations specifically state that they “shall not be construed in violation of County policy” (Doc. 67, Ex. B at § 1(d)); (Doc. 67, Ex. A at § 11).
- D. Plaintiffs state that the Electioneering Regulations are overbroad because they prohibit “electioneering activities in a substantial amount of public fora.” (Doc. 92-1, p.17). But the Electioneering Regulations’ prohibitions on electioneering activities—which exclude passive expressions of speech—apply only to sidewalks and easements and rights of way at polling locations that are not Designated Areas of Electioneering. *See* (Doc. 67, Ex. B).
- E. Again, Plaintiffs cherry-pick portions of the deposition testimony of Judge Eloy Vera in support of their contention that, contrary to the language of the Electioneering Regulations, electioneering is prohibited in parks and grassy areas. Plaintiffs make much from an exchange between Judge Eloy Vera and County Attorney Victor Canales at a Commissioners Court Meeting in which Mr. Canales stated that electioneering “is prohibited everywhere you do not see the green.” (Doc. 92-1, p.18). But Plaintiffs do not present the Court with the entire discussion between Mr. Canales and Judge Vera (erroneously identified as “commissioner” in the transcript):

2 | permitted. People may electioneer in whatever manner they
3 | may so choose. On the sidewalks the sidewalks themselves
4 | where electioneering is prohibited individuals would be
5 | allowed to actually wear non-vocal electioneering like if
6 | they're wearing a shirt that's permissible they can walk
7 | around in their shirt. They cannot; however, hand out
8 | voting cards sample ballots.
9 | COMMISSIONER: That would be on the
10 | sidewalks?
11 | MR. CANALES: That would be on the sidewalks.
12 | COMMISSIONER: It is prohibited?
13 | MR. CANALES: It is prohibited everywhere you
14 | do not see the green. The green part is allowed. By
15 | statute it has those little circles is where it is
16 | permitted.

(Ex. 1). The discussion was centered on activities on sidewalks, and not on the Courthouse lawns and parks, contrary to Plaintiffs' assertion.

F. Plaintiffs also continue to contend, despite the clear language of the Electioneering Regulations, that there are no Designated Areas for Electioneering at certain polling locations and that this means electioneering is prohibited at those locations. (Doc. 92-1, p.18, 31). But the Designated Areas of Electioneering carve out an exception to the prohibition from electioneering on sidewalks and parking lots. *See* (Doc. 67, Ex. B at §§ 2(b), 4(f)); (Doc. 67, Ex. A at § 11). The purpose of the Designated Areas for Electioneering is not to identify all areas where electioneering may occur:

21 | Q. Now, just looking at the maps, would it be
22 | fair to say that at La Victoria there is no
23 | designated area for electioneering?
24 | A. There's no green zone.
25 | Q. So would that mean there's no designated

1 area for electioneering under the regulation?
2 A. Right, there's no -- well, yeah, there's
3 no designated area. But in other words, there's
4 nothing prohibited -- there's a reason why you have
5 these green zones.
6 Q. Sure.
7 A. These carve out an exception to the
8 general rule that you're not going electioneer in
9 these parking areas here. Because you're looking at
10 the building use policy use also. You're not going
11 to be able to take one without the other.

13 Q. So to sum up, the La Victoria map that's
14 attached to the electioneering regulation contains
15 no green zone indicating a designated area for
16 electioneering. But your reading of this
17 electioneering regulation in combination with the
18 building policy would permit electioneering in a
19 park near La Victoria?
20 A. Ye, this is not -- this -- it's a park.
21 Q. So the whole property is a park?
22 A. Yeah, this whole property is a park. You
23 can electioneer here. There's nothing preventing
24 you. It's a public space. You could not -- to me,
25 you could not be prohibited from electioneering in

(Ex. 1). All parks surrounding polling locations are available for electioneering and there is nothing in the Electioneering Regulations or Use Policy that prohibits electioneering as Plaintiffs contend.

G. Defendants cannot understand how limiting the Electioneering Regulations' application to polling locations during voting periods somehow bans electioneering on County properties not used as polling locations. *See* (Doc. 92-1, p.19). Defendants deny that this is the intent and effect of the Regulations, based on their plain language.

