

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LUKE ASH,

Plaintiff;

v.

CITY OF BATON ROUGE,
LOUISIANA/PARISH OF EAST
BATON ROUGE, ET AL.,

Defendants.

CIVIL ACTION

NO. 26-740-JWD-RLB

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

Defendants' Motion to Dismiss (Doc. 21) "combines the best of musical chairs and hot potato," where "the object of the game is to be sitting pretty when the judicial music stops, by leaving the other party holding the spud." *Nutt v. Loomis Hydraulic Testing Co., Inc.*, 552 F.2d 1126, 1127 (5th Cir. 1977). Defendants' Motion does not, because it cannot, seek dismissal of Plaintiff Luke Ash's ("Ash") Complaint on the basis that his well-pleaded allegations fail to state a claim upon which relief can be granted or that he is not otherwise entitled to relief. (Memorandum in Support of Motion to Dismiss (Doc. 21-1, ("MTD Memorandum"). Rather, at the motion to dismiss stage and armed with no binding precedent supporting the contentions, Defendants Katrine Stokes, Sid Edwards, Brandon Noel, and Candace Temple (collectively the "Official Capacity Defendants") merely state that all of them are redundant and thus unnecessary to provide Ash with any relief. (Doc. 21-1, MTD

Memorandum, at 3–5.) Each of these Official Capacity Defendants contend that once the motion music stops, they ought to be resting comfortably in a chair of dismissal.

Defendants Metropolitan Council of the City of East Baton Rouge, Library Board of Control of the City of Baton Rouge, and the East Baton Rouge Parish Library¹ (collectively the “Entity Defendants”) contend that claims against them are futile because none are juridical, nor capable of being sued, nor otherwise standing independently before the Court in such a manner that is not already subsumed into claims against the Defendant City of Baton Rouge/Parish of East Baton Rouge. (Doc. 21–1, MTD Memorandum, at 5–6.) The Entity Defendants, too, would like the safety and security of a dismissed chair.

In sum, on the contentions of Defendants’ Motion, Defendant City of Baton Rouge/Parish of East Baton Rouge (“City/Parish Defendant”) is the only one unfortunate enough to still stand as a Defendant in this matter. Fortunately for City/Parish Defendant, it will not be left alone at this stage. As demonstrated *infra*, there are too many factual questions that remain at issue to resolve this question on a motion to dismiss, and the factual questions concerning the appropriate role, scope, authority, and liability of each Defendant are required to be resolved in Ash’s favor. *See Favre v. Sharpe*, 117 F.4th 342, 346 (5th Cir. 2024).

¹ Defendants’ Motion seeks dismissal of Defendant East Baton Rouge Parish Library (Doc. 21, Motion at 1), but Defendants’ Memorandum raises no argument, and therefore waives it, as to why Defendant East Baton Rouge Public Library should be dismissed. *E.g., Freedom Patents LLC v. TCL Elec. Holdings Ltd.*, 2023 WL 7414144, *4 n.3 (E.D. Tex. Nov. 9, 2023). Ash’s arguments in opposition to dismissal of the Entity Defendants applies equally to Defendant East Baton Rouge Parish Library, and dismissal is inappropriate for the same reasons articulated *infra* Section III.

What Defendants' Motion ignores is that Ash has a duty to name all parties necessary to obtain complete relief. *See* Fed. R. Civ. P. 19(a)(1). *See also Hood v. City of Memphis*, 570 F.3d 625, 628–29 (5th Cir. 2009). *He did*. Defendants' Motion does not, because it cannot, contend that the challenged Inclusivity Policy under which Ash's employment was terminated does not exist or that it cannot serve as a proper basis for Ash's prayers for relief. *It can*. Rather, Defendants' Motion is largely premised on the notion that there are simply too many defendants in the present action, and the Court should reduce the number. (Doc. 21–1, MTD Memorandum, at 6.) The problem for Defendants is that resolving that question at this stage is inappropriate. Factual questions and dispute remain, which are axiomatically inappropriate for resolution here, and the premises upon which Defendants base their Motion do not conclusively resolve anything. The Court must deny the Motion.

