

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Texas Democratic Party, Gilbert Hinojosa, §
Chair of the Texas Democratic Party, §
Joseph Daniel Cascino, Shanda Marie §
Sansing, and Brenda Li Garcia, §
Plaintiffs, §

v. §

Civil Action No. 5:20-CV-00438-FB

Greg Abbott, Governor of Texas, §
Ken Paxton, Attorney General of Texas, §
Ruth Hughs, Texas Secretary of State, §
Dana Debeauvoir, Travis County Clerk, and §
Jacquelyn F. Callanen, Bexar County §
Elections Administrator, §
Defendants. §

STATE DEFENDANTS' ADVISORY

On November 16, 2020, the Court invited counsel to “to give counsel’s insights as to how this matter should proceed.” Doc. 121 at 3. Accordingly, State Defendants Greg Abbott, in his official capacity as Governor of Texas, Ruth Hughs, in her official capacity as Texas Secretary of State, and Ken Paxton, in his official capacity as Attorney General of Texas, respectfully submit the following advisory.

As the Court noted, Plaintiffs have filed a petition for a writ of certiorari in the United States Supreme Court, which raises the question whether Section 82.003 of the Texas Election Code violates the Twenty-Sixth Amendment. *Id.* at 2 (citing Plaintiffs’ petition for a writ of certiorari). In State Defendants’ view, proceedings in this Court should remain stayed until the Supreme Court has resolved the petition for a writ of certiorari. The Supreme Court’s disposition of the petition—and any resolution of the Twenty-Sixth Amendment question, if the petition is granted—is certain to influence the remainder of this litigation, and it would therefore promote judicial economy and

preserve the parties' resources for the appellate proceedings on that question to fully and finally conclude before the parties reengage in this Court. *See generally Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (referring to the power to stay proceedings as incident to inherent powers of federal courts); *see also In re Stone*, 986 F.2d 898, 902 (5th Cir. 1993) (concluding that federal courts have inherent authority “to protect the efficient and orderly administration of justice and those necessary to command respect for the court’s orders, judgments, procedures, and authority.”).

The Court also noted that Plaintiffs filed their complaint and request for immediate injunctive relief in the specific context of the 2020 election. Doc. 121 at 1. That election has now passed, and the Fifth Circuit has issued two published decisions addressing the merits of Plaintiffs' claims. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020); *Tex. Democratic Party v. Abbott*, 978 F.3d 168 (5th Cir. 2020). Therefore, in the event that the Supreme Court denies the petition for a writ of certiorari, the appropriate next step would be for Plaintiffs to file an amended complaint making clear which claims they intend to continue to pursue, if any, and *against which defendants* they intend to pursue those claims, consistent with the Fifth Circuit's decisions regarding the appeal from Plaintiffs' application for temporary injunction. Following the filing of the amended complaint, State Defendants will file an appropriate responsive pleading or motion consistent with Federal Rule of Civil Procedure 15(a)(3).

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief, General Litigation Division

/s/ Michael R. Abrams _____

MICHAEL R. ABRAMS

Texas Bar No. 24087072

CORY A. SCANLON

Texas Bar No. 24104599

Assistant Attorneys General

Office of the Attorney General

General Litigation Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

(512) 463-2120 | FAX: (512) 320-0667

michael.abrams@oag.texas.gov

cory.scanlon@oag.texas.gov

Counsel for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record.

/s/ Michael R. Abrams _____

MICHAEL R. ABRAMS
Assistant Attorney General