

CAUSE No. 08-07335

FILED

2008 JUL -2 AM 6:00  
IN THE DISTRICT COURT

CLERK OF DISTRICT COURTS  
DALLAS COUNTY, TEXAS

DALLAS COUNTY  
COMMISSIONERS COURT,  
Plaintiff,

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v.

DALLAS COUNTY SHERIFF LUPE  
VALDEZ & DISCOVERY  
COMMUNICATIONS LLC,  
Defendants.

DALLAS COUNTY, TEXAS

C-68th

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

Plaintiff Dallas County Commissioners Court ("Commissioners Court") files this Original Petition, Application for Temporary Restraining Order and Temporary and Permanent Injunction, complaining of Dallas County Sheriff Lupe Valdez ("Sheriff Valdez") and Discovery Communications LLC ("Discovery Channel"). In support thereof, the Commissioners Court would respectfully show the Court as follows:

**I. Introduction**

1. Sheriff Valdez has entered into a written agreement with the Discovery Channel. This agreement grants the Discovery Channel access to the Dallas County jail for the next several weeks for the filming of a documentary about the jail. Sheriff Valdez impermissibly entered into this agreement without the authorization or knowledge of the Commissioners Court.

2. The Commissioners Court has concluded that permitting the Discovery Channel to film in the Dallas County jail is not in the best interests of Dallas County and its taxpayers. The Commissioners Court's concerns include, among others: (1) the safety of the Discovery Channel's

film crew and any potential liability resulting from a breach of security; (2) the potential privacy interests of the inmates and the potential liability resulting from any violation of an inmate's privacy rights; and (3) the possibility of jeopardizing Dallas County's ability to restrict access to the Dallas County jail and other county buildings in the future given the precedent set by this impermissible agreement with the Discovery Channel.

## **II. ORIGINAL PETITION**

### **A. Discovery Control Plan**

3. The Commissioners Court intends to conduct discovery pursuant to Level 2 Discovery Control Plan.

### **B. Parties**

4. The Commissioners Court is the principal governing body of Dallas County. *See* TEX. CONST. art. V, § 18.

5. Sheriff Valdez is the Sheriff of Dallas County and is represented in this case by District Attorney Craig Watkins who can be served at the Frank Crowley Courts Building, 133 North Industrial Boulevard LB 19, Dallas, Texas 75207-4399.

6. Discovery Channel is a television and cable channel owned by Discovery Communications, LLC. Upon information and belief, Discovery Channel has no registered agent for service of process in the State of Texas. Therefore, the Secretary of State is the proper agent for service of process on the Defendant. The Secretary of State may send a copy of this petition in care of the Discovery Channel's registered agent, The Corporation Trust Incorporated, 300 E. Lombard St., Baltimore, Maryland, 21202.

**C. Jurisdiction and Venue**

7. This Court has jurisdiction over Sheriff Valdez because she is a Texas resident and a public official of Dallas County. Discovery Channel is doing business in Texas in connection with the allegations giving rise to this lawsuit.

8. Venue is proper in this county pursuant to Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

**D. Factual Background**

8. On June 30, 2008, at 2:19 p.m., Allen Clemson, the Dallas County Commissioners Court Administrator, received a Memorandum from Leslie Sweet, the legal advisor for the Dallas County Sheriff's Department. *See* Tab A-1. The Memorandum, written on the letterhead of the Dallas County Sheriff's Department, explained that Sheriff Valdez had entered into a written agreement with the Discovery Channel. *See* Tab A-1. This agreement grants the Discovery Channel access to the Dallas County jail so that a documentary may be filmed by the Discovery Channel about the Dallas County jail. *See* Tab A-2. This Memorandum was the first notice the Commissioners Court received of this arrangement.

9. At their regular meeting held on July 1, 2008, the Commissioners Court "reviewed, considered, and discussed the Sheriff's notice to allow access to the Discovery Channel" to film a documentary. It determined that this proposed "use of Dallas County property by the Discovery Channel for the purpose of filming to not be in the best interest of the County." *See* Tab A-2.

