IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

POTTER COUNTY REPUBLICAN PARTY, DANIEL ROGERS, and ALEXANDER HALE, individually and on behalf of all other similarly affected.

Plaintiffs,

v.

CHRISTY BENGE, in her official capacity as the POTTER COUNTY ELECTIONS ADMINISTRATOR and as proposed representative of a defendant class of similarly situated Texas county election officials,

Defendant.

Civil Action No. 2:26-cv-00215-Z

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DEFENDANT CHRISTY BENGE'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO DISMISS

Pursuant to the Court's Order of November 10, 2026 (ECF Doc. 67), Defendant Christy Benge ("Defendant") files her reply to Plaintiffs' response to her motion to dismiss filed on November 9, 2026. In support, Defendant respectfully shows:

I. Procedural Developments Since Filing of Motion to Dismiss.

Defendant filed her motion to dismiss, along with a supporting brief, on November 9, 2026. (*See* ECF Docs. 59, 63). On November 14, 2026, Plaintiffs filed their response. (*See* ECF Doc. 73.) Before doing so, however, they also filed an amended complaint on that same date. (*See* ECF Doc. 72.) In their response to Defendant's motion to dismiss, Plaintiffs effectively contend that their amended complaint renders the arguments in Defendant's motion moot. (*See* ECF Doc. 73,

at 7.) Accordingly, they ask the Court to deny the motion as moot or, alternatively, to simply deny it. (ECF Doc. 73, at 8.) Notably, the amended complaint adds a new Plaintiff, Alexander Hale, who ran for Congress in the November 3, 2026 election in District 7 of Texas. (ECF Doc. 72, ¶ 26, at 11-12.) The Seventh Congressional District of Texas is located in and around Houston in Harris and Fort Bend Counties.[1] Plaintiffs do not separately allege, in their amended complaint or in their response, that Defendant administers elections in Harris or Fort Bend Counties. (*Cf.* ECF Doc. 72, ¶ 27, at 12) ("The Potter County Elections Administrator supervises elections in Potter County ….").

While the requested relief remains largely the same,[2] the amended complaint changes – in a significant manner – the nature of the core claim asserted by Plaintiffs. Specifically, the gravamen of the original complaint was grounded in the concern that the electronic tabulation of votes could be subject to hacking by foreign or domestic malefactors, either with or without the use of artificial intelligence, which allegedly risked diluting or canceling the original Plaintiffs' votes. (*See* ECF Doc. 1, ¶¶ 5, 11, at 3, 5.; *see also id*. ¶ 14, at 7 (noting Plaintiff Rogers's fear of "disenfranchisement").) By contrast, the amended complaint focuses on the allegation that, because each county's election administrator decides for her own county whether a documented discrepancy "leads to any further count, investigation, or correction," identical ballots "receive different protection depending on the county in which they are cast." (ECF Doc. 72 ¶¶ 7, 73, at 3,

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[1] *See* https://wrm.capitol.texas.gov/fyiwebdocs/PDF/congress/dist7/m1.pdf (official State of Texas map demarcating boundaries of Congressional District 7) (last accessed Nov. 16, 2026 at 9:37 a.m.).

[2] *Compare* ECF Doc. 1, at 25-26 *with* ECF Doc. 72 at 31-32. The primary difference in requested relief is the amended complaint's request that Plaintiffs' requested ballot verification procedures apply to future elections beyond the recently completed November 3, 2026 election. (ECF Doc. 72, at 31.)

27-28.) Plaintiffs now cite *Bush v. Gore*, 531 U.S. 98, 104-105 (2000) and *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) as the basis for their contention of an equal protection violation. (ECF Doc. 72, ¶ 72, at 27.) The amended complaint also adds allegations that discrepancies have been detected in Harris, Dallas, Randall, and Lubbock Counties (ECF Doc. 72, ¶ 37, at 14.) Further, Plaintiffs newly allege that election watchers appointed by Plaintiff Rogers are unable to perform their duties properly within the confines of the current system. (ECF Doc. 72, ¶¶ 22, 23, at 9-10.) And they allege a printing error on Potter County ballots in the 2022 election. (ECF Doc. 72, ¶ 24, at 10-11.) Because the allegations regarding the new Plaintiff, as well as the reconfiguration of Plaintiffs' constitutional claims and the amended complaint's attempt to allege more facts concerning their specific injury did not appear in the original complaint and were not reasonably foreseeable at the time Defendant filed her motion to dismiss, they were not addressed.

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II. The Amended Complaint Arguably Moots the Contentions in Defendant's Previously-Filed Motion to Dismiss.

"An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading." *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 282 n. 1 (5th Cir. 2023) (quoting *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994)). Plaintiffs here did not adopt or incorporate their original complaint by reference. In that circumstance, "the district court [has] the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint." *Id*. (quoting *Pettaway v. Nat'l Recovery Sols., LLC*, 955 F.3d 299, 304 (2d Cir. 2020)) (internal punctuation added). The latter approach is proper "if some of the defects raised in the original motion remain in the new pleading," in which case "the court simply may consider the motion as being addressed to the amended pleading." *Rountree v. Dyson*, 892 F.3d 681, 683-84 (5th Cir. 2018).