H. Plaintiffs contend that the term "distracting" is unconstitutionally vague, (Doc. 92-1, p.20), but it is a common term that does not have to be defined in the County's Regulations, especially in the context of driving. *Cf.* 49 C.F.R. pt. 300, appx. A (2019); 23 C.F.R. §

1200.24 (2019) (addressing driver distraction without definition). When used as a transitive verb, “distract” is “to draw away or divert,” “to draw or direct (something, such as someone’s attention) to a different object or in different directions at the same time.” WEBSTER’S COLLEGE DICTIONARY 390 (1991); MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/distract> (last visited April 19, 2019); *see also* Driver Distraction Guidelines for In-Vehicle Electronic Devices, 78 Fed. Reg. 24,818, 24,819 (April 26, 2013) (defining driver distraction as “a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity”); Limiting the Use of Wireless Communication Devices, 75 Fed. Reg. 59,118, 59,120 (Sept. 27, 2010) (defining driver distraction “as the voluntary or involuntary diversion of attention from the primary driving tasks due to an object, event, or person that shifts the attention away from the fundamental driving task[; t]he diversion reduces a driver’s situational awareness, decision making, or performance; and it may result in a crash, near-crash, or unintended lane departure by the driver”). Moreover, the regulation in this case is nothing like the one cited by Plaintiffs in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971); the County does not have an interest in protecting people from “annoyances”, but does have an interest in maintaining roadways safe.

- I. Plaintiffs contend that the term “loitering” is unconstitutionally overbroad. (Doc. 92-1, p.21). The Regulations closely follow the Texas Election Code, and simply extend one of its prohibitions to sidewalks leading to the entrance of polling locations, to wit, Section 61.003(a), which states:

A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person:

- (1) loiters; or
- (2) electioneers for or against any candidate, measure, or political party.

See also, Tex. Elec. Code § 62.010(b) (“A distance marker must contain the following language printed in large letters: ‘Distance Marker. No electioneering or loitering between

this point and the entrance to the polling place.”). To find that the use of the term “loitering” is unconstitutional would also render portions of the Texas Election Code unconstitutional. Furthermore, the prohibition on loitering is restricted to sidewalks leading up to polling locations, creating exceptions to allow spaces for electioneering, therefore, it has been narrowly tailored and cannot be found to be overbroad. Section 4(f) of the Electioneering Regulations, (Doc. 67, Ex. B), is not a sweeping prohibition on any place within the County and does not give law enforcement “moment-to-moment judgment” and absolute discretion. *Cf. City of Chicago v. Morales*, 527 U.S. 41, 60 (1999). The regulation at issue makes clear that the prohibition applies only to polling locations during voting periods, and gives law enforcement no discretion in the prohibition’s enforcement. *See* (Doc. 67, Ex. B at § 1(b)).

- J. Plaintiffs also contend that the term “loitering” is unconstitutionally vague. (Doc. 92-1, p.22). But the County’s loitering prohibition at polling locations is specific as to the conduct it seeks to restrain. Plaintiffs may try to liken the County’s loitering prohibition with the City of Chicago’s Gang Congregation Ordinance, but the regulation at issue is nothing like it. In *City of Chicago v. Morales*, the Supreme Court rejected the argument that vagueness rested on the “product of uncertainty about the normal meaning of ‘loitering.’” 527 U.S. at 57. Instead, the Supreme Court found that the vagueness in the City of Chicago ordinance rested in the fact that it had no nexus to “some other overt act or evidence of criminal intent.” *Id.* (citing *Tacoma v. Luvene*, 118 Wn.2d 826, 827 P.2d 1374 (1992) (upholding ordinance criminalizing loitering with purpose to engage in drug-related activities); *People v. Superior Court*, 46 Cal. 3d 381, 394-395, 758 P.2d 1046, 1052, 250 Cal. Rptr. 515 (1988) (upholding ordinance criminalizing loitering for the purpose of engaging in or soliciting lewd act)). The Supreme Court noted that “state courts have uniformly invalidated laws that do not join the term ‘loitering’ with a second specific element of the crime.” *Id.* at 57-58. Unlike the ordinance in *Morales*, the loitering prohibition in Section 4(f) of the Electioneering Regulations, (Doc. 67, Ex. B), **does** contain a second element—an “overt act”—which is the prohibition against “interfere[nce] with citizen access to polling locations.” The County has

“provide[d] the kind of notice that will enable ordinary people to understand what conduct it prohibits.” *Morales*, 527 U.S. at 58.