10. The Commissioners Court ordered that "unless the Sheriff withdraws her approval of such access for the Discovery Channel prior to 1:00 p.m. on July 1, 2008, that a law suit seeking

a restraining order and injunction be filed against both Sheriff Lupe Valdez and the Discovery Channel.” *See* Tab A-2.

11. The Discovery Channel is to begin filming in the Dallas County jail today. *See* Tab A-1.

12. Sheriff Valdez was not and is not authorized to enter into any agreement with the Discovery Channel to provide access to the Dallas County jails for the filming of a documentary.

13. The business of Dallas County is conducted by and through the Commissioners Court. *See* TEX. CONST. art. V, § 18. It is well-settled that the Commissioners Court is the “contracting agency of the county, and it alone has authority to make contracts binding on the county, unless otherwise specifically provided by statute.” *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941). In contrast, “[S]heriff [Valdez] has no authority to make contracts that are binding on the county, except where [s]he is specifically so authorized to do so by statute.” *Id.* “Absent an express statute, the authority to enter into contracts regarding a county jail’s operation rests with the commissioners court.” Op. Tex. Att’y Gen. No. GA-0229, 2004 WL 1787814, at \*2 (2004). There is no Texas statute authorizing Sheriff Valdez to enter into the written agreement with the Discovery Channel for the filming of a documentary in the Dallas County jail.

14. Moreover, Section 351.001(a) of the Local Government Code specifically provides that the Commissioners Court is charged with the obligation to “provide safe and suitable jails for the county.” TEX. LOC. GOV’T CODE § 351.001(a).

15. Providing for the safety of a Discovery Channel film crew and any potential liability resulting from a breach of security during the filming of a documentary is the responsibility of the Commissioners Court, not the Sheriff.

16. It is also clear that granting permission to the public to access county buildings, like the Dallas County jail, is a function of the Commissioners Court, not the Sheriff's Department. And the Commissioners Court has a stated policy of not granting the public access to county buildings unless the use is "in the best interest of the county." DALLAS COUNTY CODE §§ 74-241, -191(e), -192(b). In the considered judgment of the Commissioners Court, the use of the county jail to film documentary is not in the county's best interests.

17. In contrast to the role of the Commissioners Court, the sheriff is only "the keeper," and the day-to-day administrator, of the county jail. See TEX. LOC. GOV'T CODE §§ 351.041(a), .034(a). Entering into a written agreement with a television cable network for the making of a documentary film in the Dallas County jail is not within Sheriff Valdez's normal day-to-day operation of the jail. Sheriff Valdez was not and is not authorized to enter into the written agreement with the Discovery Channel.

18. The Discovery Channel has no constitutional right of access to the Dallas County jail. See *Houchins v. KQED, Inc.*, 438 U.S. 1, 8 (1978) ("The public importance of conditions in penal facilities and the media's role of providing information afford no basis for reading into the Constitution a right of the public or the media to enter these institutions, with camera equipment, and take moving and still pictures of inmates for broadcast purposes. This Court has never intimated a First Amendment guarantee of a right of access to all sources of information within government control.").

**E. Causes of Action**

**COUNT ONE: DECLARATORY RELIEF**

19. The Commissioners Court incorporates by reference all the allegations set forth in the paragraphs above.

20. The Uniform Declaratory Judgments Act permits this Court to “declare rights, status, and other legal relations” between the parties in this case. TEX. CIV. PRAC. & REM. CODE § 37.003(a).

21. Sheriff Valdez’s decision to enter into the written agreement with the Discovery Channel is neither authorized nor in the best interests of the County. Although Sheriff Valdez is tasked with the day-to-day operations of the Dallas County jail, the Commissioners Court has a broader duty to provide jails that are safe and suitable, *see* TEX. LOC. GOV’T CODE § 351.001(a), as well as with entering into any contracts regarding the jail’s operation. *See* Op. Tex. Att’y Gen. No. GA-0229, 2004 WL 1787814 (2004).

22. As a result, the Commissioners Court seeks a declaration that Sheriff Valdez was not authorized to enter into the written agreement with the Discovery Channel, that the written agreement is therefore void, that Sheriff Valdez has no authority to grant the Discovery Channel access to the Dallas County jail for the purpose of filming a documentary, and that the Discovery Channel has no right to enter the Dallas County jail to film a documentary without the express permission of the Commissioners Court.

