

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CITY OF EL CENIZO, et.al.	§	Civil Action No. 5:17-CV-00404-OLG
	§	(Lead Case)
EL PASO COUNTY; RICHARD WILES,	§	Case No. 5:17-CV-00459-OLG
SHERIFF OF EL PASO COUNTY in his official	§	Consolidated
capacity; and the TEXAS ORGANIZING	§	
PROJECT EDUCATION FUND,	§	
<i>Plaintiffs,</i>	§	
	§	
TEXAS ASSOCIATION OF HISPANIC	§	
COUNTY JUDGES AND COUNTY	§	
COMMISSIONERS,	§	
<i>Proposed Plaintiff/Intervenor</i>	§	
	§	
V.	§	
STATE OF TEXAS	§	
<i>Defendants,</i>	§	

COMPLAINT IN INTERVENTION
OF PLAINTIFF-INTERVENORS TEXAS ASSOCIATION OF HISPANIC COUNTY
JUDGES AND COUNTY COMMISSIONERS

I. PRELIMINARY STATEMENT:

1. Senate Bill 4 (“SB 4”), also known as the “Show Me Your Papers Bill,” is an unprecedented, cruel, and vague law that is aimed at the heart of Texas. It violates the Constitution of the United States, the Texas Constitution, and federal law and should be immediately and permanently enjoined. The State of Texas has a long, notorious history of disfranchising voters by various methods and discriminating against classes of voters, especially on account of race and

2. There are many legal flaws with SB 4. Racial animus fueled SB 4’s enactment, tainting the entire law with an impermissible legislative purpose. The law’s language is unconstitutionally vague, chills policy dissent in violation of the First Amendment and leaves

those potentially subject to its mandates without meaningful notice of what acts are forbidden. SB 4 will make all Texans less safe by eroding the discretion of our local law enforcement and law enforcement on college campuses, interfering with the chain of command and the existing decision-making processes of local officials, and preventing the reporting of crimes. Finally, SB 4 invites racial profiling, permitting local officers to demand “papers” from virtually any person in Texas at any time. History and logic supports that all Texans will not be equally subject to this harassment: Texans of Hispanic heritage and immigrants and their families, particularly those from Mexico, Central American and other Spanish-speaking countries, will be targeted.

3. This historic and unconstitutional attack on the core values and identity of Texas is especially harmful to populations represented by the Texas Association of Hispanic County Judges and County Commissioners (the “HJ&C”).

4. HJ&C is a unique association in Texas: it is an association of county elected officials that represent bilingual, bi-national, multi-cultural populations and areas that are geographically distinct. HJ&C includes elected officials from the following South/West Texas Counties: Hidalgo, Cameron, Starr, Zavala, Zapata, Webb, Maverick, Frio, LaSalle and El Paso. It is part of the largest border community in the United States, and one of the safest communities in the nation, leading the country in public safety. In its attack upon immigrants of all nationalities, against Mexican Americans, and against Hispanic communities, SB 4 stands in stark contrast to South/West Texas.

5. It is insulting to the people and leaders of HJ&C that the Texas Legislature continues to erode the policy decision-making and sovereignty of local communities based on irrational, unfounded “fears” of immigrants.

6. As it has done for hundreds of years, Texas Counties will protect its heritage, identity

and adherence to constitutional values such as equality and justice — and will do so with everything that it has. It is for these reasons and more, that the HJ&C files this suit in intervention seeking declaratory and injunctive relief.

7. The HJ&C seek declaratory and injunctive relief against the State of Texas, Texas Governor Greg Abbott, Texas Attorney General Ken Paxton, and Director Steve McCraw of the Texas Department of Public Safety for the following legal violations in connection with the enactment, administration, and prospective enforcement of SB 4: 1) SB 4 was adopted with an impermissible purpose which violates the Fourteenth Amendment's guarantee of the equal protection of laws; 2) SB 4 is unconstitutionally vague and violates the Fourteenth Amendment's due process clause; 3) SB 4 violates the Fourth Amendment protection against unreasonable searches and seizures; 4) SB 4 violates the supremacy clause, Art. V § 2, of the United States Constitution, as federal immigration enforcement is wholly dedicated to the federal government and may not be usurped by the states; 5) SB 4 violates the First Amendment prohibition against governmentally-controlled speech or expression by disallowing the endorsement of a policy by public officials that prohibits or materially limits the enforcement of immigration laws; and finally, and 6) SB 4 violates the Texas Constitution.

8. In addition, the HJ&C also seek a declaratory judgment that Texas Counties' current policies regarding federal immigration enforcement comply with state and federal law and do not violate SB 4.

