

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Bryan C. Zesiger and Gina Montalbano aka Gina Montablano
Zesiger v. Laura Kelly, Governor of the State of Kansas, et al.

Zesiger v. Kelly · No. 25-2354-EFM-RES · Decided March 17, 2026

SUMMARY

The United States District Court for the District of Kansas grants the State Defendants’, County Defendants’, and Senator Jerry Moran’s motions to dismiss a pro se civil rights action concerning the classification of a winery as commercial property and the imposition of a special use permit. The court concludes that claims against state agencies and officials are barred by Eleventh Amendment immunity and that the Ex parte Young exception does not apply. It also dismisses several federal claims as time-barred, dismisses the RICO claim for failure to plead an enterprise and predicate acts, and dismisses state-law claims for failure to comply with the Kansas Tort Claims Act.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Eric F. Melgren
JURISDICTION	United States District Court for the District of Kansas
DECIDED	March 17, 2026
DOCKET	25-2354-EFM-RES
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs brought a 42 U.S.C. § 1983 civil-rights action asserting federal and state claims against 28 defendants. The State Defendants, County Defendants, and Senator Jerry Moran moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiffs moved to change or transfer venue.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, the party invoking federal jurisdiction bears the burden of establishing subject-matter jurisdiction, and the court must dismiss when jurisdiction is lacking. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, disregards legal conclusions, and determines whether the complaint states a facially plausible claim for relief. Pro se pleadings are construed liberally but the court may not act as the litigant's advocate.
PRECEDENTIAL VALUE	unpublished

PARTIES

Bryan C. Zesiger, Gina Montalbano aka Gina Montablano Zesiger v. Laura Kelly, Governor of the State of Kansas, State Defendants, County Defendants, Senator Jerry Moran, et al.

TOPICS

motions to dismiss

subject matter jurisdiction

qualified immunity

venue

civil procedure

PRACTICE AREAS

civil procedure

constitutional law

civil rights

zoning and land use

sovereign immunity

QUESTIONS PRESENTED

1. Whether the claims against Kansas, its agencies, and officials sued in their official capacities were barred by Eleventh Amendment immunity and by the rule that states and official-capacity defendants are not persons under 42 U.S.C. § 1983.
2. Whether the Ex parte Young exception applied to Plaintiffs' claims for prospective relief against state officials.
3. Whether Plaintiffs' federal constitutional claims were barred by Kansas's two-year statute of limitations for personal-injury actions.
4. Whether Plaintiffs adequately stated a RICO claim.
5. Whether individual County Defendants were entitled to qualified immunity on Plaintiffs' § 1983 claims.
6. Whether Plaintiffs' Kansas-law claims were barred for failure to comply with the Kansas Tort Claims Act notice requirement.
7. Whether Plaintiffs adequately stated conspiracy and municipal-liability claims.
8. Whether claims against Senator Jerry Moran were barred by sovereign immunity and lack of subject-matter jurisdiction.
9. Whether venue could be transferred to the District of Colorado under 28 U.S.C. §§ 1404(a) or 1406(a).

HOLDINGS

1. The Eleventh Amendment barred Plaintiffs' claims against Kansas and its agencies, and against state officials sued in their official capacities. Those defendants also were not persons subject to suit for damages under 42 U.S.C. § 1983.
2. The Ex parte Young exception did not permit Plaintiffs' claims against the State Defendants because the named officials lacked authority to provide the requested prospective relief or reclassify Plaintiffs' property.
3. Plaintiffs' § 1983 claims for equal protection, due process, First Amendment retaliation, takings, Commerce Clause violations, and declaratory or injunctive relief were barred by Kansas's two-year statute of limitations.

4. Plaintiffs failed to state a RICO claim because they did not adequately allege an enterprise or at least two predicate acts of racketeering activity.
5. Van Parys, Webber, Huntsinger, and Voth were entitled to qualified immunity because Plaintiffs failed to allege their personal participation in the alleged constitutional violations.
6. The court lacked subject-matter jurisdiction over Plaintiffs' Kansas-law claims because Plaintiffs did not allege compliance with the Kansas Tort Claims Act notice requirement.
7. Plaintiffs failed to state a § 1983 conspiracy claim because they alleged no specific facts showing an agreement, concerted action, or an underlying constitutional violation.
8. Plaintiffs failed to state a municipal-liability claim because they identified no underlying constitutional violation and pleaded only conclusory failure-to-train allegations without deliberate indifference.
9. The claims against Senator Moran were dismissed for lack of subject-matter jurisdiction because the official-capacity claims were barred by sovereign immunity and Plaintiffs identified no waiver.
10. Transfer to the District of Colorado was unavailable under 28 U.S.C. §§ 1404(a) and 1406(a), and Plaintiffs' venue motions were denied as moot after dismissal of the case.

KEY QUOTATIONS

“Federal courts are courts of limited jurisdiction, and a presumption exists against exercising jurisdiction over a case.”

“The plausibility standard reflects the requirement in Rule 8 that pleadings provide defendants with fair notice of the nature of claims as well as the grounds on which each claim rests.”

FACTUAL BACKGROUND

Plaintiffs owned and operated Z&M Twisted Vines Winery and Vineyard in Leavenworth County, Kansas. They alleged that part of the property was improperly classified as commercial rather than agricultural, resulting in unequal taxation, and that the County required a special use permit restricting the winery's operations. Their complaint asserted constitutional, civil-rights, RICO, statutory, tort, and declaratory-relief claims based principally on the property classification and special-use-permit requirements.

