

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

LETICIA GARZA GALVAN and,
MARTIE GARCIA VELA

Plaintiffs,

v.

ROLANDO PABLOS, in his official
capacity as Texas Secretary of State,
and ARMANDINA MARTINEZ,
ALMA GARCIA, ALICIA
DOUGHERTY NO. 1, ALICIA
DOUGHERTY NO. 2, YOLANDA
MARTINEZ,

Defendants.

CIVIL ACTION NO. 7:18-cv-113

DEFENDANTS ARMANDINA MARTINEZ, ALMA GARCIA, ALICIA
DOUGHERTY NO. 1, ALICIA DOUGHERTY NO. 2, YOLANDA MARTINEZ'S
ANSWER TO PLAINTIFFS' COMPLAINT

Defendants Armandina Martinez, Alma Garcia, Alicia Dougherty No. 1, Alicia Dougherty No. 2, Yolanda Martinez (collectively the "Early Vote Ballot Board Defendants" or "EVBB Defendants") file their Answer to Plaintiffs' Complaint, and respectively show the Court the following:

Discovery Control Plan

1. No response is required to the allegations in paragraph No. 1 as they raise questions of law. However, given the removal of the case to this Court, the state law discovery plan is inappropriate and inapplicable.

Introduction

2. Defendants admit the allegations contained in this paragraph No. 2.

3. Defendants admit the allegations contained in this paragraph No. 3.

4. Defendants admit the allegations contained in paragraph No. 4, except as to the use of the word “incredible”. The rejection of any mail-in ballot was not incredible or even remarkable. The rejection of any mail-in ballot was made pursuant to Texas law.

5. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in paragraph No. 5.

6. Defendants admit, upon information and belief, that Plaintiffs bring this action challenging constitutionality of Texas longstanding procedures accepting or rejecting a voter’s mail-in ballot, the appointment of EVBB members. To the degree that this allegation requires a factual deny, Defendants deny the allegations in paragraph No. 6.

7. No response is required to the allegations in paragraph No. 7 as they raise questions of law. However, upon information and belief, the state trial court has affirmed the outcome of the primary elections challenged by the election contest.

8. No response is required to the allegations in paragraph no. 8 as they raise questions of law. Upon information and belief, this issue is now moot as the motion to consolidate has been denied and the election contest has affirmed the outcome in the primary election.

Parties

9. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in paragraph No. 9.

10. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in paragraph No. 10.

11. Upon information and belief, the EVBB defendants admit the allegations

12. Defendants admit the allegations contained in paragraph No. 12.

13. Defendants admit the allegations contained in paragraph No. 13.

Jurisdiction and Venue

14. No response is required to the allegations in paragraph No. 14 as they raise questions of law.

15. No response is required to the allegations in paragraph No. 15 as they raise questions of law.

Background

16. Defendants admit the allegations contained in paragraph No. 16.

Summary of the framework for applying for, and returning, ballot by mail, and delivery of timely-returned ballots to the Early Voting Ballot Board

17. No response is required to the allegations in paragraph No. 17 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit the allegations contained in this paragraph.

18. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in paragraph No. 18.

19. Defendants are without knowledge or information sufficient to form a belief about the truth of the factual allegations in paragraph No. 19.

20. No response is required to the allegations in paragraph No. 20 as they raise questions of law.

21. No response is required to the allegations in this paragraph as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in paragraph No. 21.

22. No response is required to the allegations in paragraph No. 22 as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in this paragraph.

23. No response is required to the allegations in paragraph No. 23 as they raise questions of law.

24. No response is required to the allegations in paragraph No. 24 as they raise questions of law.

Procedure for appointment of Early Voting Ballot Board

25. No response is required to the allegations in paragraph No. 25 as they raise questions of law.

26. No response is required to the allegations in paragraph No. 26 as they raise questions of law.

27. No response is required to the allegations in paragraph No. 27 as they raise questions of law.

Qualifying ballots by mail

28. No response is required to the allegations in paragraph No. 28 as they raise questions of law.

29. No response is required to the allegations in paragraph No. 29 as they raise questions of law.

30. No response is required to the allegations in paragraph No. 30 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

31. No response is required to the allegations in paragraph No. 31 as they raise questions of law.

32. No response is required to the allegations in paragraph No. 32 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

33. No response is required to the allegations in paragraph No. 33 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

34. Defendants deny the allegations in paragraph No.34.

35. No response is required to the allegations in paragraph No. 35 as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in this paragraph and, therefore, deny the same.

