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## City of Hugo v. Nichols

Ben Sudduth

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***City of Hugo v. Nichols*, 656 F.3d 1251 (10th Cir. 2011).**

**Ben Sudduth**

**I. INTRODUCTION**

In *City of Hugo v. Nichols*,<sup>1</sup> the City of Hugo, Oklahoma, and the City of Irving, Texas, sued the Oklahoma Water Resources Board (Board) alleging that the underlying Oklahoma laws governing how the Board allocated water resources were unconstitutional under the dormant Commerce Clause.<sup>2</sup> The contested issue was a contract that Hugo entered into with Irving for the sale of water. The Tenth Circuit determined that Hugo lacked standing to sue the Board under the dormant Commerce Clause, and Irving could not demonstrate standing because its claim was based solely on the contract and the potential injury to Irving could not be redressed.<sup>3</sup>

**II. FACTUAL AND PROCEDURAL BACKGROUND**

The Board facilitates Oklahoma's permitting process for appropriating water within the state. The City of Hugo, located in southeastern Oklahoma, contracted a portion of its water to the City of Irving, Texas, a suburb of Dallas. Hugo applied for a permit with the Board in order to appropriate the water.<sup>4</sup>

Before the Board could act on the permit, Hugo filed a declaratory judgment to declare certain Oklahoma laws unconstitutional under the dormant Commerce Clause and sought an injunction to prevent the Board from applying Oklahoma laws to Hugo's case.<sup>5</sup> Hugo alleged that the Oklahoma state laws "discriminate against permit applications seeking to appropriate

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<sup>1</sup> *City of Hugo v. Nichols*. 656 F.3d 1251(10th Cir. 2011).

<sup>2</sup> *Id.* at 1254.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

water for out of state use, thereby impermissibly burdening interstate commerce.”<sup>6</sup> Irving alleged the same.<sup>7</sup>

The district court awarded summary judgment to the Board on the dormant Commerce Clause claim, and a water compact authorized Oklahoma to enact the laws at issue.<sup>8</sup> Therefore, the district court never considered whether the Oklahoma statutes violated the dormant Commerce Clause.<sup>9</sup>

### **III. ANALYSIS**

In consideration of this issue, the Tenth Circuit limited its conclusions to the doctrine of political subdivision standing because federal courts lack jurisdiction over certain controversies between political subdivisions and their parent states.<sup>10</sup> The Tenth Circuit, upon its own “independent obligation,” determined the federal courts had no jurisdiction over this matter asserting that the standing requirements from Article III apply equally in appeal as they do in the district court.<sup>11</sup> On appeal, neither party raised the issue as to whether Hugo had standing to sue the Board, an entity of the state of Oklahoma, under the dormant Commerce Clause or whether Irving had standing based on its contract with Hugo.<sup>12</sup> The Tenth Circuit concluded that Hugo and Irving lacked standing and defended this assertion against a well-reasoned dissent.<sup>13</sup>

#### **A. Hugo’s Standing**

The Supreme Court has held that a political subdivision could not sue its parent state because the Fourteenth Amendment does not produce this power.<sup>14</sup> In *Trenton v. New Jersey*,<sup>15</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Hugo*, 656 F.3d at 1254.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1254–55.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Hugo*, 656 F.3d at 1254–1265.

<sup>14</sup> *Id.* at 1256.

the Court held that the contract clause did not assert an unrestrained power of the state by the Fourteenth Amendment; thus, the power of the state extended to rights and property of the cities held for “governmental purposes.”<sup>16</sup> In *Williams v. Mayor and City Council of Baltimore*,<sup>17</sup> the Court, applying *Trenton*, held that a political subdivision lacked standing in federal court under a Fourteenth Amendment equal protection challenge to a parent state’s actions.<sup>18</sup>

However, the Supreme Court and the courts of appeal had not set “an absolute bar to political subdivisions asserting their rights against their parent states in federal courts.”<sup>19</sup> The Court in *Gomillion v. Lightfoot*<sup>20</sup> concluded that particular provisions of the Constitution granted the state power over the municipalities in earlier cases.<sup>21</sup> However, in *Hugo*, the court examined the holding in *Branson Sch. Dist. RE 82 v. Romer*<sup>22</sup> and determined that federal jurisdiction did exist over a school district’s claim challenging Colorado statute under a Supremacy Clause claim.<sup>23</sup>

Under the Supremacy Clause, the rights of a party under federal law trump any contrary state law.<sup>24</sup> In *Branson*, the school district asserted the Supremacy Clause because federal statute trumped a recently enacted state law in Colorado; the school district, a political subdivision, had standing to sue its parent state.<sup>25</sup> *Hugo* argued that the dormant Commerce Clause, via the Supremacy Clause, trumped Oklahoma’s water allocation statutes.<sup>26</sup>

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<sup>15</sup> *Trenton v. New Jersey*, 262 U.S. 182 (1923).

