

of Defendants' Motion for Summary Judgment (Doc. 93), and respectfully show unto the Court the following:

1. Defendants hereby incorporate by reference their Response to Plaintiffs' Motion for Summary Judgment (Doc. 94), which addresses several of Plaintiffs' arguments.
2. Plaintiffs hold that the Electioneering Regulations "ban peaceful campaign leafletters outside the polling place during voting" while allowing "singing by the high school glee club, a prayer meeting for peace, [etc.]" (Doc. 95, p.2). But the Electioneering Regulations do not ban peaceful leafletters, the Regulations prohibit loitering or electioneering on sidewalks that "interfere with citizen access to polling locations." (Doc. 67, Ex. B at § 4(f)). Plaintiffs also hold that the Electioneering regulations restrict campaign activity in a "substantial amount of public fora at every polling location" but, again, the only prohibition on where to electioneer is Section 4(f), which prohibits loitering or electioneering on sidewalks that "interfere with citizen access to polling locations." (Doc. 67, Ex. B at § 4(f)).
3. Plaintiffs seem to argue that the County must articulate "negative incident[s]" before having the authority to legislate. (Doc. 95, p.3). There is no caselaw supporting such contention.
4. Plaintiffs argue that a ban on posting signs on county property is unconstitutional and unprecedented, but there is no caselaw to support such contention. (Doc. 95, p.4).
5. Contrary to Plaintiffs' assertion, Defendants have made clear that the Use Policy and Electioneering Regulations are just right, and, most importantly, constitutional, and, therefore, that they are entitled to summary judgment as a matter of law. There is nothing vague or overbroad, as specifically set out in Defendants' Motion for Summary Judgment.
6. The evidence shows that the circumstances under which voting took place prior to the enactment of the Electioneering Regulations, especially at the County Courthouse, created a circus of politiqueras descending on voters before they even had an opportunity to exit their vehicles. As District Attorney Omar Escobar described, campaign workers competed for the opportunity to "assist" voters. (Doc. 93, Ex. G at p.70). Furthermore, County Judge Eloy Vera testified that prior to enacting the Electioneering Regulations voters at the County Courthouse could not use the north

sidewalk to access the polling site because it was full of people, impeding voter access—in addition to citizen access to County offices. (Doc. 93, Ex. B at p.45). Mr. Escobar stated that the drafting of the Electioneering Regulations began with the goal of making it “easier for the voters to come into the polling location” with “a little bit more order.” (Doc. 93, Ex. G at p.94). Plaintiffs cannot seriously argue that protecting voter access to the polls is a not a compelling interest.

7. According to Plaintiffs’ the testimony in this case is vague and conclusory. (Doc. 95, p.8). But Defendants have explained what it was like for voters at polling locations, particularly the County Courthouse. *See, supra*, para.6; (Doc. 93, Exs. A-K). Plaintiff Rosbell Barrera himself has explained the intimidation of voters at the County Courthouse:

25 Q. I've had to dodge the park -- the tents and the
1 barbecue pits.
2 A. Yeah. People are intimidated by those because
3 you don't want to say you're not voting for them.
4 Q. So, would you say, in your opinion, is it a good
5 thing to keep the barbecue pits out of the parking lot?
6 A. Yes. Oh, I've been advocating for that for
7 years, but it wasn't benefit to a certain party. So,
8 now it is, so.

(Doc. 93, Ex. I at p.35-36).

23 Q. Right. So, do you think that having the barbecue
24 pits and the tents was -- was -- had a negative impact
25 on voting?
1 A. No. No. I think removing those was -- I don't
2 think it was either or. It was more of an ease to a lot
3 of the professional people who actually vote. Not by a
4 certain party, but who actually vote independently, and
5 they do not want to be harassed.
6 Q. Okay. So, it was a good thing for the democratic
7 process not to have the tents and the barbecue pits in
8 the parking lot?
9 A. I would say yes.

(Doc. 93, Ex. I at p.36-37).

8. Plaintiffs complain that “Defendants improperly cite to entire transcripts of deposition testimony of seven of the individual Defendants [] forcing Plaintiffs and this Court to hunt through the record to locate” Defendants’ evidence. (Doc. 95, p.9). Defendants’ Exhibits A-K are excerpts of most of the depositions in this case—Defendants have not included all of the testimony in this case—and the combined number of pages is a fraction of the 700+ pages of Plaintiffs’ Exhibits to their Motion for Summary Judgment (Doc. 92) and approximately the same size as Plaintiffs’ Exhibits to their Response to Defendants’ Motion for Summary Judgment (Doc. 95).

9. There is no question that the County Courthouse became a “circus” during the voting periods.

5	Q. What kind of signs would people put in the grass?
6	A. Political.
7	Q. Oh, yes. And were they the signs with the skinny
8	wire legs on either sides or just a stand?
9	A. No, I wish they were but it's not that. They were
10	4x8s, 4x4s, on T Posts and that's another problem, nail
11	them on the trees, this sort of thing. Because if one
12	would put one, the next guy would put two, the next guy
13	would put four. Before you knew it looked like a circus
14	around the courthouse.

