

APPENDIX A
Case #21-20402 Appellate decision

United States Court of Appeals
for the Fifth Circuit

No. 21-20402

United States Court of Appeals
Fifth Circuit

FILED

December 6, 2021

Lyle W. Cayce
Clerk

MICHAEL PALMA,

Plaintiff—Appellant,

versus

HARRIS COUNTY APPRAISAL DISTRICT; DEDRA DAVIS,

Defendants—Appellees,

MICHAEL PALMA,

Plaintiff—Appellant,

versus

HARRIS COUNTY APPRAISAL DISTRICT; CHRISTINE WEEMS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-2741
USDC No. 4:20-CV-2743

No. 21-20402

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee's motion to dismiss appeal as frivolous is GRANTED.

APPENDIX B
Case #21-20402 Appellate rehearing decision

United States Court of Appeals
for the Fifth Circuit

No. 21-20402

MICHAEL PALMA,

Plaintiff—Appellant,

versus

HARRIS COUNTY APPRAISAL DISTRICT; DEDRA DAVIS,

Defendants—Appellees,

MICHAEL PALMA,

Plaintiff—Appellant,

versus

HARRIS COUNTY APPRAISAL DISTRICT; CHRISTINE WEEMS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-2741
USDC No. 4:20-CV-2743

ON PETITION FOR REHEARING EN BANC

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 35 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX C
Case #4:20-CV-02741 District court decision

ENTERED

August 03, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL PALMA,

Plaintiff,
VS.

HARRIS COUNTY APPRAISAL
DISTRICT and DEDRA DAVIS

Defendants.

CIVIL ACTION NO. 4:20-CV-02741

ORDER

Before the Court are United States Magistrate Judge Frances H. Stacy's Memorandum and Recommendation filed on June 28, 2021 (Doc. #23) and Plaintiff's Objections (Doc. #52). The Magistrate Judge's findings and conclusions are reviewed de novo. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as this Court's Order. As such, this case and the related case, *Palma v. Harris County Appraisal, et al*, Civil Action Number 4:20-cv-2743, are hereby DISMISSED with prejudice.

It is so ORDERED.

Date

AUG 03 2021

The Honorable Alfred H. Bennett
United States District Judge



APPENDIX D
Case #4:20-CV-02741 Magistrates Memorandum

ENTERED

June 28, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL PALMA, §
§
Plaintiff, §
§
V. § CIVIL ACTION NO. H-20-2741
§ Consolidated with
HARRIS COUNTY APPRAISAL DISTRICT, § CIVIL ACTION NO. H-20-2743
DEDRA DAVIS, and CHRISTINE WEEMS, §
§
Defendants. §

MEMORANDUM AND RECOMMENDATION

Pending in this case in which Plaintiff, proceeding *pro se*, complains about certain property tax proceedings in state court, is Defendant Dedra Davis' Motion to Dismiss (Document No. 7 in Civil Action No. H-20-2741), Defendant Harris County Appraisal District's Motion to Dismiss (Document No. 8 in Civil Action No. H-20-2741), Defendant Christine Weems' Motion to Dismiss (Document No. 9 in Civil Action No. H-20-2743) and Defendant Harris County Appraisal District's Motion to Dismiss (Document No. 15 in Civil Action No. H-20-2743). Having considered the Motions to Dismiss, Plaintiff's responses in opposition, the additional briefing, the allegations in Plaintiff's current pleadings, and the applicable law, the Magistrate Judge RECOMMENDS, for the reasons set forth below, that Defendants' Motions to Dismiss (Document Nos. 7 and 8 in Civil Action No. H-20-2741 and Document Nos. 9 & 15 in Civil Action No. H-20-2743) all be GRANTED.

