

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
OCT -4 PM 4:19
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
DEPUTY

Ray Salazar, David Ochoa, and Jesús B.)
Ochoa, Jr.,)
Plaintiffs,)
v.)

JUDGE DAVID GUADERRAMA

The City of El Paso, Texas, a municipal)
corporation, by and through its Mayor John)
Cook, in his official capacity as Mayor)
of El Paso, Texas, Joyce Wilson, in her)
personal and official capacity as City)
Manager of El Paso, Texas, Cortny Niland,)
in her personal and official capacity as)
Representative, District 8, El Paso,)
Texas, Steve Ortega, in his personal and)
official capacity as Representative of)
District 7, El Paso, Texas, Ann Morgan)
Lilly, Dr. Michiel Noe and Susie Byrd,)
all in their capacity as Representatives of)
their several Districts in El Paso, Texas,)
Defendants.)

EP 12 CV 0403

No. EP-Civ-

MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE COURT:

Plaintiffs in the captioned matter move the Court to grant them a Preliminary Injunction after hearing, and in support thereof show the Court:

I

This Motion is brought pursuant to Rules 65(a)(1)(c) and Rule 4, Fed. R. Civ. P.

II

Plaintiffs' counsel respectfully advises the Court that counsel will not be available October 19 - 23, 2012 because a previously planned family trip to Washington, DC.

III

1) Plaintiffs anticipate actual success on their Constitutional and Voting Rights claims for the reasons that the right to vote for a citizen ordinance through the initiative process, enshrined in the City Charter, takes precedence over any "window of opportunity" argument made the basis for haste by Defendants' public utterances for the necessity of demolishing City Hall. This case raises serious questions involving Plaintiffs' Constitutional and Civil Rights vis-a-vis Defendants' embrace of private interests over the public weal.

2) irreparable harm will ensue not only to Plaintiffs but to the general public of the City of El Paso, Texas, as this involves the demolition of City Hall for which in fact preliminary steps involving heavy drilling are already taking place: further, the planned demolition of City Hall is to take place by Christmas of the current year, leaving Plaintiffs without any adequate remedy at law.

3) the threatened injury outweighs any realistic harm to parties opposite, which would only mean a temporary delay to give the public an opportunity to approve or deny the said demolition in a democratic manner at the ballot box. If the preliminary injunction is issued in the sound exercise of the Court's discretion,

4) the relief sought will not adversely affect the public interest, but, to the contrary, will protect said interest, which involves maintaining the strength of democracy by protecting the right to vote and to have one's vote counted, protected and not diluted.

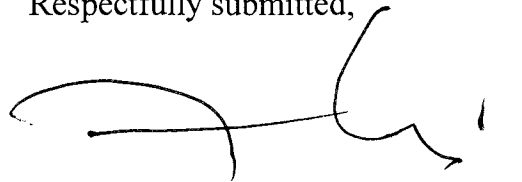
Pursuant to Local Rule CV-65(g), Plaintiffs request an oral hearing at the Court's earliest possible opportunity.

They request further that the requirement of Local Rule CV 65(h) that a "Conference to Settle the Matter" be waived, because the several public statements of the Defendants that "it's a done deal" along with the preparations to demolish the City Hall building, which are ongoing, render any such conference unrealistic.

WHEREFORE, Plaintiffs request the Court to issue its preliminary injunction after hearing, and in the exercise of its sound discretion to enjoin the Defendants, their agents, employees and all other persons acting in concert with them, from proceeding on with plans for and the actual demolition of City Hall:

the Plaintiffs request further that after trial on the merits, the preliminary injunction be extended until such time as the public has the opportunity to vote on the matter at the earliest City of El Paso election in the coming year.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fernando Chacón', is written over a horizontal line.

Fernando Chacón
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(915) 532-3850
Attorney for Plaintiffs

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AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE COURT:

Plaintiffs in the captioned matter submit their Verified Affidavit in support of their Motion for Preliminary Injunction.

THE STATE OF TEXAS)
COUNTY OF EL PASO)

BEFORE ME, the undersigned authority, on this first day of October, 2012, personally appeared Ray Salazar, David Ochoa, and Jesús B. Ochoa Jr., all Plaintiffs in the captioned

matter, and having been by me duly sworn, severally stated under oath as follows:

“We are all over the age of eighteen years, are of sound mind, reside in El Paso, El Paso County, Texas, and have no impediment in making the following declarations:

“All the allegations set out in our Complaint are based on personal knowledge and on the public utterances made by the Defendants relating to the proposed demolition of the City Hall of El Paso, Texas.

