

Litigation

Texas Court Scolds Paxton's Office in Beto-Funded Quorum Break

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More than six months after Texas Attorney General Ken Paxton (R) called them "Beto-loving" activists, the Republican justices on the statewide intermediary court asked Paxton's office to lower their tone during oral arguments Thursday.

Chief Justice Scott Brister read aloud from a scathing brief Paxton's office submitted to the Texas Supreme Court on Aug. 26, complaining about an expedited briefing schedule set by the Court of Appeals, Fifteenth District.

Brister said the justices had to implement fast-paced deadlines in order to quickly decide an issue related to Democratic leader Beto O'Rourke raising money for Texas House members who fled the state. Paxton said O'Rourke's solicitations amounted to bribery because he offered the lawmakers lodging and food as they collectively kept the House from making quorum to vote on a GOP-gerrymandered Congressional redistricting plan.

Paxton a day later called out the justices as the "Beto-loving Fifteenth Court of Appeals," in a press release criticizing the court for granting O'Rourke a pause in the case.

During arguments, all three justices expressed concerns with Paxton's request to regulate what they say they believe is protected political speech. Their comments signaled favor for O'Rourke, the former US representative and onetime presidential candidate, and his advocacy group Powered by People.

As for Paxton's criticisms of them, the justices redirected the argument for several minutes to call out his office for what they viewed as unprofessional conduct.

Signed by Paxton's solicitor general, William Peterson, the August brief called the court's schedule "patently unreasonable" and said it "violated due process." It would also disrupt "the exceptionally busy schedule of the state's lawyers," it read.

"In the world I grew up in, which was another age and generation, you wouldn't say stuff like that about a court that you were going to have to appear in front of," Brister told Paxton's lawyer, Johnathan Stone.

Brister reminded Stone that the justices in the end agreed to extend the briefing deadline by two weeks, issuing the order one minute before the state filed the motion asking the highest court for relief.

"Is there somebody you can talk to and say, 'Look, we need somebody to read stuff before we file it and see if in fact this problem is about to disappear?'" Brister said, adding, "It's just hard to take things like that back."

Stone, who didn't join the motion in question, said he'd relay Brister's concerns to his colleagues.

Personal and Political Expenses

The justices appeared likely to side with O'Rourke and conclude that state law permits his fundraising efforts, and that the Democratic lawmakers were free to use the money to stay out of the state.

"The line between what's a personal expense and what's a political expense is a dangerous one to try to draw," Brister said, adding that no court in Texas has held that it's an improper use of political contributions "to eat or stay at a hotel."

Justice April Farris pushed Stone for evidence that O'Rourke misled donors by using the funds for a purpose the state says is unlawful. Stone said he didn't need any beyond what the state asserted in its pleading to secure a temporary restraining order at the trial court.

Farris added that prior restraint on political speech is "very disfavored in state law." And, she said, the state might not be able to show that anyone meets the definition of a consumer in O'Rourke's fundraising, as required for a violation of deceptive trade practice laws.

Her comments squared with a preliminary ruling from the court in September that said the state had failed to show the deceptive trade practice laws apply to political activity.

The justices are also being asked to decide if the case should play out in Tarrant County, where Paxton filed against O'Rourke, or in El Paso, County, where O'Rourke lives and where he's pursuing a parallel proceeding.

The state also is considering asking a judge to hold O'Rourke in contempt because it says he showed "disdain for the courts" by telling attendees of a rally he wouldn't follow the temporary restraining order barring him from fundraising. O'Rourke's lawyer said the state misinterpreted his comment, and the justices suggested the speech would be legally protected anyway.

"Speaking of disdain for the courts," Brister said, before unloading on Stone about the office's August brief.

O'Rourke and his group are represented by Marziani, Stevens & Gonzalez PLLC, and Sommerman, McCaffity, Quesada & Geisler LLP.

The case is In Re Powered by People and Robert Francis O'Rourke, Tex. App., 15th Dist., No. 15-25-00140-CV, 3/12/26.

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