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

ISABEL LONGORIA and CATHY MORGAN, Plaintiffs, v. WARREN K. PAXTON, in his official capacity as Attorney General of Texas, KIM OGG, in her official capacity as Harris County District Attorney, SHAWN DICK, in his official capacity as Williamson County District Attorney, and JOSÉ GARZA, in his official capacity as Travis County District Attorney, Defendants.	§	Case No. 5:21-CV-1223-XR

PLAINTIFFS' RESPONSE IN OPPOSITION TO
ATTORNEY GENERAL PAXTON'S MOTION TO STAY

On January 4, 2022, Defendant Warren K. Paxton (the "Attorney General") filed a Motion to Stay, Dkt. No. 9, that asks the Court to postpone consideration of Plaintiffs' Motion for a Preliminary Injunction, Dkt. No. 7. Plaintiffs oppose the Motion, which serves no interest other than to delay resolution of a claim that is ripe, discrete from those claims raised in the Consolidated Cases, and ready for swift resolution without the need for discovery. Plaintiffs respectfully ask that the Court deny the Motion to Stay.

Introduction and Background

Plaintiffs Isabel Longoria and Cathy Morgan filed the First Amended Complaint in the instant case on December 27, 2021, Dkt. No. 5, and the Motion for a Preliminary

Injunction the following day.[1] The First Amended Complaint challenges provisions of a recently passed election law ("SB1") that 1) make it a criminal offense for public officials and election officials to "solicit" vote by mail applications from voters who have not requested them and 2) make the same conduct a civil offense for election officials. TEX. ELEC. CODE § 276.016(a)(1) (the "anti-solicitation provision"); TEX. ELEC. CODE § 31.129 (together, the "challenged provisions"). Plaintiffs assert the challenged provisions violate their First Amendment right to freedom of speech.

Plaintiff Longoria initially raised a lone claim against the anti-solicitation provision as part of an action challenging several other provisions in SB1 titled *La Unión del Pueblo Entero v. Abbott*, No. 5:21-cv-844 (W.D. Tex.) ("*LUPE*"). *LUPE* is one of six cases consolidated before the Court challenging SB1 (the "Consolidated Cases"). Although Longoria was a plaintiff in the *LUPE* case, she is a defendant in three of the other Consolidated Cases. *See OCA-Greater Houston v. Esparza*, 5:21-cv-844, Dkt. No. 137 (W.D. Tex.); *Houston Justice v. Abbott*, No. 5:21-cv-848, Dkt. No. 139 (W.D. Tex.); *League of United Latin American Citizens v. Esparza*, No 1:21-cv-786, Dkt. No. 136 (W.D. Tex.) ("*LULAC*"). In granting the opposed motion to consolidate the cases, the Court asked the parties how Longoria's position as both a plaintiff in *LUPE* and a defendant in other cases was "going to be addressed." *LUPE*, 5:21-cv-844, Dkt. No. 31, ¶ 6(l).

On December 1, 2021, Longoria dismissed her claim in *LUPE* without prejudice so that she could re-file it as a separate but related action. *LUPE*, 5:21-cv-844, Dkt. No.

[1] Although Plaintiffs were unable to accomplish formal service of process until January 3, 2022, they provided counsel for Defendant Paxton with an electronic copy of both the First Amended Complaint and the motion on December 28, 2021.

138. Doing so achieved two aims. First, Plaintiffs in the Consolidated Cases can now coordinate more smoothly as Longoria is no longer both a plaintiff and a defendant in those actions. *See id.* Second, the Court can now immediately resolve Longoria's discrete claim, which requires no discovery.

Nevertheless, on January 4, 2022, the Attorney General moved to re-consolidate this case with the Consolidated Cases and to stay consideration of Plaintiffs' preliminary injunction motion pending a status conference and ruling on the re-consolidation motion.

Argument

Staying a decision of Plaintiffs' ripe and discrete claims would lead to irreparable harm for Plaintiffs and sow greater inefficiencies for all parties. Contrarily, a quick decision on Longoria's claim would lighten the burden on both the Court and the parties as the Consolidated Cases move through discovery and towards trial.

