

2004 WL 1737904

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United States District Court,  
E.D. Louisiana.

Reverend William SHANKS

v.

PARISH OF JEFFERSON, LOUISIANA, et al.

No. Civ.A. 04-1057. | July 30, 2004.

#### Attorneys and Law Firms

J. Michael Johnson, Shreveport, LA, Genia Coleman Lee, Genia Coleman Lee, Attorney at Law, Lake Charles, LA, for Plaintiffs.

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#### Opinion

### ORDER AND REASONS

VANCE, J.

\*1 Before the Court is defendant William Lazaro's motion to dismiss plaintiffs' claim under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs do not oppose the motion. For the following reasons, the Court GRANTS defendant's motion.

#### I. BACKGROUND

Plaintiffs Reverend William Shanks, Kathleen Benfield, and Reverend Grant Storms are pro-life advocates and members of plaintiff United for Life, Inc., a non-profit corporation. (R. Doc. 1, Verified Complaint, ¶¶ 17, 64, 66.) Plaintiffs sue Jefferson Parish, Jefferson Parish Sheriff Harry Lee, Jefferson Parish Police Officer Daniel Samrow, and William Lazaro, Jefferson Parish Director of Citizen Affairs, under 28 U.S.C. § 1983 for various violations of their constitutional rights in connection with the enforcement of certain Jefferson Parish ordinances. Plaintiffs sue Lazaro in both his official and his individual capacities. Lazaro now moves under Federal Rule 12(b)(6) to dismiss the suit against him in his official capacity. Plaintiffs do not oppose the motion.

#### II. LEGAL STANDARD

In a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court must accept all well-pleaded facts as true and view the facts in the light most favorable to the plaintiff. *See Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir.1996); *American Waste & Pollution Control Co. v. Browning-Ferris, Inc.*, 949 F.2d 1384, 1386 (5th Cir.1991). The Court must resolve doubts as to the sufficiency of the claim in plaintiff's favor. *Vulcan Materials Company v. City of Tehuacana*, 238 F.3d 382, 387 (5th Cir.2001). Dismissal is warranted if it appears certain that the plaintiff cannot prove any set of facts in support of her claim that would entitle her to relief. *Id.*; *Piotrowski v. City of Houston*, 51 F.3d 512, 514 (5th Cir.1995) (quoting *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 524 (5th Cir.1994)).

#### III. DISCUSSION

Lazaro moves to dismiss the claims against him in his official capacity because they are duplicative of plaintiffs' claims against Jefferson Parish. In *Romero v. Becken*, the Fifth Circuit affirmed a dismissal of Section 1983 claims against city officers in their official capacities because the plaintiff also asserted the same claims against the city. 256 F.3d 349, 355 (5th Cir.2001). *See also McCall v. Peters*, 2001 WL 1082417 at \*8 (N.D.Tx. Aug.28, 2001) (affirming dismissal of Section 1983 claims against city officials in their official capacities because they duplicated the claims against the city); *cf. Sims v. Jefferson Downs Racing Ass'n*, 778 F.2d 1068, 1081 (5th Cir.1985) (holding that a plaintiff does not have a cause of action against both a corporation and its officer in his official capacity). The Court reasoned that the claims against the city officers in their official capacities duplicate the claims against the city. *Romero*, 256 F.3d at 355. This follows because liability for the official's actions in his official capacity runs against the city. *See Sims*, 778 F.2d at 1081 (using this reasoning in the context of a corporation and its officers). Thus, to hold both the city and its officers liable for the same claims would make the city liable twice for the same claims. *Romero's* holding applies to plaintiffs' official capacity claims against Lazaro, since plaintiffs assert the same Section 1983 claims against Jefferson Parish that they assert against Lazaro. Thus, plaintiffs' claims against Lazaro in his official capacity must be dismissed.

#### III. CONCLUSION

\*2 Accordingly, the Court GRANTS Lazaro's motion to dismiss claims against him in his official capacity.

