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

TEXAS DEMOCRATIC PARTY; DSCC; and DCCC, *Plaintiffs*, v. RUTH R. HUGHS, in her official capacity as the Texas Secretary of State, *Defendant.*	CIVIL ACTION NO. 5:20-cv-00008-OLG

MOTION TO ABSTAIN

In her Supplemental Advisory, the Secretary advised the Court that this case should not move forward based on principles of abstention. ECF 30 at 8 n.4. The Court should abstain from any further proceedings under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Plaintiffs' recent filings focus on a disputed state-law issue—whether Texas law allows their proposed methods of submitting voter registration applications—the resolution of which would moot or substantially alter their claims. Deciding Plaintiffs' federal claims under these circumstances would violate established principles of federalism and comity.

"The *Pullman* case establishes two prerequisites for *Pullman* abstention: (1) there must be an unsettled issue of state law; and (2) there must be a possibility that the state law determination will moot or present in a different posture the federal constitutional questions raised." *Palmer v. Jackson*, 617 F.2d 424, 428 (5th Cir. 1980).[1] The Fifth Circuit recently reaffirmed the importance of *Pullman*

[1] *Pullman* abstention applies to Plaintiffs' Section 1971 claim, not just their constitutional claims. *See United States v. State of Texas*, 430 F. Supp. 920, 929 (S.D. Tex. 1977) (three-judge court) (abstaining under *Pullman* and rejecting the argument "that actions brought under 42 U.S.C. ss 1971 and 1973 constitute a per se exception to the abstention doctrine"). The Fifth Circuit cited this case with approval in *Texas Democratic Party v. Abbott*, 961 F.3d 389, 397 n.13 (5th Cir. 2020).

abstention in another election-law case brought by the Texas Democratic Party. It criticized "the district court's decision to forge ahead despite an intimately intertwined—and, at that time, unresolved—state-law issue." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 397 n.13 (5th Cir. 2020); *see also id.* at 419 (Costa, J., concurring in the judgment).

The first prong of *Pullman* abstention is satisfied by the state-law question permeating Plaintiffs' arguments: whether the alleged "wet signature rule" or the process described in Plaintiffs' complaint regarding a voter registration application being compiled and submitted by a third-party "app" violates state law. *See, e.g.*, ECF 26-1 at 3–4. The Secretary believes her office's statements have been well supported by state law. *See, e.g.*, Tex. Elec. Code §§ 13.002(b), 13.003. Plaintiffs disagree. Texas courts have not yet settled this issue.

The second prong of *Pullman* abstention is also met because resolution of the state-law question would moot or alter Plaintiffs' federal claims. Abstention is particularly appropriate in this case because a state-court ruling would moot or alter Plaintiffs' claims regardless of whether the state court agreed with Plaintiffs or the Secretary.

If Plaintiffs are right about state law (contrary to the Secretary's argument), then a state-court judgment would moot their federal claims. If the relevant state courts decide that state law forbids enforcement of the alleged "wet signature rule," then state and local officials will not enforce any such rule to the extent that the rule exists (which the Secretary disputes). In that event, there would be no need for this Court to rule on Plaintiffs' federal claims. *See, e.g.*, *Pullman*, 312 U.S. at 501 ("If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise.").

When a federal court predicts that state courts would prohibit the challenged action on state-law grounds, the case "call[s] most insistently for abstention." *Harris Cty. Comm'rs Court v. Moore*, 420 U.S. 77, 84 (1975). As the Supreme Court has explained, "[i]f the state courts would be likely to

construe the statute in a fashion that would avoid the need for a federal constitutional ruling or otherwise significantly modify the federal claim, the argument for abstention is strong." *Id.* "[N]o matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination" because "[t]he last word on the meaning of" Texas law belongs "to the supreme court of Texas." *Pullman*, 312 U.S. at 499–500; *see also City Pub. Serv. Bd. v. Gen. Elec. Co.*, 947 F.2d 747, 748 (5th Cir. 1991) (explaining that federal courts are "*Erie*-bound to apply state law as state courts would do")

That alone would be sufficient for abstention. But in this case, there is more. Unlike most abstention cases, this case will be mooted or altered regardless of how the state courts resolve the state-law issue.