ARGUMENT

Federal Rule of Civil Procedure 8 requires only “a short and plain statement of the claim showing that [he] is entitled to relief.” *Berk v. Choy*, 607 U.S. 187, 193 (2026) (quoting Fed. R. Civ. P. 8(a)(2)). “By requiring no more than a statement of the claim, Rule 8 establishes implicitly, but with unmistakable clarity, that evidence of the claim is not required.” *Berk*, 607 U.S. at 187 (cleaned up). “When evaluating whether a plaintiff has stated a claim ... [t]he court instead asks only whether the complaint's factual allegations, if taken as true, ‘state a claim to relief that is plausible on its face.’” *Id.* at 193 (internal citation omitted) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[A] complaint attacked by a Rule 12(b)(6) motion to dismiss

does not need detailed factual allegations,” but a plaintiff must meet his “obligation to provide the grounds of his entitlement to relief.” *Bell Atl.*, 550 U.S. at 555 (cleaned up). “A complaint that satisfies this standard is ‘well pleaded’ and may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable.” *Berk*, 607 U.S. at 193 (quoting *Bell Atl.*, 550 U.S. at 556). “A motion to dismiss under rule 12(b)(6) ‘is viewed with disfavor and is rarely granted.’” *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982)). “In considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the district court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff.” *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

Here, Ash’s Complaint states a plausible claim for relief against each Defendant, and none are redundant or duplicative of the other. Ash has plainly and plausibly a violation of the First and Fourteenth Amendments to the United States Constitution against each Defendant and that the Official Capacity Defendants were primary and active participants in the claims before the Court. As such, Ash’s claims against each Defendant are neither duplicative nor redundant but are well-pleaded allegations seeking appropriate relief against each appropriate Defendant. Defendants’ contentions concerning the futility of naming certain Entity Defendants are incorrect. At this stage, there is neither cause nor warrant to dismiss the well-pleaded allegations against Defendants necessary to provide complete and effectual relief to Ash on each of his respective claims and prayers for relief. Where, as here, the factual

allegations are assumed true and all reasonable inferences are drawn in Ash's favor, each Defendant is properly before the Court, is necessary to obtain complete relief under Rule 19, and should remain Defendants in this matter. The Motion should be denied.

I. Ash's claims against each respective Defendant are neither redundant nor duplicative, and dismissal is inappropriate.

Defendants' Motion does not and cannot contend that Ash has failed to state a claim upon which relief can be granted. *He has*. Defendants' Motion likewise does not and cannot contend that Ash has failed to allege the necessary elements to each of his respective claims. *He has*. Nor does Defendants' Motion contend that Ash has failed to allege sufficient facts showing a plausible entitlement to relief. *He has*. Rather, Defendants' Motion contends simply that there are too many named Defendants, and that some of them are redundant and duplicative of one another. (Doc. 21–1, MTD Memorandum, at 3–6.) Defendants' resort to redundancy for dismissal is inappropriate here. "After all, Rule 12(b)(6) asks whether a complaint contains well-pleaded allegations sufficient to state a plausible claim for relief; a claim that is redundant does not necessarily fail Rule 8(a)(2)'s pleading standard." *McHugh v. St. Tammany Parish*, 738 F. Supp. 3d 719, 729 (E.D. La. 2024). Simply put, there is "no binding precedent supporting the proposition that the Court *must* dismiss the official-capacity claims against him if the Court determines that those claims are redundant." *Id.* (emphasis original). Rather, a court is afforded discretion to dismiss official-capacity defendants if they are indeed redundant. *Id.* ("dismissing official-capacity claims as redundant is discretionary; it is not required."). *See also id.*

(citing *Owens v. District of Columbia*, 631 F. Supp. 2d 48, 54 (D.D.C. 2009) (“there is no requirement” that an official-capacity claim against a government official be dismissed as redundant of the claim against the government entity); *Roy v. Cnty. of Los Angeles*, 114 F. Supp. 3d 1030, 1047 (C.D. Cal. 2015) (concluding that the “permissive, not mandatory,” language used in “cases discussing dismissal of redundant defendants suggests that dismissal of official capacity suits is not required” (cleaned up))). As demonstrate more fully *infra*, there is no good cause for this Court to exercise that discretion, and it would be inappropriate at this stage where factual questions must be resolved in Ash’s favor and the proper application of certain provisions of Louisiana law is disputed.

II. Ash has plainly and plausibly alleged a violation of the First and Fourteenth Amendments to the United States Constitution against each Defendant and that the Official Capacity Defendants were primary actors in the claims before the Court.

Unremarkably, Defendants’ Motion contends that a plaintiff bringing a claim against an official capacity defendant must “allege and establish that a policy, practice or custom of a municipality was the moving force behind the alleged constitutional violation.” (Doc. 21–1, MTD Memorandum, at 4 (citing *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985))). True enough, but Defendants do not and cannot contend that Ash has failed to allege sufficient facts to satisfy this requirement. The reason is simple: *he has*.

