

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

FILED

MAR 27 2019

CLERK, U.S. DISTRICT CLERK  
WESTERN DISTRICT OF TEXAS  
BY 

TEXAS LEAGUE OF UNITED LATIN )  
AMERICAN CITIZENS, ET AL., )

Plaintiffs, )

V. )

CIVIL ACTION NO. SA-19-CA-074-FB

DAVID WHITLEY, in his Official Capacity )  
as Secretary of State for the State of Texas; )  
ET AL., )

Defendants. )

ORDER AND ADVISORY

Before the Court is the motion to dismiss (docket no. 81) alleging that the counties only act upon the direction of the Secretary of State, following what the counties perceive to be orders. On the other hand, the Secretary of State has consistently taken the position that his statutory authority is limited to advisories to county election officials. If either interpretation is accepted, the county administrators are those who would send what plaintiffs assert are inaccurate correspondence leading to improper intimidation of eligible voters. Accordingly, the 12(b)(6) motion to dismiss (docket no. 81) is DENIED.

The Court is sympathetic to the counties' concerns about the extraordinary, and in the Court's opinion unnecessary, expense and time caused by the flawed program executed by the Secretary of State's office. Accordingly, the Court would be open to a proposal from the county defendants agreeing not to send notice of examination letters without conclusive evidence that the recipient is indeed a non-citizen registered voter based on an investigation that does not include contact with the individual. Were such a proposal forthcoming, the Court would reconsider whether the counties need to continue being a party to this lawsuit.

It is so ORDERED.

SIGNED this 27<sup>th</sup> day of March, 2019.



FRED BIERY  
UNITED STATES DISTRICT JUDGE