"The party moving for a stay bears a 'heavy burden' to demonstrate that it is appropriate." *Mott's LLP v. Comercializadora Eloro, S.A.*, 507 F. Supp. 3d 780, 785 (W.D. Tex. 2020) (quoting *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985)). "Where a discretionary stay is proposed, something close to genuine necessity should be the mother of its invocation." *Coastal* at 203 n.6. The Attorney General does not explain why a stay is appropriate when Plaintiffs face irreparable harm, let alone why it is necessary. Instead, his motion states in conclusory fashion that *consolidation* would be a better use of resources. Mot. to Stay, Dkt. No. 9, at 3.

The parties achieve no efficiency by delaying a decision in *Longoria* because there are no overlapping claims between this case and those in the Consolidated Cases. The

Attorney General conflates claims raised by various Plaintiffs in the Consolidated Cases in arguing the opposite. Dkt. No. 9 at 2. The *LULAC* and *LUPE* complaints make passing reference to the anti-solicitation provision, but do not challenge it. No. 5:21-cv-844, Dkt. No. 136, ¶ 156; Dkt. No. 140, ¶ 31 n.23. Plaintiffs in the *Houston Justice* case, 5:21-cv-844, Dkt. No. 139, allege that the anti-solicitation provision violates the Fourteenth and Fifteenth Amendments' prohibitions on intentional race discrimination, but bring no cause of action predicated on the First Amendment's guarantee of free speech.[2] This case is the only one challenging the anti-solicitation provision's impermissible burdens on speech on behalf of public officials or election officials. This claim can thus be resolved without prejudicing other Plaintiffs or slowing the advancement of their claims.

Staying this case would also undermine the Court's stated goal of resolving "discrete . . . legal issues . . . earlier rather than later." Tr. from Nov. 16, 2021 Status Conference, Dkt. No. 9-1, at 54. Unlike most of the other claims raised in the Consolidated Cases, Plaintiffs' Motion for a Preliminary Injunction can be resolved without discovery or live testimony. The Attorney General needs to submit only a single brief to litigate the motion. A stay will not save resources because the work required of the Court and parties will be identical whether this case is adjudicated now or in several months. Resolving it now partially clears the docket before the Consolidated Cases reach

[2] The paragraphs in the *Houston Justice* First Amended Complaint that the Motion to Stay cites are not challenges to the anti-solicitation provision. Paragraph 78 merely references a nearby provision from SB1 § 7.04, codified at TEX. ELEC. CODE § 276.016(a)(3), and paragraph 211 contains a one-phrase description of the anti-solicitation provision in a list of SB1 provisions that limit the ability of voters to access mail ballot applications. No. 5:21-cv-844, Dkt. No. 139.

their busiest stages, in line with the Court's request that the parties identify "any dispositive motions . . . that could be filed without the benefit of discovery" to avoid a logjam of work in several months. *Id.* at 35. Efficient administration of justice is best served by litigating these Plaintiffs' claims—which are discrete and turn exclusively on a small number of legal issues—right away.

Finally, the relief sought in this case does not contradict the Consolidated Cases Plaintiffs' decision not to seek preliminary relief. In addition to this being a different case, deciding the claims in the instant case right away will not affect the Consolidated Cases' schedule. Many claims in the Consolidated Cases can be fully developed only with extensive discovery, including discovery of evidence related to the March 2022 primary elections. Because Plaintiffs' sole claim requires no further factual development, it makes sense to separate and quickly resolve it. Waiting would only prejudice Plaintiffs, especially given that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)).

Conclusion

Plaintiffs Longoria and Morgan respectfully ask that the Court deny the Attorney General's Motion to Stay.

Dated: January 10, 2021

Respectfully submitted,

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* Application for *pro hac vice* forthcoming
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CERTIFICATE OF SERVICE

The undersigned certifies that on January 10, 2022, the foregoing document was filed electronically with the United States District Court for the Western District of Texas via CM/ECF. As such, this Response in Opposition to Attorney General Paxton's Motion to Stay was served on all counsel who have consented to electronic service.

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