- K. Plaintiffs state that the Use Policy restricts First Amendment rights in traditional public fora, (Doc. 92-1, p.24), but the statement is false: the Use Policy specifically states that sidewalks, parks, cemeteries, memorials, and the Courthouse lawns are public spaces and permits for their use are not required. (Doc. 67, Ex. A § 12(a), Attach. B § (i)(d)). The only arguable public space which is subject to the permitting process is the Courthouse steps, but as the County Attorney testified, safety concerns would prohibit individuals from congregating in the area used for ingress and egress; besides, there are alternative areas for gathering and exercising First Amendment rights at the Courthouse, *i.e.*, sidewalks and lawns. *See* (Ex. 1).
- L. Plaintiffs make much of District Attorney Omar Escobar’s testimony that the process for drafting the Use Policy began when realizing a cattle trailer could be driven into the Courthouse parking lot for parking across several parking spaces. (Doc. 92-1, p. 24). But this does not make the Use Policy unconstitutional; every ordinance and legislation has a starting point, and the Use Policy’s starting point was realizing there were no policies in place that regulated the proper and orderly use of County property. Furthermore, as Plaintiffs have stated, Mr. Escobar was not focused solely on the “cattle trailer” incident, he was also concerned with the “variations in leasing practices of County Commissioners.” (Doc. 92-1, p.24). These “variations,” which several of the Defendants have testified about, made the enactment of Use Policy necessary. Mr. Escobar drafted the policies and regulations to provide a uniform policy that would protect county property from being mismanaged or used for personal gain—a concern that was raised after one of the county’s properties was leased to a school district and the written lease agreement was executed without the County Judge or Commissioners Court’s approval, and before the County Attorney’s review. *See* (Ex. G).
- M. Contrary to Plaintiffs assertion that the Use Policy requires a permit for the use of the Courthouse lawns, (Doc. 92-1, p.24), a permit is not required—the County Judge would prefer that the permit be required, but that was not included in the Use Policy. *See* (Ex. 1)

- N. Plaintiffs take issue with the County's decision to exclude the Salineno Community Center and the Abel Gonzalez Community Center from the permitting process. (Doc. 92-1, p. 26). But the County is not obligated to make these centers available to private use; the County uses these spaces for senior citizens on most days, and the County has the right to reserve their use for such public purpose. Moreover, Plaintiffs are incorrect in implying that a particular commissioner was targeted in the enactment of the Use Policy by excluding Salineno Community Center and Abel Gonzalez Community Center because they are in Precincts 2 and 4, respectively, and the commissioners for Precincts 2 and 4 voted in favor of the Use Policy. *See* (Ex. 1); (Doc. 67, Ex. A).
- O. Plaintiffs also take issue with the fact that the County Judge recommends that individuals contact their commissioners for use of property that is not made available through the Use Policy's permitting process. (Doc. 92-1, p. 27). But the Use Policy allows for Commissioners Court to consider such a request. (Doc. 67, Ex. A § 2(c)). The County reserves the right to enact a policy, ordinance or regulation that become necessary for the County or its citizens.
- P. Plaintiffs falsely state that people are prohibited from speaking or assembling on County property on holidays. (Doc. 92-1, p.27). The Use Policy specifically states "facilities are not available for reservation and permitting on County holidays," it does not prohibit the exercise of First Amendment rights on public spaces. (Doc. 67, Ex. A §§ 3(e), 12). Furthermore, the County cannot accommodate the private use of County property on holidays because there are no County employees available to keep the facilities open. *See* (Ex. 1).
- Q. Plaintiffs make much of the possibility of addressing the County's concerns in a different way. (Doc. 92-1, p.27-28). But the County has not chosen to do so, and the ideas and proposals from individual members of Commissioners Court have either not proposed such changes or have been successful in obtaining their colleagues approval. Whether or not an individual member of Commissioners Court could draft alternatives to the Use Policy is irrelevant.
- R. The Use Policy is not a criminal statute; it sets out policies and procedures for the use of

property. If individuals do not abide by the policies and procedures, they can simply be denied access to County property that has not been designated a public space. Contrary to Plaintiffs' assertion, (Doc. 92-1, p. 28), there is no need for a criminal penalty. *See* (Ex. 1).