The EVBB's effectively unreviewable authority to reject mail in ballots contrasted with the process for review of provisional ballots.

36. No response is required to the allegations in paragraph No. 36 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

37. No response is required to the allegations in paragraph No. 37 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

38. No response is required to the allegations in paragraph No. 38 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

39. No response is required to the allegations in paragraph No. 39 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

40. No response is required to the allegations in paragraph No. 40 as they raise

41. No response is required to the allegations in paragraph No. 41 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

42. No response is required to the allegations in paragraph No. 42 as they raise questions of law. To the degree that these are not allegations of the law, Defendants admit this allegation.

Count 1: The Lack of a process affording a voter the opportunity to cure a deficiency resulting in the rejection of his or her mail violates the right to vote and the right to due process and equal protection of the law.

43. No response is required to the allegations in paragraph No. 43 as they raise questions of law.

44. No response is required to the allegations in paragraph No. 44 as they raise questions of law.

45. No response is required to the allegations in paragraph No. 45 as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in this paragraph and, therefore, deny the same.

46. No response is required to the allegations in paragraph No. 46 as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in this paragraph.

47. No response is required to the allegations in paragraph No. 47 as they raise questions of law. To the degree that these are not allegations of the law, Defendants are without sufficient knowledge to form a belief about the truth of the factual allegations in this paragraph.

48. Defendants deny the allegations in paragraph No. 48.

Count 2: The lack of uniform standards for reviewing voter signatures to determine whether a ballot is acceptable violates equal protection

49. Defendants deny the allegations in paragraph. No. 49.

50. Defendants deny the allegations in paragraph. No. 50.

51. Defendants deny the allegations in paragraph. No. 51.

52. Defendants deny the allegations in paragraph. No. 52.

Count 3: The manner in which the Starr County EVBB reviewed the carrier envelopes for acceptance in this election – whereby each individual member made unilateral decisions to accept or reject – violates equal protection.

53. Defendants deny the allegations in paragraph. No. 53.

54. Defendants deny the allegations in paragraph. No. 54.

55. Defendants deny the allegations in paragraph. No. 55.

56. Defendants deny the allegations in paragraph. No. 56.

Motion to Consolidate with Election Contest

57. No response is required to the allegations in paragraph No. 57 as they raise questions of law. However, the issue is moot as the election contest affirmed the results of the primary.

58. No response is required to the allegations in paragraph No. 58 as they raise questions of law. However, the issue is moot as the election contest affirmed the results of the primary.

59. No response is required to the allegations in paragraph No. 59 as they raise questions of law. However, the issue is moot as the election contest affirmed the results of the primary.

Prayer

Defendants need not admit or deny legal argument or legal conclusions contained in the prayer. To the extent a response is required, Defendants are without knowledge or information sufficient to form a belief about the truth of the remaining factual allegations in this paragraph contained in the plaintiffs' prayer, and, therefore, deny the same.

Defenses to Plaintiffs' complaint

1. Defendants assert the defense of standing to all claims to which that defense applies.
2. Defendants assert that Plaintiffs lack standing to pursue their claims against the EVBB Defendants because their injuries are not traceable to the EVBB Defendants and because the EVBB Defendants cannot provide the relief plaintiffs seek
3. Defendants assert that Plaintiffs' claims are not justiciable.
4. Defendants assert that Plaintiffs have failed to state a claim upon which relief can be granted.
5. Defendants assert the right to amend these defenses to assert additional defenses as they may become known to Defendants.

Affirmative Defenses to Plaintiff's complaint

1. Defendants assert the defense of Eleventh Amendment immunity to all claims to which that defense applies.
2. Defendants assert sovereign immunity for the actions taken by the EVBB Defendants in their official capacities.
3. Defendants assert the right to amend these affirmative defenses to assert additional affirmative defenses as they may become known to Defendants.

Defendants' Prayer

Defendants request that the Court enter a judgment that Plaintiffs take nothing by this suit, that Plaintiffs' claims be dismissed with prejudice, and that defendants be granted such other and further relief to which they may show themselves to be justly entitled.

DATE: May 9, 2018.

Respectfully Submitted,

/s/ Jose Garza

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served on all counsel of record in conformity with the Federal Rules of Civil Procedure via Certified Mail, Return Receipt Requested, and via facsimile transmission.

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/s/ Jose Garza

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