**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

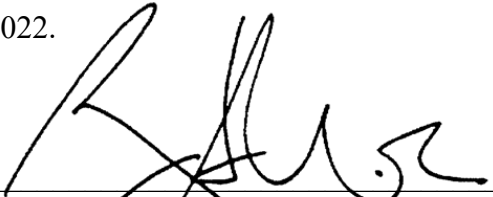|		
JERRY LUMAN, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION H- 19-4920
	§	
CHRISTOPHER DIAZ, *et al.*,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Pending before the court are defendant Chris Diaz's motions to strike the plaintiffs' "new claims." Dkts. 154–66. Diaz contends that the plaintiffs, for the first time in their responses to Diaz's motions for summary judgment, raised new contentions that they were compelled to support Diaz's election campaign and that their decisions not to do so were silence that is protected by the First Amendment. Dkts. 154–66. Diaz cites case law supporting the contention that a claim that is not raised in the complaint and is raised in a response to summary judgment is improper. Dkts. 154–66 (citing *Cutrera v. Bd. of Supervisors*, 429 F.3d 108–13 (5th Cir. 2005)). However, in the Third Amended Complaint, under the section entitled "Chris Diaz," the plaintiffs assert that Diaz required employees to work for his private party and perform certain campaign functions. Dkt. 55 ¶ 18. It goes further to say, "Diaz required Precinct Two employees to perform these essential campaign functions and conditioned employment upon their performance." *Id.* ¶ 19. It then notes that "[e]mployees who also generally spoke out or refused to participate in the Diaz campaign would also be disciplined." *Id.* ¶ 20. And, "[e]mployees who supported opposition candidates would be disciplined by Diaz." *Id.* ¶ 21. The court finds that the allegations in the Third Amended Complaint provide fair notice that the plaintiffs were arguing that Diaz was

compelling speech by requiring support of his campaign and that refusing the participate was silent speech.

The motions to strike (Dkts. 154–66) are **DENIED**.

Signed at Houston, Texas on June 27, 2022.

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                                               Gray H. Miller
                                        Senior United States District Judge