S. Plaintiffs state they are left to guess what conduct is permitted or prohibited on County property that is not available for private use through the Use Policy's permitting process. (Doc. 92-1, p. 28). But the Use Policy clearly states that "all persons on County property must observe and follow the Regulations for Use of Space in Section 9 [of the Use Policy]." (Doc. 67, Ex. A § 3(c)).

3. WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Court deny Plaintiffs' Motion for Summary Judgment, grant Defendants' Motion for Summary Judgment, enter judgment dismissing all of Plaintiffs' claims, order that Defendants recover all costs incurred herein, including attorney's fees, and grant Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Ysmael D. Fonseca
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Via CM/ECF

Ms. Nina Peralez
Ms. Alejandra Avila
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Via CM/ECF

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/s/ Ysmael D. Fonseca
Ysmael D. Fonseca

EXHIBIT “1”

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 MCALLEN DIVISION

3 HILDA GONZALEZ GARZA, \$
4 ET AL \$
5 vs. \$ CASE NO. 7:18-CV-00046
6 STARR COUNTY, TEXAS, \$
7 ET AL \$

8
9
10
11 ORAL DEPOSITION OF OMAR ESCOBAR

12 January 30, 2019

13
14 ORAL DEPOSITION OF OMAR ESCOBAR, produced
15 as a witness at the instance of the Plaintiff and
16 duly sworn, was taken in the above-styled and
17 numbered cause on the 30th day of January, 2019,
18 from 9:28 a.m. to 3:18 p.m., before Annette E.
19 Escobar, Certified Shorthand Reporter in and for the
20 State of Texas, reported by computerized stenotype
21 machine at the offices of Starr County Courthouse
22 Annex Conference Room, 100 N. FM 3167, Rio Grande
23 City, Texas, pursuant to the Federal Rules of Civil
24 Procedure and the provisions stated on the record or
25 attached hereto.

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1 see maps that show us the county property in
2 question, correct?

3 A. Right.

4 Q. And there is a yellow circle on the map as
5 well to show the hundred-foot electioneering buffer
6 zone; is that correct?

7 A. That's correct.

8 Q. And that's set by state law?

9 A. Right.

10 Q. And then we also see on some of these maps
11 some green-shaded areas. And would that be fair to
12 say looking at the key on these maps that those are
13 marked as electioneering areas?

14 A. That's correct.

15 Q. Okay. And would those areas on the maps
16 marked as electioneering areas be what the
17 electioneering regulations refer to as designated --

18 A. Right.

19 Q. -- areas?

20 A. Correct.

21 Q. Now, just looking at the maps, would it be
22 fair to say that at La Victoria there is no
23 designated area for electioneering?

24 A. There's no green zone.

25 Q. So would that mean there's no designated

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1 area for electioneering under the regulation?

2 A. Right, there's no -- well, yeah, there's
3 no designated area. But in other words, there's
4 nothing prohibited -- there's a reason why you have
5 these green zones.

6 Q. Sure.

7 A. These carve out an exception to the
8 general rule that you're not going electioneer in
9 these parking areas here. Because you're looking at
10 the building use policy use also. You're not going
11 to be able to take one without the other.

12 If you went by the straight building
13 policy, you couldn't set up here. You couldn't do
14 anything here.

15 Q. You're pointing to the map of La Rosita?

16 A. Right, La Rosita.

17 Q. And you're pointing to the green zone in
18 the parking lot?

19 A. Right. The reason you have this is
20 because these are otherwise exceptions to the rule.
21 For example, you're looking -- we haven't talked
22 about the building policy, but under the policies
23 you wouldn't be able to park here and put tents and
24 any of that type of stuff, barbecue pits that kind
25 of stuff. You wouldn't be able to do any of that.

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1 parking. Like it's -- nothing prevents anybody from
2 going in there. That's my understanding. That's
3 how I read this. Because nothing is -- I don't know
4 that anybody is prevented or prohibiting -- this is
5 not a parking zone. This is not a parking area so
6 nothing is being prohibited here. This is a public
7 space. Anybody can go and barbecue do whatever they
8 want in the park here. It's otherwise opened to the
9 public. So I'm not sure -- you're right, it doesn't
10 have a green area. It doesn't have a green zone.
11 But my understanding of this it's a public -- it's a
12 park. It's public space to me.

