

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
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U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ AO

LAKE TRAVIS CITIZENS COUNCIL,
PLAINTIFF,

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V.

CAUSE NO. 1:14-CV-994-LY

NATALIA ASHLEY, IN HER
OFFICIAL CAPACITY AS EXECUTIVE
DIRECTOR OF THE TEXAS ETHICS
COMMISSION,
DEFENDANT.

ORDER

Before the court is Defendant’s Motion for Summary Judgment filed December 14, 2015 (Clerk’s Doc. No. 28), Plaintiffs’ Brief in Response to Defendant’s Motion for Summary Judgment filed January 5, 2016 (Clerk’s Doc No. 35), and Defendant’s Reply in Support of her Motion for Summary Judgment filed January 15, 2016 (Clerk’s Doc. No. 38).

I. FACTS

Lake Travis Citizens Council (“Citizens Council”) brings this action against Natalia Ashley, Executive Director of the Texas Ethics Commission, seeking injunctive and declaratory relief to bar the enforcement of Texas Election Code, Sections 251.001(12) (defining “political committee”) and 251.001(7) (defining “campaign expenditure”), and Texas Administrative Code, Section 20.1(20) (defining “primary purpose”), and declare such provisions unconstitutional.

Citizens Council is a nonprofit corporation organized under the Texas Business Organizations Code and Title 26 of the United States Code, Section 501(c)(4). Citizens Council alleges that it curtailed its spending before the March 2016 election out of fear that

engaging in its desired advocacy would subject Citizens Council to classification as a political committee under Texas Election Code, Section 251.001(12) and expose Citizens Council to the possibility of civil and criminal penalties for failure to comply with requirements of a political committee.

II. STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 (“Rule 56”); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The standard for determining whether to grant summary judgment “is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the nonmoving party based upon the record evidence before the court.” *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 576 (1986)).

“If the moving party meets the initial burden of showing there is no genuine issue of material fact, the burden shifts to the nonmoving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial.” *Allen v. Rapides Parish Sch. Bd.*, 204 F.3d 619, 621 (5th Cir. 2000) (internal quotations and citations omitted). Doubts will be resolved in favor of the nonmovant, and all justifiable inferences to be drawn from the underlying facts are viewed in the light most favorable to that party. *See Minter v. Great Am. Ins. Co.*, 423 F.3d 460, 465 (5th Cir. 2005); *Burch v. City of Nacogdoches*, 174 F.3d 615, 619 (5th Cir. 1999).

However, conclusory allegations are not competent summary-judgment proof and thus are insufficient to defeat a motion for summary judgment. *See Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996). Unsubstantiated assertions, improbable inferences, and unsupported speculation are also not competent summary-judgment proof. *See Forsyth v. Barr*, 19 F.3d 1527, 1533 (5th Cir. 1994). The nonmovant must go beyond the pleadings and identify specific proof in the record and articulate the precise manner in which that proof supports his claim. *See Wheeler v. B.L. Dev. Corp.*, 415 F.3d 399, 401–02 (5th Cir. 2005) (citing *Celotex Corp.*, 477 U.S. at 324); *Ragas v. Tennessee Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998). Rule 56 does not impose a duty on the court to “sift through the record in search of evidence” to support the nonmovant’s opposition to the summary-judgment motion. *Ragas*, 136 F.3d at 458.

III. ANALYSIS

Citizens Council argues it has standing based on the alleged fact that the State of Texas wants to deem Citizens Council a political committee under Texas Election Code, Section 251.001(12). Ashley argues Citizens Council lacks standing to challenge the constitutionality of the provisions at issue because Citizens Council is not subject to classification as a political committee.

A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute’s operation or enforcement. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298-99 (1979). “One does not have to await the consummation of threatened injury to obtain preventive relief.” *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923). If the injury is impending, that is enough. *Id.* However, “persons having no fears of state prosecution except those that are imaginary or speculative,

are not to be accepted as appropriate plaintiffs....” *Younger v. Harris*, 401 U.S. 37, 42 (1971). The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests. *Babbitt*, 442 U.S. at 298. A plaintiff must show a definite and concrete dispute, not a just hypothetical or abstract question. *See id.* When plaintiffs “do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible,” they do not allege a dispute susceptible to resolution by a federal court. *Younger*, 401 U.S. at 42.

Ashley argues that Citizens Council is not at risk of regulation as a political committee because it is a nonprofit corporation and therefore treated as a singular person, not a group of persons, under the Texas Election Code. *See* Tex. Gov’t Code § 311.005(2). The court agrees. Texas Election Code, Section 251.001(12) defines “political committee” as “a group of persons that has as a principal purpose accepting political contributions or making political expenditures.” The word “[p]erson” includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.” Tex. Gov’t Code § 311.005(2). As a singular entity, Citizens Council is not a “group of persons” as required for classification as a political committee. *See* Tex. Elec. Code § 251.001(12).

Citizens Council argues that another nonprofit corporation is currently under investigation by the Texas Ethics Commission as to whether the nonprofit is operating with one of its donors as a political committee. However, Citizens Council is not under investigation and does not allege that Texas Ethics Commission has threatened any type of investigation of or enforcement against Citizens Council under the statutes at issue. “Persons having no fears of state prosecution except those that are imaginary or speculative, are not to

be accepted as appropriate plaintiffs....” *Younger*, 401 U.S. at 42 (concluding individuals who had not been “indicted, arrested, or even threatened by the prosecutor” did not have standing to challenge statute under which plaintiff who was allowed to proceed was being prosecuted).

Citizens Council argues it should not be classified as a political committee under the Texas Election Code and Ashley agrees. The court concludes that there is no dispute here for the court to resolve. Citizens Council therefore lacks standing to bring this suit. *See Babbitt*, 442 U.S. at 298.

IT IS THEREFORE ORDERED that Defendant’s Motion for Summary Judgment (Clerk’s Doc. No. 28) is **GRANTED**.

IT IS FURTHER ORDERED that this cause of action is **DISMISSED**.

SIGNED this 14th day of March, 2016.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE