

of incorporation as well as other rights provided by general principles applicable to non-profit corporations in the State of Texas.

Plaintiffs' Application essentially asks that the Court undertake two extraordinary steps, e.g., (1) declare what the voting and parliamentary rights are among members of a voluntary non-profit organization and (2) recast the organization's by-laws by eliminating by-law provisions that members voted on years ago that require the tabling and polling of certain types of important and significant by-law amendments.

This Court, however, will not be persuaded by Plaintiffs' attempt to divert the Court's attention from the real issue in this action, that is, whether a non-profit voluntary association should be free to manage its own affairs (as it relates to its members and by-laws) without judicial intervention. Plaintiffs should not be entitled to injunctive relief that would prohibit the Society and its President from operating according to its by-laws and managing its operations in the best interests of its members. Accordingly, the request for temporary injunction must be denied for the reasons set forth in more detail herein.

II. BACKGROUND FACTS

For almost 30 years, the Society has been a voluntary association organized and operating under the Non-Profit Corporation Act of the State of Texas, as opposed to a profit-oriented corporation. The Society also has received recognition from the Internal Revenue Service as a non-profit organization pursuant to IRC 501(c)(3).

The Society is a statewide organization with approximately 800 members. Membership in the Society is strictly voluntary. The Society typically holds two

meetings annually, with its summer meetings held in Austin. The by-laws require two meetings and the President is vested with the authority to call Special Meetings.

The principal by-law provision that is impacted in this action is Paragraph 6.6.3 which provides:

Any proposed change or amendment which will affect existing Society Band Plans, Standards for Coordination, or have an adverse affect on repeater trustees shall automatically be tabled. The determination to table a motion or bring it to a vote shall be made by the society president. This tabled motion shall not be brought before the membership for a vote until the Vested Membership is polled in writing for agreement or non-agreement and the results of the poll are made known to the membership prior to a vote.

During one of the Society's meetings, a vote came up to amend the by-laws to provide for a mail-in voting procedure. This amendment triggered Section 6.6.3 and should have been automatically. That is why the President of the Society, pursuant to Section 6.6.3, initially tabled the proposed amendment. However, at the insistence of Plaintiffs and others, the President was overruled and the vote proceeded on the amendment. In other words, this proposed amendment was improperly voted upon and was essentially null and void.

The Society now wants to acknowledge, at an official meeting, that this proposed amendment is null and void since it should have triggered an automatic tabling under Section 6.6.3. Plaintiffs, however, through this action, seek to enjoin the Society and the President from proceeding with meetings and votes to recognize that the proposed amendment is not effective until the members have been polled according to the by-laws and have voted on the amendment. These meetings and votes would otherwise be permitted pursuant to the Society's By-laws.

III. SUMMARY OF ARGUMENT

Plaintiffs' Application should be denied for several reasons:

- First, as a general rule, the courts will not interfere with the internal management of a voluntary association. Therefore, this Court should decline to impose its judicial resources into this internal dispute
- Second, Plaintiffs cannot show and does not have a probable right to relief on the underlying claims.
- Third, Plaintiffs cannot show that they will suffer immediate and irreparable harm if injunctive relief is not granted.
- Fourth, Plaintiffs' claims, if any, can be adequately addressed by money damages, if they are able to prevail on their claims.
- Fifth, granting a temporary injunction would disturb, rather than preserve, the status quo.
- Sixth, the potential harm to the Society and the public if an injunction issues outweighs Plaintiffs' perceived need for injunctive relief.

IV. ARGUMENT AND ANALYSIS

A. Injunctive Standards.

In general, a temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex.1993) (per curiam). For a temporary injunction to issue, the movant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; (3) a probable, imminent, and irreparable injury in the interim; and (4) no adequate remedy at law.

Butnaru v. Ford Motor Co., 84 S.W.3d 198, 204 (Tex.2002); *Walling*, 863 S.W.2d at 57; *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex.1968); see Tex. Civ. Prac. & Rem.Code Ann. § 65.011 (Vernon 1997).

1. The Court should not interfere with the operations of this voluntary organization.

Although Plaintiffs have couched their claim otherwise, it is essentially an action concerning a private association's decision-making powers regarding its membership. But, the courts traditionally are not disposed to interfere with the internal management of a voluntary association. *Dallas Co. Medical Soc. v. Ubinas-Brache*, 68 S.W.3d 31 (Tex.App. – Dallas 2001); *Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 176 (Tex.App. – Dallas 2000, pet. denied). The *Dickey* court reasoned that by becoming a member, a person subjects himself to the organization's power to make and administer its rules. 12 S.W.3d at 176. A private, nonprofit organization has the right to manage its own affairs without interference from the courts. *Dickey*, 12 S.W.3d at 176; *Butler v. Hide-A-Way Lake Club, Inc.*, 730 S.W.2d 405, 410 (Tex. App. – Eastland 1987, writ ref'd n.r.e.); *Combs v. Tex. State Teachers Ass'n*, 533 S.W.2d 911, 913 (Tex.Civ.App. – Austin 1976, writ ref'd n.r.e.); *Hoey v. San Antonio Real Estate Board*, 297 S.W.2d 214 (Tex.Civ.App. – San Antonio 1956, no writ).