Ash has plainly and plausibly alleged the existence of a policy, practice, or custom, *e.g.*, the Inclusivity Policy (*see* Doc. 1, Compl., ¶¶40–41), and has plainly and plausibly alleged that this Inclusivity Policy was the “moving force” behind his

unlawful and unconstitutional termination. (See Doc. 1, Compl., ¶¶49–61.) Specifically, Ash alleged that “his employment was terminated for refusal to comply with the Inclusivity Policy.” (Doc. 1, Compl., ¶61.) And, importantly, Ash has alleged that each Defendant—including the Official Capacity Defendants—have a role in the adoption, enforcement, application, and force of the Inclusivity Policy. (E.g., Doc. 1, Compl., ¶¶8–15.) That is all that is required at the pleading stage.

Moreover, Ash has alleged that his termination as a result of Defendants’ Inclusivity Policy violated the First Amendment (Doc. 1, Compl., ¶¶69–113, 164–183) and violated the Equal Protection Clause of the Fourteenth Amendment. (Doc. 1, Compl., ¶¶184–205.) In his Prayer for Relief, Ash specifically requests prospective equitable relief in the form of a permanent injunction, enjoining Defendants from enforcing the Inclusivity Policy as specifically prayed for (Doc. 1, Compl. at 40, ¶A), and a declaratory judgment, declaring that Defendants have violated these specific constitutional provisions by their unlawful termination of Ash’s employment on the basis of the Inclusivity Policy. (Doc. 1, Compl., at 40–41, ¶B.) Each of the components of Ash’s requested prospective equitable relief requires the inclusion of an official capacity defendant to effectuate the relief. See, e.g., *Randolph v. East Baton Rouge Parish Sch. Bd.*, 2018 WL 1474541 (M.D. La. Mar. 26, 2018), *rev’d in part on other grounds* 774 F. App’x 861 (5th Cir. 2019). Indeed, “Section 1983 is not a source of substantive rights; it merely provides a method for vindicating already conferred federal rights.” 2018 WL 1474541, at *5. And “municipal liability under 42 U.S.C. §1983 requires proof of,” *inter alia*, a “policymaker.” *Rivera v. Houston Indep. Sch.*

Dist., 349 F.3d 244, 247 (5th Cir. 2003). Here, the policymakers are the Official Capacity Defendants, and each are necessary to effectuate complete relief on Ash’s claims. Fed. R. Civ. P. 19(a)(1). No Defendant is redundant or unnecessary, and it is premature to make that determination on a motion to dismiss.

Moreover, even if the Official Capacity Defendants were somehow unnecessary under *Monell* and Section 1983 in general, which they are not, any dismissal for purported redundancy is discretionary, and the exercise of that discretion would be inappropriate here. “[C]ourts often decline to exercise their discretion to dismiss as redundant official-capacity claims for prospective injunctive relief against government officials.” *McHugh*, 738 F. Supp. 3d at 729. This is particularly true where—as here—“the official-capacity request for injunctive relief is asserted against an elected official who is alleged to have played a central role in the case.” *Id.*

The Western District of Louisiana has reached the same conclusion concerning the inappropriateness of dismissal solely on redundancy at the pleading stage. *See Mejia v. Lafayette Consolidated Govt.*, 2024 WL 4645504 (W.D. La. Oct. 3, 2024). There, as here, the official capacity defendants sought dismissal solely on the ground that the claims against them were redundant of the entity defendant. 2024 WL 4645504, at *3. The court relied heavily upon *McHugh* to note that dismissal solely on redundancy is inappropriate. Where the official-capacity defendant is alleged to have played a central role in the allegedly unlawful conduct and the plaintiff seeks prospective equitable relief against that official-capacity defendant, he is neither redundant nor duplicative and should not be dismissed. *Id.* at *4.

