

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CAMPAIGN LEGAL CENTER, *et al.*,

Plaintiffs,

v.

JOHN SCOTT, in his official capacity as
Texas Secretary of State,

Defendant.

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Case No. 1:22-cv-92-LY

**DEFENDANT’S ANSWER TO PLAINTIFFS’ COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant John Scott, in his official capacity as Texas Secretary of State, files this Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief. ECF 1.

ANSWER

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant denies each and every allegation contained in Plaintiffs’ Complaint except those expressly admitted herein. The headings and paragraphs below directly correlate to the sections and numbered paragraphs of the Complaint. Those titles are reproduced from Plaintiffs’ Complaint for organizational purposes only and do not constitute admissions on behalf of Defendant.

Defendant responds to the specifically numbered allegations of the Complaint as follows:

INTRODUCTION

1. Defendant admits that in 2019 the Texas Secretary of State (“SOS”) implemented a program designed to verify the eligibility of registered voters, a program errantly described as a “voter purge program.” Defendant admits that that three lawsuits were brought in connection with that program, and that those claims were settled globally (“Settlement”). Defendant denies that the program implemented by SOS is relevant to the instant lawsuit and denies any remaining allegations in this

paragraph.

2. This paragraph cites the National Voter Registration Act of 1993 (“NVRA”), which speaks for itself. Defendant denies any allegation to the extent it mischaracterizes the NVRA. Defendant denies any remaining allegations in this paragraph.

3. This paragraph cites the NVRA, which speaks for itself. Defendant denies any allegation to the extent it mischaracterizes the NVRA.

4. Defendant admits that in August of 2021, and pursuant to the Settlement, representatives from the Office of the Attorney General (“OAG”) provided notice to the parties to the Settlement that SOS intended to send data to county voter registrars and election administrators identifying registered voters who were potentially not United States citizens. Defendant denies any remaining allegations in this paragraph.

5. Defendant admits that in August and October of 2021, the Campaign Legal Center sent letters to Deputy Secretary of State Jose A. Esparza requesting certain records under the NVRA. Those letters speak for themselves. Defendant also admits that he is responsible for maintaining a statewide voter list. *See* Tex. Elec. Code § 18.061(a) (“The secretary of state shall implement and maintain a statewide computerized voter registration list that serves as the single system for storing and managing the official list of registered voters in the state.”). Defendant denies any remaining allegations in this paragraph.

6. Defendant admits that SOS has not produced any records pursuant to the Campaign Legal Center’s requests. Defendant also admits the Campaign Legal Center sent SOS letters in October and November of 2021 purporting to give SOS notice of violations of the NVRA. Those letters speak for themselves. Defendant admits that ninety days had elapsed since SOS received the letters purporting to give SOS notice of violations of the NVRA when Plaintiffs filed the Complaint. Defendant denies any remaining allegations in this paragraph.

7. Defendant admits that Plaintiffs purport to bring this lawsuit under the NVRA. Defendant denies any remaining allegations in this paragraph.

JURISDICTION AND VENUE

8. Defendants admits that Plaintiffs purport to bring this lawsuit under the NVRA. In this paragraph, Plaintiffs purport to quote 52 U.S.C. § 20510(b), which speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in that statute.

9. This paragraph contains assertions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring claims pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Defendant denies that Plaintiffs' cause of action is meritorious and denies that Plaintiffs can meet their burden of proof to demonstrate this Court's jurisdiction over the claim and relief sought in this case.

10. This paragraph contains assertions of law to which no response is required. To the extent that this paragraph contains any allegations requiring a response, Defendant admits that the Court has personal jurisdiction over him for purposes of the instant lawsuit. Defendants denies any remaining allegations in this paragraph.

11. This paragraph contains assertions of law to which no response is required. To the extent that this paragraph contains any allegations requiring a response, Defendant admits that venue is proper in this district. Defendants denies any remaining allegations in this paragraph.

12. This paragraph contains assertions of law to which no response is required.

PARTIES

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations, and therefore denies them.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of these

allegations, and therefore denies them.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations, and therefore denies them.

16. Defendant lacks knowledge or sufficient information to form a belief about the truth of these allegations, and therefore denies them.

17. Defendant lacks knowledge or information sufficient to form a belief about the truth of these allegations, and therefore denies them.

18. Defendant admits that he is the Texas Secretary of State and that Plaintiffs have sued him in his official capacity. This paragraph contains quotations from the Texas Election Code, which speaks for itself. Defendant denies any allegations to the extent the quotations or Plaintiffs' characterization of the quotations is inconsistent with the statutes. Defendant denies any remaining allegations in this paragraph.

