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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EMPACADORA DE CARNES DE FRESNILLO, S.A. DE C.V., ET AL.	§	
VS.	§	CIVIL ACTION NO. 4:02-CV-804-Y
TIM CURRY, District Attorney, Tarrant County, Texas, ET AL.	§	

ORDER PARTIALLY GRANTING PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION AND CANCELLING HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Pending before the Court is the plaintiffs' Motion for Preliminary Injunction ("PI") [doc. # 8-1], filed October 4, 2002. Having carefully considered the motion, response, reply, and all other related documents, the Court concludes that the motion should be PARTIALLY GRANTED.

The plaintiffs,[1] which are involved in horsemeat processing and slaughtering horses for human consumption in foreign countries, filed a complaint on September 26, 2002, seeking to enjoin defendants Tim Curry, District Attorney of Tarrant County, Texas; and Ed Walton, District Attorney of Kaufman County, Texas, from enforcing chapter 149 of the Texas Agriculture Code. *See* TEX. AGRICULTURE CODE ANN. § 149.001 *et seq.* (Vernon 2003). The plaintiffs claim that they are entitled to a PI because either chapter 149 has been repealed or is

[1]The plaintiffs in this suit are: (1) Beltex Corporation, a meat processing plant in Fort Worth, Texas that has processed horsemeat for human consumption for 27 years; (2) Dallas Crown, Inc., a meat processing plant in Kaufman, Texas; and (3) Empacadora de Carnes de Frenillo, S.A. de C.V., a Mexican corporation that processes meat for human consumption and exports it though Texas for international delivery.

preempted by federal law. The plaintiffs further allege that they will most likely be put out of business and that numerous other organizations that rely on the plaintiffs' businesses will be adversely affected if the plaintiffs are prosecuted and convicted for violating chapter 149.

Under well settled Fifth Circuit precedent, a PI is an extraordinary remedy that should not be granted unless the movant proves: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) that the injunction will not undermine the public interest. *See Sugar Busters LLC v. Brennan*, 177 F.3d 258, 265 (5th Cir. 1999); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998); *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990); *Canal Auth. of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). The grant of interim injunctive relief is "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied 'only in [the] limited circumstances' which clearly demand it." *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 811 (4th Cir. 1992) (citing *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989).

With respect to the first element, the Court concludes, at least at this juncture of the proceedings, that the plaintiffs have shown a substantial likelihood of success on the merits. For the reasons

stated in the plaintiffs' motion, the United States Department of Agriculture's October 11, 2002, response to the plaintiff's motion, and the plaintiffs' reply, the Court believes that chapter 149 of the Texas Agriculture is preempted by federal law and/or has been repealed.

As to the second element, the plaintiffs have demonstrated a substantial threat of irreparable injury, at least as to defendant Curry.[2] Curry has indicated that he is ready and willing to prosecute the plaintiffs for violating chapter 149 of the Texas Agriculture Code if the Court does not grant the plaintiffs' motion for PI. The plaintiffs would suffer irreparable harm if they are prosecuted, convicted, and put out of business based on a state statute that is preempted or has been repealed.

Defendant Walton, on the other hand, has stated that "his office has no present intention of prosecuting Dallas Crown[3] for any alleged violations of Chapter 149." (Walton Aff. at 1.) Based on this statement, there is no substantial threat of irreparable harm by defendant Walton. Consequently, the plaintiffs' motion for PI as to defendant Walton must be denied.

With respect to the third element, the plaintiffs have shown that the threatened injury to them outweighs the harm to defendant

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[2]"An injury is 'irreparable' only if it cannot be undone through monetary remedies." *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981).

[3]Dallas Crown, Inc. is the only plaintiff over which defendant Walton has the authority to prosecute.

Curry that may result from the injunction. Defendant Curry, although admitting that the threat to the plaintiffs is real and serious, claims that the "injury to Defendant is that he will be precluded from exercising prosecutorial powers in the name of the State of Texas." (Def. Curry's Resp. at 17-18.) Even assuming that this does constitute a real injury to defendant Curry, the injury to the plaintiffs of a possible criminal prosecution, criminal conviction, and resulting injunction that will likely put them out of business far outweighs any injury to defendant Curry.

Finally, with respect to element four, granting a PI in this case would be in the public interest. The plaintiffs provide a wide variety of products to people and organizations. For example, the plaintiffs provide samples and horse parts to various veterinary schools for studies and to zoos to feed their animals. Although there are members of the public that find the consumption of horse meat by humans repulsive, the public interest is much better served by permitting the plaintiffs to continue normal operations of all aspects of their businesses, as they have for many years, until an ultimate decision is made whether chapter 149 is preempted or has been repealed.

Based on the foregoing, the plaintiffs' Motion for Preliminary Injunction [doc. # 8-1] is GRANTED as to defendant Curry and DENIED as to defendant Walton.

It is further ORDERED that the hearing on the plaintiffs' Motion for Preliminary Injunction that is set for Tuesday, April 22, 2003,

is CANCELLED as the Court concludes that it is no longer necessary.

SIGNED April 21, 2003.

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/knv