Amawi v. Pflugerville Independent School District et al

2019 | Cited 0 times | W.D. Texas | May 8, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION BAHIA AMAWI, § § Plaintiff, § § v. § 1:18-CV-1091-RP § PFLUGERVILLE INDEPENDENT § SCHOOL DISTRICT, et al., § Consolidated with: § 1:18-CV-1100-RP Defendants. §

ORDER On May 2, 2019, Defendants the Trustees of the Klein Independent School District and the Trustees of the Lewisville Independent School District gave notice that they have appealed the ment of House Bill 89, codified at Tex. Gov. Code §2270.001 et seq efore the Court is motion for a stay of this matter pending appeal of the Order, (Mot., Dkt. 83), and responsive briefing, (Dkts. 88, 89). For the reasons that follow, the Court will deny the motion.

I. LEGAL STANDARD an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses

In determining whether to grant a stay pendin stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the

applicant will be irreparably harmed absent a stay; (3) whether issuance of the stay will substantially Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 734 F.3d 406, 410 (5th Cir. 2013) (citation

omitted). Nken v. Holder, 556 U.S. 418, 433 (2009) (quoting Virginian R. Co. v. U.S., 272 U.S. 658, 672

Id.

II. DISCUSSION There is substantial overlap between the four factors courts must consider in determining whether to stay an action and the four factors governing preliminary injunctions. Id. (citing Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008)). The Court has therefore already largely addressed the four factors for a stay in determining that Plaintiffs were entitled to a preliminary injunction enjoining the enforcement of H.B. 89. To the extent the State merely repeats arguments the Court has already considered and rejected, it has failed to meet its burden of showing that the Court should exercise its discretion to stay this case. See Kahara Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 264 F. Supp. 2d 484, 487 (S.D. Tex. 2002) (rejecting motion to stay raising the same arguments considered and rejected in determining

that a preliminary injunction was warranted). The Court addresses below additional support now offered by the State with respect to its reasserted arguments, as well as arguments now made by the State for the first time.

As an initial matter, however, it is unclear what standard the State attempts to satisfy in meeting its burden under the four-factor test for a stay. that [it] Planned

Parenthood, 734 F.3d at 410. (Reply, Dkt. 89, at 1). But by citing to Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981), the State appears to invoke the alternative standard provided in that case. (Id.). Ruiz held that always show a probability success on the merits; instead, the movant need only present a substantial case on the merits when a

serious legal question is involved and show that the balance of the equities weighs heavily in favor of 650 F.2d at 565 (emphases added). This alternative standard is applicable in cases Id.

Giving the State the benefit of the doubt, the Court considers its motion under both standards. However, the Court finds that under either standard, the State has failed to show that the Court should exercise its discretion to stay its injunction.

A. Likelihood of Success on the Merits First, the State recycles its argument that Rumsfeld v. FAIR, 547 U.S. 47 (2006), governs this case, and that under it, Plaintiffs boycotts are not speech. (Mot., Dkt. 83, at 2). The Court has addressed and rejected this argument. (See Order, Dkt. 82, at 23 26). involved (but did not depend on) the fact that FAIR does not once mention Claiborne, boycotts, or

even the decision to withhold patronage. (See id. at 24). Rather, FAIR was about providing the military equal access to law students for recruitment purposes. Amendment] specifies that if any part of an institution of higher education denies military recruiters

access equal to that provided other recruiters, the entire institution would lose certain federal Now the State argues that in their briefing, the FAIR plaintiffs referred to their own activities as a boycott and cited to Claiborne four times. (Mot., Dkt. 83, at 3). FAIR . . . was unambiguously boycotting Id. at 2).

That the FAIR plaintiffs chose to characterize their conduct as a boycott does not change the fact that the Supreme Court did not do so, however. If anything, the State has made it all the more clear that because the Supreme Court was invited to consider the FAIR its decision not to do so was deliberate. To read FAIR, as the State does, to hold that political

boycotts are not protected speech, without citing to or discussing the foundational Claiborne decision

(despite the fact that it was thoroughly briefed and presented) and conspicuous avoidance of any discussion of boycotts, strains credulity.

The Court therefore reaffirms its conclusion that the case directly applicable here is Claiborne. Claiborne expressly interprets the scope of First Amendment protection for political boycotts. FAIR does not; it avoids doing so. Moreover, as previously noted, to the extent that there is any tension between Claiborne FAIR s holdings, this Court and the Fifth Circuit is bound to follow Claiborne. See Agostini v. Felton, 521 U.S. 203, 237 (1997) (quoting Rodriguez de Quijas v. Shearson/Am. Exp., Inc., 490 U.S. 477, 484 (1989)) a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals

should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions Second, the State repeats its argument that H.B. 89 does not restrict speech, and therefore it Dkt. 83, at 3). As explained at length in the Order, political boycotts are protected speech. (See Dkt. 82, at 23 29). To the extent the State now remain free to speak about any issue surrounding the Israeli-Pa 3), this argument is a non-sequitur. Plaintiffs need not be silenced for their speech to be impermissibly

chilled. Third, passage of intended to serve the compelling state interest of preventing national origin discrimination but was

