

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

FILED

DEC - 6 2007

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY
 DEPUTY CLERK

TEXANS UNITING FOR REFORM AND FREEDOM, §
 §

Plaintiff, §

VS. §

CIVIL ACTION NO. SA-07-CA-0859-FB §

SAN ANTONIO BEXAR COUNTY METROPOLITAN PLANNING ORGANIZATION and SHEILA McNEIL, §
 §

Defendants. §

ORDER CONCERNING MOTION FOR PRELIMINARY INJUNCTION

Before the Court is the Plaintiff's Motion for Preliminary Injunction filed November 19, 2007 (docket #6), relating to a San Antonio-Bexar County Metropolitan Planning Organization (SAMPO) Board meeting on December 3, 2007. Because a motion for preliminary injunction was filed instead of a request for an ex parte temporary restraining order, and because no request was made for expedited consideration, the Court awaited a response from the defendants which was due on December 3, 2007. FED. R. CIV. P. 65; W. DIST. TEX. LOCAL RULE CV-7. On November 30, 2007, at 4:43 p.m., defendants filed their response to plaintiff's motion for preliminary injunction. That response, however, was not delivered to the Court's chambers until the afternoon of December 3, 2007. The Court was conducting a criminal jury trial on December 3 and 4, and upon its completion began a review of plaintiff's motion.

Although plaintiff stated in its opening paragraph that it was requesting a preliminary injunction to "preserve the status quo pending the resolution of this legal action," no mention was made of the impending December 3 SAMPO Board Meeting and plaintiff's belief of a strong

likelihood that a vote and final action would be taken at that meeting until the last two pages of the motion. Specifically, in the prayer for relief, plaintiff made its first request that:

the Court issue a Preliminary Injunction to preserve the status quo pending further deliberations and proceedings, by ordering the Defendants, their agents and representatives, and all persons acting in privity with them, to cease and desist from considering final action that would have the effect of approving the construction of toll roads at the SAMPO Board meeting scheduled for December 3, 2007; and further that the Court issue a Preliminary Injunction to preserve the last peaceable lawful status quo by ordering Defendant McNeil, her agents and representatives, and all persons acting in privity with her, to cease and desist from preventing any SAMPO Board member from offering for consideration any motion relating pro or con to the subject of toll roads, subject to every SAMPO Board member's obligation to submit agenda items sufficiently in advance of meetings to enable the timely posting of the agenda in accordance with the Texas Open Meetings Act.

Plaintiff's Motion for Preliminary Injunction, docket #6 at pages 9-10. Moreover, the Court was never contacted by plaintiff's counsel concerning an expedited ruling. Because the SAMPO Board meeting took place prior to this Court's consideration of plaintiff's motion for preliminary injunction to enjoin that action, that request is now moot.

With respect to plaintiff's request that Defendant McNeil be prevented from "offering for consideration any motion relating pro or con to the subject of toll roads," that request is denied because plaintiff has not met its burden to show (1) substantial likelihood of success on the merits, (2) a substantial threat of immediate and irreparable harm for which that is no adequate remedy at law, (3) that greater injury will result from denying the preliminary injunction, and (4) that granting the preliminary injunction will not disserve the public interest. Moreover, as explained in defendant's response, Mr. Leibowitz's motion was removed from the agenda because it called for a Board resolution criticizing the Texas Department of Transportation's advertising and lobbying of State officials in the promotion of toll roads as a solution to transportation needs which was

considered by the Board Chairman to be outside of SAMPO and the Board's role and authority. The motion was not included in the formal meeting agenda posted 72 hours in advance of the meeting as required by the Texas Open Meetings Act.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction (docket #6) be DISMISSED in part as moot, and DENIED in part.

It is so ORDERED.

SIGNED this 6th day of December, 2007.



FRED BIERY
UNITED STATES DISTRICT JUDGE