II. JURISDICTION AND VENUE

9. This action raises federal questions under the United States Constitution, particularly Article 1, and the First, Fourth, Fourteenth Amendments. In addition, this court has jurisdiction

over these constitutional claims pursuant to 42 U.S.C. § 1983.

10. The Court has jurisdiction under 28 U.S.C. §§ 1331, 1346. This court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §2201-02.

11. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367, “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

12. Venue lies in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

III. PARTIES

13. Plaintiff-Intervenor HJ&C, is an association of county elected officials; they are Hispanic elected county officials, and represent Hispanic populations; they have an interest in protecting the rights of Hispanics free of racial discrimination. They face removal from office for violating SB 4.

14. According to the 2010 Census, Texas had a total population of 25,145,561, with a Hispanic population of 9,460,921 (37.6%). HJ&C is comprised of county elected officials that represent a substantial portion of the Hispanic population.

15. Defendant State of Texas is one of the fifty United States of America.

The State of Texas, is a free and independent sovereign state of the United States beholden to the principle of limited government enshrined in the United States and Texas Constitutions

16. Defendant Greg Abbott is the Governor of the State of Texas and signed SB 4 into law on May 7, 2017. He is the Chief Executive officer of the State of Texas and is responsible for the appointment of officials who administer state law enforcement. Governor Abbott is sued in his official capacity.

17. Defendant Ken Paxton is the Attorney General of the State of Texas, which is an executive office that represents the State of Texas in all actions in which the State may be a party. As to his responsibilities for SB 4, he is the officer who shall seek mandamus or injunction if and when local entities violate SB 4. He is also the State officer given the sole authority to seek a quo warranto or a removal action against a public official who has violated SB 4. He is sued in his official capacity

18. Defendant Steve McCraw is the Director of the Texas Department of Public Safety (DPS). He is responsible for the policies and practices of the DPS officers and their enforcement of federal immigration laws. These officers, under SB 4, are given the authority during any lawful detention to inquire into the nationality of the detained party. Director McCraw is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. General Facts

19. SB 4 was signed into law on May 7, 2017. It is the most restrictive and prohibitive anti-immigrant state law of the fifty states.

20. SB 4 prohibits local entities from adopting, enforcing, or endorsing a policy that prohibits or materially limits the enforcement of “immigration laws,” a term without meaningful definition, or, as demonstrated by pattern or practice, materially limiting or prohibiting enforcement of such laws.

21. SB 4 prohibits law enforcement agencies, as demonstrated by pattern or practice, from refusing to comply with an immigration detainer request issued by the federal government. An immigration detainer, also known as an “ICE hold,” is a document by which the United States Immigration and Customs Enforcement (ICE) requests a local law enforcement agency to hold a person ICE suspects has violated civil immigration laws, so that ICE may gain custody, even if there are no underlying criminal charges to justify continued detention.

22. In addition, SB 4 provides that local entities may not prohibit or materially limit a police officer — including safety officers on college campuses — from inquiring into the immigration status of a person under lawful detention or under arrest; inquiring into the detainee’s place of birth; sending that information to the United States Citizenship and Immigration Services (USCIS), ICE, or any other federal agency; assisting or operating with a federal immigration officer; or allowing the federal government access to a jail to enforce federal immigration law.

23. Any “citizen” residing in the jurisdiction of a local entity may file a complaint with the attorney general alleging that a jurisdiction has violated SB 4. The Attorney General may then seek a writ of mandamus or injunction to compel the jurisdiction to comply with SB 4.

24. Jurisdictions that intentionally violate SB 4 face severe, escalating civil penalties, including fines of \$25,000 per day of violation, excluding the first day of a violation.

25. Public officials who violate SB 4 face removal from office via quo warranto. A public statement made by a public official is evidence for removal. Sheriffs, chiefs of police, constables, or any one with primary authority for administering a jail is criminally liable for knowingly failing to comply with a detainer request.

26. In total, SB 4 attempts to force the hands of local government to enforce federal immigration laws. Law enforcement officials who do not comply will have committed crimes. Public officials who do not comply face removal. All law enforcement agencies and jurisdictions that opt to stay out of immigration enforcement face stringent civil liability. And, persons in Texas, particularly Mexican-Americans, those of Hispanic descent, and immigrants and their families, will be caught in the crossfire.

B. Fourteenth Amendment – Unlawful Discrimination

27. The Fourteenth Amendment to the United States Constitution guarantees persons the equal protection of the laws, and prohibits the government from treating persons differently than a similarly situated individual. To establish a Fourteenth Amendment violation the district court should examine factors detailed by the United States Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-68 (1977).

