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Webcast:

Voting Law 101: What Voters and Advocates Need to Know

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Voting Litigation and Pending Decisions/Legislation

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997 F.3d 288 United States Court of Appeals, Fifth Circuit.

TEXAS DEMOCRATIC PARTY;

Democratic Senatorial Campaign Committee; Democratic Congressional Campaign Committee; Emily Gilby; Terrell Blodgett, Plaintiffs—Appellees,

v.

Ruth HUGHS, in her official capacity as the Texas Secretary of State, Defendant—Appellant.

No. 20-50683 | FILED May 7, 2021

Synopsis

Background: Voters and political organizations brought action against Texas Secretary of State, seeking to enjoin enforcement of state law that barred counties from operating mobile or pop-up early voting locations. The United States District Court for the Western District of Texas, Lee Yeakel, J., 2020 WL 5745915, denied Secretary's sovereign immunity defense. Secretary appealed.

[Holding:] The Court of Appeals, Don R. Willett, Circuit Judge, held that Secretary was not sufficiently connected to the enforcement of the law at issue, and thus exception of *Ex parte Young* to state sovereign immunity did not apply to allow suit against Secretary.

Reversed and remanded with instructions.

West Headnotes (4)

[1] Federal Courts 🐎 Immunity

Court of Appeals reviews a sovereign immunity determination de novo.

1 Cases that cite this headnote

[2] Federal Courts Suits for injunctive or other prospective or equitable relief; Ex parte Young doctrine

Federal Courts ← Agencies, officers, and public employees

Ex parte Young exception to state sovereign immunity allows a federal court to enjoin a state official from enforcing state laws that conflict with federal law, U.S. Const. Amend. 11.

[3] Federal Courts Suits for injunctive or other prospective or equitable relief; Ex parte Young doctrine

Federal Courts ← Agencies, officers, and public employees

To be sued under *Ex parte Young* exception to state sovereign immunity, a state official must have some connection to the state law's enforcement and threaten to exercise that authority. U.S. Const. Amend. 11.

1 Cases that cite this headnote

[4] Federal Courts • Other particular entities and individuals

Texas Secretary of State was not sufficiently connected to the enforcement of state law barring counties from operating mobile or popup early voting locations, and thus exception of *Ex parte Young* to state sovereign immunity did not apply to allow suit against Secretary to enjoin enforcement of law; local officials were responsible for administering and enforcing statutes governing days and hours of early voting. U.S. Const. Amend. 11; Tex. Elec. Code Ann. § 85.064.

1 Cases that cite this headnote

*289 Appeal from the United States District Court for the Western District of Texas, USDC No. 1:19-CV-1063, Lee Yeakel, U.S. District Judge

Attorneys and Law Firms

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Before Haynes, Graves, and Willett, Circuit Judges.

Opinion

Don R. Willett, Circuit Judge:

Various voters and political organizations sued the Texas Secretary of State seeking to enjoin the enforcement of HB 1888, a state law that bars counties from operating mobile or pop-up early voting locations. The district court denied the Secretary's sovereign immunity defense. We reverse.

Ι

Texas law generally requires counties to conduct early voting at their main county branch offices. 1 Counties may also conduct early voting at other locations. 2 The state *290 statutes classify early voting locations at the main county branch offices as "permanent branch" polling places, while other early voting locations are called "temporary branch" polling places. 3

In 2019, the Texas Legislature passed HB 1888, which requires a county's "temporary branch" early voting locations to be open for at least 8 hours a day on the same days that the county's main "permanent branch" polling place is open, unless the region holding the election has fewer than 1,000 registered voters. As the Secretary explained in an Election Advisory to county officials, HB 1888 banned mobile or popup early voting sites. 5

Before HB 1888, many counties offered pop-up early voting sites near college campuses and senior living facilities. For example, Tarrant County offered temporary early voting locations at the University of Texas at Arlington and Texas Christian University, Williamson County offered one at Southwestern University, and Travis County offered them at Huston-Tillotson University, St. Edward's University, and Austin Community College. Travis County also set up a pop-up early voting location near the Westminster senior living facility in Austin. After HB 1888, counties curtailed the use of temporary early voting locations. For the 2019 elections, Travis County did not offer early voting at the three campuses mentioned above or at the Westminster senior living facility.

In Fall 2019, the Texas Democratic Party, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, the Texas Young Democrats, the Texas College Democrats, Southwestern University student Emily Gilby, and Westminster resident Terrell Blodgett sued the Secretary of State, alleging that HB 1888 violates the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Twenty-Sixth Amendment, and the Americans with Disabilities Act. They sought declaratory relief and an injunction prohibiting the Secretary from implementing or enforcing HB 1888.

The Secretary moved to dismiss on the grounds that sovereign immunity barred the suit, that Plaintiffs lacked standing, and that Plaintiffs failed to state a claim. The district court dismissed the ADA claim but denied the motion in all other respects. The Secretary timely appealed from the denial of sovereign immunity.

II

[1] The plaintiffs asserted subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, and we always have jurisdiction to determine our own jurisdiction.⁶ We have appellate





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