This case was filed by Plaintiff Michael Palma *pro se* against the Harris County Appraisal District and two state district judges, Dedra Davis and Christine Weems. In his current pleadings, Palma alleges that the Harris County Appraisal District "failed to provide critical state constitutional list and statutory definition" and that the two state district judges "abused their discretion by not

producing the same list and definition in a findings of fact.” According to Palma, he is entitled to know, from both the Harris County Appraisal District and the two state district judges before whom he had property tax proceedings, what is meant by, or considered to be, “exempt” under Section 1(b), Article 8 of the Texas Constitution and Section 11.01 of the Texas Tax Code; and what is meant by, or considered to be, “located in this state” under sections 11.01 and 11.02 of the Texas Tax Code. Palma ostensibly seeks such definitions and lists to further his arguments that the real property he owns at 5026 Autumn Forest Drive, Houston, Texas 77091 (hereafter referred to as “the Property”) should not be subject to property taxes in the State of Texas. Palma also alleges that the failure of the Harris County Appraisal District and Judges Davis and Weems to provide him with those definitions and lists constitutes a denial of his due process rights under 42 U.S.C. § 1983.

Defendants Davis and Weems argue in their Motions to Dismiss that dismissal of Palma’s claim(s) is warranted on numerous bases, including: (1) for frivolousness; (2) for lack of standing; (3) as barred by Eleventh Amendment immunity; 4) as barred by the *Rooker-Feldman* doctrine; (5) as barred by judicial immunity; and (6) for failure to state a claim upon which relief may be based. Defendant Harris County Appraisal District argues in its Motion to Dismiss that dismissal of Palma’s claim(s) is warranted on two bases: (1) for lack of subject matter jurisdiction under the Tax Injunction Act; and (2) for lack of jurisdiction under the *Rooker-Feldman* doctrine. As the commonality between the Motions to Dismiss is the invocation of the *Rooker-Feldman* doctrine, that is where the undersigned’s consideration will begin.

The *Rooker-Feldman* doctrine provides that federal district courts have “no authority to review final judgments of a state court in judicial proceedings.” *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). That means that “federal courts do not have subject

matter jurisdiction in ‘cases brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.’” *Boatwright v. Plumley*, No. 3:20-cv-00043-1 (BT), 2020 WL 4550418 (N.D. Tex. June 25, 2020) (quoting *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)), *report and recommendation adopted*, 2020 WL 4530368 (N.D. Tex. Aug. 5, 2020). “If the district court is confronted with issues that are ‘inextricably intertwined’ with a state judgment, the court is ‘in essence being called upon to review the state court decision,’ and the originality of the district court’s jurisdiction precludes such a review.” *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir. 1994) (quoting *Feldman*, 460 U.S. at 482). It matters not that civil rights claims are raised, for “[l]itigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts case in the form of civil rights suits.” *Hutchings v. County of Llano, Texas*, Case No. 1:20-CV-308-LY-SH, 2020 WL 4289383 (W.D. Tex. July 27, 2020) (citing *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317 (5th Cir. 1994)), *report and recommendation adopted*, 2020 WL 6145204 (W.D. Tex. Sept. 3, 2020).

Here, while construing Palma’s allegations liberally given his *pro se* status, nothing in plaintiff’s allegations seeks anything more than a re-evaluation of the state courts’ decisions relative to his property tax obligations on the Property. Palma maintains in his responses to the Motions to Dismiss that he is not seeking a re-evaluation of those decisions, but rather, a written explanation or written findings that explain how or why the Property is not “exempt” and/or the basis upon which the Property is considered to be “located” in the state for purposes of § 11.01 of the Texas

Tax Code.¹ Despite Palma’s differentiation of the issues in the underlying state court proceedings and this case, a review of those underlying state court proceedings reveals that Palma asked for the exact same things in those proceedings as he seeks herein.

