

## ***APPENDIX***

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**Appendix A - Western District Ruling**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
OKLAHOMA**

ADAM HOLLEY,

)

)

Plaintiff,

)

)

v.

)

)

Case No. CIV-24-656-R

BRIAN BINGAM, in his )

official capacity, et al., )

)

Defendants.

)

**ORDER**

Plaintiff, proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983 against Brian Bingam (in his official capacity as Oklahoma Secretary of State), Josh Cockroft (in his official capacity as Oklahoma Secretary of State),<sup>1</sup> Paul Ziriaux (in his official capacity as Secretary for the State Election Board), the Oklahoma Secretary of State, and the

Oklahoma State Election Board.

Now before the Court are Defendants' respective Motions to Dismiss [Doc. Nos. 17, 18] seeking dismissal of Plaintiff's Third Amended Complaint [Doc. No. 16] pursuant to Fed. R. Civ. P. 12(b)(6). The matter is fully briefed and at issue [Doc. Nos. 19, 20, 21].

### **PROCEDURAL BACKGROUND**

Plaintiff initiated this action by filing a Complaint [Doc. No. 1] alleging that Mr. Bingam, Mr. Cockroft, and the Oklahoma Secretary of State violated his constitutional rights during the 2022 election. Defendants moved to dismiss [Doc. No. 7], pursuant to

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<sup>1</sup> Defendants' motion clarifies that Mr. Bingam is the former Oklahoma Secretary of State and Mr. Cockroft is the current Secretary of State. *See* Defs.' Br. at 2.

Fed. R. Civ. P. 12(b)(6) and raised arguments that are essentially identical to the arguments raised in their current motions. In response, Plaintiff filed a Second Amended Complaint [Doc. No. 9] that added Mr. Ziriaux and the Oklahoma State Election Board as defendants but included allegations that were substantially similar to his initial Complaint. Because the filing of the Second Amended Complaint superseded the original pleading and rendered it of no legal effect, *see Davis v. TXO Prod. Corp.*, 929 F.2d 1515, 1517 (10th

Cir. 1991), the Court denied Defendants' motion to dismiss without prejudice to refiling. *See* Order dated August 16, 2024 [Doc. No. 13]. However, pursuant to its inherent power to manage its docket, the Court reviewed the Second Amended Complaint and concluded that it failed to state a claim against any of the named defendants. *Id.* The Court therefore dismissed the Second Amended Complaint without prejudice and granted Plaintiff leave to amend. *Id.*

Plaintiff then filed his Third Amended Complaint which is now the operative pleading. Liberally construed, the Third Amended Complaint alleges that Oklahoma unconstitutionally limits eligible candidates for election via its primary system and that Plaintiff was prevented from listing his name as a candidate for United States Senate during the 2022 general election. He asserts that Oklahoma's election process, and specifically Okla. Stat. tit. 26, §§ 1-102 and 103, violate the First, Ninth, Tenth, and Fourteenth

Amendments and seeks declaratory and monetary relief.

### STANDARD

Rule 8(a)(2) requires a pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” The purpose of this requirement is “to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the Court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief.” *Mwangi v. Norman*, No. 16-CV-0002-GPG, 2016 WL 153220, at \*1 (D. Colo. Jan. 13, 2016) (citing *Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass’n of Kansas*, 891 F.2d 1473, 1480 (10th Cir. 1989)).

Although “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ [] it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). Thus, a complaint must contain “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In evaluating a complaint, all well-pleaded factual allegations are accepted as true and viewed in the light most favorable to the plaintiff. *Lane v. Simon*,

495 F.3d 1182, 1186 (10th Cir. 2007). Additionally, where, as here, a litigant is proceeding pro se, the “pleadings are to be construed liberally.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.

1991). However, “[t]he broad reading of the plaintiff’s complaint does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based.” *Id.*

## DISCUSSION

Defendants contend that there are a number of deficiencies with Plaintiff’s Third Amended Complaint, and the Court agrees. To begin, Plaintiff has attempted to assert a claim for monetary relief pursuant to § 1983 against two state agencies and three state officials in their official capacity. However, neither a state nor its officials acting in their official capacity are persons that are subject to a suit for damages under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989).