**COUNT TWO: ATTORNEY’S FEES**

23. The Commissioners Court incorporates by reference all the allegations set forth in the paragraphs above.

24. Pursuant to Section 37.009 of the Uniform Declaratory Judgments Act, the Court “may award costs and reasonable and necessary attorney’s fees as are just and equitable.” *See* TEX. CIV. PRAC. & REM. CODE § 37.009. The Commissioners Court has been required to retain counsel on its behalf to bring this action and requests an award of costs and reasonable and necessary attorney’s fees.

### III. REQUEST FOR INJUNCTIVE RELIEF

25. The Commissioners Court incorporates by reference all of the allegations set forth in the paragraphs above.

26. The Commissioners Court’s request for injunctive relief is supported by the attached Affidavit of County Court Administrator Allen Clemson, which is attached hereto as Exhibit A; the Dallas County Commissioners Court Order No. 2008 1265, which is attached hereto as Exhibit A-2; and the Memorandum authored by Leslie Sweet, legal advisor to the Dallas County Sheriff’s Department, which is attached hereto as Exhibit A-1.

27. As set forth in detail above, the Commissioners Court has established a probable right to the relief it seeks upon final hearing. The Commissioners Court has established that if Sheriff Valdez and the Discovery Channel are not immediately restrained from performing under the unauthorized written agreement granting the Discovery Channel access to the Dallas County jail for the purpose of filming, and making a documentary, Dallas County and the Commissioners Court will suffer immediate irreparable injury for which money damages would be inadequate if they could be determined. Unauthorized access to Dallas County property is not remediable except by injunction.

28. The Commissioners Court lacks an adequate remedy at law for the harm that is likely to accrue absent the requested injunctive relief.

29. Accordingly, the Commissioners Court is entitled to injunctive relief under the Court's equitable jurisdiction.

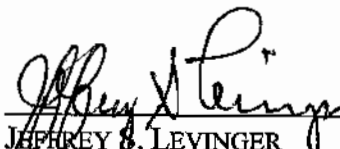
30. Therefore, the Dallas County Commissioners Court seeks a temporary restraining order and temporary and permanent injunction:

- (a) prohibiting Sheriff Valdez and all persons in active concert or participation with Sheriff Valdez and the Dallas County Sheriff's Department from granting the Discovery Channel access to the Dallas County jail for the purpose of filming and making a documentary without the express consent of the Dallas County Commissioners Court;
- (b) prohibiting the Discovery Channel and all persons in active concert or participation with the Discovery Channel from entering the Dallas County jail for the purpose of filming and making a documentary without the express consent of the Dallas County Commissioners Court.

WHEREFORE, Plaintiff Dallas County Commissioners Court respectfully prays that the Defendants, Dallas County Sheriff Lupe Valdez and the Discovery Channel, be cited to appear and answer herein and the Defendants and all persons in active concert or participation with the Defendants and who receive actual notice of the order by personal service or otherwise, be temporarily, preliminarily, and permanently enjoined as described in detail above.

Upon final trial hereof, the Commissioners Court also requests an award of attorney's fees and such other and further relief to which the Commissioners Court may show itself to be justly entitled.

Respectfully submitted,



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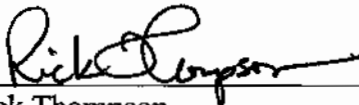
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COUNTY COMMISSIONERS COURT

**Certificate of Counsel Under Local Rule 2.02**

The undersigned, one of the counsel for the Commissioners Court, spoke with Jana Prigmore, counsel for Sheriff Valdez, about this lawsuit on July 1-2, 2008. The undersigned faxed a copy of this original petition and the accompanying order to Ms. Prigmore and District Attorney Craig Watkins on July 2, 2008 at approximately 8:00 a.m. The undersigned also faxed a copy of these documents to the general counsel of the Discovery Channel at approximately the same time. Additional notice is not practicable or required, however, because the Discovery Channel is scheduled to begin filming in the jail immediately this morning, and for the reasons state above, those actions will give rise to imminent irreparable harm.

The undersigned further certifies that, to the best of his knowledge, this case is not subject to transfer under Local Rule 1.06.

  
Rick Thompson