

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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AUSTIN DIVISION
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WESTERN DISTRICT OF TEXAS
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HYDE PARK BAPTIST CHURCH

Plaintiff,

vs.

CITY OF AUSTIN,

Defendant.

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Civil Action No. A: 01 CV 212 JRN

ORDER

Before the Court is the above entitled cause of action. This cause was referred to a United States Magistrate Judge for findings and recommendations pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. Magistrate Judge Andrew Austin filed his report and recommended that the District Court abstain from deciding the state law issues in this case based upon the *Pullman* doctrine.

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with a copy of the report and recommendation. When objections are timely filed, the party is entitled to a *de novo* review by the district court. *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*). Plaintiff Hyde Park Baptist Church (HPBC) timely filed objections to the Report and Recommendation; therefore, this Court conducted a *de novo* review and issues the following Order.

HPBC seeks a declaratory judgment that would allow them to continue with the planning and building of a multi-level parking structure on the block bounded by 39th and 40th Streets to the South and North and Speedway and Avenue D to the East and West in the area known locally as Hyde Park in Austin, Texas. HPBC claims it's application to build the parking structure was

submitted according to the terms of a 1990 ordinance that created a Neighborhood Conservation and Combining District (NCCD Ordinance). The NCCD Ordinance was the product of a compromise between HPBC and the City of Austin regarding the extent of development by HPBC in the Hyde Park neighborhood. The application was initially approved and released for construction by the Director of Development Review and Inspection Department. On appeal, the City Council overturned the Director's decision and suspended the permit. HPBC initially sued the City in state court, but after losing its request for temporary relief, non-suited its state court action and filed this lawsuit in federal court. Among the state law claims, HPBC alleges that the City of Austin violated the Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C. § 2000cc)(RLUIPA) which, according to HPBC, gives this Court jurisdiction.

Defendant City of Austin requests that this Court abstain from exercising its jurisdiction pursuant to the *Pullman* doctrine. *R.R. Comm'n of Tex., et. al v. Pullman, Co., et al.*, 312 U.S. 496 (1941). Under the *Pullman* doctrine, a court can abstain from a case where there is a federal constitutional challenge to state action and there is an unclear issue of state law that, if resolved, would make it unnecessary to rule on the federal constitutional question.

HPBC contends that it would be improper for the Court to abstain where a fundamental federal right is at issue. HPBC asserts that Congress, through the enactment of RLUIPA, has determined that as to religious organizations, land use is to be regarded and treated as a fundamental right. The City of Austin counters that the mere presence of a federal claim does not bar a court from considering abstention.

The Court agrees with the City. In order for a court to consider the *Pullman* abstention doctrine there must be a federal constitutional challenge to state action. Needless to say, there will always be a federal issue if the *Pullman* doctrine is applicable. The Court is not convinced that the presence of an alleged fundamental federal claim precludes abstention. Recently the Fifth Circuit held that where a state law question was "fairly susceptible" to an interpretation that could render a federal constitutional decision unnecessary abstention would be proper.

Nationwide Mutual Ins. Co. v. Unauthorized Practice of Law Committee of the State Bar of Texas, – F.3d –, 2002 WL 243199 (5th Cir. 2002). Importantly, the *Nationwide* case involved both abstention and alleged violations of fundamental federal rights. The Fifth Circuit upheld the district court’s abstention ruling even though the plaintiff alleged that their fundamental federal rights were violated. Therefore, it is not an absolute that the mere presence of an alleged fundamental federal right precludes a court from considering abstention.

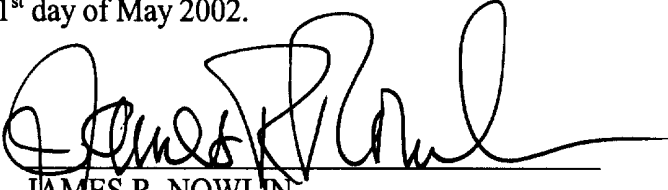
This Court acknowledges that in a previous order it denied Defendant’s Motion to Abstain on the grounds that the resolution of the state law issues might not preclude the need to determine the federal issues. Upon further briefing, arguments and review, this Court has reconsidered its position. As the Magistrate’s Report notes, abstention in this case will likely avoid any friction between federal and state courts, reduce the likelihood of an erroneous interpretation of state law and avoid an unnecessary constitutional ruling. See *Pullman Co.*, 312 U.S. at 499-501; see also *CHEMERINSKY*, supra at 738-41. This Court now finds that by abstaining from ruling on the state law issues presented it will avoid the potential conflicts addressed in *Pullman*. This Court, in agreeing with and incorporating the findings and conclusions stated in the Report and Recommendation herein, overrule HPBC’s objections.

THEREFORE IT IS ORDERED that the REPORT AND RECOMMENDATION is ACCEPTED AND ADOPTED.

IT IS FURTHER ORDERED that this Court will ABSTAIN from deciding the state law issues in this case based on the *Pullman* doctrine.

IT IS FURTHER ORDERED that this CASE is DISMISSED WITHOUT PREJUDICE.

SIGNED and ENTERED this the 31st day of May 2002.


JAMES R. NOWLIN
CHIEF UNITED STATES DISTRICT JUDGE