

The Right to Campaign in Housing Projects

Vasquez v. Housing Authority of El Paso (3:00-cv-89)
and De la O v. Housing Authority of El Paso (3:02-cv-456)
 (David Briones, W.D. Tex.)

Successive federal complaints challenged proscriptions on door-to-door campaigning in housing projects. The district judge found the campaign restrictions reasonable as part of viewpoint-neutral regulations that protect housing projects from criminal activity. A panel of the court of appeals held the proscriptions to be unconstitutional, but the full court voted to rehear the appeal en banc. The second case was filed because the first appeal was dismissed when the appellant died. A second panel of the court of appeals agreed with the district judge that the proscriptions were reasonable.

Subject: Campaign activities. *Topics:* Door-to-door canvassing; case assignment.

On March 30, 2000, a candidate for office and a housing-project resident filed a federal complaint in the Western District of Texas against El Paso’s housing authority to challenge proscriptions against door-to-door campaigning that resulted from limits on access to housing projects by nonresidents.¹ The plaintiffs also filed a motion for a temporary restraining order.²

On the following day, Judge David Briones issued a temporary restraining order requiring access to housing projects for door-to-door campaigning between 9:00 a.m. and 8:00 p.m.³ Early voting was scheduled for April 3, and April 11 was election day.⁴ Judge Briones heard the case on April 7 and agreed to accept merits briefing thereafter.⁵

On July 13, he dismissed the case.⁶ He found the housing authority’s content-neutral access rules “are a reasonable means of combating . . . criminal activity that, according to Defendant’s uncontradicted summary judgment evidence, occurs on its property by non-residents.”⁷

Finding some of the plaintiffs’ less challenging claims without merit, including a claim based on a statute repealed in 1948, Judge Briones cautioned,

1. Docket Sheet, *Vasquez v. Housing Auth. of El Paso*, No. 3:00-cv-89 (W.D. Tex. Mar. 30, 2000) [hereinafter *Vasquez* Docket Sheet] (D.E. 1); *Vasquez v. Housing Auth. of El Paso*, 103 F. Supp. 2d 927, 929–30 (W.D. Tex. 2000) (noting that the candidate was campaigning for the office of county party chair); see *Candidate Suing Housing Authority*, *El Paso Times*, Mar. 31, 2000, *Borderland*, at 1.

2. *Vasquez* Docket Sheet, *supra* note 1 (D.E. 2); *Vasquez*, 103 F. Supp. 2d at 929–30.

3. Temporary Restraining Order, *Vasquez*, No. 3:00-cv-89 (W.D. Tex. Mar. 30, 2000), D.E. 4; *Vasquez*, 103 F. Supp. 2d at 930.

4. *Vasquez*, 103 F. Supp. 2d at 929.

5. *Id.* at 930.

6. *Id.* at 934–35, *appeal dismissed*, Order, *Vasquez v. Housing Auth. of El Paso*, No. 00-50702 (5th Cir. Sept. 23, 2002) [hereinafter *Appeal Dismissal Order*], *filed as* Order, *Vasquez*, No. 3:00-cv-89 (W.D. Tex. Oct. 2, 2002), D.E. 17, *cert. denied*, 539 U.S. 914 (2003).

7. *Vasquez*, 103 F. Supp. 2d at 933.

Before addressing Plaintiffs' claims, however, the Court begins by expressing its exasperation with the briefing by the Parties, which contains more than its fair share of typographical errors, bold assertions of law without citation to supporting authority, and which often times cites a correct assertion of the law, but for the wrong proposition.⁸

On November 5, 2001, resolving the project resident's appeal, the court of appeals held by a two-to-one vote that the trespass regulation was unconstitutional as applied to political campaigns.⁹ "The effect of the trespass regulation, as applied in the matter before us, is to isolate a significant portion of the El Paso community from one of the most time-honored and effective means of political discourse."¹⁰

The court of appeals agreed with Judge Briones that the housing projects were not public fora and the trespass proscriptions were viewpoint neutral, but the court of appeals found a proscription on campaigning to be unreasonable.¹¹ "We note with some focus that the record reflects that [the housing authority] does not ban all nonresidents, as the trespass regulation does not apply to certain individuals."¹² Housing-authority contractors and law-enforcement officers were among the permitted exceptions.¹³

On April 19, 2002, the court of appeals decided to rehear the appeal en banc,¹⁴ but the court dismissed the appeal on September 27 because of the appellant's death.¹⁵

On October 1, the appellant's widow and another housing-project resident filed a second complaint.¹⁶ The court assigned the case to Judge Philip R. Martinez, who transferred it to Judge Briones.¹⁷ Judge Briones issued a temporary restraining order against campaign proscriptions on October 7¹⁸ and set the

8. *Id.* at 931.