13 Q. So to sum up, the La Victoria map that's
14 attached to the electioneering regulation contains
15 no green zone indicating a designated area for
16 electioneering. But your reading of this
17 electioneering regulation in combination with the
18 building policy would permit electioneering in a
19 park near La Victoria?

20 A. Ye, this is not -- this -- it's a park.

21 Q. So the whole property is a park?

22 A. Yeah, this whole property is a park. You
23 can electioneer here. There's nothing preventing
24 you. It's a public space. You could not -- to me,
25 you could not be prohibited from electioneering in

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1 County?

2 A. The Salinas Community Center is owned,
3 right.

4 Q. All right. But we don't find it on
5 attachment A of the building use policy; is that
6 correct?

7 A. I don't see that in the -- well, I don't
8 see that in attachment A, right.

9 Q. Okay. So in order for me to know whether
10 or not I could use it, I would have to go to the
11 county judge?

12 A. You just ask. Go and ask.

13 Q. Okay. And in your view, is the use of
14 Salineno Community Center subject to the permitting
15 requirements of the property use policy?

16 A. Yes, just like all the other -- just like
17 all the other buildings, all the other properties,
18 it would be subject to the same permitting process.

19 Q. Okay. Would you agree with me that the
20 policy forbids the use of county properties on
21 county holidays?

22 A. On county holidays, yes, because you would
23 need somebody supervising. And if you don't have
24 anybody present working, that's going to be a little
25 bit difficult to have some kind of supervision, have

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1 somebody watching over the property itself.

2 Q. And are there county holidays where there
3 are county staff present and on the clock?

4 A. As far as county employees, your regular
5 county employees, no. You do have sheriff's
6 deputies, but their main task, their main role is
7 law enforcement and to keep the community safe, not
8 to sort of babysit anybody.

9 So as far as I know, nobody, nobody
10 works -- or available for supervision of a
11 particular building on county holidays or weekends.

12 Q. Are the courthouse steps subject to the
13 permitting policy in the property use policy in
14 Exhibit 8?

15 A. Aren't they public spaces, defined as
16 public spaces? Sidewalks. County property.
17 (Reading silently.) To me the steps are what we
18 would traditionally consider a public space.

19 Q. But it's not specifically defined as a
20 public space in the policy; is that correct?

21 A. Right, it's not specifically defined
22 there. But like I said, that would be something
23 that we would traditionally consider a public space,
24 so we wouldn't even try to enforce -- that's a
25 public space.

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1 courthouse outside the hundred-foot zone.

2 A. Right. So this is a situation you might
3 have. You may have a person that is going in to
4 vote, simply walking in to vote. They're talking
5 the sidewalk to get to the voting location and to
6 vote. And they've got a shirt that says vote for.
7 Okay.

8 On the sidewalk, that presumably is
9 considered electioneering, but you're going to --
10 that would be okay.

11 Q. Because they're going in to vote?

12 A. Well, they're going to be going into vote.
13 They're going to be going into the voting location
14 during the voting period.

15 Q. But state law tells us they can't enter
16 the polling place or even the hundred-foot buffer
17 zone wearing an election T-shirt.

18 A. That's right.

19 Q. So --

20 A. They're going to get turned back either
21 way.

22 Q. So they're going to get turned back?

23 A. Yes.

24 Q. You're saying that in these beige sidewalk
25 areas that we're talking about, that somebody can be

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1 wearing an election T-shirt if they're on their way
2 to vote?

3 A. So what is meant by prohibiting is you're
4 not going to be standing around at the sidewalk and
5 trying to engage voters there. That's what --
6 that's the whole crux of this is that you're not
7 going to be standing there electioneering, trying to
8 engage the voters who are trying to get in and out
9 of the polling location. So somebody, they might
10 have -- they happen to have a something, anything,
11 an article of clothing. It may -- you may be on the
12 sidewalk outside of the hundred-foot buffer zone
13 trying to get there.