The record shows that Palma filed suit against the Harris County Appraisal District on January 9, 2019 in the 281st District Court of Harris County, Cause No. 2019-02377 (hereafter referred to as “2019 case”). Christine Weems is, and was at the time the 2019 case was filed, the State District Judge for the 281st District Court of Harris County, Texas. In the pleading Palma filed in the 2019 case, which he titled a “Writ of Mandamus to Hold Administrative Hearing Pursuant to Tax Code § 41.41(a)(3),” Palma alleged that the Property was exempt from ad valorem taxes and that the taxes assessed for 2018 were not legally or constitutionally assessed (Document No. 15-1 in Civil Action No. 20-2473). The Harris County Appraisal District filed a Motion for Summary Judgment in the 2019 case, which Judge Weems granted in May 29, 2020 (Document No. 15-6). Palma then filed a request for Findings of Fact and Conclusions of Law (Document No. 15-7), and argued therein that there was an absence of authority upon which it could be determined which property is “exempt” and which property can be considered “located in this state” for purposes of ad valorem taxes. As of this date, no action has been taken in the 2019 case on Palma’s request for findings of fact and conclusions of law. In addition, it appears that no appeal has been filed in the

¹ Pursuant to § 11.01 of the Texas Tax Code:

- a) All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.
- (b) This state has jurisdiction to tax real property if located in this state.

In addition, Article VIII, § 1(b) of the Texas Constitution provides for taxation of property “in this State,” unless “exempt.” (“All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”).

2019 case.

The record additionally shows that on January 2, 2020, Palma filed suit against the Harris County Appraisal District and the Harris County Tax Assessor Collector in the 270th District Court of Harris County, Texas, Cause No. 2020-00039 (hereafter referred to as “2020 case”). Dedra Davis is, and was at the time the 2020 case was filed, the State District Judge for the 270th District Court of Harris County, Texas. In the Original Petition he filed in the 2020 case, Palma challenged the 2019 taxes on the Property, alleging that the Harris County Appraisal District had “never stated why” the Property is “not ‘exempt as required’ under the Texas Constitution,” the Harris County Appraisal District “has never definitively stated, nor has it ever agreed with, what the definition of the legal phrase ‘located in this state’ means.” (Document No. 8-1 at 1, 2). In his “Prayer” for relief, Palma asked in the 2020 case that the court:

- 1) Write a legal decision of what property is exempt under the Organic Laws of this Country,
- 2) Draw a legal conclusion of what “located in this state” means as the appellate courts have done[;] and
- 3) order the deferment of the delinquency date of alleged ad valorem taxes due until such time as the foregoing has occurred and this case has run its course through the state district and appeals courts[,] if any.

(Document No. 8-1 at 3). The Harris County Appraisal District filed a Motion for Summary Judgment in the 2020 case, which Judge Davis granted on June 9, 2020, in a short order which stated that the Property “should be included on the appraisal records for the 2019 tax year.” (Document No. 8-5). Palma thereafter filed a request for findings of fact and conclusions of law in the 2020 case. (Document No. 8-6). As of this date, no action has been taken in the 2020 case on Palma’s request for findings of fact and conclusions of law. In addition, it appears that no appeal has been

filed in the 2020 case.

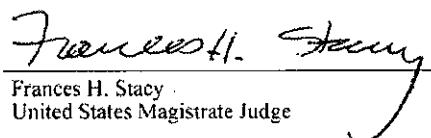
Certainly in the 2020 case, and less directly in the 2019 case, Palma sought the relief from the state courts that he now seeks in this case – an explanation and delineation of what property is “exempt” from taxes under § 11.01 of the Texas Tax Code and Article VIII, § 1(b) of the Texas Constitution, and what property is, and can be considered “located in this state” under § 11.01 of the Texas Tax Code and Article VIII, § 1(b) of the Texas Constitution. The state courts did not address those issues directly, but did determine that the Property is, and has been, properly included in the appraisal records for tax years 2018 and 2019. That the state district courts did not explain their decisions in a manner requested by Palma does not give rise to a separate claim herein, particularly given that the relief sought herein is inextricably intertwined with the merits of the 2019 case and the 2020 case. *Rooker-Feldman* dictates that the Court decline to exercise subject matter jurisdiction over the claims raised by Palma in this case. *See Palma v. Luker*, Civil Action No. H-18-0335, 2019 WL 1330332, at *4 (S.D. Tex. Mar. 25, 2019) (where essential aspect of Palma’s claim(s) was tax dispute about property taxes on 5026 Autumn Forest Drive, Houston, Texas, for 2015, 2016 and 2017, *Rooker-Feldman* doctrine precluded the exercise of subject matter jurisdiction), *reconsideration denied*, No. CV H-18-0335, 2019 WL 12117151 (S.D. Tex. Apr. 4, 2019), and *appeal dismissed*, No. 19-20193, 2019 WL 4667550 (5th Cir. June 13, 2019); *Hutchings*, 2020 WL 4289383 at *5 (concluding that *Rooker-Feldman* doctrine precluded subject matter jurisdiction over plaintiff’s complaints about his property taxes). It is, therefore

