

Supreme Court of Texas

No. 24-1042

In re Steven Hotze M.D.,
Relator

On Petition for Writ of Mandamus

Statement of JUSTICE DEVINE, joined by Justice Busby and Justice Bland, respecting the denial of the petition for writ of mandamus.

During my years on the trial bench, I routinely stayed civil proceedings when a defendant faced criminal charges arising from the same conduct. Experience taught me that allowing both cases to move forward together distorts the litigation process and forces a defendant into the fundamentally unfair position of fighting a civil action while facing criminal prosecution. Confronted with that dilemma, a defendant must either invoke the Fifth Amendment and suffer adverse consequences in the civil case or waive the privilege and provide testimony that may be used by the State in the criminal proceeding.¹

¹ See U.S. CONST. amend. V (“No person shall be . . . compelled in any criminal case to be a witness against himself[.]”); TEX. CONST. art. I, § 10 (declaring that the accused in a criminal prosecution “shall not be compelled

Either choice exacts a substantial price.

If allowed to proceed, the civil-litigation process often becomes less a search for truth than a mechanism for extracting concessions at the expense of constitutional rights. This undermines the integrity of the judicial system itself. When parallel civil and criminal proceedings place a defendant between Scylla and Charybdis, courts should not compel the choice when the defendant seeks relief. Justice demands that the civil case be stayed until the criminal matter has been resolved.

This Court has yet to articulate a standard for resolving motions to stay civil proceedings when parallel criminal proceedings are pending. By default, federal law has filled the gap with multi-factor balancing tests, generally permitting trial courts to defer civil proceedings when the “interests of justice” so require.² But those tests offer little meaningful guidance, functioning only as a “rough guide” for the exercise of judicial discretion.³

to give evidence against himself”); TEX. R. EVID. 513(c) (allowing factfinders to draw adverse inferences from invocation of the privilege against self-incrimination in a civil case); *In re Peters*, 699 S.W.3d 307, 310 (Tex. 2024) (observing that the privilege against self-incrimination “extends to civil litigation” and “applies to testimony that could directly incriminate a witness or furnish an evidentiary link that might tend to incriminate him”); *Tex. Dep’t of Pub. Safety Officers Ass’n v. Denton*, 897 S.W.2d 757, 760 (Tex. 1995) (“[J]uries in civil cases [may] make negative inferences based upon the assertion of the privilege.”).

² See *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970); (gathering cases); see also, e.g., *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 627 (6th Cir. 2014); *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 99 (2d Cir. 2012); *SEC v. Global Exp. Cap. Real Estate Inv. Fund, I, LLC*, 289 F. App’x 183, 190-91 (9th Cir. 2008); *Microfinacial, Inc. v. Premier Holidays Int’l, Inc.*, 385 F.3d 72, 78 (1st Cir. 2004).

³ *Louis Vuitton*, 676 F.3d at 99.

The problem is not merely their indeterminacy. Because balancing tests lack objective, ascertainable benchmarks, they generally insulate stay decisions from meaningful appellate review. The result is a regime in which litigants are left to the broad discretion of individual trial judges, with little ability to predict outcomes or assess whether like cases will be treated alike. That uncertainty erodes confidence in the judicial process. And in highly visible or politically charged cases—like this one—it invites the perception that the decision rests not on neutral principles, but on the predilections of the particular judge assigned to the case.

I propose the following presumptive standard that replaces ad hoc balancing with a rule that promotes consistency, predictability, and public confidence in the administration of justice:

When a defendant in a civil case faces parallel criminal charges arising from the same conduct and moves for a stay of the civil proceedings, the stay should be granted unless the opposing party either (1) demonstrates a compelling reason why the civil proceedings must go forward notwithstanding the pending criminal prosecution or (2) stipulates to a jury instruction prohibiting the factfinder from drawing any adverse inference from the defendant's invocation of the Fifth Amendment.

The proposed standard would yield substantial benefits. It would provide trial courts with a clear, administrable framework; reduce arbitrary and inconsistent outcomes; and permit meaningful appellate review. It would also protect defendants from being forced to choose between preserving their constitutional privilege against self-incrimination and defending themselves in civil litigation. At the same time, the standard would preserve flexibility for cases in which

there is a compelling need to proceed despite the parallel criminal matter. And by allowing the opposing party to eliminate the principal source of prejudice through a no-adverse-inference instruction, it would encourage practical solutions tailored to the circumstances of the case.

I nevertheless agree with and join my colleague's statement, which explains why the mandamus petition should be denied at this time. *See post* at 3 (Hawkins, J., statement respecting denial of petition for writ of mandamus). The original proceeding's current posture makes the petition a less-than-ideal vehicle for establishing such a standard.

This case arises from a roadside confrontation between Mark Aguirre and David Lopez that spawned criminal prosecutions and civil litigation. Following the incident, the district attorney indicted both Aguirre and his alleged employer, Dr. Steven Hotze, and Lopez sued both men in civil court. Under Lopez's pleaded causes of action, Hotze's potential liability is derivative of Aguirre's alleged misconduct.

After the trial court denied Hotze's motion to stay the civil proceedings pending resolution of *his* criminal case, Hotze sought mandamus relief from this Court. While that petition was pending, a newly elected district attorney determined that his predecessor had abused official power by pursuing investigations and bringing charges against individuals with whom she had political disagreements. Acting on that determination, the district attorney dismissed all criminal charges against Hotze and most of the charges against Aguirre.

The standard I propose may, in an appropriate case, extend to a defendant seeking a stay based on a co-defendant's pending criminal prosecution when their potential civil liability is inextricably

intertwined. But neither Hotze's mandamus petition nor his predicate request to the trial court presented that issue. And although Aguirre has now moved to join Hotze's petition in this original proceeding, *see* TEX. R. APP. P. 9.7, the mandamus record does not reflect that he first sought a stay in the trial court. Meanwhile, Aguirre's criminal case has continued to progress, creating a substantial possibility that the issue in this original proceeding could become moot before the Court has an opportunity to fully consider the merits.

Given the evolving circumstances, the prudent course is to deny the mandamus petition without prejudice. Doing so preserves the opportunity to address these important issues in a case that cleanly presents them on a complete mandamus record and in a procedural posture that permits meaningful review. The Court's denial should not, however, be mistaken for a license to press ahead with the civil proceedings as though the parallel criminal proceeding does not exist.

John P. Devine
Justice

STATEMENT FILED: June 26, 2026