14 Once you hit the buffer zone, it
15 could be considered an electioneering violation.
16 Personally, I don't really think going into a
17 election location, a polling location with a shirt
18 is a problem. In fact, the U.S. Supreme Court has
19 most recently addressed that issue, I think, of just
20 passive forms of -- because, for example, the
21 courthouse, what if you're an employee and you're
22 going to work in an office and you are wearing an
23 elect, presumably you wouldn't be able to be in
24 there. So I don't see that passive form of
25 expression would be necessarily something that it

Deposition of Eloy Vera

January 23, 2019

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF Texas
3 MCALLEN DIVISION

3 HILDA GONZALEZ GARZA, {
4 ET AL {
5 V. { CIVIL ACTION NO.:
6 STARR COUNTY, Texas, ET AL { 7:18-CV-00046

7
8
9 *****
10 ORAL DEPOSITION OF
11 ELOY VERA

12 JANUARY 23, 2019
13 *****

14
15
16 ORAL DEPOSITION OF ELOY VERA, produced as a
17 witness at the instance of the Plaintiffs and duly sworn,
18 was taken in the above-styled and numbered cause on
19 January 23, 2019 from 9:12 a.m. to 2:28 p.m., before Maria
20 E. Amador, Certified Shorthand Reporter in and for the
21 State of Texas, reported by computerized stenotype
22 machine, at Starr County Annex Conference Room, 100 N. FM
23 3167, Rio Grande City, Texas, pursuant to the Federal
24 Rules of Civil Procedure and the provisions stated on the
25 record or attached hereto.

Deposition of Eloy Vera

January 23, 2019

Page 69

1 areas that you see there are where electioneering is
2 permitted. People may electioneer in whatever manner they
3 may so choose. On the sidewalks the sidewalks themselves
4 where electioneering is prohibited individuals would be
5 allowed to actually wear non-vocal electioneering like if
6 they're wearing a shirt that's permissible they can walk
7 around in their shirt. They cannot; however, hand out
8 voting cards sample ballots.

9 COMMISSIONER: That would be on the
10 sidewalks?

11 MR. CANALES: That would be on the sidewalks.

12 COMMISSIONER: It is prohibited?

13 MR. CANALES: It is prohibited everywhere you
14 do not see the green. The green part is allowed. By
15 statute it has those little circles is where it is
16 permitted.

17 COMMISSIONER: Inside the circle?

18 COMMISSIONER: Outside the circle.

19 MR. CANALES: I'm sorry, I apologize. Inside
20 the circle it is not permitted, outside is permitted;
21 however, with the regulations that we're proposing is not
22 permitted as well on county property.

23 (Video ended.)

24 Q. (Ms. Perales) Okay. Were you able to hear that
25 video?

Deposition of Eloy Vera

January 23, 2019

Page 119

1 Q. So when you testified earlier that you needed
2 permits to use the spaces on Exhibit C, you were mistaken
3 and it's page 14.

4 A. Yeah, cause those are county parks and I guess
5 that would be considered a county space.

6 Q. Very well. Now let's look at page 10 of the Use
7 Policy, which is Attachment B and it outlines regulations
8 specific regulations concerning the Starr County
9 courthouse. If you could look at subsection ID at the top
10 of page. Do you see that?

11 A. Uh-huh.

12 Q. Could you please read it to yourself and once
13 you're done, let me know.

14 A. Okay.

15 Q. Are permits required to use the courthouse greens
16 or lawns?

17 A. Apparently not.

18 Q. Can it be used year round?

19 A. Uh-huh. Yes, sir.

20 Q. Including during election times and voting
21 periods?

22 A. During what, sir?

23 Q. Voting periods?

24 A. I believe so. I don't recall having any
25 reservation on the electioneering for the greens so.

Deposition of Eloy Vera

January 23, 2019

Page 120

1 Q. And again for the record, why did you say that
2 permits were required for the courthouse?

3 A. I would have love to have seen that they would be
4 required that is not what we passed.

5 Q. That is your personal opinion not what?

6 A. Yeah like I said before we spent a lot of money
7 on the grass and the yard and everything else. I guess if
8 it was once in a while it wouldn't be damaging but if
9 we're going to have people going out there every day just
10 to sit there that could be damaging.

11 Q. But that's your opinion that's not the policy?

12 A. That's my opinion. It's not the policy, right.

13 Q. And finally, Judge, if you could turn to page 3
14 we have Subsection 6. You went through it with
15 Ms. Perales earlier and talked about the application
16 process but you also I believe you also testified that
17 permits have to go through commissioner's court?