(Deposition of County Judge Eloy Vera, Ex. O, p.35).

19	Q. Now, in the rest of your answer to
20	Interrogatory number four you mention, Quote: The
21	parking lot was called a circus environment during
22	elections because of the tents and the toxic
23	environment created by the proximity of the adverse
24	parties, unquote.
25	Do you see what sentence there?
1	A. Yes, I do.
2	Q. Okay. And when you use the word "toxic,"
3	you mean verbally and politically toxic?
4	A. Yes.
5	Q. This is because people from -- rather,
6	this is because supporters of different campaigns
7	are competing with each other to capture the
8	attention of voters and to offer assistance to
9	voters?

10 A. Not only that. I believe emotions run
11 very, very, very high at that time. People are --
12 because campaigning has become very negative.
13 There's a lot of personal feelings that are hurt on
14 both sides, rarely by the candidates by themselves.
15 But surrogates, oh, my God, it's like they lose it.
16 Q. I see.
17 A. They get very emotional. Because they've
18 said something bad about their candidate, they take
19 it personally and they're upset and they're mad and,
20 you know, screaming, yell at each other. It gets
21 pretty bad.

(Deposition of Victor Canales, Ex. O, pp.65-66).

10. Plaintiffs argue that there is an impermissible or unconstitutional purpose that motivated the enactment of the Electioneering Regulations; Plaintiffs are mistaken. The County initially passed an order concerning electioneering that was vague and unenforceable. (Doc. 18). And it wasn't until May 9, 2018, after the March 2018 primary elections, that the County, with its continued intent to protect poll access in the future, enacted the first version of the Electioneering Regulations. By the time the Electioneering Regulations were first considered and enacted, the primary elections were over, and Plaintiffs cannot seriously contend that they were politically motivated or enacted to target any political group or faction.

11. The District Attorney and County Attorney began considering the need to bring order to the voting process after realizing how many candidates were involved in contested races. (Doc. 95, p.15). More candidates would equal more campaigns, which in turn would result in a bigger circus at the County Courthouse. This is not political; this is not improper; this is not unconstitutional. Plaintiffs correctly state that District Attorney Omar Escobar had not previously assisted in drafting regulations or policies for Starr County, but his involvement is not evidence of anything—the County Attorney testified that he delegated the drafting to Mr. Escobar after discussing the need for the Regulations and Policy, “he did the heavy lifting.” (Doc. 93, Ex. K at p.55).

12. One commissioner, the sole member of Starr County's Commissioner's Court that voted

against the Electioneering Regulations and Use Policy, has testified that they were “100 percent” politically motivated. (Doc. 95, p.15). “[T]hese statements are unspecific and conclusory and may not be considered for purposes of summary judgment.” (Doc. 95, p.8) (citing *Lechuga v. S. Pac. Transp. Co.*, 949 F.2d 790, 798 (5th Cir. 1992) (holding that testimony “based on conjecture” or that is “conclusory and unspecific” is insufficient)).

13. Simply because the County could enact a different version of the complained of policies, does not mean that it has to, or that such a fact constitutes evidence of unconstitutionality. (Doc. 95, p.26). The majority of the Commissioners Court has decided to enact this particular version, without proposing another or seeking an amendment or revision; the possibility of different language is irrelevant—the same could be said about any piece of legislation.

14. According to Plaintiffs, “Defendants ignored the requirements of state law when they enacted and enforced the Property Use Policy and Electioneering Regulations, both of which are prohibited by Texas Election Code § 61.003.” (Doc. 95, p.29). But Plaintiffs do not indicate what “state law” was ignored in support of their conclusory statement.

15. District Attorney Omar Escobar does not have jurisdiction over misdemeanor crimes and is, therefore, an improper party in this case. (Deposition of Omar Escobar, Ex. O, p.24).

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, 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,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 26th 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

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Rio Grande City, Texas 78582

/s/ Ysmael D. Fonseca

Ysmael D. Fonseca

EXHIBIT “O”

Deposition of Eloy Vera

January 23, 2019

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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
ELOY VERA
JANUARY 23, 2019

ORAL DEPOSITION OF ELOY VERA, produced as a
witness at the instance of the Plaintiffs and duly sworn,
was taken in the above-styled and numbered cause on
January 23, 2019 from 9:12 a.m. to 2:28 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.

1 hot. Again, this is before the policy they go out there
2 they put signs, they'd put all this stuff in the grass and
3 I think that took a lot away from the view of the
4 courthouse.

5 Q. What kind of signs would people put in the grass?

6 A. Political.

7 Q. Oh, yes. And were they the signs with the skinny
8 wire legs on either sides or just a stand?

9 A. No, I wish they were but it's not that. They were
10 4x8s, 4x4s, on T Posts and that's another problem, nail
11 them on the trees, this sort of thing. Because if one
12 would put one, the next guy would put two, the next guy
13 would put four. Before you knew it looked like a circus
14 around the courthouse.