FEDERAL STATUTORY BACKGROUND

19. This paragraph quotes the NVRA, which speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in those statutes. Defendants denies any remaining allegations in this paragraph.

20. This paragraph quotes the NVRA, which speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in those statutes. Defendants denies any remaining allegations in this paragraph.

21. This paragraph quotes the NVRA, which speaks for itself. Defendant denies any allegation in this paragraph to the extent it misquotes or mischaracterizes the statute. Defendants denies any remaining allegations in this paragraph.

22. This paragraph contains a legal assertion, which does not require a response.

STATEMENT OF FACTS

23. Defendant admits that SOS issued Election Advisory 2019-02 in January of 2019. That advisory is not relevant to the instant lawsuit and, in any event, speaks for itself. Defendant denies any allegation in this paragraph to the extent it mischaracterizes the advisory. Defendants denies any remaining allegations in this paragraph.

24. This paragraph refers to Election Advisory 2019-02, which is not relevant to the instant lawsuit and, in any event, speaks for itself. Defendant denies any allegation in this paragraph to the extent it mischaracterizes the advisory.

25. This paragraph refers to Election Advisory 2019-02, which speaks for itself. Defendant denies any allegation in this paragraph to the extent it mischaracterizes the advisory.

26. This paragraph refers to Election Advisory 2019-02, which is not relevant to the instant lawsuit and speaks for itself. Defendant admits that, in part, Election Advisory 2019-02 directed the review of records of individuals who submitted information to the Department of Public Safety (“DPS”) concurrent with a request for a state-issued driver’s license or personal identification card. Defendant admits that Texas driver’s licenses are valid for up to eight years. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the fifth and sixth sentences in this paragraph. The remaining allegations in this paragraph constitute argument or legal assertions, describes alleged events surrounding Election Advisory 2019-02 that are not relevant to this lawsuit, that do not require a response, but insofar as a response is required, Defendant denies them.

27. This paragraph contains Plaintiffs’ characterization of a 2012 court decision from Florida, which speaks for itself. Defendant denies Plaintiffs’ characterization of that decision, denies it is relevant to issues in this case and to the extent it is inconsistent with the decision itself. Defendant denies the remaining allegations in this paragraph.

28. Defendant admits that organizations and individuals brought lawsuits challenging SOS’s

implementation of Election Advisory 2019-02 in 2019. In this paragraph, Plaintiffs quote from a district court order, which is not relevant to Plaintiffs claims and speaks for itself. Defendant denies any remaining allegations in this paragraph.

29. Defendant admits that SOS entered into a settlement agreement respecting Election Advisory 2019-02 on April 26, 2019. That Settlement speaks for itself. Defendant denies any allegations concerning the Settlement to the extent they mischaracterize it.

30. This paragraph contains Plaintiffs' characterization of the Settlement, which speaks for itself. Defendant denies any allegations concerning the Settlement to the extent they mischaracterize it.

31. Defendant admits that § 16.0332(a-1) of the Texas Election Code includes the quoted language included in this paragraph. Defendant denies any remaining allegations in this paragraph.

32. Defendant admits that representatives from OAG sent a letter on August 20, 2021, pursuant to paragraph 14 of the Settlement, providing notice to the parties to the settlement agreement that SOS intended to send 11,197 records to county voter registrars and election administrators that were identified based on the process set forth in paragraphs 8, 9, and 10 of the Settlement. Defendant denies any remaining allegations in this paragraph.

33. Defendant admits that the 11,197 records referenced in the August 20, 2021 letter were identified based on the process set forth in paragraphs 8, 9, and 10 of the Settlement. Defendant denies any remaining allegations in this paragraph.

34. This paragraph includes Plaintiffs' characterization of an apnews.com article, which speaks for itself. Defendants denies Plaintiffs' characterization of the article to the extent it is inconsistent with what the article says. Defendant admits that SOS has publicly stated that of 11,737 registered voters identified as potential non-citizens, 278 voters were removed due to confirmation of non-citizenship by the county. The Defendant denies any argument or legal assertions contained in this paragraph.

35. Defendant admits that, on August 27, 2021, the Campaign Legal Center sent Deputy Secretary

of State Jose A. Esparza a letter requesting certain records under the purported authority of the NVRA. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter. Defendant denies any remaining allegations in this paragraph.

