

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

TEXAS DEMOCRATIC PARTY;
GILBERTO HINOJOSA, Chair of the
Texas Democratic Party; JOSEPH
DANIEL CASCINO; SHANDA MARIE
SHANSING; and BRENDA LI GARCIA,

Plaintiffs,

And

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS (LULAC), and
TEXAS LEAGUE OF UNITED LATIN
AMERICAN CITIZENS,

Plaintiff-Intervenors,

v.

GREG ABBOTT, Governor of Texas;
KEN PAXTON, Texas Attorney General;
RUTH HUGHS, Texas Secretary of State;
DANA DEBEAUVOIR, Travis County
Clerk; and JACQUELYN F. CALLANEN,
Bexar County Elections Administrator,

Defendants.

CIVIL ACTION NO.
5:20-cv-00438-FB

**PLAINTIFFS AND PLAINTIFF-INTERVENORS RESPONSE TO DEFENDANT
JAQUELYN F. CALLANEN'S MOTION TO DISMISS**

Plaintiffs¹ seek to enjoin Defendants, including Defendant county elections officials Dana Debeauvoir and Jaquelyn F. Callanen, from enforcing Texas's unconstitutional and discriminatory age-based eligibility requirement for absentee voting. Defendant Callanen is the Bexar County

¹ For ease of reference, "Plaintiffs" as used herein refers to both the Texas Democratic Party ("TDP") Plaintiffs and the League of United Latin American Citizens ("LULAC") Plaintiff-Intervenors unless otherwise specified.

Elections Administrator and is responsible for carrying out early voting procedures in Bexar County, the county in which one of the plaintiffs in this matter resides. Defendant Callanen moves to dismiss Plaintiffs' claims against her on the grounds that she is not a proper defendant to the litigation. But Defendant Callanen's motion focuses almost entirely on whether Secretary of State Hughs is a proper defendant to the litigation (she is). Because Defendant Callanen plays a substantial and important role in enforcing the age-based eligibility requirement for absentee voting, her motion is due to be denied.

LEGAL STANDARD

Defendant Callanen moves to dismiss Plaintiffs' complaints for lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim pursuant to Rule 12(b)(6).

I. Standard for a Rule 12(b)(1) Motion to Dismiss

"[A] motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158,161 (5th Cir. 2001) (citation omitted). At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [courts] 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)) (citations omitted; second bracket in original).

II. Standard for a Rule 12(b)(6) Motion to Dismiss

In deciding a Rule 12(b)(6) motion, the "central issue" is whether the complaint, viewed in a light favorable to the plaintiff, states a claim for relief. Fed. R. Civ. Pro. 12(b)(6); *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010). To survive a Rule 12(b)(6) motion, a plaintiff need

only plead a short and plain statement of facts showing entitlement to relief, *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 245 (5th Cir. 2010), setting out “enough facts to state a claim to relief that is plausible on its face.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Co. v. Twombly*, 550 U.S. 544 (2007)).

Motions to dismiss are generally disfavored and should be granted only rarely. *See, e.g., Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011); *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009); *Hack v. Wright*, 396 F.Supp.3d 720, 747 (S.D. Tex. 2019); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000); *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164 (5th Cir. 1999).

ARGUMENT

I. Defendant Callanen Is A Proper Defendant in This Matter.

In order to show proper standing against a Defendant, a plaintiff must show: (1) an injury in fact to the plaintiff that is concrete, particularized, and actual or imminent; (2) the injury was caused by the defendant; and (3) the injury would likely be redressed by the requested judicial relief. *See Texas Democratic Party v. Abbott*, 978 F.3d 168, 178 (5th Cir. 2020) (“*TDP*”).

