

CERTIFICATE OF INTERESTED PERSONS

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INTRODUCTION

The City of Houston creates various local government corporations to carry out its governmental functions; one such corporation is the Houston Downtown Park Corporation (“Park Corporation”) created for the purpose of operating and developing a public park, which exists today as Discovery Green Park (“the Park”). The City of Houston provided most of the \$125 million in funding to create the park and in December of 2004, the City conveyed 11 acres of public land to Discovery Green Conservancy (“the Conservancy”) requiring that the property be developed as park land and open space. That same day, the Conservancy deeded those same 11 acres to the Park Corporation.

The Conservancy operates Discovery Green Park (“the Park”) pursuant to an Operating Agreement with the Park Corporation and has been delegated final rulemaking authority by the City and the Park Corporation. Signs posted in the Park announce that the Park is owned by the Park Corporation and the City of Houston. Notably, the Park is the sole public park in

downtown Houston. Many of the security guards employed to patrol the Park, including the two involved in this case, are Houston Police officers.

With the knowledge that parks are one of the most basic traditional public forums, one c

The Conservancy is performing a public function and wielding government power delegated to it by the City, and therefore its actions must be treated as state actions

, 326 U.S. 501 (1946), it is the government of this jurisdiction for all substantive and practical purposes, and is therefore a state actor.

If this is not state action, it is a blueprint for any municipality to create a shell corporation to do its bidding without constitutional restraints. If the state-action doctrine means anything at all, Houston's quirks and creative corporate form cannot be used to contract out of its constitutional obligations.

ARGUMENT

A. The Conservancy is a state actor because its identity overlaps and is entwined with the City and the Park Corporation.

Formally, the Conservancy is a private entity, but its function is so

Otherwise private action can be fairly characterized as state action based on an assessment of the specific facts. ,

In analyzing whether the Secondary School Athletic Association was a state actor in _____, the Court explained that a lack of coercion or

Further, the technical designation of the Conservancy as a private corporation is of little importance here. The Supreme Court's cases "are unequivocal in showing that

B. The Park Corporation and Conservancy, having been delegated the traditional exclusive public function of operating a public park and final rulemaking authority by Houston, qualify as state actors.

“[A] private entity may qualify as a state actor when it exercises ‘powers traditionally exclusively r61 14.04 (t Dj0.005TT1 1 .04 (t Dj0.005TT1 1 .04 (t ()7.5 (

enforce constitutional guarantees in company towns would deprive the people living in those towns “of the liberties guaranteed by the First and Fourteenth Amendments” because, like our Plaintiffs-Appellants, they would have no alternative public forum available. . If a privately owned company town, like the one in is required to respect the First Amendment rights of the public, so too is the Conservancy in its operation of the city’s only public park.

And here the operation of the park is not truly private, not only because of the entwinement and overlapping identities, but also because the City of Houston has delegated its final rulemaking authority to the private entity through the operating agreement. Under the District Court’s reasoning, the government can contract away First Amendment obligations

In *Estelle v. Gamble*, the Supreme Court held that contracting out prison medical care to a private entity by delegation did not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, nor did it deprive the State's prisoners of the means to vindicate their Eighth Amendment rights. *Estelle v. Gamble*, 429 U.S. 97, 112 (1977); *Wolcott v. Ferriter*, 487 U.S. 42, 56 (1988).

The Fifth Circuit considered a similar situation in *E-Systems, Inc. v. United States*, 667 F.2d 1219 (5th Cir. 1982), where E-Systems, a private corporation, contracted with the federal government to provide support services for a surveillance system in the Sinai Peninsula. The Court determined that E-Systems was a state actor under two theories: 1) symbiosis, or interdependence, due to the close relationship and overlapping identities between the government and E-Systems; and 2) E-Systems performing a traditional exclusive public function in the role of “peacekeeper,” a “broad governmental role” which was delegated to the company by the United States. *E-Systems, Inc. v. United States*, 667 F.2d at 1226. The finding of state action was based upon the nature of the duties performed and the interdependent relationship between the contractor and the government, and while the mere existence of a contract between them is insufficient to create state action, when the contract

C. The use of public funds and public property by a seemingly private organization qualifies their speech-suppressive activities as state action.

This Court has repeatedly held that the use of public lands and public funds by a private organization indicates state action through a symbiotic or interdependent relationship. _____, 667 F.3d at 1222

(citing _____, 365 U.S. 715 (1961)

(pointing to public ownership of the land and building, their dedication to public uses, the physical and financial relationship between the Parking Authority and the restaurant, in finding an interdependent relationship between the private and state actor, making the state actor a joint participant in discrimination).

In _____, 553 F.2d 918 (5th Cir. 1977), state action was found

“

conducted city recreational programs. _____, 667 F.2d at 1223.

In _____, 344 F.2d 951 (5th Cir. 1965), “[t]his Court explained that although the University of Tampa is not a state or city university, its establishment was largely made possible by the use of a surplus of city buildings and the use of other city land leased for university purposes. As a result, [the Court] held that the City's involvement in the establishment and maintenance of the university was of such a nature as to require a holding that “state action” was involved in the denial of the plaintiff's rights.” _____, 553 F.2d at 920.

Likewise, the establishment of the Park at issue in this case “was largely made possible by the use of” nearly \$125 million in public funds and over 11 acres of public property provided by the City of Houston. See Compl. ¶¶ 51, 54. Even setting aside the overlapping identity of the Board members and

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's dismissal of the case and grant the preliminary injunction.

Dated: February 28, 2025

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7) because the brief contains