RECOMMENDED that Defendants’ Motions to Dismiss (Document Nos. 7 and 8 in Civil Action No. H-20-2741 and Document Nos. 9 & 15 in Civil Action No. H-20-2743) all be GRANTED and this case be DISMISSED WITH PREJUDICE for lack of subject matter

jurisdiction.

The Clerk shall file this instrument and provide a copy to all counsel and unrepresented parties of record. Within fourteen (14) days after being served with a copy, any party may file written objections pursuant to 28 U.S.C. § 636(b)(1)(c), FED. R. CIV. P. 72(b) to the Recommendation made herein as to Defendants' Motion to Dismiss. Failure to file objections within such period shall bar an aggrieved party from attacking factual findings on appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Ware v. King*, 694 F.2d 89 (5th Cir. 1982), *cert. denied*, 461 U.S. 930 (1983); *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982) (en banc). Moreover, absent plain error, failure to file objections within the fourteen day period bars an aggrieved party from attacking conclusions of law on appeal. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1429 (5th Cir. 1996). The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas 77208.

Signed at Houston, Texas, this 28th day of June, 2021.



Frances H. Stacy
United States Magistrate Judge

APPENDIX E
Case #21-20588 Appellate decision

United States Court of Appeals
for the Fifth Circuit

No. 21-20588

MICHAEL PALMA,

Plaintiff—Appellant,

versus

GREG ABBOTT, *State of Texas*; KEN PAXTON, *Texas Attorney General*;
HARRIS COUNTY APPRAISAL DISTRICT, *Roland Altinger*; HARRIS
COUNTY APPRAISAL REVIEW BOARD, *Ronnie Thomas*; HARRIS
COUNTY TAX ASSESSOR COLLECTOR, *Ann Harris Bennett*; TEXAS
GENERAL LAND OFFICE, *George P. Bush*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-1210

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the motion of Appellees Mr. Greg Abbott, Mr. Ken Paxton and Texas General Land Office to dismiss appeal as frivolous is GRANTED.

APPENDIX F
Case #4:21-CV-1210 District court decision

ENTERED

October 28, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL PALMA,
Plaintiff

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V.

CIVIL ACTION NO. 4:21-cv-1210

STATE OF TEXAS, ET AL.,
Defendants

§
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§

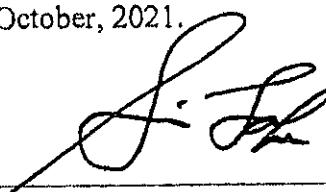
FINAL JUDGMENT

In accordance with the Order Adopting the Magistrate Judge's Memorandum and Recommendation it is hereby ADJUDGED that Plaintiff shall take nothing from Defendants and this action is DISMISSED WITH PREJUDICE.

Costs will be taxed against Plaintiff.

This is a FINAL JUDGMENT.

SIGNED at Houston, Texas this 28th day of October, 2021.



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

ENTERED

October 28, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL PALMA,
Plaintiff,

V.

STATE OF TEXAS, ET AL.,
Defendants.

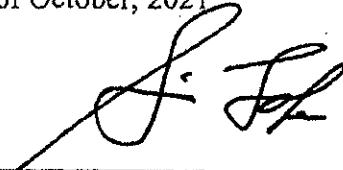
CIVIL ACTION NO. 4:21-cv-1210

**ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION**

Having reviewed the Magistrate Judge's Memorandum and Recommendation dated October 22, 2021 (ECF 27), Palma's objections thereto (ECF 28), and HCAD's response to the objections (ECF 29), the court is of the opinion that said Memorandum and Recommendation should be adopted by this court.