Moreover, the Eleventh Amendment bars suits in federal court for money damages against a state and state officers sued in their official capacity. *Peterson v. Martinez*, 707 F.3d 1197, 1205 (10th Cir. 2013). And, contrary to Plaintiff’s argument, Eleventh Amendment “immunity extends to suits brought by citizens against their own state.” *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10<sup>th</sup> Cir. 2021).

In addition to seeking damages, Plaintiff’s Third Amended Complaint also seeks a declaration that Oklahoma’s primary election system is unconstitutional. In *Ex parte Young*, 209 U.S. 123, 159 (1908), the Supreme Court recognized an exception to Eleventh Amendment immunity “under which individuals can sue state officers in their official capacities if the lawsuit seeks

prospective relief for an ongoing violation of federal law.” *Free Speech Coal., Inc. v. Anderson*, \_\_ F.4th \_\_, 2024 WL 4352434, at \*2 (10th Cir. Oct. 1, 2024). “To come within this exception,” the state official named as a defendant “must ‘have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.’” *Id.* (quoting *Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 828 (10th Cir. 2007)). The duty to enforce may be shown by reference to “state law, an administrative delegation, or a demonstrated practice of enforcing a provision.” *Peterson v. Martinez*, 707 F.3d 1197, 1207 (10th Cir. 2013). “But when a state law explicitly empowers one set of officials to enforce its terms, a plaintiff cannot sue a different official absent some evidence that the defendant is connected to the enforcement of the challenged law.” *Id.*

Here, Plaintiff has named the Oklahoma Secretary of State (and its current and former officers) as defendants. However, Oklahoma law provides that the State Election Board, not the Secretary of State, is responsible for administering various aspects of the primary and general elections. *See* Okla. Stat. tit. 26, § 5-102 (providing that candidates for United States Senator “shall file Declarations of Candidacy with the Secretary of the State Election Board”); § 6-103 (State Election Board is responsible for printing ballots); § 8-101 (State Election Board certifies list of nominees); § 8-103 (State Election Board certifies list of successful candidates for office). In support of his claim that the Secretary of State is a proper defendant, Plaintiff references Oklahoma Stat. tit. 26, § 11-106, but this law concerns elections for judicial offices – not the

senate seat that forms the basis of Plaintiff's allegations – and, in any event, merely provides that the State Election Board shall certify the results of any election to the Secretary of State. Ultimately, the Third Amended Complaint does not cite to any provision of state law or include any non-conclusory allegations showing that the Secretary of State's office is responsible for enforcing the challenged laws. Accordingly, Plaintiff has failed to show that Defendants Bingam, Cockroft, or the Secretary of State are not entitled to Eleventh Amendment immunity. *See Peterson*, 707 F.3d at 1206 (explaining that a district court is not required to accept conclusory allegations about an official's responsibility for implementing a state law, particularly when they contradict state law).

Apart from these statutory and jurisdictional defects, the Third Amended Complaint also fails to state a plausible claim. Despite having two opportunities to amend his pleading, Plaintiff's allegations are still somewhat disjointed. However, liberally construed, he appears to be asserting that Oklahoma's use of a primary election is unconstitutional because it limits who can appear as a candidate for office on the general election ballot. He alleges that he was excluded from appearing on the 2022 general election ballot for United States Senate and specifically challenges the constitutionality of Okla. Stat. tit. 26, §§ 1-102 and 1-103, which provide for primary and runoff elections for nominating candidates from recognized political parties. Plaintiff appears to take issue with the following limitations set out in § 1-102:

No candidate's name shall be printed upon the



General Election ballot unless such candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his or her name printed upon the General Election ballots.

In his response brief, Plaintiff argues that utilizing a primary election to remove otherwise eligible candidates from the general election ballot is unconstitutional. *See* Pl.'s Br. at 9.