<sup>16</sup> *Hugo*, 656 F.3d at 1256.

<sup>17</sup> *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36 (1933).

<sup>18</sup> *Hugo*, 656 F.3d at 1256.

<sup>19</sup> *Id.*

<sup>20</sup> *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

<sup>21</sup> *Hugo*, 656 F.3d at 1256.

<sup>22</sup> *Branson Sch. Dist. RE 82 v. Romer*, 161 F.3d 619 (10th Cir. 1998).

<sup>23</sup> *Hugo*, 656 F.3d at 1256.

<sup>24</sup> *Id.* at 1257.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1254.

The court held that because the dormant Commerce Clause does not specifically provide rights to municipalities, Hugo lacked standing to assert the dormant Commerce Clause against the Board.<sup>27</sup> As the court in *Branson* explained, cases against a parent state have only been allowed when Congress has enacted specific statutes that provide a right, in this case, a right to municipalities.<sup>28</sup> Therefore, Hugo was not able to bring its claim, which was an issue that offended the dissent.

### **B. Irving's Standing**

Political subdivision standing did not apply to Irving because it sued a state other than its parent state.<sup>29</sup> However, Irving still needed to meet the other standing requirements.<sup>30</sup> Specifically, Irving needed to show an injury-in-fact that was traceable to the defendant's conduct and that this injury could be redressed by the requested relief.<sup>31</sup> Irving asserted injury solely on the contract between it and Hugo for the sale of water and, like Hugo, alleged violations under the dormant Commerce Clause.<sup>32</sup> The Tenth Circuit believed that Irving's argument failed on the redressability issue of standing.<sup>33</sup>

The court articulated that even if the Oklahoma laws at issue were deemed unconstitutional under the dormant Commerce Clause, the Board would still not be constrained with respect to Hugo's permit applications.<sup>34</sup> The invalidation of the Oklahoma laws "would not [have compelled] the Board to grant Hugo's applications, or even to process them in any particular way."<sup>35</sup> Thus, because the Tenth Circuit had already determined that Hugo did not

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<sup>27</sup> *Id.* at 1258.

<sup>28</sup> *Id.*

<sup>29</sup> *Hugo*, 656 F.3d at 1263.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 1265.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1264.

<sup>35</sup> *Hugo*, 656 F.3d at 1264.

have standing, the remedy Irving sought would not have redressed Irving’s injury. Irving’s standing relied solely on the contract with Hugo—which had no right under the dormant Commerce Clause—so Irving failed to meet the redressability requirement.<sup>36</sup>

### C. Dissent

In a lengthy dissent, Judge Matheson argued that the majority erred in its reading of *Branson*.<sup>37</sup> Judge Matheson argued that *Branson* supported the proposition that a political subdivision may sue its parent state for a dormant Commerce Clause violation.<sup>38</sup> Judge Matheson believed that the precedent established by the Supreme Court and the Tenth Circuit established only a “limited proposition” that political subdivisions lack standing when a claim is based on a “constitutional provision . . . written to protect individual rights.”<sup>39</sup> However, under *Branson*, standing exists when the claim is based on a “constitutional provision . . . written to protect . . . structural rights.”<sup>40</sup> Judge Matheson believed that the dormant Commerce Clause protected a *structural right*; thus, Hugo had standing based upon it.<sup>41</sup>

In response, the majority asserted, “the claims advanced by Hugo [were] not based on a federal statutory enactment affording it federal rights, but [were] instead based on a constitutional provision affording it *individual* economic rights.”<sup>42</sup> Furthermore, *Branson* did not “bear the weight” the dissent wished to place upon it. The party in *Branson* asserted a specific right protected by a federal statute, not a substantive provision from the Constitution.<sup>43</sup>

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<sup>36</sup> *Id.* at 1265.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1266.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 1270.

<sup>41</sup> *Hugo*, 656 F.3d at 1271–1274.

<sup>42</sup> *Id.* at 1263 (emphasis added).

<sup>43</sup> *Id.* at 1260.

Unlike the dissent, the majority did not stray from precedent established by the Supreme Court: the Constitution does not confer rights to political subdivisions to sue their parent states.<sup>44</sup>

#### **IV. CONCLUSION**

Contracts allocating water resources across state borders are not uncommon. Generally, municipalities are afforded some right to allocate water resources as they see fit. However, in the end, the parent state maintains the ultimate right to determine how water resources within the state are allocated. The legislation of the states will be difficult to trump with the substantive Constitutional provisions and the Supremacy Clause; the Tenth Circuit demonstrated this by upholding the decision of the Oklahoma Water Resources Board.

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<sup>44</sup> *Id.* at 1263.