15 Q. And in addition to signs, you mentioned that
16 people would stand under the trees. Would they sit in
17 lawn chairs or just stand?

18 A. Some would have lawn chairs and some would stand
19 there.

20 Q. If there were no signs or T Posts nailed to the
21 trees, would it be okay with you if people stood under the
22 trees during election time?

23 A. We unfortunately, I do have not the money in the
24 budget but I have talked to commissioners before about --
25 see all these are really pretty oak trees, I don't know if

Deposition of Victor Canales

January 31, 2019

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

HILDA GONZALEZ GARZA, §
ET AL §
vs. § CASE NO. 7:18-CV-00046 §
STARR COUNTY, TEXAS, §
ET AL §

ORAL DEPOSITION OF VICTOR CANALES

January 31, 2019

ORAL DEPOSITION OF VICTOR CANALES,
produced as a witness at the instance of the
Plaintiff and duly sworn, was taken in the
above-styled and numbered cause on the 31st day of
January, 2019, from 9:31 a.m. to 12:46 p.m., before
Annette E. Escobar, Certified Shorthand Reporter in
and for the State of Texas, reported by computerized
stenotype machine at the offices of Starr County
Courthouse 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 Victor Canales

January 31, 2019

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1 and forth?

2 A. Yes. Some shoving, I believe, but no
3 blows.

4 Q. How did you hear that there was shoving?

5 A. I believe the courthouse security was the
6 one that advised me of that.

7 Q. During the primary elections when the
8 courthouse was being used as a polling place, is
9 courthouse security watching what's going on
10 outside?

11 A. Sometimes they are. Sometimes -- because
12 depending on what's going on in the courthouse,
13 sometimes they have to be at their post to do the
14 metal protector.

15 Q. Okay. Do they stand inside any of the
16 courtrooms inside the county courthouse?

17 A. No. Not unless specifically requested,
18 but no.

19 Q. Now, in the rest of your answer to
20 Interrogatory number four you mention, Quote: The
21 parking lot was called a circus environment during
22 elections because of the tents and the toxic
23 environment created by the proximity of the adverse
24 parties, unquote.

25 Do you see that sentence there?

Deposition of Victor Canales

January 31, 2019

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1 A. Yes, I do.

2 Q. Okay. And when you use the word "toxic,"
3 you mean verbally and politically toxic?

4 A. Yes.

5 Q. This is because people from -- rather,
6 this is because supporters of different campaigns
7 are competing with each other to capture the
8 attention of voters and to offer assistance to
9 voters?

10 A. Not only that. I believe emotions run
11 very, very, very high at that time. People are --
12 because campaigning has become very negative.
13 There's a lot of personal feelings that are hurt on
14 both sides, rarely by the candidates by themselves.
15 But surrogates, oh, my God, it's like they lose it.

16 Q. I see.

17 A. They get very emotional. Because they've
18 said something bad about their candidate, they take
19 it personally and they're upset and they're mad and,
20 you know, screaming, yell at each other. It gets
21 pretty bad.

22 Q. Okay.

23 THE WITNESS: Is there any way we
24 can take a break?

25 MS. PERALES: Absolutely, we're

Deposition of Omar Escobar

January 30, 2019

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

HILDA GONZALEZ GARZA, §
ET AL §
vs. § CASE NO. 7:18-CV-00046
STARR COUNTY, TEXAS, §
ET AL §

ORAL DEPOSITION OF OMAR ESCOBAR

January 30, 2019

ORAL DEPOSITION OF OMAR ESCOBAR, produced
as a witness at the instance of the Plaintiff and
duly sworn, was taken in the above-styled and
numbered cause on the 30th day of January, 2019,
from 9:28 a.m. to 3:18 p.m., before Annette E.
Escobar, Certified Shorthand Reporter in and for the
State of Texas, reported by computerized stenotype
machine at the offices of Starr County Courthouse
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 Omar Escobar

January 30, 2019

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1 A. Felony cases, yes.

2 Q. I'm skipping ahead a little bit, but since
3 it's relevant to this conversation, would it be fair
4 to say that your understanding of the election
5 regulation -- electioneering regulation and the
6 property use policy is that the offenses under those
7 policies are misdemeanors?

8 A. It's my understanding that those would be
9 misdemeanors. I don't know if there's felony
10 offenses. If any, they would be misdemeanors, not
11 felony offenses. I don't see any felony offenses
12 there, unless somebody shoots somebody in the middle
13 of them. But the violation of them is not going to
14 be anything like felonious.

15 Q. Okay. And so would it be fair to say,
16 then, that your office, the office of the district
17 attorney, would not be involved in prosecuting
18 offenses under the property use policy and
19 electioneering regulation?

20 A. Right.

21 Q. All right. You mentioned earlier that
22 attorneys in your office provide advice and guidance
23 to law enforcement; is that correct?

24 A. Right.

25 Q. And that advice would be, for example, on