Plaintiff's argument is foreclosed by long-standing Supreme Court precedent recognizing "that the State may limit each political party to one candidate for each office on the ballot and may insist that intraparty competition be settled before the general election by primary election or by party convention." *Am. Party of Texas v. White*, 415 U.S. 767, 781 (1974). *See also Bullock v. Carter*, 405 U.S. 134, 145 (1972) (recognizing that "a State has a legitimate interest in regulating the number of candidates on the ballot"); *California Democratic Party v. Jones*, 530 U.S. 567, 572, (2000) (reaffirming "that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion").


Additionally, to the extent he asserts other complaints about the election process, he has failed to include sufficient factual content to state a plausible claim. For example, Plaintiff asserts that his ability to run for office with the party that most aligns with his faith was somehow compromised but

fails to provide any factual support for this assertion, other than his misplaced belief that a primary election system is unconstitutional. He also suggests that government agencies conspired with the media to limit media coverage but fails to include any factual content to support this allegation. Thus, much like his prior pleadings, Plaintiff's Third Amended Complaint is devoid of a coherent factual basis that alleges any cognizable claim against any named defendant.

### CONCLUSION

For the reasons detailed above, Defendants' respective Motions to Dismiss [Doc. Nos. 17 and 18] are GRANTED and this action is DISMISSED WITHOUT PREJUDICE. Plaintiff has not requested leave to amend his complaint or suggested that he could plead additional facts that would state a plausible claim and the Court therefore finds no reason to permit him another opportunity to amend.

IT IS SO ORDERED this 9<sup>th</sup> day of October, 2024.

  
\_\_\_\_\_  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE

**Appendix B - Tenth Circuit Ruling  
UNITED STATES COURT OF APPEALS FOR  
THE TENTH CIRCUIT  
FILED**

**United States Court of  
Appeals**

**Tenth Circuit**

ADAM HOLLEY  
*Plaintiff - Appellant,*

v.

BRIAN BINGMAN, in his  
official capacity,  
JOSH COCKROFT, in his  
official capacity,  
OKLAHOMA  
SECRETARY OF STATE;  
PAUL ZIRIAX, in his  
official capacity,  
OKLAHOMA STATE  
ELECTION BOARD.

*Defendants – Appellees.*

**September 23, 2025**

**Christopher M.  
Wolpert Clerk of Court**

No. 24-6237

(D.C. No.5:24-CV-00656-  
R) (W.D. Okla.)

## ORDER AND JUDGMENT\*<sup>1</sup>

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Before **TYMKOVICH, BACHARACH**, and **EID**,

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Circuit Judges.

Adam Holley appeals the district court's dismissal of his pro se complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). We have jurisdiction under 28 U.S.C. § 1291 and affirm the district court's judgment for the reasons explained below.

### I

Holley filed a third amended complaint under 42 U.S.C. § 1983, naming as defendants the Oklahoma

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<sup>1</sup> \* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res

judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

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Secretary of State, the Oklahoma State Election Board, and three state officials in their official capacities. He alleged that Oklahoma's electoral primary system established under Okla. Stat. tit. 26, §§ 1-102 and 1-103 unlawfully excludes candidates from the electoral process and that he was excluded from Oklahoma's 2022 senatorial election. Based on these allegations, he claimed violations of the First, Ninth, Tenth, and Fourteenth Amendments and sought monetary, declaratory, and injunctive relief.

Defendants moved to dismiss under Fed. R. Civ.

P. 12(b)(6), and the district court granted the motions, ruling Holley failed to state a plausible claim for relief.

We review de novo the district court's ruling on a motion to dismiss. *Brown v. City of Tulsa*, 124 F.4th 1251, 1263 (10th Cir. 2025). "To survive a Rule 12(b)(6) motion, the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* (internal quotation marks omitted). "Mere labels and conclusions or a formulaic recitation of the elements of a cause of action will not suffice." *Id.* (internal quotation marks omitted). We afford pro se materials a liberal construction but do not advocate on a party's behalf. *Childers v. Crow*, 1 F.4th 792, 798 n.3 (10th Cir. 2021).

