

Electioneering on County Property

Gonzalez Garza v. Starr County
(*Randy Crane, S.D. Tex. 7:18-cv-46*)

A federal district judge declared unconstitutionally vague an apparent proscription against electioneering on county-owned property adjacent to voting locations, finding that the apparent order was expressed merely as a desire. Litigation continued during several amendments to the policy and several amendments to the complaint.

Subject: Campaign activities. *Topics:* Campaign materials; early voting.

Two voters, one active in the Democratic Party and one active in the Republican Party, filed a federal complaint in the Southern District of Texas’s McAllen courthouse on Wednesday, February 21, 2018, against Starr County and its election officials to challenge a proscription against electioneering on county-owned property, including property adjacent to early voting locations, during the March 6 primary election and the November 6 general election.¹ The voters filed an application for a temporary restraining order on February 22.² That day, Judge Randy Crane set the case for hearing on Monday.³ Although one of the defendants asked on Saturday for a continuance because of the tight time frame,⁴ Judge Crane conducted the hearing as originally scheduled.⁵

The order that triggered the case stated, “the Commissioners Court of Starr County finds that it desires to regulate the time, place and manner of electioneering by prohibiting electioneering during any ‘voting period’ . . . in or on property owned or under the care, custody and control of the County of Starr.”⁶ At the hearing, Judge Crane questioned whether a statement of desire was an order.⁷ Following testimony and argument, Judge Crane concluded

1. Complaint, *Gonzalez Garza v. Starr County*, No. 7:18-cv-46 (S.D. Tex. Feb. 21, 2018), D.E. 1; see Second Amended Complaint, *id.* (May 1, 2018), D.E. 29; First Amended Complaint, *id.* (Apr. 2, 2018), D.E. 24; see also Molly Smith, *Lawsuit Challenges Starr County’s Electioneering Ban*, *McAllen Monitor*, Feb. 22, 2018.

2. First Temporary Restraining Order Motion, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. Feb. 22, 2018), D.E. 4.

3. Order, *id.* (Feb. 22, 2018), D.E. 5.

Tim Reagan interviewed Judge Crane for this report by telephone on September 17, 2018.

4. Continuance Motion, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. Feb. 24, 2018), D.E. 9 Transcript at 5, *id.* (Feb. 26, 2018, filed Mar. 9, 2018), D.E. 19 [hereinafter Feb. 26, 2018, Transcript].

5. Feb. 26, 2018, Transcript, *supra* note 4.

6. Ex. A., First Temporary Restraining Order Brief, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. Feb. 22, 2018), D.E. 4.

7. Feb. 26, 2018, Transcript, *supra* note 4, at 6–10.

that “a document that expresses only the desires of the county [which] contains no language actually adopting any order or rule” is unconstitutionally vague as something that could be enforced against an individual.⁸

On February 28, Judge Crane enjoined, “until the merits of this case are decided,” any proscription on electioneering in county-owned common areas outside a 100-foot buffer around polling places.⁹ Judge Crane did not enjoin “reasonable restrictions in light of the primary purpose served by the fora”: proscriptions on setting up electioneering tents and barbeque pits in parking lots.¹⁰

As a May 22 runoff primary election approached, and following new statements of electioneering control issued on April 11 and May 9, the plaintiffs sought leave on May 20 to file a third amended complaint,¹¹ and they filed a second application for a temporary restraining order on May 21.¹² Judge Crane scheduled a hearing for June 5.¹³ Following the hearing, Judge Crane gave the county 30 days to refine their electioneering controls, after which the plaintiffs would have 30 days to amend their complaint again.¹⁴ A fourth amended complaint was filed on July 25,¹⁵ and a fifth amended complaint was filed on August 23.¹⁶

The quality of the lawyering in the case was good, which was a pleasure for Judge Crane.¹⁷ On one side of the case was one of his former law clerks, and on the other side was a former law clerk of another judge in the courthouse.¹⁸

Changes in county policy to accommodate the plaintiffs’ concerns and the courts’ concerns resulted in frequent amendments to the complaint. Although

8. Feb. 26, 2018, Transcript, *supra* note 4, at 103; see Berenice Garcia, *Judge Issues Preliminary Order on Starr Electioneering Ban*, McAllen Monitor, Feb. 26, 2018.

9. Opinion, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. Feb. 28, 2018), D.E. 18, 2018 WL 1089341; see Berenice Garcia, *Judge Blocks Part of Starr County Electioneering Rules*, McAllen Monitor, Feb. 28, 2018.

10. Opinion, *supra* note 9, at 6.

11. Amended Complaint Motion, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. May 20, 2018), D.E. 35; Minutes, *id.* (May 22, 2018), D.E. 38; see Transcript, *id.* (May 2, 2018, filed May 14, 2018), D.E. 32 (status conference including a discussion of electioneering policy revisions).

12. Second Temporary Restraining Order Motion, *id.* (May 21, 2018), D.E. 36.

13. Order, *id.* (May 22, 2018), D.E. 39.

“There were some scheduling issues, I probably would have set it earlier, but here it is now.” Transcript at 3, *id.* (June 5, 2018, filed July 12, 2018), D.E. 54 [hereinafter June 5, 2018, Transcript] (remarks by Judge Crane).

14. Order, *id.* (June 5, 2018), D.E. 53; see June 5, 2018, Transcript, *supra* note 13, at 9 (Judge Crane’s observing, “the Plaintiffs I feel need to re-plead with greater specificity”); see also Berenice Garcia, *Judge Denies Order Blocking Starr County Policies*, McAllen Monitor, June 7, 2018.

15. Fourth Amended Complaint, *Gonzalez Garza*, No. 7:18-cv-46 (S.D. Tex. July 25, 2018), D.E. 56; see Transcript at 2–4, *id.* (Aug. 17, 2018, filed Aug. 28, 2018), D.E. 64 [hereinafter Aug. 17, 2018, Transcript].

16. Fifth Amended Complaint, *id.* (Aug. 23, 2018), D.E. 63.

17. Interview with Hon. Randy Crane, Sept. 17, 2018.

18. *Id.*; Aug. 17, 2018, Transcript, *supra* note 15, at 24 (Aug. 17, 2018, filed Aug. 28, 2018), D.E. 64 (“Always nice seeing former law clerks in court.”).

this presented Judge Crane with a moving target,¹⁹ it was also a process that moved the situation toward a just result.²⁰ Changes in circumstances also tended to give the court a break in time pressure, because the plaintiffs needed time to examine the changes.²¹

19. June 5, 2018, Transcript, *supra* note 13, at 7 (Judge Crane’s observing, “we have a little bit of a moving target here”).

20. Interview with Hon. Randy Crane, Sept. 17, 2018.

21. *Id.*