18 A. Correct.

19 Q. Why the difference in your testimony?

20 A. Again, if I recall correctly, at one point in
21 time it had to go through the court. Apparently it got
22 changed. This says only Starr County Judge's office. It
23 don't say anything about the court.

24 Q. So as it stands today the policy for Starr County
25 Judge is that permit are strictly directed to you?

Deposition of Victor Canales

January 31, 2019

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 MCALLEN DIVISION

4 HILDA GONZALEZ GARZA, §
5 ET AL §

6 vs. § CASE NO. 7:18-CV-00046

7 STARR COUNTY, TEXAS, §
8 ET AL §

9
10
11 ORAL DEPOSITION OF VICTOR CANALES

12 January 31, 2019

13
14 ORAL DEPOSITION OF VICTOR CANALES,
15 produced as a witness at the instance of the
16 Plaintiff and duly sworn, was taken in the
17 above-styled and numbered cause on the 31st day of
18 January, 2019, from 9:31 a.m. to 12:46 p.m., before
19 Annette E. Escobar, Certified Shorthand Reporter in
20 and for the State of Texas, reported by computerized
21 stenotype machine at the offices of Starr County
22 Courthouse Annex Conference Room, 100 N. FM 3167,
23 Rio Grande City, Texas, pursuant to the Federal
24 Rules of Civil Procedure and the provisions stated
25 on the record or attached hereto.

Deposition of Victor Canales

January 31, 2019

Page 45

1 Q. And would your office be responsible for
2 prosecuting offenses associated with violating the
3 building and property use policy?

4 A. That would depend on what the violations
5 were. If they're misdemeanors, then, yes, because
6 as discussed previously, I don't think that there's
7 any creation of any offenses in the building use
8 code. So depending what the offense is
9 theoretically we could be the ones prosecuting.

10 Q. So if a deputy sheriff's found some people
11 violating that property use code at a county
12 property, potentially those individuals could be
13 arrested for trespassing?

14 A. Correct. Depending on what would happen.
15 If somebody would violate they could be charged with
16 criminal trespass. If they violate it to commit a
17 felony inside the building that would be burglary of
18 habitation. It could be either one.

19 Q. Okay. And if it was criminal trespass you
20 would prosecute?

21 A. Yes.

22 Q. What about disturbing the peace would that
23 be you?

24 A. It would depend if it was a county
25 official who would arrest or city official that

Deposition of Victor Canales

January 31, 2019

Page 124

1 outdoor concrete area at any of the properties,
2 besides the one that you circled before, where you
3 could -- where you envision that somebody would get
4 a permit to then go and set up chairs and tables to
5 have a party?

6 A. El Cenizo -- not El Cenizo. Zarate Park.

7 Q. Zarate Park.

8 A. Zarate in front of the community center
9 building or the building that's used for voting, the
10 same situation, you have a large stretch of concrete
11 that comes out of it. I do not believe Abel
12 Gonzalez San Isidro has that. I don't believe they
13 have that. They have the parking lot all the way
14 around it.

15 Q. Okay. How about the courthouse steps? Is
16 that part of that surrounding property that would be
17 subject to the property use policy?

18 A. I think that its use or even its
19 permitting would be prohibited simply from a safety
20 standpoint. It's an ingress, egress into the
21 building.

22 Q. I see. So are you saying that somebody
23 would apply for a permit and they would likely be
24 denied or that the property use policy doesn't apply
25 to it at all?

Deposition of Raul Pena

January 15, 2019

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 MCALLEN DIVISION

4 HILDA GONZALEZ GARZA, \$
5 ET AL \$

6 vs. \$

CASE NO. 7:18-CV-00046

7 STARR COUNTY, TEXAS, \$
8 ET AL \$

9
10
11 ORAL DEPOSITION OF RAUL PENA

12 January 15, 2019

13
14 ORAL DEPOSITION OF RAUL PENA, produced as
15 a witness at the instance of the Plaintiff and duly
16 sworn, was taken in the above-styled and numbered
17 cause on the 15th day of January, 2019, from
18 9:12 a.m. to 11:19 a.m., before Annette E. Escobar
19 , Certified Shorthand Reporter in and for the State
20 of Texas, reported by computerized stenotype machine
21 at the offices of Starr County Courthouse Annex
22 Conference Room, 100 N. FM 3167, Rio Grande City,
23 Texas, pursuant to the Federal Rules of Civil
24 Procedure and the provisions stated on the record or
25 attached hereto.

