

United States Court of Appeals
for the Fifth Circuit

No. 20-50654

FILED
SEP - 4 2020
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

LINDA JANN LEWIS; MADISON LEE; ELLEN SWEETS; BENNY
ALEXANDER; GEORGE MORGAN; VOTO LATINO; TEXAS STATE
CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE; TEXAS ALLIANCE FOR
RETIRED AMERICANS,

Plaintiffs—Appellees,

versus

RUTH HUGHS, TEXAS SECRETARY OF STATE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:20-CV-577-OLG

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellees' opposed alternative motion to
dismiss appeal as frivolous is DENIED.

IT IS ORDERED that Appellees' opposed motion for summary
affirmance is GRANTED with respect to the district court's denial of

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Appellant's motion to dismiss on grounds of sovereign immunity. Under our cases, there are "at least two circumstances under which summary disposition is necessary and proper." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The first are cases "where time is truly of the essence" because "important public policy issues are involved or . . . where rights delayed are rights denied." The second is where the position of the party seeking that relief is "clearly right as a matter of law so that there can be no substantial question as to the outcome of the case." *Id.*

Considering the parties' submissions and applicable law, particularly including this court's recent decision in *Texas Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020), we are convinced that no substantial question exists in this matter with respect to whether the Texas Secretary of State bears a sufficient connection to the enforcement of the Texas Election Code's vote-by-mail provisions to satisfy *Ex parte Young*'s "some connection" requirement. *See Ex parte Young*, 209 U.S. 123, 157 (1908) (officer must have "some connection" with enforcement). In affirming the district court's determination that the Secretary of State is amenable to suit in this instance, however, we do not decide the merits of any claims made, or whether the requested injunctive relief is warranted. That assessment remains for the district court to consider on remand.