Here, each of the Official Capacity Defendants is alleged to have played a central role in the underlying violations, and Ash's Complaint alleges sufficient factual material against each such Defendant to preclude a finding of redundancy. Under *Monell* and the allegations of Ash's well-pleaded Complaint, each Official Capacity Defendant is a policymaker in relation to the Inclusivity Policy. (Doc. 1, Compl., ¶¶9, 11, 13, 15.) Defendant Edwards is alleged to have "ultimate authority" for the policies that are enacted and enforced in Baton Rouge, including the so-called Inclusivity Policy. (Doc. 1, Compl., ¶9.) Defendant Stokes is the Director of the East Baton Rouge Parish Library, is responsible for Library policies, including the Inclusivity Policy, and was Ash's direct supervisor at the Library from which he was terminated. (Doc. 1, Compl., ¶11.) Defendant Noel is alleged to be responsible for overseeing the policies implemented in Baton Rouge, including the appointment of the Library Board of Control, which adopted the Inclusivity Policy under which Ash's employment was terminated. (Doc. 1, Compl., ¶13.) Defendant Temple is the President of the Library Board of Control that adopted the Inclusivity Policy under which Ash's employment was terminated. (Doc. 1, Compl., ¶15.) Under each of these well-pleaded allegations, Ash's Complaint has sufficiently alleged that the Official Capacity Defendants all have some central role in the case and primary responsibility for the Inclusivity Policy under which Ash's employment was terminated. They are, therefore, necessary to provide complete relief under *Monell* and Rule 19, rendering Defendants' claims of redundancy inapplicable and inappropriate for dismissal at this stage.

III. Defendants’ contentions concerning the futility of naming certain Entity Defendants are incorrect.

Defendants contend that the City/Parish Defendant is the only necessary or appropriate defendant, and that the Entity Defendants are “futile” defendants against whom claims cannot be brought. (Doc. 21–1, MTD Memorandum, 5–6.) This is incorrect, or—at best—premature and inappropriate for resolution at this stage.

To be sure, Ash has alleged that the City/Parish Defendant controls the operation of City/Parish functions and is thus responsible for the actions of the Library Board of Control and East Baton Rouge Parish Library. (Doc. 1, Compl., ¶8.) The scope of that allegation and its implications for the relief Ash’s Complaint prays for may prove true in discovery, or it may not. This is why Ash likewise named the Library Board of Control, which has the authority to enact policies governing the East Baton Rouge Parish Library. Black letter law requires that for Ash to succeed on a theory of municipal liability, he must allege and ultimately prove that there was “1) a policymaker; 2) an official policy; and 3) a violation of constitutional rights whose moving force is the policy or custom.” *Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 247 (5th Cir. 2003) (citing *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 694 (1978)). Those critical elements and points of proof require, *inter alia*, that “[t]he policymaker [had] final policymaking authority.” *Id.* (citing *City of St. Louis v. Prprotnik*, 485 U.S. 112, 127 (1988)). At this stage, and on the basis of mere assertions in a responsive pleading without citation to any governing authority firmly establishing ultimate authority, control, and even employment, it would be inappropriate to dismiss the Entity Defendants. The Entity Defendants plainly have

policymaking authority and enforcement authority. Whether that authority is subsumed under the City/Parish Defendant is a fact-intensive inquiry inappropriate for resolution at this stage. Fact questions remain as to the proper role and authority of each Defendant, and fact questions cannot be resolved on a motion to dismiss. *E.g.*, *Smith v. Regional Transit Auth.*, 756 F.3d 340, 347 (5th Cir. 2014). Indeed, “disputed questions of fact are anathema to Rule 12(b)(6) jurisprudence,” *id.*, and all disputes as to any fact must be resolved in Ash’s favor. *See Favre v. Sharpe*, 117 F.4th 342, 346 (5th Cir. 2024).

Defendants contend that Section 11.03 of the City of Baton Rouge Plan of Government shows the futility of naming the Entity Defendants. (Doc. 21–1, MTD Memorandum, at 6.) Specifically, Defendants’ Motion contends that the Entity Defendants are subsumed into the City/Parish Defendant, who is the only entity capable of suit here. The Plan of Government does not speak with the clarity Defendants suggest.² As Defendants represent, Section 11.03 states that the Board of Control was established by the City/Parish and that it shall have all the powers and duties conferred or imposed by the General Laws of the State of Boards of Control of Parish Libraries. (Doc. 21–1, MTD Memorandum, at 6.) But that assertion and the powers and duties appurtenant to the Board of Control under the General Laws of Louisiana raises more questions than it answers, and it certainly does not warrant dismissal on the grounds that all claims against Entity Defendants are redundant,

² See City of Baton Rouge/Parish of East Baton Rouge, *Plan of Government*, Chapter 11, §11.03, available at <https://www.brla.gov/1273/Chapter-11-Miscellaneous> (last visited Oct. 5, 2026).

unnecessary, and futile. Indeed, the General Laws to which Defendants cite specifically note that Library Boards of Control “shall have authority to establish rules and regulations for its own government and that of the library.” La. Rev. Stat. §25:215(A). In short, Louisiana law establishes that the Entity Defendants are policymakers under *Monell*. Thus, a number of questions arise (and remain unanswered by Defendants’ Motion) concerning the proper policymaker responsible for the Inclusivity Policy, Ash’s termination, and thus liability under *Monell*.