If Plaintiffs are wrong about state law (as the Secretary believes), then a state-court judgment would still moot their federal claims, or at least put them "in a different posture." *Palmer*, 617 F.2d at 428; *see also Tex. Democratic Party*, 961 F.3d at 397 n.13. Plaintiffs' arguments in their motion for a preliminary injunction rest on the resolution of the disputed state-law question. Indeed, their motion includes a section entitled "Texas law does not require voter registration applications to include original, wet-ink signatures." ECF 26-1 at 3–4.

Plaintiffs explain each one of their federal claims by reference to state law. According to Plaintiffs, the "wet signature rule . . . violates the Due Process Clause" because it "impos[es] additional restrictions on the voter registration process that are neither permitted by, nor consistent with, Texas law." ECF 26-1 at 18. Similarly, Plaintiffs argue that the "wet signature rule" violates the Civil Rights Act because a wet signature "is neither material nor even mandated by State law." *Id.* at 13. And Plaintiffs support their equal protection claim by arguing that "no Texas law actually states that wet signatures are required on voter registration applications." *Id.* at 15.

In their response to the Secretary's supplemental advisory, Plaintiffs doubled down on this

approach. They contend that no discovery is needed because, in Plaintiffs' view, this case boils down to one state-law question. For their Civil Rights Act claim, Plaintiffs argue that "the absence of any statutory requirement" under state law proves that requiring "a *wet* signature" violates federal law. ECF 31 at 2. Thus, they claim that this Court's analysis of "Texas law" in another case "effectively resolved" their federal statutory claim. *Id.* Plaintiffs argue discovery is "unnecessary to resolve the equal protection claims" because "Texas law does not even require wet signatures." *Id.* at 3. Finally, Plaintiffs argue their due process claim "can be resolved without further discovery because . . . State law does not impose [a wet signature] requirement." *Id.* at 3–4.

It is now clear that Plaintiffs' theory of this case centers on state law. A state-court ruling in the Secretary's favor (i.e., holding that state law prohibits Plaintiffs' proposed registration system) would seemingly moot all of Plaintiffs' federal claims. But it would at least substantially undercut those claims. *Pullman* abstention is appropriate because a state-court ruling "might 'at least materially change the nature of the problem.'" *Palmer*, 617 F.2d at 431 (quoting *Harrison v. NAACP*, 360 U.S. 167, 177 (1959)).

When analysis of the alleged federal rights at issue requires "focus[] on Texas law," abstention is appropriate. *Russell v. Harris County*, No. 4:19-cv-226, 2020 WL 1866835, at *12 (S.D. Tex. Apr. 14, 2020). Here, there is no doubt that "clarification of" state law "may have a considerable impact on the posture and ultimate resolution of . . . federal issues." *Brooks v. Walker Cty. Hosp. Dist.*, 688 F.2d 334, 338 (5th Cir. 1982); *see also Moore v. Hosemann*, 591 F.3d 741, 745 (5th Cir. 2009).[2]

* * *

An unsettled question of state law underlies Plaintiffs' federal claims, and whichever way the state courts rule, Plaintiffs' claims will be mooted or substantially modified. If the state courts agree

[2] For the same reasons, the Court should exercise its discretion to withhold declaratory relief until state courts have had the opportunity to resolve the state-law issue. *See* 28 U.S.C. § 2201(a) (providing that a federal court "may" issue declaratory relief).

with Plaintiffs, then state and local officials will not take the actions Plaintiffs seek to prevent. And if the state courts agree with the Secretary, then Plaintiffs cannot prevail on the legal theories they have advanced in this Court. For these reasons, the Secretary respectfully requests that the Court abstain.

Date: August 10, 2020

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Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I certify that on August 10, 2020, I conferred with counsel for the Plaintiffs about the foregoing motion and that counsel for Plaintiffs indicated they were opposed.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on August 10, 2020, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

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ORDER

Now before the Court comes the Motion to Abstain filed by Texas Secretary of State Ruth R. Hughs. After considering the Motion, any response, and all other matters properly before the Court, the Court is of the opinion that it should be GRANTED.

IT IS THEREFORE ORDERED that Secretary Hughs's Motion to Abstain is hereby GRANTED. The Court will abstain from any further proceedings until further notice.

DATE: _____

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HON. ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE