

No. 03-17-00662-CV

IN THE COURT OF APPEALS
FOR THE THIRD JUDICIAL DISTRICT
AUSTIN, TEXAS

IN RE
ROLANDO PABLOS, SECRETARY OF STATE FOR THE STATE OF
TEXAS, AND KEITH INGRAM, DIRECTOR, TEXAS ELECTIONS
DIVISION OF THE SECRETARY OF STATE,
RELATORS,

Original Proceeding to Cause No. D-1-GN-17-003451
Pending in the 98th Judicial District Court,
Travis County, Texas,
Honorable Tim Sulak, Presiding

RELATORS' MOTION TO EXPEDITE CONSIDERATION OF
RELATORS' EMERGENCY MOTION FOR TEMPORARY RELIEF

TO THE HONORABLE THIRD COURT OF APPEALS:

Pursuant to Local Rule 55, Relators, Rolando Pablos, Secretary of State for the State of Texas, and Keith Ingram, Director, Texas Elections Division of the Secretary of State, respectfully request that this Court expedite its consideration of Relators' Emergency Motion for Temporary Relief, which was filed on October 10, 2017, and requests a stay in the trial court proceeding pending resolution of the pending Petition for Writ of Mandamus (herein "Petition"). Relators respectfully

request that this Court determine the Motion for Temporary Relief and issue a stay prior to the scheduled October 16, 2017, 9:00 a.m. temporary injunction hearing as it would 1) avoid potential conflicting ruling on the jurisdictional issues; 2) resolve the issue before the forthcoming trial court hearing; and 3) allow Relators to retain their sovereign immunity from suit while this Court considers the pending Petition.

A full statement of the relevant facts and proceedings appear in the Petition and are summarized in the Motion for Temporary Relief. Real Parties in Interest the League of Women Voters of Texas, Texas State Conference of the National Association for the Advancement of Colored People (NAACP), and Ruthann Geer (“Plaintiffs”), filed an action against Relators seeking an injunction to prohibit the Secretary of State’s Office from producing publicly available voter information pursuant to Texas Election Code § 18.066 in response to a request from the Presidential Advisory Commission on Election Integrity (the “Commission”). *See* Mot. for Temp. Relief, Appx. A at 3-8. The trial court held a hearing on Relators’ Plea to the Jurisdiction, but subsequently expressly declined to rule on the motion. *Id.*, Appx C at 9.

In Relators’ Petition, they argue that under these circumstances—specifically where 1) there is a central docket system which assigns each subsequent matter to a randomly assigned court; 2) Respondent is assigned and hears a jurisdictional-based motion; 3) the motion is ripe for adjudication; 4) Respondent expressly declines to

rule on the motion; and 5) a subsequent hearing is scheduled in the central docket system, which will necessarily involve the same issues raised in the jurisdictional-based motion—Respondent abused its discretion by not acting on the motion. Relators contend that the Court should expedite its consideration of the Motion for Temporary Relief for three main reasons.

First, issuing a stay of the trial court proceedings before the hearing would avoid a potential situation where two district courts issue conflicting rulings on the same issues in the same case. Notably, Travis County’s central docket system means that each hearing in the case is “assigned to available judges without regard to the court in which the case is filed” and “may be heard by any judge.” *Id.*, Appx. A at 15. Further, the Plea to the Jurisdiction, which was heard by Respondent, raised threshold jurisdictional issues which “must be consider by a court sua sponte” *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012). Therefore, the next district court assigned a matter in this case will be tasked with determining the same jurisdictional issues as where considered by Respondent. Therefore, since the Petition requests the Court to compel Respondent to decide the matters assigned to its court, issuing a stay prior to the temporary injunction hearing avoids the risk of conflicting rulings.

Second, the Petition is partially premised on the argument that, under these unique circumstances, it is unreasonable for the Court to refusal to rule prior to the

temporary injunction hearing. Issuing a stay prior to October 16, 2017, would allow the Court to decide that issue prior to the injunction hearing in question.

Third, allowing the litigation to proceed in the trial court through discovery and other proceedings, without a ruling on the Plea to the Jurisdiction, would effectively deprive Relators of their sovereign immunity from suit. *City of Galveston v. Gray*, 93 S.W.3d 587, 591 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding) (A government unit’s immunity from suit would be “effectively lost if the court erroneously assumes jurisdiction and subjects the government unit to pre-trial discovery and the costs incident to litigation.”).

CONCLUSION AND PRAYER

For these reasons, Relators respectfully request that the Court hear and determine its Emergency Motion for Temporary Relief and issue a stay of the trial court proceedings before the temporary injunction hearing scheduled for October 16, 2017, at 9:00 a.m.

Date: October 11, 2017

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Director of Defense Litigation

ANGELA V. COLMENERO
Chief, General Litigation Division

/s/ Esteban S.M. Soto _____
ESTEBAN S.M. SOTO
Assistant Attorney General
State Bar No 24052284
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4054
Facsimile: (512) 320-0667
esteban.soto@oag.texas.gov
ATTORNEYS FOR RELATORS

CERTIFICATE OF CONFERENCE

I certify that I conferred with lead counsel for the Real Parties in Interest-Plaintiffs on October 10, 2017, and they indicated that they are opposed to the relief requested in this motion. Plaintiffs asked that the following language be included in the motion: “Plaintiffs take the position that any stay of the TRO would cause irreparable injury. Plaintiffs’ Counsel are still meeting and conferring with Defendants’ Counsel as to whether any agreement can be reached to extend the TRO and move the TI hearing to a later date.” Relators disagree with the contention that a stay would cause irreparable injury, as the Commission’s request is currently tolled, but agree that the Parties are continuing to discuss potential agreements on the extension of the TRO and resetting the TI hearing to a later date. Relators will immediately advise the Court of any such agreement should the parties reach one.

/s/ Esteban S.M. Soto

ESTEBAN S.M. SOTO
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent *via electronic filing and email* on **October 11, 2017**, to:

Counsel for Real Parties of Interest: Charles W. McGarry
701 Commerce Street, Suite 400
Dallas, Texas 75202
cmcgarry@ix.netcom.com

Myrna Pérez, Esq.
Douglas Keith, Esq.
Brennan Center for Justice
120 Broadway, Suite 1750
New York, New York 10271
myrna.perez@nyu.edu
wendy.weiser@nyu.edu
douglas.keith@nyu.edu

Daniel T. Donovan, Esq.
Susan M. Davies, Esq.
Michael A. Glick, Esq.
Kirkland & Ellis L.L.P.
655 Fifteenth Street, N.W.
Washington, DC 20005
daniel.donovan@kirkland.com
susan.davies@kirkland.com
michael.glick@kirkland.com

In addition, I certify that a true and correct copy has been sent to Respondent by *facsimile and regular mail* on **October 11, 2017**.

/s/ Esteban S.M. Soto

ESTEBAN S.M. SOTO
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), this brief contains 794 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Esteban Soto

ESTEBAN S.M. SOTO

Assistant Attorney General