The district court first correctly determined that Holley could not recover money damages from defendants in their official capacities because neither the state nor its officials acting in their official capacities qualify as “persons” under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989). The district court also correctly determined that Holley’s claim for monetary damages against the state and its officials was barred because they were protected by Eleventh Amendment immunity. *See Peterson v. Martinez*, 707 F.3d 1197, 1205 (10th Cir. 2013).

Although Holley contends Eleventh Amendment immunity only applies to suits brought against the state by citizens of another state, *see* Aplt. Opening Br. at 33, the district court correctly recognized that Eleventh Amendment immunity “extends to suits brought by citizens against their own state,” *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021).

As for Holley’s claims for prospective relief, the district court explained that *Ex parte Young*, 209 U.S. 123 (1908), provides a jurisdictional exception to Eleventh Amendment immunity for official-capacity claims alleging an ongoing violation of federal law and seeking prospective relief. *See Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002). The district court determined, however, that *Ex parte Young* did not apply because Holley failed to name as a defendant the state agency or official charged with enforcing the laws he challenged. The district court reasoned that Holley named the Secretary of State and its current and former office holders as defendants,

but he did not name the State Election Board, which administers the state's primaries and general elections. *See R.* at 156-57.

But Holley *did* name the State Election Board as a defendant. *R.* at 81. He also named the supervisor of the State Election Board, Paul Ziriaux, *id.*, who allegedly “is responsible for the administration and management of the elections,” *R.* at 85-86. According to Holley, the State Election Board and Ziriaux’s “primary functions” are to administer “the elections process,” “they are the primary cause of [his] constitutional injury,” and *Ex parte Young* applies to “stop ongoing violations of federal law.” *Aplt. Br.* at 32. We agree with Holley that *Ex parte Young* provides a jurisdictional path to the merits of his claims for prospective relief.

“In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md.*, 535 U.S. at 645 (brackets and internal quotation marks omitted). Holley alleged an ongoing violation of federal law by claiming the Oklahoma electoral system violated his rights. *See id.* at 646 (“An *allegation* of an ongoing violation of federal law is ordinarily sufficient[.]” (ellipsis and internal quotation marks omitted)). He also sought prospective relief in asking for a declaratory judgment on the constitutionality of Oklahoma’s electoral system and requesting a mandatory injunction to abolish the current electoral system. *See R.* at 90-91. These claims fall under the

jurisdictional exception to Eleventh Amendment immunity provided by *Ex parte Young*.

Nonetheless, the jurisdictional inquiry is not determinative of whether the complaint states a plausible claim for relief. *See Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167-68 (10th Cir. 2012). Even if we determine the “district court had subject matter jurisdiction over the claims under the *Ex parte Young* exception,” we may still conclude the district court “properly dismissed the complaint for failure to state a claim.” *Id.* at 1168. And on that score, we agree with the district court that Holley failed to state a constitutional violation. The district court observed that Holley generally challenged Okla. Stat. tit. 26, §§ 1-102 and 1-103, which establish Oklahoma’s primary and primary runoff system. Holley averred these statutes unconstitutionally exclude candidates from the ballot via the primary process. In particular, he challenged § 1-102, which states:

No candidate’s name shall be printed upon the General Election ballot unless such candidate shall have been nominated as herein provided, unless otherwise provided by law; provided further that this provision shall not exclude the right of a nonpartisan candidate to have his or her name printed upon the General Election ballots.

Holley suggests these statutory provisions abridge his constitutional rights, but the Supreme Court has held states “may limit each political party to one candidate for each office on the ballot and may insist that intraparty competition be settled



before the general election by primary election or by party convention,” *Am. Party of Texas v. White*, 415 U.S. 767, 781 (1974). Indeed, “a [s]tate has a legitimate interest in regulating the number of candidates on the ballot,” *Bullock v. Carter*, 405 U.S. 134, 145 (1972), and “[t]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization’s candidate on the ballot,” *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). These authorities confirm that states may implement ballot-access measures as a permissible exercise of their power to regulate elections. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 828 (1995).