PROCEDURAL HISTORY

Plaintiffs filed the action in the District of Kansas on July 1, 2025. The court granted all three motions to dismiss, dismissed all claims, denied Plaintiffs' venue motions as moot, and closed the case. The court dismissed the Kansas state-law claims without prejudice for lack of subject-matter jurisdiction and also stated that the dismissal of the claims against Senator Moran would be without prejudice.

DISPOSITION

dismissed

CASES CITED

- In re Syngenta AG MIR 162 Corn Litig., 61 F.4th 1126, 1170 (10th Cir. 2023)
- Siloam Springs Hotel, LLC v. Century Sur. Co., 906 F.3d 926, 931 (10th Cir. 2018)
- Port City Props. v. Union Pac. R.R. Co., 518 F.3d 1186, 1189 (10th Cir. 2008)
- Ridge at Red Hawk, LLC v. Schneider, 493 F.3d 1174, 1177 (10th Cir. 2007)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Robbins v. Oklahoma, 519 F.3d 1242, 1247-50 (10th Cir. 2008)
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Trackwell v. U.S. Gov't, 472 F.3d 1242, 1243 (10th Cir. 2007)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Levy v. Kan. Dep't of Soc. & Rehab. Servs., 789 F.3d 1164, 1168 (10th Cir. 2015)
- Williams v. Utah Dep't of Corrs., 928 F.3d 1209, 1212 (10th Cir. 2019)
- Martin Marietta Materials, Inc. v. Kan. Dep't of Transp., 953 F. Supp. 2d 1176, 1185 (D. Kan. 2013)
- Higginbotham v. Oklahoma ex rel. Okla. Transp. Comm'n, 328 F.3d 638, 644 (10th Cir. 2003)
- P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993)
- Kentucky v. Graham, 473 U.S. 159, 165 (1985)
- Monell v. N.Y.C. Dep't of Soc. Servs., 436 U.S. 658, 689, 690 n.55 (1978)
- Harris v. Owens, 264 F.3d 1282, 1289 (10th Cir. 2001)
- Hull v. State of N.M. Tax'n & Rev. Dep'ts Motor Vehicle Div., 179 F. App'x 445, 446 (10th Cir. 2006)
- Ex parte Young, 209 U.S. 123, 157, 159-60 (1908)
- Klein v. Univ. of Kan. Med. Ctr., 975 F. Supp. 1408, 1417 (D. Kan. 1997)
- Free Speech Coal., Inc. v. Anderson, 119 F.4th 732, 736 (10th Cir. 2024)
- Brown v. Unified Sch. Dist. 501, Topeka Pub. Schs., 465 F.3d 1184, 1188 (10th Cir. 2006)
- Tal v. Hogan, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006)
- Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 838 (10th Cir. 2005)
- Deck v. Engineered Laminates, 349 F.3d 1253, 1257 (10th Cir. 2003)
- Series 17-03-615 v. Teva Pharms. USA, Inc., 785 F. Supp. 3d 904, 945 (D. Kan. 2025)
- Cillo v. City of Greenwood Vill., 739 F.3d 451, 460 (10th Cir. 2013)
- Pearson v. Callahan, 555 U.S. 223, 236 (2009)
- Medina v. Cram, 252 F.3d 1124, 1128 (10th Cir. 2001)
- Foote v. Spiegel, 118 F.3d 1416, 1423 (10th Cir. 1997)
- Fullen v. City of Salina, 2021 WL 4476780, at *9 (D. Kan. Sept. 30, 2021)
- Henry v. Storey, 658 F.3d 1235, 1241 (10th Cir. 2011)
- Pahls v. Thomas, 718 F.3d 1210, 1225 (10th Cir. 2013)
- Williams v. Dalton, 2022 WL 1184473, at *6 (D. Kan. Apr. 21, 2022)
- Shrum v. Cooke, 2021 WL 3051891, at *6 (D. Kan. 2021)
- Farmers Bank & Tr. v. Homestead Cmty. Dev., 58 Kan. App. 2d 877, 476 P.3d 1, 14 (2020)

- Humes v. Cummings, 2018 WL 4600717, at *4 (D. Kan. Sept. 25, 2018)
- Brereton v. Bountiful City Corp., 434 F.3d 1213, 1216 (10th Cir. 2006)
- Jones v. Norton, 809 F.3d 564, 578 (10th Cir. 2015)
- Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)
- Douglass v. Garden City Cmty. Coll., 543 F. Supp. 3d 1043, 1060 (D. Kan. 2021)
- Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 402-03 (1997)
- Hinton v. City of Elwood, 997 F.2d 774, 782 (10th Cir. 1993)
- Zorn v. City of Marion, 774 F. Supp. 3d 1279, 1332 (D. Kan. 2025)
- Connick v. Thompson, 563 U.S. 51, 61 (2011)
- George ex rel. Bradshaw v. Beaver Cnty., 32 F.4th 1246, 1253 (10th Cir. 2022)
- Valdez v. Macdonald, 66 F.4th 796, 815 (10th Cir. 2023)
- Atkinson v. O'Neill, 867 F.2d 589, 590 (10th Cir. 1989)

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