Moreover, questions remain as to which entity or entities are properly considered the employer for purposes of Title VII liability. The Western District of Louisiana faced an identical issue in *Dyas v. City of Shreveport*, 2018 WL 2169976 (W.D. La. May 10, 2018). There, the Board of Control members claimed they were not the plaintiff’s employer, but that it was the library itself. 2018 WL 2169976, at *3. There was further dispute concerning whether the Board of Control and the library could be considered joint employers. *Id.* The Western District of Louisiana, citing La. Rev. Stat. §25:215, noted that the relevant inquiry “can be a fact-intensive inquiry” and denied a motion to dismiss. *Id.* It noted that there were simply too many questions to grant a motion to dismiss at the pleading stage prior to factual inquiry into the potential issues. *Id.*

The same is true here. Despite statutory authority to determine policies and make employment decisions, *see* La. Rev. Stat. §25:215(A), there is conflicting authority on whether such Boards of Control have authority to sue and be sued. *Compare Dyas*, 2018 WL 2169976, at *3 (citing La. Att’y Gen. Op. No. 83-766 (Nov.

7, 1983) (opining that Library Boards of Control do not have authority to sue and be sued), *with Douglas v. St. John the Baptist Parish Library Bd. of Control*, 2021 WL 2592920 (E.D. La. Jun. 24, 2021) (dismissing the St. John the Baptist Parish Council and retaining the Library Board of Control as the proper defendant). Indeed, contrary to Defendants’ contentions, local boards and the municipality of which it is a part are considered “separate and distinct juridical persons.” *Roberts v. Sewage & Water Bd. of New Orleans*, 634 So.2d 341, 346 (La. 1994). And, the Supreme Court of Louisiana said that the determination of the separate juridical status of an entity and its municipality is determined by reference to the organic law and whether its “grants it the legal capacity to function independently and not just as an agency or division of another government entity.” *Id.* at 347. The court in *Roberts* held that control boards are “autonomous or self-governing legal entit[ies]” that are juridical persons for purposes of suit. *Id.* In sum, there are too many questions to resolve this issue on a motion to dismiss where the well-pleaded allegations of Ash’s Complaint show that the Entity Defendants have policymaking authority and likely the right to be sued for violations of civil rights.

Moreover, as to Defendant Metropolitan Council of the City of Baton Rouge/Parish of East Baton Rouge, similar questions likewise remain. Section 1.02 of the Plan of Government cited by Defendants notes specifically that Defendant Metropolitan Council is “the governing body” of the East Baton Rouge Parish, and so, too, does Section 2.04.³ The Supreme Court of Louisiana has also specifically stated

³ *See supra* note 2.

that a municipality is a juridical person, *Broome v. Rials*, 383 So.3d 578, 585 (La. 2024), and there are instances where the Metropolitan Council has been properly named as a defendant. *E.g.*, *Dawson v. City of Baton Rouge; Metropolitan Council*, 136 F.3d 136 (5th Cir. 1998).

Simply put, at this stage, there is no basis to dismiss any Defendants as redundant or futile. Fact questions remain, and Ash is entitled to have “[a]ll questions of fact and any ambiguities in the current controlling substantive law . . . resolved in [his] favor.” *Lewis v. Fresne*, 252 F.3d 352, 356 (5th Cir. 2001).

CONCLUSION

Because Ash’s well-pleaded allegations establish the necessary and proper role of each Defendant named in his Complaint and because too many factual questions remain concerning the proper role and ultimate authority of each Defendant at this stage, Defendants’ Motion should be denied.

Respectfully submitted,

/s/ Michael DuBos
 Michael L. DuBos
 Breithaupt, DuBos, & Wolleson, LLC
 1811 Tower Drive, Suite D
 Monroe, LA 71201
 (318) 322-1202
 michael@bdw.law

/s/ Daniel J. Schmid
 Mathew D. Staver**
 Horatio G. Mihet**
 Daniel J. Schmid*
 Avery B. Hill*
 LIBERTY COUNSEL
 P.O. Box 540774
 Orlando, Florida 32854
 Phone: (407) 875-1776
 Fax: (407) 875-0770
 Email: court@lc.org – hmihet@lc.org
 dschmid@lc.org – ahill@lc.org
Attorneys for Plaintiff
 *Admitted *pro hac vice*
 **Application *pro hac vice* forthcoming