Holley faults the district court for failing to consider *Thornton*, but he does not explain how that case helps him. *Thornton* distinguished between constitutionally impermissible state-created *qualifications* on eligible candidates for congressional office, *see id.* at 827, and permissible state *ballot-access measures*, which regulate election procedures, *see id.* at 828-29, 835. Without addressing that distinction, Holley asserts in conclusory fashion that the laws in question here are impermissible qualifications on running for federal office. *See* Appt. Opening Br. at 14. But merely labeling the laws as qualifications is insufficient to withstand the motions to dismiss. *See Brown*, 124 F.4th at 1263. Oklahoma’s primary and runoff system do not operate to disqualify candidates who win their nominations, so they do not establish qualifications for federal office.

Holley’s allegations fail to suggest otherwise,  
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so the district court correctly dismissed the action.<sup>2</sup>

### III

Accordingly, the district court's judgment is affirmed.

Entered for the Court

Allison H. Eid

Circuit Judge

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<sup>2</sup> We need not consider Holley's remaining arguments, which do not address the district court's reasoning. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) ("The first task of an appellant is to explain to us why the district court's decision was wrong.").



# CERTIFICATE OF COMPLIANCE

No. \_\_\_\_\_

**ADAM HOLLEY**

*Petitioner - Pro Se,*

**v.**

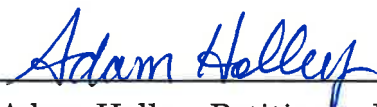
**BRIAN BINGMAN, in his Official Capacity,  
JOSH COCKROFT, in his Official Capacity,  
OKLAHOMA SECRETARY OF STATE,  
PAUL ZIRIAX, in his Official Capacity,  
OKLAHOMA STATE ELECTION BOARD,**

*Respondents.*

This petition complies with the word count limitation of Supreme Court Rule 33.1(g)(i) because my word-processing system was set to include footnotes in the word count. It contains 4,849 words including footnotes, excluding the parts of the petition that are exempt from the word count limitation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 9, 2026.

A handwritten signature in blue ink that reads "Adam Holley". The signature is written over a horizontal line.

Adam Holley, Petitioner *Pro Se*  
13927 E. 171st St. S.  
Bixby, OK 74008  
(918) 900-4441  
info@AdamForOklahoma.com

## **CERTIFICATE OF SERVICE (28 U.S.C. § 1746)**

I, Adam Holley, declare under penalty of perjury that the following is true and correct:

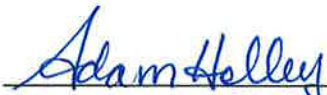
Executed on January 9, 2026, I served the Petition for a Writ of Certiorari, and all required accompanying materials as follows: Respondents served by USPS Certified mail Represented by Assistant Attorney General Tracy E. Neel:

- **Oklahoma Secretary of State Office**  
**Brian Bingman, Josh Cockroft**  
2300 N. Lincoln Blvd., Room 122,  
Oklahoma State Capitol Building,  
Oklahoma City, OK 73105
- **Oklahoma State Election Board**  
**Paul Ziriaux**  
2300 N. Lincoln Blvd., Room G28,  
State Capitol Building,  
Oklahoma City, OK 73105

Service on counsel of record for Respondents Bingman, Cockroft, Ziriaux, the Oklahoma Secretary of State, and the Oklahoma State Election Board:

**Assistant Attorney General**  
**Tracy E. Neel** (OBA #33574)  
313 NE 21st Street  
Oklahoma City, OK 73105  
**Phone:** (405) 521-3921  
**Email:** Tracy.Neel@oag.ok.gov

**Filing with the Court:** On January 9, 2026, I mailed to the Clerk of this Court an original and the required number of copies for filing.

  
**Adam Holley**, Petitioner, Pro Se  
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