t. 83, at 4 (citing Order, Dkt. 82, conclusion that the plain text of the statute makes clear that it is severely underinclusive with respect to its purported goal of preventing national origin

discrimination. (Order, Dkt. 82, at 32 35). H.B. 89 does not prohibit any company from boycotting any person or entity of Israeli national origin and on that basis so long as the person or entity is anywhere in the world outside Israel or its controlled territories, and is not doing business in Israel or those territories. (Id. at 33). government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or

viewpoint (Id. (quoting , 138 S. Ct. 2361, 2376 (2018))). This result follows even if the statements the Court cited in the Order do not reflect the motivations of the entire Texas Legislature an assertion the State now makes, (see Mot., Dkt. 83, at 4), but for which it points to no evidence. newly asserted justification Israeli

(id.), problem. The State offers this justification for the first time in the instant motion to stay and cites

no evidence that it played any part in the decision to pass H.B. 89. It is an illogical justification because r entity because

that person or entity is Israeli. As described in the Order, Plaintiffs allege that they boycott Israel national origin. (See Dkt. 82, at 4 11). They boycott HP on this basis, for example, even though HP

is not an entity of Israeli national origin. And notwithstanding its logical infirmity, the asserted justification for H.B. underinclusiveness problem. A

company wishing to boycott an Israeli person or entity on the basis of Israeli national origin may continue to do so as long as the person or entity is not located within or does not do business from within Israel or its controlled territories.

Fourth, the State argues for the first time that , 391 U.S. 367 (1968), not the modified Pickering v. Bd. of Edu., 391 U.S. 593 (1969) analysis, provides the appropriate level of scrutiny to which H.B. 89 should be subjected. But is inapplicable. That case announces a Texas v. Johnson, 491 U.S. 397, 407 (1989). The

Court has found with which it disagrees. (See Order, Dkt. 82, at 32 36). Such id. at 29 (quoting R.A.V. v. St. Paul, 505 U.S. 377, 430 (1992) (Stevens, J., concurring))),

and a regulation discriminating on the basis of viewpoint is be justified only if [the State] proves that [it] [is] narrowly tailored to serve compelling state

id. at 32 (quoting Reed v. Town of Gilbert, 135 S. Ct. 2218, 2231 (2015))). H.B. 89 does not pass this scrutiny.

Fifth, the State repeats its argument that H.B. 89 is not unconstitutionally vague because the . (Mot., Dkt. 83, at 5). This argument is identical to the preliminary injunction and in its motion to dismiss. (See Dkt. 25, at 16 n.5; Dkt. 55, at 14). For the

reasons already explained in the Order, the Court rejects this argument. (See Dkt. 82, at 43 46). The State now argues separately in a footnote, however, that the Court should have considered severing parts of H.B. 89 to render it constitutional. (Mot., Dkt. 83, at 5 n.1). But the Court found that (1) the -all provision is vague, (2) -out provision is vague, and (3) the vagueness is compounded when these two provisions are read together provisions. (See Order, Dkt. 82, at 43 45). Were the Court to sever the catch-all provision, the

statute would continue to both permit and prohibit the same conduct, such as boycotts of HP. (See

id. at 45). Were the Court to sever the carve-out provision, it would be rewriting the statute to cover activities the Texas Legislature intended to exempt from its reach. R.R. Ret. Bd. v. Alton R. Co., 295 U.S. 330, 362 (arbitrary and discriminatory

Roark & Hardee LP v. City of Austin, 522 F.3d 533, 551 (5th Cir. 2008))). And in any event, the Court that the statute is unconstitutionally vague is but one of several, independent grounds for finding that Plaintiffs are likely to succeed on the merits of their claims that the statute violates the First Amendment. (Id.).

B. The Remaining Factors The State also argues that the Court should stay its injunction because enjoining the

Court has determined that Plaintiffs are likely to succeed in showing that H.B. 89 is unconstitutional (on several grounds), that violates federal law. (Order, Dkt. 82, at 48 (quoting Planned Parenthood of Gulf Coast, Inc. v. Gee, 862 F.3d 445, 471 (5th Cir. 2017))). alone Ruiz, 650 F.2d at 566.

Next, the -held interest in preventing invidious It does not. Preventing were, H.B. 89 is not sufficiently tailored to promote that purpose. (See Order, Dkt. 82, at 32 37).

moot this case, and

6). The State does not

hypothetical confusion imposes on the State, or why this confusion is itself sufficient reason for the

Court to exercise its discretion to stay the injunction. On the other hand, the Court found that H.B. 89 inflicts irreparable harm on Plaintiffs. (Order, Dkt. 82, at 46). The Court is not persuaded that a the Court has found to likely Id. (citing Elrod v. Burns, 427 U.S. 347, 373 (1976))).

III. CONCLUSION For the reasons given above, the Court finds that the State has failed to meet its burden to show that the Court should exercise its discretion to stay its injunction prohibiting the enforcement of H.B. 89. Accordingly, IT IS ORDERED 83), is DENIED.

SIGNED on May 8, 2019.

_____ ROBERT PITMAN

UNITED STATES DISTRICT JUDGE