Defendant Callanen does not dispute that Plaintiffs have plausibly alleged an injury in fact. Rather, she contends that the injuries alleged by Plaintiffs are not traceable to or redressable by her, in her capacity as Bexar County Elections Administrator. As acknowledged by the Fifth Circuit in *TDP*, however, responsibilities for enforcing Texas’ absentee ballot laws are divided between the Secretary of State and local elections officials like Defendant Callanen. *TDP*, 978 F.3d at 180. The Fifth Circuit held that the Secretary’s statutory responsibilities for designing absentee ballot applications and providing them to local officials and others who want to disseminate them were sufficient to show that injuries alleged by Plaintiffs in the enforcement of

the law were traceable to and redressable by the Secretary of State. *Id.* So to, are Defendant Callanen’s responsibilities for “review[ing] each application for a ballot to be voted by mail [and] mail[ing] without charge an appropriate official application form,” *id.* (citing Tex. Elec. Code §§ 86.001(a), 84.012), sufficient to show that Plaintiffs injuries are traceable to and redressable by Defendant Callanen. Indeed, “though there is a division of responsibilities,” Defendant Callanen “has the needed connection” to serve as a proper defendant in this matter. *Id.*; *see also Texas Democratic Party v. Abbott*, 961 F.3d 389, 399 (5th Cir. 2020) (“Texas’s vote-by-mail statutes are administered, at least in the first instance, by local election officials”).

The bulk of Defendant Callanen’s motion addresses whether the Secretary of State is a proper Defendant in this matter. Plaintiffs agree with Defendant Callanen that Secretary Hughs is a proper Defendant, that the claims against her are not barred by sovereign immunity, and that Plaintiffs injuries are similarly traceable to and redressable by the Secretary. This does not mean the Defendant Callanen is not *also* a proper defendant. Both statute and caselaw demonstrate that Plaintiffs’ injuries are traceable to and redressable by Defendant Callanen. *See supra*.

Indeed, it is undisputed that Defendant Callanen, as an election administrator, plays a role in the implementation and enforcement of § 82.003(1)-(4).² As such, Plaintiffs sufficiently pleaded their claim by pleading Defendant Callanen’s role as an election administrator, which statutorily

² There has never been any court finding that election administrators are not proper defendants in challenges to the enforcement of election law. And though the Fifth Circuit has raised questions about the Secretary’s status as a proper defendant in other cases, those questions arise because of the special status the Secretary carries as an arm of the state, which can assert sovereign immunity. *See Texas Democratic Party v. Hughs*, 997 F. 3d 288, 291 (5th Cir. May 7, 2021) (evaluating the Secretary’s amenability to suit and noting that “[a]pplying our precedents in this area is no easy task. We have not outlined a clear test for when a state official is sufficiently connected to the enforcement of a state law so as to be a proper defendant under *Ex parte Young*.”). But none of the Fifth Circuit precedent regarding the Secretary suggests that county election officials, who do not have sovereign immunity, are not proper parties.

requires her to perform her duties in accordance with state law, including enforcing § 82.003(1)-(4), *see* Doc. 141 at ¶ 79; Doc. 142 at 22, and pleading that Defendant Callanen’s enforcement of the statute, together with the other Defendants, violates Plaintiffs’ rights, *see, e.g.*, Doc. 141 ¶ 107 (seeking to enjoin all Defendants, including Defendant Callanen from “enforcing or giving any effect to” the challenged statute); *see generally* Doc. 142 (referring to Defendants collectively throughout). Since it has been clearly established, as a matter of law, that local election officials share enforcement authority for § 82.003 with the Secretary of State, Defendant Callanen is an appropriate defendant herein.

CONCLUSION

Plaintiffs have standing to bring a claim against Defendant Callanen because their injuries are directly traceable to Defendant Callnen’s role in enforcing the age-based eligibility requirements for absentee ballots and are redressable by an appropriate injunction against Defendant Callenen. The Court should deny Defendant Callanen’s motion to dismiss.

WHEREFORE, Plaintiff prays that the Defendant’s Motion be in all respects DENIED for the reasons set forth herein.

DATED: June 11, 2021

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

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CERTIFICATE OF SERVICE

I certify that, on June 11, 2021, I foregoing response was filed via the Court's ECF/CM system, which will serve a copy on all counsel of record.

/s/Chad W. Dunn

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