The "right of a voluntary club or association to interpret its own organic agreements, such as its charter, its by-laws and regulations, after they are made and adopted, is not inferior to its right to make and adopt them, and an individual, by becoming a member, subjects himself...to the association's power to administer as well as its power to make its rules." *Dallas Athletic Club Pro. Com. v. Dallas Athletic Cl.*, 407 S.W.2d 849 (Tex.Civ.App. – Austin 1966, writ ref'd n.r.e.).

In fact, courts have gone so far as to state that they will not review a private association's failure to conduct its business according to its own procedures except for the purpose of protecting some civil or property right. *Brotherhood of R.R. Trainmen v. Price*, 108 S.W.2d 239, 241 (Tex.Civ.App. – Galveston 1937, writ dismissed). In this oft-cited case, the court reasoned:

To say that the Courts may exercise the power of interpretation and administration reserved to the governing bodies of such organizations would plainly subvert their contractual right to exercise such power of interpretation and administration... Without such latitude of action, associations organized to promote the legitimate welfare of its members would be deprived of the power to do so.

Id. at 241. And, in *Harden v. Colonial Country Club*, 634 S.W.2d 56 (Tex.App. 1982, no writ), the court reasoned that under the well-established policy of nonintervention in affairs of private, nonprofit associations, the court would not entertain any question of fact as to whether the board acted reasonably. *Id.*

In the current matter, Defendants ask that this Court adopt this long-standing principle of nonintervention and deny Plaintiffs any judicial review of the alleged potential violation of the non-profit association's bylaws.

2. Plaintiffs cannot show a probable right of success on the merits of their claims.

To establish a probable right to recovery, Plaintiffs must have a cause of action for which they may be granted relief. *Walling*, 863 S.W.2d at 58; *Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 577 (Tex.App.-Austin 2000, no pet.). Because the injunction request here arises from a dispute over the operations of this non-profit organization, Plaintiffs do not have a cause of action, nor a probable right of recovery.

Plaintiffs seek to prevent the President of the Society from calling a special meeting to address the improperly approved voting amendment. However, it is clear that Section 6.2 of the Society's by-laws provide that the President of the Society has the authority to call Special Meetings. Furthermore, Section 6.6.3 of the by-laws "required" that the offending amendment be tabled. This was not done. Therefore, the proposed amendment effectively is null and void. As a result, it was certainly within the President's discretion to call a Special Meeting to address this significant and improper deviation from the Society's by-laws. Because the President was acting within his authority, Plaintiffs have no right to recover against the Society or the President.

3. Plaintiffs will not suffer immediate and irreparable harm in the interim if injunctive relief is not granted.

Probable injury in the interim must be established by tendering evidence of imminent harm, irreparable injury, and inadequate legal remedy. *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 598 (Tex.App.- Amarillo 1995, no writ). To establish an irreparable injury, the injured applicant must show that it "cannot be adequately compensated in damages or ... the damages cannot be measured by any certain pecuniary standard." *Butnaru*, 84 S.W.3d at 204. That is, the applicant must establish that there is no adequate remedy at law for damages. See *Surko Enters., Inc. v. Borg-Warner Acceptance Corp.*, 782 S.W.2d 223, 225 (Tex.App.-Houston [1st Dist.] 1989, no writ). An adequate remedy at law is one that is as complete, practical, and efficient to the ends of justice and its prompt administration as is equitable relief. *Id.*

In this case, the only harm that would result to Plaintiffs, if any, from the Society maintaining its previous in-person voting system could be adequately addressed by money damages, if Plaintiffs were able to prevail on their claim. Contrary to Plaintiffs'

argument, however, the previous in-person by-law provision (which may or may not be restated) **does not and will not** deprive Plaintiffs of any voting rights. If Plaintiffs want to vote at the annual meetings, Plaintiffs could simply “travel” to Austin so that they could debate and vote based on their participation in the live discussions on any motions that came before the Society. Therefore, any “damages” that Plaintiffs might incur (if they are successful) would simply be the traveling expenses of having to continue traveling to meetings, as opposed to a new mail-in balloting procedure. These travel and transportation expenses are clearly measurable in money damages should Plaintiffs prevail. And, money damages are presumptively an adequate remedy at law. *Dyer v. Weedon*, 769 S.W.2d 711, 714 (Tex.App. – Waco 1989, no writ). According, the injunction Plaintiffs have requested should not issue.