28. The Supreme Court in *Arlington Heights* considered several factors as informing the intent decision. The following describe some of those facts here.

i. Events leading up to the adoption of SB 4, including Departures from Norma Procedure

29. It is impossible to detach SB 4 from the cultural context in which it was passed. The 2016 election both in Texas and in the United States was riddled with nativist and anti-

immigrant appeals. For instance, then-candidate Trump repeatedly claimed that illegal immigrants were “rapists,” “criminals” roaming the streets, killing people and stealing jobs from American workers. He also publicly attacked persons of Hispanic descent, including by questioning the impartiality of a United States federal judge presiding over a lawsuit related to Trump University.

30. Likewise, Texas lawmakers and members of the State’s leadership have made racial and xenophobic appeals in supporting laws like SB 4. In campaigns, Lieutenant Governor Dan Patrick called immigration into Texas an “invasion” and said that immigrants coming to Texas bring “third world diseases,” such as leprosy. Without factual data, Patrick blamed immigrants for “a rising crime rate, overcrowded schools, an overburdened health-care system, and runaway growth in the state budget,” and characterized illegal immigrants as “terrorists and drug runners.”

31. Texas Legislatures have considered so-called “Sanctuary Cities” and “Show Me Your Papers” bills in several forms in past legislative cycles, but SB 4 is the first, and most extreme, anti-immigrant measure to be enacted into law in Texas. It flew through the legislative process at an unusually fast pace, despite a chorus of public cries against it.

32. SB 4 was filed by Senator Charles Perry on November 15, 2016, as a pre-filed bill. In Committee, the Senate State Affairs Committee held a day long committee hearing in which hundreds of people testified in person. Despite the volume of testimony, only a few people testified in person in support of the bill.

33. On February 7, 2017, SB 4 was passed to engrossment and sent to the House. SB 4 was referred to the House Committee on State Affairs and was heard on March 15, 2017. Again, hundreds of people testified in person against the bill. Again, only a few testified

in favor. On April 12, 2017, the bill was voted out of the House State Affairs Committee as substituted and sent to the Calendars Committee on April 20, 2017 at 2:22 PM. Just 48 minutes later, the bill was placed on the Emergency Calendar.

34. The House considered SB 4 on April 26, 2017. Chairman Charlie Geren was the House sponsor for SB 4. In all, the House considered 145 amendments, accompanied by emotional debate, in a session that extended until 4:30 AM on April 27, 2017.

35. The House debate contained many peculiar deviations from normal procedure. First, several points of order were overruled that under normal operating procedures would have been sustained. This included a point of order concerning the validity of a witness affirmation, which is the same category of point of order that was sustained against a previous “sanctuary cities” bill. Second, rather than cut off debate utilizing the House rules to move to the previous question, the House moved to have the vote for “Record Vote 456” used for all amendments that remained on the Speaker’s desk. This rule suspension has not been used or adopted by the Texas House for any legislation other than bills on the local and consent calendars. This effectively cut-off debate without meaningful consideration of any amendment numbered 76 to 145.

36. The tenor of the debate was also a major departure from the normal practices of the Texas House. The proponents of the bills used words like “illegals” to describe the targets of the legislation. Legislators were often heard laughing at the demise of ameliorative amendments, which lead to one lawmaker commenting about the disrespectful behavior during the debate. Chairman Geren said that the bill was aimed at “bad people.” Throughout debate, opposition legislators were heckled by their colleagues.

37. Also a departure from normal procedure was the consideration of the so-called

“Schaeffer Amendment.” An amendment proposed by Representative Matt Schaffer became the turning point of the debate. The Schaeffer Amendment would re-draft the House version of the bill and return it to the language of the Senate bill in substance. Principally, that would have permitted immigration inquiries with any lawful detention rather than only after an arrest. A deal was raised that, essentially, would have removed the Schaeffer Amendment from consideration in exchange for allowing 10-20 other amendments to be considered, that would have been chosen by the Speaker of the House in response to concerns that had been raised about the measure. But there never was any real deal offered, as Representative Schaeffer showed no serious inclination to remove his amendment from consideration.

38. Accordingly, in one night, SB 4 made Texas legislative history in the worst possible way. Meaningful points of order were denied outright and not considered despite the traditional practice of the House. The bill spent less than an hour in the Calendars Committee. It was subject to a tremendous volume of negative witness testimony in both the Texas Senate and Texas House committees, all of which failed to impede its swift progress through the legislature. The House cut-off debate by using a practice reserved only for bills on the local and consent calendar. A “deal” was offered that would have allowed the Speaker to choose which amendments but without any serious intention of compromise. Only one amendment offered by a lawmaker of color was adopted.

