4/16/2020 3:34 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-20-001610
Kyla Crumley

No. D-1-GN-20-001610

TEXAS DEMOCRATIC PARTY, et. al	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiffs,	§	
	§	
and	§	
	§	
ZACHARY PRICE, LEAGUE OF WOMEN VOTERS OF TEXAS, LEAGUE OF WOMEN VOTERS AUSTIN AREA, MOVE TEXAS ACTION FUND, WORKERS DEFENSE ACTION FUND,	§	TRAVIS COUNTY, TEXAS
	§	
	§	
Intervenor-Plaintiffs,	§	
	§	
v.	§	
	§	
DANA DEBEAUVOIR	§	
	§	
Defendant,	§	
	§	
and	§	
	§	
STATE OF TEXAS	§	
	§	
Intervenor-Defendant.	§	201st JUDICIAL DISTRICT

Plaintiffs' and Intervenor-Plaintiffs' Joint Response to Intervenor-Defendant's Objections to Proposed Order

---

Intervenor-Defendant, the State of Texas, takes the untenable position that it can proactively intervene in a lawsuit, become a full party to the lawsuit, participate fully in briefing and the hearing before this Court on Plaintiffs' and Intervenor-Plaintiffs' request for a Temporary Injunction, but somehow not be bound by the judgment. Remarkably, even in the same breath that it is seeking to be relieved from the Court's judgment, the State still claims to

"reserve[] its right to seek review of any order ultimately entered in this cause, and to raise any objections thereto including without limitation the factual findings, legal conclusions, and any relief entered by the Court herein." The State's position that it can act as a full party during the litigation with full rights of appeal on *any issue* in the judgment, and yet cannot be bound by the judgment is contrary to the law and common sense, and should be rejected.

By way of short background, it is worth noting that Plaintiffs originally named the Secretary of State as a defendant, but the Secretary of State claimed she was an improper party to the suit. Plaintiffs then nonsuited the Secretary of State without prejudice. On March 27, 2020, Intervenor-Defendant State of Texas then filed a petition in intervention in this case.

The State of Texas's intervention in this lawsuit renders them a party to the lawsuit, who is bound by the judgment therein. *In re E.C.*, 431 S.W.3d 812, 815 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("Upon filing of the petition, an intervenor becomes a party to the suit for all purposes.") (citing *In the Interest of D.D.M.*, 116 S.W.3d 224, 231 (Tex.App.-Tyler 2003, no pet.); *Schwartz v. Taheny*, 846 S.W.2d 621, 622 (Tex. App.—Houston [14th Dist.] 1993, writ denied) ("An intervenor is bound by a final judgment unless he has been dismissed, severed, or he has withdrawn. Therefore, appellant is bound by this final judgment if he is an intervenor, and if he has not been severed or dismissed or has not withdrawn from the case.") (citing *Ray v. Chisum*, 260 S.W.2d 118, 124 (Tex.Civ.App.—Texarkana 1953, writ ref'd, n.r.e.)); *City of Dallas v. Abney*, 09-16-00038-CV, 2016 WL 3197591, at *6 (Tex. App.—Beaumont June 9, 2016, no pet.) (treating Sabine River Authority of Texas as intervening defendant and noting "It is well-established that an intervening party may be characterized as either a plaintiff or a defendant.").

The State's authorities do not support the unfounded notion that they can intervene, fully participate in the litigation—including briefing, lodging evidentiary objections, cross-examining witnesses, and arguing for a contrary construction of the statute—and yet not be bound by the judgment. Texas Rule of Civil Procedure 683 specifies only that "[e]very order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them[.]" TEX. R. CIV. P. 683. However, as established above, it is textbook law that by intervening in this action, the State of Texas has become a party thereto.

The State also cites *State v. Cook United, Inc.*, 469 S.W.2d 709 (Tex. 1971), but that case is completely inapposite. It does not deal with a situation in which the State of Texas has intervened as a party. Instead, the case stands for the unremarkable proposition that injunctive relief cannot be granted against someone who is not party to the action and had neither notice nor service of the request for a temporary injunction (in that case, the Attorney General and numerous counties). Here, the State is a party to the action, and the State had notice that the parties were seeking injunctive relief against it. Intervenor-Plaintiffs Temporary Injunction Application expressly seeks injunctive relief against the State, and the State was served with both the Application, on April 7, 2020, and the Notice of Hearing thereon, on April 10, 2020. Plaintiff's Brief in Support of Temporary Injunction also expressly seeks relief against the State, and again was served on the State. Finally, Plaintiffs and Intervenor-Plaintiffs' Joint Proposed Order expressly seeks injunctive relief against the State and was served on the State prior to the Temporary Injunction Hearing. This case could not be more different than *State v. Cook United, Inc.*, 469 S.W.2d 709 (Tex. 1971).

Finally, the State vaguely alludes to sovereign immunity, but this issue has already been briefed with respect to the State's Plea to the Jurisdiction, which the Court denied.

Because the State intervened in this action, it is a party thereto, and the Court should reject the State's claim that it can be a full participant in the litigation, but not be bound by the judgment.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

By: /s/ Chad W. Dunn
Chad W. Dunn
General Counsel
State Bar No. 24036507
Brazil & Dunn, LLP
4407 Bee Caves Road, Suite 111
Austin, Texas 78746
Telephone: (512) 717-9822
Facsimile: (512) 515-9355
chad@brazilanddunn.com

K. Scott Brazil
State Bar No. 02934050
Brazil & Dunn, LLP
13231 Champion Forest Drive, Suite 406
Houston, Texas 77069
Telephone: (281) 580-6310
Facsimile: (281) 580-6362
scott@brazilanddunn.com

Dicky Grigg
State Bar No. 08487500
Law Office of Dicky Grigg, P.C.
4407 Bee Caves Road, Suite 111
Austin, Texas 78746
Telephone: 512-474-6061
Facsimile: 512-582-8560
dicky@grigg-law.com

Martin Golando
The Law Office of Martin Golando, PLLC
SBN #: 24059153

N. Saint Mary's, Ste. 700
San Antonio, Texas 78205
(210) 892-8543
martin.golando@gmail.com

ATTORNEYS FOR PLAINTIFFS

/s/ Joaquin Gonzalez
Joaquin Gonzalez
Texas Bar No. 24109935
Joaquin@texascivilrightsproject.org
Mimi Marziani
Texas Bar No. 24091906
mimi@texascivilrightsproject.org
Rebecca Harrison Stevens
Texas Bar No. 24065381
beth@texascivilrightsproject.org

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, Texas 78741
512-474-5073 (Telephone)
512-474-0726 (Facsimile)

Edgar Saldivar
TX Bar No. 24038188
Thomas Buser-Clancy
TX Bar No. 24078344
Andre Segura
TX Bar No. 24107112

ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288
Telephone: (713) 325-7011
Fax: (713) 942-8966
esaldivar@aclutx.org
tbuser-clancy@aclutx.org
asegura@aclutx.org

Sophia Lin Lakin**
New York Bar No. 5182076
Dale E. Ho**
New York Bar No. 4445326

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 519-7836
Fax: (212) 549-2654
slakin@aclu.org
dho@aclu.org

** Pro hac vice application on file

ATTORNEYS FOR INTERVENOR-PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing response has been sent via the Court's electronic filing system to all counsel of record on April 16, 2020.

/s/ Chad W. Dunn
Chad W. Dunn