Although standing remains a substantial question generally applicable to the amended complaint, its contours are not a neat fit with the arguments raised in Defendant's motion to dismiss. Plaintiffs appear to agree, arguing that Defendant's motion – directed as it is to their original complaint – "is moot." (ECF Doc. 73, at 7.) The same is likely true of the motion's Rule 12(b)(6) component, which addressed the original complaint's somewhat amorphous constitutional violation arguments. The Court could properly apply the motion to dismiss to the amended complaint if the differences between the original and amended complaints were minor. *See Villas at Parkside Partners v. City of Farmers Branch*, 245 F.R.D. 551, 557 (N.D. Tex. 2007). Here, however, the Plaintiffs have altered the fundamental basis of their lawsuit and added factual allegations (and a new Plaintiff) in support of that alteration, none of which were reasonably predictable from the text of the original complaint.

Defendant's motion sought dismissal based on standing, directed to the generalized nature of Plaintiffs' alleged injury, their assertions about the speculative risk of hacking, and the absence of redressability considering Defendant's one-county authority. (*See* ECF Doc. 63, at 14-23.) While some of those standing issues remain broadly applicable, their proper assertion with respect to the amended complaint will not be identical or even substantially the same—particularly since the primary asserted risk has shifted from hacking to potentially inconsistent ballot verification. Moreover, Plaintiffs' recasting of their constitutional claims renders much of Defendant's argument in her Rule 12(b)(6) motion inchoate or inapplicable. And that says nothing of whether that task is feasible within a 10-page-limited reply.

While it is true that the "filing of an amended complaint does not 'revive' the right of a defendant to file a successive Rule 12(b)(6) motion to dismiss on grounds that were *available but not raised* prior to the amended pleading", a defendant is permitted "to file a motion to dismiss on

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new claims that were raised for the first time in an amended complaint that was filed after its original motion to dismiss." *Hernandez v. Casey*, No. 3:16-CV-452-M-BH, 2017 WL 685679, at *3 (N.D. Tex. Jan. 12, 2017), *report and recommendation adopted*, No. 3:16-CV-452-M, 2017 WL 680309 (N.D. Tex. Feb. 21, 2017) (emphasis in original). Defendant attacked Plaintiffs' claims as they were actually pleaded in the original complaint, not as they have been reconfigured in the amended complaint. Concurrently, the issue of subject-matter jurisdiction is not subject to Rule 12(g)(2)'s successive motion bar. *See* FED. R. CIV. P. 12(h)(3).

Defendant intends to file a Rule 12(b) motion to dismiss the amended complaint. Plaintiffs' tactical decision to overhaul its theory of the case after Defendant filed her original motion to dismiss should not cut off her ability to fully present the applicable, and newly available, defensive matters. In the procedural situation at hand, then, it appears that denial for mootness would be proper. If the Court denies Defendant's Motion to Dismiss as moot based on the filing of the amended complaint, it should do so without prejudice to Defendant's ability to file a Rule 12 motion directed to the new matters in the amended complaint, and it should set a "clean slate" for Rule 12 motion practice concerning the amended complaint. *See Hernandez*, 2017 WL 685679, at *3; *see also VeroBlue Farms USA, Inc. v. Wulf*, 465 F. Supp.3d 633, 649 (N.D. Tex. 2020) (applying Rule 12(g)(2) bar in absence of prior order "mooting and setting a clean slate" as to previous motion to dismiss). Defendant will comply with any deadline and page limit the Court may impose in that instance.

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III. Conclusion and Prayer

Based on the foregoing, Defendant Benge respectfully requests that the Court deny the motion to dismiss as moot without prejudice to the filing of a subsequent Rule 12(b) motion to

dismiss the amended complaint, and that the Court set a clean slate with respect to Rule 12(b) motion practice directed to the amended complaint. [3]

Respectfully submitted,

POTTER COUNTY ATTORNEY'S OFFICE
500 South Fillmore, Room 301
Amarillo, Texas 79101
Telephone: (806) 379-2255
Fax: (806) 379-2267

By: /s/ Scott Brumley
Scott Brumley
Potter County Attorney
Texas Bar No. 00783738
Email: scottbrumley@co.potter.tx.us

Attorney for Defendant Christy Benge

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to N.D. Tex. LR 7.2(f), that generative artificial intelligence was not used in the preparation of this document.

/s/ Scott Brumley
Scott Brumley
Attorney for Defendant Christy Benge

CERTIFICATE OF SERVICE

On November 16, 2026, I filed the foregoing document with the clerk of court for the United States District Court for the Northern District of Texas. I hereby certify that I have served the document on all counsel of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2), specifically, through the Court's CM/ECF system.

/s/ Scott Brumley
Scott Brumley
Attorney for Defendant Christy Benge

[3] A proposed order to this effect is attached as Exhibit 1 and is being emailed to the Court in compliance with the judge-specific requirements for this Court.

EXHIBIT 1

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ORDER DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT

Before the Court is Defendant Christy Benge's motion to dismiss and its supporting brief. [Docs. 59, 63] Plaintiffs have filed a response [Doc. 73] but also have filed an amended complaint. [Doc. 72] The amended complaint was filed as a matter of course. *See* Fed. R. Civ. P. 15(a)(1)(B). The amended complaint superseded the original complaint and rendered it of no legal effect, since the amended complaint did not specifically refer to or adopt and incorporate by reference the original complaint. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). The Court finds that the amended complaint presents new matters not addressed in the motion to dismiss. Accordingly, the Court finds that Defendant Christy Benge's motion to dismiss is moot.

Based on these considerations, the Court **DENIES** Defendant Christy Benge's motion to dismiss as moot. The Court's denial of Defendant Christy Benge's motion to dismiss is without prejudice to the filing of a subsequent motion to dismiss, and Defendant Christy Benge is not

precluded by Fed. R. Civ P. 12(g)(2) from filing a subsequent motion to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b).

IT IS SO ORDERED.

SIGNED on _____, 20_____.

_____
HONORABLE MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

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