Deposition of Raul Pena

January 15, 2019

Page 60

1 Q. Do you see a map for Salineno on this
2 regulation?

3 A. No, ma'am.

4 Q. Does that mean there's no place where you
5 can electioneer at Salineno?

6 A. I don't see a map here, but I think they
7 do have something designed for Salineno.

8 Q. So is a campaign worker going to
9 understand where they can electioneer at Salineno?

10 A. Well, let me explain something because
11 that belongs to Precinct 2 where I am at. Salineno
12 is very small, so unfortunately you go outside. If
13 I'm not mistaken, the parking area would be a
14 hundred feet, so...

15 Q. So what you're saying is that people can
16 electioneer at Salineno outside the hundred feet?

17 A. Yeah, but there you got to cross the road.

18 Q. You have to cross the road?

19 A. It's not in county property.

20 Q. What you're saying is that if you draw a
21 hundred-foot circle around the entrance to Salineno,
22 there's no more county property?

23 A. No, ma'am. The area next to it belongs to
24 TxDOT. And then you have your road, also belongs
25 to -- where we maintain the road, but I think it

Deposition of Ruben Saenz

January 8, 2019

Page 1

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

HILDA GONZALEZ GARZA, {
ET AL {
V. { CIVIL ACTION NO.:
{ 7:18-CV-00046
STARR COUNTY, TEXAS, ET AL {

ORAL DEPOSITION OF

RUBEN D. SAENZ

January 8, 2019

ORAL DEPOSITION OF RUBEN D. SAENZ, produced
as a witness at the instance of the Plaintiffs and duly
sworn, was taken in the above-styled and numbered cause on
January 8, 2019 from 9:10 a.m. to 12:33 p.m., before Maria
E. Amador, Certified Shorthand Reporter in and for the
State of Texas, reported by computerized stenotype
machine, at Starr County Annex Conference Room, 100 N. FM
3167, Rio Grande City, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on the
record or attached hereto.

Deposition of Ruben Saenz

January 8, 2019

Page 10

1 Q. When did you first get elected to serve for any
2 office in Starr County?

3 A. 2011.

4 Q. And was that for your current position as county
5 commissioner?

6 A. Yes.

7 Q. So have you been county commissioner for precinct
8 four since 2011 to date?

9 A. Yes.

10 Q. Can you tell me more about the people who you
11 represent. What is, for example, the most common
12 occupation for the people in your precinct?

13 A. Service to the constituents.

14 Q. The people in your precinct, what do the people
15 do in your precinct do for a living generally?

16 MR. FONSECA: Objection, vague.

17 A. Excuse me.

18 Q. (By Ms. Avila) You can go ahead and answer.

19 A. They lead normal lives.

20 Q. Okay. What is, for example, the income level for
21 the people in your precinct?

22 A. I don't -- I don't know.

23 Q. Do you have an idea, generally, of how much
24 people make in your precinct?

25 A. Usually, it's work from Wal-Mart, HEB, school

Deposition of Ruben Saenz

January 8, 2019

Page 38

1 Q. What polling locations are in your precinct?

2 A. Courthouse and Abel Gonzalez.

3 Q. Okay. So I want to go back to the courthouse.

4 Are you pretty familiar with the courthouse?

5 A. Yes.

6 Q. Can you tell me in the courthouse where can
7 people go in electioneer?

8 A. In back of the courthouse.

9 Q. When you mean the back of the courthouse, what do
10 you mean by that?

11 A. The designated area where we can -- as long as
12 you don't go over the hundred feet.

13 Q. Okay. So outside of the one hundred?

14 A. Outside the one hundred feet.

15 Q. You can electioneer.

16 Can you explain to me outside of this one
17 hundred foot area where people can electioneer? For
18 example, can they electioneer -- so can you to me outside
19 of one hundred foot marker at the courthouse, where
20 exactly can people electioneer?

21 A. Outside the hundred feet.

22 Q. Where exactly outside the one hundred feet?

23 A. Parking lot or sidewalks.

24 Q. Okay.

25 A. On the east and west of the courthouse.