39. SB 4 passed the Texas House and was sent to the Senate. The Senate concurred in House Amendments, and the Governor signed SB 4 into law on the evening of Sunday, May 7, 2017 in a private event not open to the media or the public. It is scheduled to become effective on September 1, 2017.

ii. Lack of Evidence Supporting the Purported Purposes of SB 4

40. As noted above, the bill's sponsor, Chairman Geren, announced from the House floor that SB 4 was meant to uphold the rule of law and get at "bad people." He argued that SB 4 required local governments to enforce federal immigration law only to the extent it was requested by the federal government. He also said that the "Show Me Your Papers" component of the bill applied only to people who were actually arrested and nearby bystanders. Finally, Chairman Geren claimed the bill simply requires jurisdictions to honor valid ICE immigration detainer requests. But each of these rationales has been disproven through the rejection of ameliorative amendments

41. First, SB 4 cannot be justified by any true concern about public safety. Amendments were rejected that targeted violent or dangerous offenders to be held pursuant to ICE detainer requests. Other amendments that would have provided training to local law enforcement concerning immigration enforcement were also rejected. Amendments that would have improved communication between immigrant communities and law enforcement were also rejected.

42. There was voluminous testimony by law enforcement officials in both the Texas House and Senate committees that SB 4 will make Texas less safe. This testimony and evidence was rejected. Finally, the bill author and all proponents of the bill were made aware that the incidence of crime among the undocumented community was lower than that among U.S. citizens and Legal Permanent Residents.

43. Similarly, the bill is also not about the need to police "bad" people or prevent criminal behavior. Once the Schaeffer Amendment was adopted, the will of the House was to allow this bill to apply to anyone detained by law enforcement not just to those

who were arrested. Accordingly, SB 4 allows police officers and campus safety officers to make national origin inquiries at traffic stops and other commonplace interactions with Texas residents. In an insult to local control, it prohibits jurisdictions from adopting policies preventing this plainly dangerous, discriminatory, and unconstitutional practice. SB 4 is thus not aimed only at those for whom probable cause supports their arrest.

44. This bill also cannot be justified by the need to mandate compliance with voluntary ICE detainer requests. A floor amendment was offered that would have limited the bill by only requiring jurisdictions to honor ICE detainers. There was testimony in committee that local jurisdictions in Texas comply with 99% of ICE detainers. Texas has been rated the best state nationwide for adhering to ICE detainers. Chairman Geren also stated that he could not name a sanctuary city, county, or university or that did not intend to honor with ICE detainers. This bill was thus not passed to simply force compliance with ICE detainers, as such compliance is already the standard across Texas.

45. A fervent belief in the “rule of law” also cannot justify SB 4, which allows the Attorney General (AG) to seek mandamus or injunction for entities that allegedly violate SB 4 and allows the AG to defend local entities from suits against those jurisdictions for complying with SB 4. However, despite its perfunctory language regarding non-discrimination, SB 4 provides no authorization for the AG to enforce that non-discrimination policy. Texas has recent and sordid history of not following federal law with regard to voting rights, gerrymandering, environmental law, and women’s health. This bill is not about the rule of law.

46. In fact, there is no rational policy justification for SB 4. Chairman Geren admitted on the House Floor that he did not consult any studies to justify or inform his decision to champion SB 4. He further stated there was no inciting event that led to his sponsorship

or drafting of SB 4.

47. Every single policy rationale for this bill is disproven by the rejection of ameliorative amendments and on-point witness testimony. Without a doubt, the policy rationales for this bill are pre-textual and belie a sub-rational, impermissible purpose based in racial or national origin animus.

iii. Disparate Impact

48. Chairman Geren on the House floor admitted that most immigrants in Texas are of Hispanic origin. He also admitted that ICE detainers are not always valid.

49. In Texas, invalid ICE detainers and unlawful detentions unequally affect Mexicans, Mexican Americans, and those of Hispanic descent more broadly. SB 4, as signed into law, allows unconstitutional intrusions into the rights of these individuals based on racial and national origin animus.

V. DECLARATORY JUDGMENT

50. In the alternative, county elected official's adherence to the existing county's adopted policies in relation to federal immigration enforcement comply with SB 4.

51. Plaintiffs have no adequate or available administrative remedy, or, in the alternative, any effort to obtain an administrative remedy would be futile.

52. Plaintiffs have no adequate remedy at law.

53. Absent declaratory relief, Plaintiffs will continue to be harmed.

VI. PRAYER FOR RELIEF

54. WHEREFORE, Plaintiffs pray that the Court grant the following relief:

- 1) Declare SB 4 unconstitutional and invalid on its face;

2) Enjoin Defendants from enforcing SB 4;

3) In the alternative, declare that county officials and their policies comply with state law, including SB 4;

4) Award Plaintiffs court costs and reasonable attorneys' fees and grant any other relief to plaintiff as allowed by law and that the Court should deem fit.

Dated: June 22, 2017.

Respectfully Submitted,

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