

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CITY OF EL CENIZO, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

No. 5:17-cv-404-OG
[Lead Case]

EL PASO COUNTY, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

No. 5:17-cv-459-OG
[Consolidated Case]

CITY OF SAN ANTONIO, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

No. 5:17-cv-489-OG
[Consolidated Case]

**DEFENDANTS' MOTION TO
DISMISS OR TRANSFER THE
CITY OF AUSTIN'S COMPLAINT
IN INTERVENTION (ECF NO. 37)**

On June 20, 2017, the Court granted the City of Austin's Motion to Intervene. ECF No. 68. Texas now moves, pursuant to Federal Rules of Civil Procedure 7 and 12(b)(3), and 28 U.S.C. §§ 1404 and 1406, for this Court to dismiss the City's Complaint in Intervention (ECF No. 37) or transfer it for consolidation with a related, first-filed matter pending in this Court's Austin Division, *Texas v. Travis County, Texas, et al.*, No. 1:17-cv-425-SS, in which the City of Austin is a named defendant.¹ The City of Austin is located within the Austin Division, has no connection to the San Antonio Division, and alleges that the actions that form the basis of its claims occurred within the confines of the Austin Division. *See* ECF No. 37 ¶¶ 13–20, 29–30; 28 U.S.C. § 124(d)(1). Venue is thus improper in the San Antonio Division.

In further support of this Motion, Texas incorporates by reference the arguments and authorities raised in its Memorandum of Law in Support of Defendants' Motion to Dismiss or Transfer the Consolidated Cases, ECF No. 32-1, and requests that the City of Austin's claims be dismissed, or alternatively, transferred to the Austin Division for consolidation with Case No. 1:17-cv-425-SS.²

¹ On June 20, 2017, the Court held Texas's Motion to Dismiss or Transfer the Consolidated Cases in abeyance pending a decision on subject matter jurisdiction in the Austin Division case. ECF No. 66. Texas is aware of the Court's order but files this Motion to ensure that there is a responsive pleading to the City's operative complaint on file. Moreover, Texas asserts that this case should be dismissed or transferred regardless of the outcome of the Austin Division case.

² Courts within the Fifth Circuit have routinely accepted and addressed the merits of arguments that have been incorporated by reference to earlier-filed motions. *See, e.g., Chaverri v. Dole Food Co., Inc.*, 2012 WL 2087409, at *3 (E.D. La. June 8, 2012) (noting that it was sensible for the defendant to incorporate by reference arguments raised in earlier motions to dismiss because the defendant raised many of the same arguments in those earlier motions); *Phoenix Licensing L.L.C. v. CenturyLink Inc.*, 2015 WL 5786582, at *1 (E.D. Tex. Sept. 30, 2015). Indeed, in Travis County's reply brief in support of its motion for intervene, the County incorporates by reference its earlier briefing in this case and its briefing in the Austin litigation. *See* ECF No. 47 at 1–2.

Respectfully submitted this the 21st day of June, 2017.

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ATTORNEYS FOR TEXAS

CERTIFICATE OF SERVICE

I, Darren McCarty, hereby certify that on this the 21st day of June, 2017, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Darren McCarty
DARREN MCCARTY