It is therefore **ORDERED** that the Magistrate Judge's Memorandum and Recommendation is hereby **ADOPTED** by this court.

SIGNED at Houston, Texas this 28th day of October, 2021



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX G
Case #4:21-CV-1210 Magistrates Memorandum

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL PALMA,
Plaintiff,

v.

STATE OF TEXAS, ET AL,
Defendants.

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CIVIL ACTION NO. 4:21-CV-1210

MEMORANDUM AND RECOMMENDATION

This case is before the Court on the Motion to Dismiss of the Harris County Appraisal District and Appraisal Review Board (ECF 12) and the Motion to Dismiss of the State of Texas Defendants (ECF 17), as well as Plaintiff Palma's "Motion for Emergency Unopposed Preliminary Injunction" (ECF 6), "Motion for Directed Verdict" (ECF 20)¹ and a Motion for Summary Judgment (ECF 21). The motions have been fully briefed and are ripe for adjudication.²

Plaintiff Michael Palma is a serial litigant who has filed numerous lawsuits protesting the requirement to pay property taxes.³ Plaintiff made claims against the Harris County Appraisal District and two Texas state district court judges which are very similar to the claims he is asserting in this case in *Palma v HCAD at al.*, Civil Action No. 4:20-CV-02741 (consolidated with 4:20-CV-02743). United States District Judge Alfred H. Bennett recently adopted Magistrate Judge Frances H. Stacy's recommendation and dismissed those claims with prejudice. *Id.* at ECF 55 (S.D. Tex. Aug. 3, 2021). Furthermore, in March 2019, United States Magistrate Judge Nancy

¹ Defendants Response to the Motion for Directed Verdict (ECF 25) was docketed as a motion in error. Docket entry 25 is terminated as a motion.

² The District Judge referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 5.

³ See ECF 17 at 8 n.2 (listing cases).

Johnson dismissed Palma's claims against multiple individual members of the Appraisal Review Board pursuant to the *Rooker-Feldman* doctrine⁴ and denied leave to assert constitutional claims like those in this case because "it is well settled that real property taxes are constitutional." *Palma v. Luker et al.*, Civil Action No. 4:18-CV-0335, ECF 47, 10 (S.D. Tex. March 25, 2019)(quoting *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 624 (1981)).

Palma filed this case against Governor Gregg Abbott, the Harris County Appraisal District, and others alleging that property taxes on his land are unconstitutional because Texas ceded all right to the land in the 1848 "McCleland Land Patent." ECF 1. He seeks an order enjoining Defendants "from moving forward with the ad valorem tax scheme for tax year 2020 and all years moving forward to include all aspects, avenues and devices used in the ad valorem tax scheme." ECF 6. The County and State Defendants moved to dismiss Palma's claims for lack of subject matter jurisdiction and alternatively on the merits. The Court recommends dismissal of Palma's claims because it lacks jurisdiction pursuant to 28 U.S.C. § 1341 and the Eleventh Amendment. Furthermore, because Palma's claims are frivolous, the Court recommends dismissal with prejudice pursuant to 28 U.S.C. § 1915.

This Court has no jurisdiction to enjoin taxing authorities acting pursuant to state law. The Tax Injunction Act (TIA) expressly excepts federal subject-matter jurisdiction over all suits, even those raising a federal question, "to enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. Texas courts provide a speedy and efficient remedy for Palma's claims that his property is exempt from ad valorem taxes as well as for his constitutional claims. Palma lost his state court case challenging ad valorem taxes in 2018. *See Palma v. Harris Cty.*

⁴ The *Rooker-Feldman* doctrine holds that "federal district courts lack jurisdiction to entertain collateral attacks on state court judgments." *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317 (5th Cir. 1994).

Appraisal Dist., No. 01-17-00502-CV, 2018 WL 1473792, at *2 (Tex. App. Mar. 27, 2018) (holding that the Appraisal District “proved as a matter of law that the subject property has situs in Harris County and is appraisable by the District.”). Thus, this case is barred by 28 U.S.C. § 1341. *See, e.g., See Palma v. Harris County Appraisal Dist.*, 448 F. App’x. 498, 498 (5th Cir. 2011) (affirming Rule 12(b)(1) dismissal of Palma’s § 1983 claims against HCAD because “federal courts may not restrain the assessment of state taxes”); *Clark v. Andrews Cty. Appraisal Dist.*, 251 F. App’x 267, 268 (5th Cir. 2007) (“[B]asing a complaint upon alleged violation[s] of civil rights . . . or the Federal Constitution will not avoid the prohibition contained in Section 1341.”); *Smith v. Travis Cty. Educ. Dist.*, 968 F.2d 453, 456 (5th Cir. 1992) (“[T]he Tax Injunction Act bars the district court from asserting jurisdiction unless the State fails to supply a plain, speedy and efficient remedy for the taxpayers’ claim.”); *Hanley v. City of Houston*, No. H-05-4370, 2006 WL 8446197, *4 (S.D. Tex. Apr. 21, 2006) (“[T]his Court lacks subject matter jurisdiction over Plaintiff’s tax-related claims against HCAD”).

In addition, Plaintiff’s claims against the State of Texas and its officers are barred by the Eleventh Amendment.⁵ *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984). The statutes on which Plaintiff’s case is ostensibly based, (see ECF 1 at 5), do not expressly waive state sovereign immunity. *Sessions v. Rush State Hosp.*, 648 F.2d 1066, 1069 (5th Cir. 1981) (no waiver for Section 1981 claim); *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 364-65 (1990) (no waiver for Section 1983 claim); *Fincher v. State of Florida Dept. of Labor & Emp’t Sec.-Unempl’t App. Comm’n*, 798 F.2d 1371, 1372 (11th Cir. 1986) (no waiver for Section 1985

⁵ There are no plausible allegations that Greg Abbott, Ken Paxton, and George P. Bush have some connection to enforcement of property taxes as required to pursue an action for injunctive relief under *Ex Parte Young*, 209 U.S. 123, 157 (1908).

claim). Palma has presented no authority holding that Texas has waived its Eleventh Amendment immunity for purposes of his claims.

Although dismissals for lack of subject matter jurisdiction are generally without prejudice, this case is subject to dismissal with prejudice under 28 U.S.C. § 1915(e)(2) because Palma was granted leave to file this action in forma pauperis.⁶ *See Civil Action No. 4:21mc0832.* This case “lacks arguable basis either in law or in fact” and “there is no realistic chance of ultimate success.” *Pugh v. Parish of St. Tammany*, 875 F.2d 436, 438 (5th Cir. 1989) (affirming dismissal of case as frivolous under 28 U.S.C. § 1915(e)(2)); *Berry v. Hudgins*, No. 3-11-CV-0085-G-BD, 2011 WL 334816, at *1 (N.D. Tex. Jan. 14, 2011) (“A district court may dismiss a complaint filed *in forma pauperis* if it concludes that the action is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i).”), *report and recommendation adopted sub nom. Berry v. Hudgin*, No. 3:11-CV-0085-G BD, 2011 WL 335313 (N.D. Tex. Jan. 31, 2011). In addition, “[a] complaint that duplicates claims asserted in an earlier case may be deemed malicious and subject to summary dismissal.” *Id.*

Therefore, the Court recommends that Defendants’ motions (ECF 12, 17) be GRANTED, Plaintiff’s motions (ECF 6, 20, 21) be DENIED, and this case be DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2).

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(c). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass*

⁶ Section 1915(e)(2) authorizes preliminary review and dismissal of all in forma pauperis actions “at any time” and thus Palma’s claims should be dismissed as to all Defendants, regardless of whether they have appeared in this action. *See Brewster v. Dretke*, 587 F.3d 764, 767 (5th Cir. 2009) (the district court may dismiss an in forma pauperis proceeding before service of process or before the filing of the answer if it states its reasons).

v. *United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on October 21, 2021, at Houston, Texas.


Christina A. Bryan
United States Magistrate Judge