IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CITY OF EL CENIZO, et al., *Plaintiffs*, v. STATE OF TEXAS, et al., *Defendants*.	No. 5:17-cv-404-OG [Lead Case]
EL PASO COUNTY, et al., *Plaintiffs*, v. STATE OF TEXAS, et al., *Defendants*.	No. 5:17-cv-459-OG [Consolidated Case]
CITY OF SAN ANTONIO, et al., *Plaintiffs*, v. STATE OF TEXAS, et al., *Defendants*.	No. 5:17-cv-489-OG [Consolidated Case] **DEFENDANTS' REPLY IN SUPPORT OF MOTIONS TO DISMISS OR TRANSFER**

Plaintiff-Intervenors Travis County (ECF No. 128), the City of Dallas (ECF No. 160) and Texas Association of Hispanic County Judges and County Commissioners (ECF No. 167) largely repeat arguments that Texas has fully addressed in prior briefing to the Court. *See* ECF Nos. 32-1, 84. Texas therefore makes just a few short points in reply. *First*, the case law that Travis County cites does not support its contention that venue is proper in San Antonio and improper in Austin. *Second*, Austin is the only proper venue for this pre-enforcement facial challenge to a law that was debated and enacted within the Austin Division. *Finally*, Plaintiff-Intervenors collectively spend pages and pages of their briefs attacking Texas's standing to assert its declaratory judgment action in the Austin Division. But these arguments are irrelevant because, as this Court has already recognized, whether Texas has standing to pursue that case is not a decision for this Court to make. And regardless of how Judge Sparks rules on the pending motions to dismiss filed by the defendants in the Austin Division, venue would still be proper in Austin and improper here. The Court should grant Texas's motions to dismiss or transfer.[1]

I. Venue Is Improper in San Antonio.

As Texas has already asserted, none of the venue criteria under 28 U.S.C. § 1391 have been satisfied. No Defendant resides in the San Antonio Division and, more importantly, the events giving rise to this action did not occur within the division. *See* ECF No. 32-1 at 2–6. Venue is improper under 28 U.S.C. § 1406.

Travis County asserts that one of the cases that Texas cites in support of this proposition, *Chapman v. Dell, Inc.*, No. EP-09-CV-7-KC, 2009 WL 1024635 (W.D. Tex. Apr. 15, 2009) actually supports the County's position because the Court did not

[1] On June 20, 2017, the Court held Texas's Motion to Dismiss or Transfer the Consolidated Cases in abeyance pending a decision on subject matter jurisdiction in the Austin Division case. ECF No. 66. Texas is well aware of the Court's order but files this reply for the Court's review at the time it resolves this issue.

transfer venue under 28 U.S.C. § 1406. ECF No. 159 at 6. But the County neglects to mention that the *Chapman* court ultimately ordered the case—a class action employment suit—to be transferred from the El Paso Division to the Austin Division under 28 U.S.C. § 1404, relying in part on several considerations that are present to an even greater degree in this litigation. The Court noted that the plaintiff-employees did not live in the El Paso Division but rather worked in the Austin Division. *Id.* at *4. The defendant-employer's headquarters were likewise located in Austin. *Id.*

If considerations of an employer's business locale can play such a prominent role in the determination of proper venue in an employment discrimination case between private parties, surely the location of the governmental officials who debated and enacted SB 4 must play a crucial consideration to the proper venue of a pre-enforcement challenge to a law that was debated and enacted in the Austin Division—the seat of Texas government. As Texas has explained, the "general rule in suits against public officials is that a defendant's residence for venue purpose[s] is the district where he performs his official duties." *Fla. Nursing Home Ass'n v. Page*, 616 F.2d 1355, 1360 (5th Cir. 1980), *rev'd on other grounds*, *Fla. Dep't of Health & Rehab. Servs. v. Fla. Nursing Home Ass'n*, 450 U.S. 147 (1981). Thus, Austin is the appropriate venue for challenges to SB 4 regardless of the outcome of other pending litigation in the Austin Division. *Chapman* does not stand for the contrary principle, which would establish a rule that Plaintiffs could sue wherever they desire (El Paso, Brownsville, or Amarillo) merely because the theory of Texas government exists throughout the state.

II. Austin Is Where All Claims in This Litigation Arose.

As mentioned above, in addition to Austin being the residence of the Texas officials who have been sued, the new law was enacted and signed in Austin. The Austin Division is required, not only because of the requirement of 28 U.S.C. § 1391(c)(2), but "because the operative facts have significant connection to this

[division]."

Significant to venue is where "a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). In that SB 4 is Texas law, the only events that give rise to this pre-enforcement facial dispute are those that surround the lawmaking process, all of which occurred in Austin. *See*, *e.g.*, *Fla. Hometown Democracy, Inc. v. Browning*, 08-CV-80636-CIV, 2008 WL 3540607, at *4 (S.D. Fla. Aug. 12, 2008); *N. Ky. Welfare Rights Ass'n v. Wilkinson*, No. 90-6268, 1991 WL 86267, at *5 (6th Cir. 1991) (unpublished decision) ("venue in this case was proper only in [the capital]. That is where all of the [government officials] have their official residences; it is the district most convenient to the [government officials]; and it is the district which has the weightiest contacts with the plaintiffs' claim.").

The entire basis of Plaintiffs' arguments—that they *will* face harm in San Antonio at some point in the future—is purely speculative, given that SB 4 has not yet taken effect. The recent amicus briefs filed by the Major Cities Chiefs Association and Harris County demonstrate this precise point. *See* ECF No. 165 at 3 (arguing that SB 4 *will* cause harm if it takes effect); ECF No. 166 at 3 (same). Finally, any argument that venue can lie in a "place of injury" "is contrary to the venue statute and the weight of jurisprudence." *Gray Cas. & Sur. Co. v. Lebas*, No. CIV.A. 12-2709, 2013 WL 74351, at *2 (E.D. La. Jan. 7, 2013). For all of these reasons, venue is proper in the Austin Division.

III. Texas's Standing in the Austin Litigation Is Irrelevant.

All three Plaintiff-Intervenors argue at length that the Austin litigation will eventually be dismissed because Texas lacks standing to bring its declaratory judgment action. ECF No. 159 at 8–15; ECF No. 160 at 8–14; ECF No. 167 at 7–14. Apart from being incorrect for reasons that Texas has already briefed, ECF No. 84 at 4–5, these contentions are irrelevant. Indeed, this Court has held Texas's Motion to Dismiss or Transfer Venue the Consolidated Cases in abeyance "pending a decision

on subject matter jurisdiction in the case pending in the Austin division." ECF No. 66 at 2. Thus, the Court has already recognized that the decision on whether venue is proper over the declaratory judgment action is one for the Austin court to decide. Moreover, the ultimate issue for resolution in this Court is whether venue is proper in Austin and improper in San Antonio. Under the relevant case law, venue is improper in San Antonio and proper in Austin. *See* Sections I & II, *supra*. Accordingly, this case should be dismissed or transferred regardless of the ultimate result of Texas's pending declaratory judgment action.

CONCLUSION

Plaintiff-Intervenors' Complaints in Intervention should be dismissed, or, at minimum, transferred to the Austin Division for consolidation with *Texas v. Travis County*, No. 1:17-cv-425-SS (W.D. Tex.).

Respectfully submitted this the 20th day of July, 2017.

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CERTIFICATE OF SERVICE

I, Darren McCarty, hereby certify that on this the 20th day of July, 2017, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Darren McCarty
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