9. *Vasquez v. Housing Auth. of El Paso*, 271 F.3d 198 (5th Cir. 2001) (opinion by Circuit Judge Henry A. Politz, joined by Eastern District of Louisiana District Judge Eldon E. Fallon, sitting by designation; dissenting opinion by Circuit Judge Rhessa Hawkins Barksdale), *appeal dismissed*, Appeal Dismissal Order, *supra* note 6; see David Crowder, *Housing Authority Loses Ruling*, *El Paso Times*, Nov. 7, 2001, at 1B.

10. *Vasquez*, 271 F.3d at 205.

11. *Id.* at 202–06.

12. *Id.* at 205.

13. *Id.*

14. *Vasquez v. Housing Auth. of El Paso*, 289 F.3d 350 (5th Cir. 2002).

15. Appeal Dismissal Order, *supra* note 6; *De la O v. Housing Auth. of El Paso*, 417 F.3d 495, 498 (5th Cir. 2005) ("the absence of a living plaintiff rendered the case moot, and it was dismissed"); see Tammy Fonce-Olivas, "Folk Hero" Chuy De la O Dies at 74, *El Paso Times*, Apr. 9, 2007, at 1B (reporting that the appellant died on April 8, 2002).

16. Docket Sheet, *De la O v. Housing Auth. of El Paso*, No. 3:02-cv-456 (W.D. Tex. Oct. 1, 2002) (complaint, D.E. 1; amended complaint, D.E. 14); *De la O*, 417 F.3d at 498; *De la O v. Housing Auth. of El Paso*, 316 F. Supp. 2d 481, 484 (W.D. Tex. 2004).

17. Transfer Order, *De la O*, No. 3:02-cv-456 (W.D. Tex. Oct. 7, 2002), D.E. 6.

Judge Martinez died on February 26, 2021. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

18. Temporary Restraining Order, *De la O*, No. 3:02-cv-456 (W.D. Tex. Oct. 7, 2002), D.E. 4; *De la O*, 316 F. Supp. 2d at 484.

case for hearing on October 17.¹⁹ Following the October 17 hearing, he left in place the temporary restraining order.²⁰ On March 24, 2004, however, he again found the housing-project restrictions to be “a reasonable means of combating . . . criminal activity that, according to Defendant’s uncontradicted summary judgment evidence, occurs on its property by nonresidents.”²¹

“After [an] appeal was filed, [the housing authority] voluntarily amended the rules, which now allow for non-residents to enter facilities to engage in political and religious activities door-to-door.”²² A new appellate panel found both the old and the new proscriptions to be reasonable.²³ The court remanded the case for further inquiry into whether nonresident proscriptions were applied to quell certain points of view.²⁴

Following additional proceedings in the district court, Judge Briones approved a stipulated dismissal on September 22, 2006.²⁵

19. Order, *De la O*, No. 3:02-cv-456 (W.D. Tex. Oct. 7, 2002), D.E. 5.

20. *De la O*, 316 F. Supp. 2d at 484.

21. *Id.* at 487; *see id.* at 483 n.1 (“Needless to say, the Parties have demonstrated a difficulty in labeling their pleadings in a correct and succinct fashion.”); *De la O*, 417 F.3d at 498.

22. *De la O*, 417 F.3d at 498.

23. *Id.* at 507–08 (opinion by Circuit Judge Jerry E. Smith, joined by Circuit Judges James L. Dennis and Edward C. Prado), *cert. denied*, 546 U.S. 1062 (2005).

24. *Id.* at 507.

25. Order, *De la O v. Housing Auth. of El Paso*, No. 3:02-cv-456 (W.D. Tex. Sept. 22, 2006), D.E. 88.