36. Defendant admits that, on September 14, 2021, SOS responded to the August 27, 2021 letter, explaining that the letter constituted a request for information under the Texas Public Information Act (“PIA”). That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

37. Defendant admits that, on October 20, 2021, the Campaign Legal Center sent SOS a letter purporting to give it notice that its actions with respect to the August 27, 2021 letter constituted NVRA violations. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

38. This paragraph refers to the October 20, 2021 letter, which speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

39. Defendant admits that on November 3, 2021, SOS sent the Campaign Legal Center a letter again explaining that the August 27, 2021 letter was a request for information under the PIA, and that, pursuant to state law and agency procedure, SOS would seek a decision from OAG as to whether the PIA permits disclosure of the requested records. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

40. Defendant admits that SOS has not produced any records pursuant to the August 27, 2021 letter. Defendant denies that this constitutes a violation of the NVRA and denies any remaining allegations in this paragraph.

41. Defendant admits that representatives from OAG sent a letter on September 14, 2021, pursuant to paragraph 14 of the Settlement, providing notice to the parties to the Settlement that SOS intended to send 49 records to county voter registrars and election administrators that were identified based on the process set forth in paragraphs 9, 10, 11, and 12 of the Settlement. That communication speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

42. Defendant admits that on October 20, 2021, the Campaign Legal Center sent Deputy Secretary of State Jose A. Esparza a letter requesting certain records related to the 49 additional registered voters under the purported authority of the NVRA. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

43. Defendant admits that on November 3, 2021, SOS sent a letter to the Campaign Legal Center explaining that the October 20, 2021 letter was a request under the PIA. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

44. Defendant admits that on November 15, 2021, the Campaign Legal Center sent SOS a letter purporting to give it notice that its actions with respect to the October 20, 2021 letter constituted NVRA violations. That letter speaks for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letter.

45. This paragraph quotes the NVRA, which speak for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in those statutes.

46. Defendant admits that the partisan primary elections for the Texas delegation to the U.S. House of Representatives will occur on March 1, 2022. Defendants admits that more than twenty days

had elapsed since the November 15, 2021 letter when Plaintiffs filed the Complaint in this case. Defendant denies any violation of the NVRA and any remaining allegations in this paragraph.

47. Defendant admits that SOS has not produced any records pursuant to the October 20, 2021 letter. Defendant denies that this constitutes a violation of the NVRA and any remaining allegations in this paragraph.

48. This paragraph quotes the NVRA, which speak for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in those statutes.

49. Defendant admits that the August 27, 2021 letter and October 20, 2021 letter requested records under the purported authority of the NVRA. Those letters speaks for themselves. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letters.

50. Denied.

51. Defendant admits that the October 20, 2021 letter and November 15, 2021 letter purported to give SOS notice that its actions with respect to the August 27, 2021 letter and October 20, 2021 letter constituted NVRA violations. Those letters speaks for themselves. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in the letters.

52. Defendant admits that more than ninety days had elapsed since SOS received the letter purporting to give it notice that its actions with respect to the August 27, 2021 letter constituted NVRA violations when Plaintiffs filed the Complaint in this case.

53. Defendant admits that more than twenty days had elapsed since SOS received the letter purporting to give it notice that its actions with respect to the October 20, 2021 letter constituted NVRA violations when Plaintiffs filed the Complaint in this case. Defendant denies any NVRA

violation and any remaining allegations in this paragraph.

54. Defendant admits that SOS has not produced any records pursuant to the August 27, 2021 letter or October 20, 2021 letter.

55. Denied.

CAUSE OF ACTION

56. Defendant repeats and reaffirms his answers to each and every allegation contained in the paragraphs above and incorporates the same here as though fully set forth.

57. This paragraph contains legal assertions and arguments and does not require a response. To the extent a response is required, Defendant denies the allegations in this paragraph.

58. This paragraph quotes the NVRA, which speak for itself. Defendant denies any allegations contained in this paragraph to the extent they are inconsistent with or mischaracterize anything contained in those statutes.

59. Denied.

60. Denied.

REQUESTED RELIEF

Paragraphs (A)–(E) of this section contain Plaintiffs’ recitation of the relief sought in this action, assertions of law, conclusory statements, and arguments to which no response is required. To the extent that Paragraphs (A)–(E) contain any allegations requiring a response, Defendant denies those allegations in their entirety. Defendant further denies that Plaintiffs are entitled to any relief from this Court.

DEFENDANT’S AFFIRMATIVE AND OTHER DEFENSES

Defendant hereby asserts the following affirmative and other defenses to which he may be entitled:

1. The Court lacks subject-matter jurisdiction to consider the claims asserted in Plaintiffs’ Complaint for Declaratory and Injunctive Relief.

2. Plaintiffs have failed to state a claim upon which relief can be granted.
3. Pursuant to 42 U.S.C. § 1988(b), Defendant will be entitled to recover their attorney's fees if they are the prevailing party.
4. Defendants reserve the right to assert additional affirmative and other defenses as they may become apparent in the factual development of this case.

Date: February 28, 2022

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

/s/ Patrick K. Sweeten
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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on February 28, 2022, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN