

Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert. *Id.* at 1. Defendants, with the exception of Defendant Callanen, comprise the Commissioners Court of Bexar County. Plaintiff's amended petition concerns the County Commissioners' effort to increase voter registration within Bexar County through a targeted mailing of voter registration applications to county citizens through a vendor, Civic Government Solutions ("CGS"). *Id.* at 5. Plaintiff's amended petition alleges that the County Commissioners' approval of the contract with CGS was *ultra vires*, or without authority. *Id.* at 15-17.

2. Whereas Plaintiff in its original petition sought relief in the form of enjoining the mailing the voter registration applications under the contract (Exhibit B at 14, ¶ 67 and 15, ¶ 72), Plaintiff's amended petition asserts expressly, for the first time, that the State is also entitled to injunctive relief prohibiting Bexar County (although Bexar County is not a named party) from making contractual payment to the vendor for mailing the voter registration applications. *Compare, e.g.,* original petition, Exhibit B at 15 ("Plaintiff is entitled to a temporary injunction enjoining Defendants from committing the *ultra vires* act of sending unsolicited voter registration applications to recipients who may or may not be eligible to vote") with the amended petition, Exhibit A at 19 (seeking "an order preventing the County from engaging in any further performance of the contract, including making payments under it"). Indeed, at a hearing on Plaintiff's request for a temporary restraining order and temporary injunction yesterday morning, September 16 (held two hours after Plaintiff filed its amended petition), following objection by the Defendants to the late-filed amended petition, the parties agreed on the record that the only issue the Court would take up was Plaintiff's request for injunctive relief as to the mailing of registration

applications, as stated in Plaintiff's original petition.¹ Following a hearing, the Honorable Judge Antonia Arteaga, presiding judge of the 57th Judicial District Court, denied Plaintiff's request to enjoin the mailing of registration applications as moot because the contractor already had mailed the applications. Mere hours after the hearing, the same day the amended petition was filed, and before entry of an order on the hearing, Plaintiff filed an appeal to the Texas Court of Appeals for the Fifteenth Judicial District. Exhibit N.

3. As mentioned above, the Defendants were served with Plaintiff's amended petition yesterday, September 16, 2024. The Defendants file this Notice of Removal within the 30-day period required by 28 U.S.C. § 1446.

BASES FOR REMOVAL

4. Removal to this Court is proper because Plaintiff's amended petition sets forth claims that are expressly or impliedly preempted by federal law. Plaintiff's re-tooled amended complaint emphasizes the Plaintiff's purported right under state law to enjoin a local government from paying a vendor for targeted voter registration application mailings. But Congress would disagree. In enacting the National Voter Registration Act (NVRA), Congress sought to facilitate voter registration, stressing that it is the duty of federal, state, and local government to promote the exercise of the fundamental right to vote. 52 U.S.C. § 20501(a). Section 20505 of the NVRA requires States to accept and use a mail voter registration application form for registration of voters for elections for federal office. And with regard to the availability of voter registration application

¹ Remarkably, Plaintiff represents to the Court of Appeals of the Fifteenth Judicial District that it is entitled to appellate relief on the issue of enjoining the County from making payments under the contract, even though the Court did not rule on that issue. *See, e.g.*, Appellant's Emergency Motion for Temporary Order, Exhibit N at 26 ("If the County were allowed to make payments or otherwise continue to perform the contract, then prospective relief in an ultra vires suit could not undo those acts").

forms, the NVRA provides that “The chief State election office of a State shall make the forms described in subsection (a) available for distribution through government *and private entities, with particular emphasis on making them available for organized voter registration programs.*” *Id.* at § 20501(b) (emphasis added). Plaintiff’s attempt to abrogate the duty of a local government to facilitate voter registration by depriving it of the right to contract and pay for mailings runs afoul of Congressional intent in passing the NVRA. Given the federal law preemption implications of Plaintiff’s claims, this Court may exercise subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

5. Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants remove this action to the United States District Court for the Western District of Texas, San Antonio Division, which is the judicial district and division in which the state court action (although now on appeal) is pending.

6. In accordance with 28 U.S.C. § 1446(b)(2)(A), all Defendants consent to the removal of this action.

INDEX OF EXHIBITS

7. A true and correct copy of all pleadings, process, orders, and other filings in the state court and appellate court are attached to this notice as required by 28 U.S.C. § 1446(a). Those filings consist of the following:

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|----|---------------------------------|--------------------|
| A) | Amended Petition | September 16, 2024 |
| B) | Original Petition | September 3, 2024 |
| C) | Request for Service and Process | September 5, 2024 |
| D) | Request for Service and Process | September 5, 2024 |
| E) | Notice of Hearing | September 6, 2024 |
| F) | Request for Service and Process | September 9, 2024 |
| G) | Request for Service and Process | September 9, 2024 |

- H) First Amended Notice of Hearing September 10, 2024
- I) Application for TRO and Temp. Inj. September 16, 2024
- J) TRO/TI Exhibit A September 16, 2024
- K) TRO/TI Exhibit B September 16, 2024
- L) TRO/TI Exhibit C September 16, 2024
- M) Proposed Order on TRO/TI September 16, 2024
- N) State's Emergency Motion
for Temporary Order
(15th Court of Appeals) September 16, 2024
- O) Notice of Appeal September 16, 2024

JURY DEMAND

8. Defendants demand a jury trial as to all claims asserted by Plaintiff

CONCLUSION AND PRAYER

For the foregoing reasons, Defendants respectfully request that the Court uphold this removal and retain jurisdiction over this suit.

Respectfully Submitted,

JOE D. GONZALES
Bexar County Criminal District Attorney

By: /s/ Robert W. Piatt III
ROBERT W. PIATT III
Bar No. 24041692
Assistant District Attorney
Robert.Piatt@bexar.org

LARRY L. ROBERSON
Bar No. 24046728
Civil Section Chief
lroberson@bexar.org

LISA V. CUBRIEL
Bar No. 24045731
Assistant District Attorney
Lisa.Cubriel@bexar.org

Bexar County District Attorney's Office
Civil Division
101 W. Nueva, 7th Floor
San Antonio, Texas 78205
Telephone: (210) 335-2142
Attorneys for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that on September 17, 2024, I served the foregoing document with attachments by electronic mail, and, as possible, through the CM/ECF system, upon the following:

Kathleen T. Hunker
State Bar No. 24118515
Garrett Greene
State Bar No. 24096217
Ryan Kercher
State Bar No. 24060998
Special Litigation Division
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1706
(512) 320-0167 (fax)
Katheen.Hunker@oag.texas.gov
Garrett.Greene@oag.texas.gov
Ryan.Kercher@oag.texas.gov
Attorneys for Plaintiff

/s/ Robert W. Piatt III
ROBERT W. PIATT III