“The planned acquisition of a sports franchise for El Paso, Texas, originally planned to be a soccer team, has been under semi-secret consideration by Defendants and others working in concert with them.

“When the acquisition of a soccer team did not work out, the focus shifted to organized baseball. The availability of a AAA farm club of the major league team, the San Diego Padres, became known. The Padres were apparently willing to sell their Tucson, Arizona farm club to a group of local investors known as Mountain Star Sports Group, LLC.

“Defendants have all been involved in a “Downtown Revitalization Plan” for the past several years. A downtown sports arena has always been part of such plan. With the proposed acquisition of the Tucson farm team, the City moved apace to hold a public hearing on September 18 at which public comment was invited.

“The hearing allowed representatives of the City, the City Manager and her assistants, business interests and the El Paso and Hispanic Chambers of Commerce to make their presentations. No time limits were imposed.

“Public comments were cut short, given the number of people who wished to speak. Opposition was heavily against the Plan, which now involved the proposed demolition of City Hall to build a stadium to house the minor league team.

“Financing for the project was projected to be in the \$80-\$90 million range, with much of the financing dependent on an increase in the hotel occupancy tax, on which the public will vote on November 6.

“A petition/initiative with verified signatures sought to oblige City Council to stop the demolition of City Hall. The petition was dismissed by Council at the end of the September 18 hearing, at the same time that Council approved the immediate demolition of City Hall, a building of approximately \$30 million in value.

“The case to demolish the building was made by representatives of the Mountain Star Sports Group, who stated that if the City did not approve the demolition, the purchase of the minor league club could not be guaranteed by the parent club, the San Diego Padres.

“It is clear that Defendants allowed City policy to be set by the San Diego Padres, who have no interest in the matter other than to sell their farm franchise, which has been portrayed as a failing minor league club.

“The demolition of the City Hall will necessitate the massive moving of people, furniture and equipment for which the City is ill prepared.

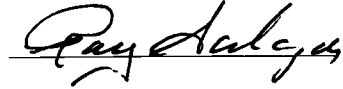
“A second petition/initiative is currently in process. It appears very likely that it will be brought before City Council in a matter of weeks. In all probability, Council will vote it down, as it did the first petition/initiative. Under the City Charter, the petition/initiative will be put on the ballot at the earliest City election, probably in March of the coming year. At this time, the public would approve or deny the razing of City Hall to build a baseball stadium in downtown El Paso.

“The stated position of Defendants is that as far as the citizen initiative us concerned, “it’s too late, it’s a done deal”, a mantra repeated in various media outlets.

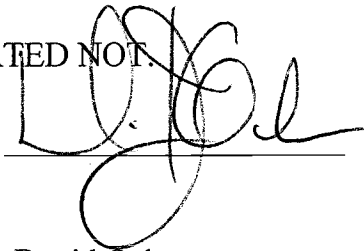
“If this is indeed the case, the Defendants and others working in concert with them would in effect have repealed the City Charter, leaving Plaintiffs with no adequate remedy at law, and irreparably harming the public interest.

“It was only when the plans to build a stadium and demolish City Hall became public, that the first petition/initiative was started, for the simple reason that people had no knowledge of the breadth of the plan to bring baseball or any other big sport franchise to downtown El Paso. Secrecy had worked.”

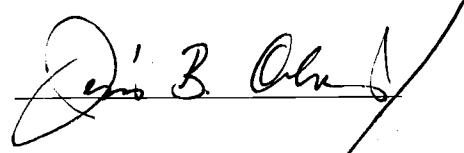
FURTHER AFFIANTS STATED NOT.



Ray Salazar



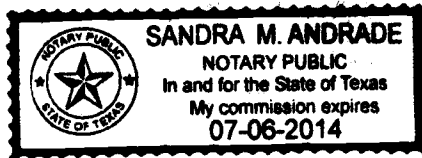
David Ochoa



Jesús B. Ochoa Jr.

STATE OF TEXAS
COUNTY OF EL PASO

BEFORE ME the undersigned authority, on this the 4TH day of October, 2012, personally appeared Ray Salazar, David Ochoa, and Jesús B. Ochoa Jr., who after having been by me duly sworn, severally stated that the allegations contained above are true and correct to their personal knowledge based on defendants' public utterances, with the remainder being true and correct on information and belief, to certify all of which witness my hand and seal of office on the date and year above stated.



Notary Public in and for
The State of Texas