

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAURA PRESSLEY, ROBERT BAGWELL, §
TERESA SOLL, THOMAS L. KORKMAS, §
and MADELO HIGHSMITH, §

Plaintiffs, §

v. §

Civil Action No. 1:24-cv-00318-DII

JANE NELSON, in her official capacity as the §
Texas Secretary of State, CHRISTINA §
ADKINS, in her official capacity as the §
Director of the Elections Division of the §
Texas Secretary of State, BRIDGETTE §
ESCOBEDO, in her official capacity as §
Williamson County Elections Administrator, §
DESI ROBERTS, in his official capacity as §
Bell County Elections Administrator, and §
ANDREA WILSON, in her official capacity as §
Llano County Elections Administrator, §

Defendants. §

**DEFENDANTS' DR. DESI ROBERTS AND BRIDGETTE ESCOBEDO, IN THEIR
OFFICIAL CAPACITIES, JOINT REPLY TO PLAINTIFFS' RESPONSES TO
THEIR RULE 12(b)(1) SUPPLEMENTAL MOTIONS TO DISMISS FOR MOOTNESS**

Ross Fischer
State Bar No. 24004647
ROSS FISCHER LAW, PLLC
430 Old Fitzhugh, No. 7
Dripping Springs, Texas 78620
Telephone: (512) 587-5995
Email: ross@rossfischer.law

Eric Opiela
State Bar No. 24039095
ERIC OPIELA, PLLC
9415 Old Lampasas Trail
Austin, TX 78750
Telephone: (512) 791-6336
Email: eopiela@ericopiela.com

*Attorney for Defendant Dr. Desi Roberts,
In His Official Capacity as
Bell County Elections Administrator*

*Attorney for Defendant Bridgette Escobedo,
In Her Official Capacity as
Bell County Elections Administrator*

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Dr. Desi Roberts (“Dr. Roberts”) and Bridgette Escobedo (“Escobedo”), in their official capacities as Bell County Elections Administrator and Williamson County Elections Administrator, respectively, file this Joint Reply to Plaintiffs’ Responses to their Supplemental Motions to Dismiss for Mootness (Dkt. Nos. 61 and 62) pursuant to Federal Rule of Civil Procedure 12(b)(1) and would show the Court as follows.

I. PLAINTIFFS’ OBJECTION MISSTATE RULE CV-7(e)(1)

1. Plaintiffs wrongly assert that Defendants Roberts and Escobedo’s respective Supplemental Motions to Dismiss for Mootness are precluded by Local Rule CV-7(e)(1). (Dkt Nos. 61 & 62, Paragraph 3) That rule governs replies in support of a motion, and does not prohibit a party from supplementing a motion to dismiss based upon factual developments occurring since the submission of the original motion to dismiss.

II. PLAINTIFFS MISTATE THE AUTHORITY OF EACH DEFENDANT

2. In attempting to address both the inapplicability of the “voluntary cessation” doctrine and the mootness of their claim, Plaintiffs misstate the authority of the Secretary of State, Defendant Escobedo, and Defendant Roberts.

3. Plaintiffs assert that the policy changes implemented by Defendants Escobedo and Roberts are voluntary in nature, despite being mandated by the Secretary of State. Plaintiffs claim that advisories issued by the Secretary of State are mere suggestions which Defendants Escobedo and Roberts are entitled to disregard. Plaintiffs attempt to differentiate between an advisory and an order. (Dkt. No. 61, Paragraph 14 and Dkt No. 62, Paragraph 15).

4. However, Secretary of State Advisory 2024-21 (Dkt. 60-2, p. 1) clearly references the two statutes upon which the advisory rests, both of which vest the Secretary of State with

authority to bind county election officials.

5. First, Advisory 2024-21 relies upon TEX. ELEC. CODE § 31.014 (Certification of Electronic Devices to Accept Voters). That statute reads, in relevant part, “[t]he secretary of state shall prescribe specific requirements and standards, consistent with this code, for the certification of an electronic device used to accept voters....” [emphasis added].

6. Second, Advisory 2024-21 cites to TEX. ELEC. CODE § 52.075 (Modification of Ballot Form for Certain Voting Systems). That statute reads, “[t]he secretary of state may prescribe the form and content of a ballot for an election using a voting system, including an electronic voting system...” [Emphasis added]

7. These two statutes clearly empower the Secretary of State to prescribe specific standards and requirements for election related equipment. To prescribe means “to order that an action be taken.” *Am. Inst. of Certified Pub. Accountants v. Internal Revenue Serv.*, No. 16-5256 (D.C. Cir. Aug. 14, 2018) (Griffith, C.J., concurring)(“To ‘prescribe’ is to ‘lay down rules [and] laws,’ or to ‘lay down as a rule or direction to be followed’ or ‘impose authoritatively.’ Oxford English Dictionary (3d ed. 2007), <http://www.oed.com/view/Entry/150644>. When referring to law, ‘prescribe’ means that the law has ‘force or power.’ *Id.* And to ‘prescribe’ some law or policy is not synonymous with ‘interpreting’ law or policy.”)

8. Therefore, an advisory issued by the Secretary of State is an order that county election officials are required to follow. If Defendants Escobedo and Roberts were to act contra to Advisory 2024-21, they would be violating a duly promulgated order issued by the state’s chief elections officer.

9. Despite Plaintiffs’ assertion, Defendants Escobedo and Roberts are not free to resume utilizing pollbooks to assign randomized ballot numbers; to do so would be to violate the

standards prescribed by the Secretary of State.

PRAYER

For all these reasons, Bell County Elections Administrator Dr. Desi Roberts and Williamson County Elections Administrator Bridgette Escobedo respectfully ask the Court to dismiss Plaintiffs' claims against them as moot and to deny Plaintiffs' motion for preliminary injunctive relief.

Dated: September 9, 2024

Respectfully submitted,

/s/ Ross Fischer

Ross Fischer
State Bar No. 24004647
ROSS FISCHER LAW, PLLC
430 Old Fitzhugh, No. 7
Dripping Springs, Texas 78620
Telephone: (512) 587-5995
Email: ross@rossfischer.law

**ATTORNEY FOR DEFENDANT
DESI ROBERTS, IN HIS OFFICIAL
CAPACITY AS BELL COUNTY
ELECTIONS ADMINISTRATOR**

/s/ Eric Opiela

Eric Opiela
State Bar No. 24039095
ERIC OPIELA, PLLC
9415 Old Lampasas Trail
Austin, TX 78750
Telephone: (512) 791-6336
Email: eopiela@ericopiela.com

**COUNSEL FOR DEFENDANT
BRIDGETTE ESCOBEDO, IN HER
OFFICIAL CAPACITY AS WILLIAMSON
COUNTY ELECTIONS ADMINISTRATOR**

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024, a true and correct copy of this document was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all counsel of record and pro se Plaintiff Laura Pressley.

/s/ Ross Fischer
Ross Fischer

RETRIEVEDFROMDEMOCRACYDOCKET.COM