

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

WILL BRADSHAW

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Plaintiff,

VS.

CIVIL ACTION NO. 5:20-CV-01168-FB-ESC

JOSEPH SALVAGGIO;

KELLY KUENSTLER;

CATHERINE RODRIGUEZ;

DONNA CHARLES;

MONICA ALCO CER.

Defendants.

**DEFENDANT CITY OF LEON VALLEY OFFICIALS’ MOTION TO DISSOLVE
TEMPORARY RESTRAINING ORDER AND/OR IN THE ALTERNATIVE,
EXPEDITED HEARING ON PRELIMINARY INJUNCTION**

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE ELIZABETH S. CHESTNEY:

NOW COMES **JOSEPH SALVAGGIO, KELLY KUENSTLER, CATHERINE RODRIGUEZ, DONNA CHARLES AND MONICA ALCO CER**, Individually and in their Official Capacities, as Officials for the City of Leon Valley and pursuant to Rule 65, Federal Rules of Civil Procedure, files this their Motion to Dissolve this Court’s Temporary Restraining Order and/or in the Alternative, to set an expedited preliminary injunction hearing and in support thereof would respectfully show unto the Court the following:

**I.
BACKGROUND**

Defendant **JOSEPH SALVAGGIO** is the Chief of Police of the City of Leon Valley. Defendant **KELLY KUENSTLER** is the City Manager for the City of Leon Valley. Defendants **DR. CATHERINE RODRIGUEZ, DONNA CHARLES and MONICA ALCO CER** are duly elected City Councilmembers for the City of Leon Valley.

On June 5, 2020, during the early morning hours following a late council meeting, Plaintiff Will Bradshaw, a member of the City Council for the City of Leon Valley directly harassed members of the City of Leon Valley Police Department who were arresting an individual based on an arrest warrant previously issued. Plaintiff Bradshaw spewed vitriolic comments toward the City of Leon Valley Police Officers and said comments were made at such time as the officers were performing their duties as police officers for the City of Leon Valley. Plaintiff Bradshaw's actions were the subject of an independent investigation conducted by the Honorable Keith B. Sieczkowski of the Branscomb Law Firm in Corpus Christi. Mr. Sieczkowski was hired to conduct the independent investigation by the City Council for the City of Leon Valley and his memorandum is attached as Exhibit 1 to this response.

The City of Leon Valley is a home ruled city and its Charter provides for Council investigations; hearings; process under Section 3.12. A copy of Section 3.12 of the City Charter is attached as Exhibit 2 and incorporated for all purposes.

Councilman Bradshaw was provided dates for the Section 3.12 hearing and the date of October 5, 2020 was agreed upon. Subsequent to establishing that date, Plaintiff Bradshaw filed his Emergency Temporary Restraining Order which was granted by this Court.

Defendant **CITY OF LEON VALLEY OFFICIALS** herein, assert that Plaintiff Bradshaw has always been given due process and the hearing as enumerated in Section 3.12 provides due process in accordance with law. Defendants move the Court to dissolve its Temporary Restraining Order under Rule 65(b)(4) and allow the Section 3.12 hearing to continue in accordance with the City Charter for the City of Leon Valley. In the alternative, Defendants move the Court for an expedited Preliminary Injunction Hearing under Rule 65(b)(3), Fed. R. Civ. Proc.

II.

Generally speaking, Courts cannot substitute their own judgments in place of a municipality's governing body, but where the municipality abuses its discretion in an illegal or arbitrary manner, or where the government's decision has no reasonable basis in evidence, judicial review is appropriate. *Davray, Inc. v. City of Midlothian, Tex.*, 2005 WL 1586574 at *10 (N.D. Tex. July 6, 2005); *Labrado v. County of El Paso*, 132 S.W.3d 581, 596 (Tex. App. – El Paso 2004, no writ). A governing body's exercise of a discretionary power may be judicially reviewed to determine whether its action is illegal, arbitrary or capricious. *White v. Bolner*, 223 S.W.2d 686, 689 (Tex. Civ. App. – San Antonio 1949, writ ref'd).

The case of *Harris v. Monroe City Sch. Board*, 2012 WL 3548056 (W.D. La. Aug. 16, 2012) is analogous to the case at bar. In *Harris*, the plaintiff superintendent of the Board filed a motion for temporary restraining order against the Board to enjoin the Board from removing her from office. The Court analyzed the requirements for obtaining a temporary restraining order as:

- (1) A substantial likelihood of success on the merits;
- (2) A substantial threat that failure to grant the injunction will result in irreparable injury;
- (3) The threat and injury outweigh any damage that the injunction may cause the opposing party; and,
- (4) The injunction will not disserve the public interest.

Injunctive relief is an extraordinary remedy and should be granted only if the Movant has clearly carried the burden of persuasion with respect to all four factors. The court in denying the injunctive relief specifically stated that the Board did not conduct the investigation by itself, but

rather retained an outside attorney to investigate its concerns. The Board only set a terminating hearing after Blunt completed his investigation and prepared formal charges against Harris. Ultimately, the court held that the superintendent had failed to meet her burden of prevailing on the merits since her rights under due process had not been violated.

In the case at bar, the **CITY OF LEON VALLEY**, acting through its Officials, retained an outside law firm to conduct the investigation and set a Section 3.12 hearing after the investigation was complete and memorandum forwarded to Councilman Bradshaw. Defendant City of Leon Valley Officials have afforded Councilman Bradshaw due process and move that the Temporary Restraining Order be dissolved.

III.

Defendants **CITY OF LEON VALLEY**, acting by and through its named officials asserts in the alternative, that the Court set an expedited preliminary injunction hearing in accordance with Rule 65(b)(3). In order to obtain a preliminary injunction, the Movant must show (1) there is a substantial likelihood of success on the merits; (2) there is a substantial threat of irreparable injury; (3) the threat and injury outweighs the injury to the non-movant and (4) the granting of the injunction will not disservice the public interest. The parties seeking the injunction bears the burden of demonstrating the various factors justifying preliminary injunctive relief. Defendant City of Leon Valley Officials assert that there is not a substantial likelihood of success on the merits, that the threat and injury to the Movant does not outweigh the injury to the Non-Movant and that granting of the injunction will disserve the public interest.

Defendant **CITY OF LEON VALLEY**, acting by and through its Officials, move the Court to deny any injunctive relief since due process has been afforded Plaintiff Bradshaw as exhibited by Exhibits 1 and 2 attached hereto for all purposes.

WHEREFORE, PREMISES CONSIDERED, Defendants **CITY OF LEON VALLEY OFFICIALS SALVAGGIO, KUENSTLER, RODRIGUEZ, CHARLES** and **ALCOCER** pray that the Court dissolve its Temporary Injunction of October 2, 2020 pursuant to Rule 65(b)(4) and/or in the Alternative, that the Court set an expedited preliminary injunction hearing pursuant to Rule 65(b)(3) and for such other and further relief, both general and special, and at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS JOSEPH SALVAGGIO,
KELLY KUENSTLER, CATHERINE RODRIGUEZ, DONNA CHARLES
AND MONICA ALCOCER**

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2020, I electronically filed the foregoing Defendants Motion to Dissolve Temporary Restraining Order or in the Alternative Expedited Hearing on Temporary Injunction to with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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