4. Granting a temporary injunction would disturb, rather than preserve, the status quo.

As the Court is aware, the purpose of injunctive relief is to preserve the status quo. Status quo is the "last, actual, peaceable, noncontested" state of affairs preceding the controversy. *Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 577 (Tex.App.-Austin 2000, no pet.) (quoting *Transport Co. of Tex. v. Robertson Transports, Inc.*, 152 Tex. 551, 261 S.W.2d 549, 553-54 (Tex.1953)). If one party's act changes the relationship between him and another, and the other party contests that action, the status quo to be maintained is not the relationship as it existed after the act, but rather is the state of things as they were before the controversy arose. *Id.* (quoting *Benavides Indep. Sch. Dist. v. Guerra*, 681 S.W.2d 246, 249 (Tex.App.-San Antonio 1984, writ ref'd n.r.e.)).

Throughout the Society's entire existence, all voting has been "in-person" voting. The Society has not yet conducted any voting-by-mail. Similarly, the President of the Society had always been required to table any proposed amendments that "affect existing Society Band Plans, Standards for Coordination, or have an adverse affect on repeater trustees." Furthermore, under standard parliamentary procedures, an improperly decided amendment that violates an organization's bylaws is effectively void and unenforceable. Therefore, the status quo that should be maintained is the way the Society has operated for its entire existence. The status quo is also the maintenance of the Society's right to declare an improper amendment ineffective where the Society's by-laws were not followed in adopting the amendment. Furthermore, if the Court were to grant the injunction sought by Plaintiffs, the injunction would paralyze the Society's ability to exercise its judgment with respect to its bylaws and voting procedures. For these reasons, this honorable court should deny the temporary injunction and decline Plaintiffs' invitation to disturb the true status quo.

5. The potential harm to the Society and the public if an injunction issues outweighs Plaintiffs' perceived need for injunctive relief

Because an injunction is an equitable remedy, a trial court weighs the respective conveniences and hardships of the parties and balances the equities. *See, e.g. Surko Enters., Inc. v. Borg-Warner Acceptance Corp.*, 782 S.W.2d 223 (Tex.App. – Houston [1st Dist] 1989 no writ); *Hitt v. Mabry*, 687 S.W.2d 791, 792 (Tex.App.-San Antonio 1985, no writ) (citing *Lower Nueces River Water Supply Dist. v. Live Oak County*, 312 S.W.2d 696, 701 (Tex.Civ.App.-San Antonio 1958, writ ref'd n.r.e.)). A trial court may consider whether the applicant would suffer significant or slight injury if the injunction were

erroneously denied, and whether the injury to the opposing party would be significant or slight if the injunction were erroneously granted. *NMTC Corp. v. Conarroe*, 99 S.W.3d 865, 869 (Tex.App.-Beaumont 2003, no pet.).

If there is a possibility of greater damage to the defendant if the injunction is granted than to the plaintiff if it is denied, it generally should be denied. *NMTC Corp. v. Conarroe*, 99 S.W.3d at 869; *Nueces County Drainage & Con. Dist. No. 2 v. Bevly*, 519 S.W.2d 938, 947 (Tex.Civ.App. – Corpus Christi 1975 1949, no writ); *Bates v. Texas Elec. Ry.*, 220 S.W.2d 707 (Tex.Civ.App. – Dallas 1949, no writ). Similarly, if the harms are equivalent, an injunction is improper. *Danden Petroleum, Inc. v. Northern Natural Gas Co.*, 615 F.Supp. 1093, 1099 (N.D. Tex. 1985).

In the present case, the facts and law are clearly against the grant of injunctive relief in favor of Plaintiffs. Indeed, the risk of harm to the Society and its members is substantial if the injunction issues. Granting the injunction would create the need for higher dues by each member of the Society to accommodate the added expense of mail balloting. An injunction would also prevent the President and the Society from being able to exercise the rights and latitude they enjoyed beforehand to undertake voting and other decision-making that is in the best interest of the Society. Furthermore, there is potential harm to the public if our courts begin to judicially interfere in the operations of private non-profit associations to determine the rights of its members.

On the other hand, if the injunction were denied, each Plaintiff would only have to pay his or her minimal travel expenses to attend one or two meetings to exercise their voting rights. Considering the inequity of granting the injunction, Defendants ask that the Court deny the injunction.

**V.
CONCLUSION**

For the foregoing reasons, Defendants respectfully urge that Plaintiffs' Application for Injunctive Relief be denied and that Defendants have all such and further relief to which they may be entitled.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy this pleading was served in the manner described below on this ____ day of April, 2005:

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