

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MIGUEL COCA, et al.,

Plaintiffs,

v.

CITY OF DODGE CITY, et al.,

Defendants.

Case No. 6:22-cv-01274-EFM-RES

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DROP INDIVIDUAL
DEFENDANTS AND THE DODGE CITY COMMISSION**

Plaintiffs, by and through their undersigned counsel, hereby submit their response to Defendants' Motion to Drop Individual Defendants and the Dodge City Commission (the "Commission"), Doc. # 179.

As an initial matter, Plaintiffs are perplexed by the timing of Defendants' Motion, filed less than two weeks before trial and after witness lists, exhibit lists, and deposition designations were due to this Court. Defendants had ample opportunity to raise this issue at earlier stages in the case and declined to do so. For example, in their Motion to Dismiss, Doc. # 37, the Defendants did not argue that the Commissioners, as well as Dodge City itself, were not proper defendants in the action. The Court, in denying that motion, explicitly upheld, separate from the Plaintiffs' right to assert a private claim for relief under Section 2 of the VRA, their right to assert a claim for violation by the Defendants of Section 2 under 42 U.S.C. 1983, and held that Plaintiffs had plausibly alleged a claim under section 1983 for violation of the Fourteenth Amendment. *See* Mem. & Order, Doc. # 71. In their Motion for Summary Judgment, Defendants likewise did not raise this issue. *See* Mot. for Summ. J., Doc. # 145; Mem. in Support of Mot. for Summ. J., Doc. # 146. In denying

Defendant's Motion, the Court once again held that all claims could proceed against all Defendants. Mem. & Order, Doc. # 159. Indeed, until the present motion, Defendants have never suggested that the Commissioners were not properly joined as defendants on each of these claims.

Defendants now suggest for the first time—more than thirteen months since they filed their motion to dismiss—that all Defendants except for the City of Dodge City (the “City”) should be dismissed in the case. In support of their Motion, Defendants assert three arguments: (1) several of the individual Commissioners named in the Amended Complaint are no longer in office and have been succeeded in office by new Commissioners; (2) the Dodge City Commission is not an entity capable of being sued under state law; and (3) the Commissioners and the Commission itself are redundant defendants. As to the first point, Rule 25(d) of the Federal Rules of Civil Procedure provides for the automatic substitution of the new Commissioners for their predecessors. Plaintiffs have no objection to substituting as defendants the current members of the Commission for those originally named in the Complaint. Likewise, Plaintiffs have no objection to dismissing the Dodge City Commission as a named defendant.

As for Defendants' third and broadest argument, that the joinder of individual Commissioners was apparently *never* necessary, Plaintiffs are forced to wonder why Defendants are making this eleventh hour request, especially when all pretrial briefing has indicated that one or more of the named individual Commissioners would be appearing and subject to examination as adverse *parties* at the trial.

Nevertheless, Plaintiffs recognize the caselaw in this district regarding official capacity suits against municipal officials where the municipality itself is also named as a Defendant. Because Plaintiffs' claims challenge the City's official policies regarding its choice of electoral system for the City Commission, under 42 U.S.C. § 1983, the City is the proper defendant

for each of these claims. *See Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 694 (1978) (“[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983”); *see also Progeny et al. v. City of Wichita*, 2021-cv-01100, 2021 U.S. Dist. LEXIS 4677, at *52-53 (D. Kan., Jan. 10, 2022) (J. Melgren) (“Plaintiffs do not allege they were injured solely by the employees or agents of the City. Rather, they allege its official policy . . . [that] causes them ongoing injury. The City is therefore a proper defendant under *Monell* and § 1983.”).

Plaintiffs therefore submit that if the Court is inclined to dismiss the individual Defendants and the Commission itself, it should do so *only* after the Court finds (and the City agrees¹) that the City itself is a proper defendant for all claims and for all relief requested. Otherwise, the City may later argue that the Court cannot enjoin the City or force it to adopt single-member districts (or any other relief ordered by the Court). Plaintiffs pled their complaint to avoid this very result. Plaintiffs therefore caution the Court against an eleventh-hour dismissal of the individual commissioners absent such findings.

Finally, as a practical matter, whether named as defendants or not, the individual commissioners are certainly agents or employees of Defendant City of Dodge City, and therefore any statements made by the commissioners are not hearsay pursuant to Federal Rule of Evidence 801(d)(2)(D). Plaintiffs raise this issue now to foreclose any hearsay objections the City may raise during next week’s trial regarding the commissioners’ prior statements on issues relevant to this case.

¹ There can be no reasonable basis on which the City should not readily agree to this, given Defendants’ assertion that the individual Commissioners’ presence in the case is “redundant and unnecessary” because the City is already a named defendant. *See* Doc. # 179 at 1. If the City does not agree in this regard, then the Court should reasonably conclude that something else is afoot here and exercise its discretion under Rule 21 to deny this motion.

CONCLUSION

For the foregoing reasons, if the Court is inclined to dismiss the individual commissioners as defendants, it should do so only after finding that (1) the City itself may be held liable under *Monell*, 436 U.S. at 694; (2) any violation Section 2 or the Equal Protection Clause is a result of the City's official policy or practice of maintaining an at-large election system; and (3) the City is the proper defendant for injunctive relief to remedy the violations found.

Dated: February 21, 2024

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CERTIFICATE OF SERVICE

Pursuant to D. Kans. Loc. R. 5.1(f), I hereby certify that on this 21st day of February 2024, a true and correct copy of the foregoing was served via the United State District Court's CM/ECF system on all parties or persons requiring notice, including upon attorneys for defendants:

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