UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

LOUISIANA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ANTHONY ALLEN; and STEPHANIE ANTHONY	Civil Action No. 3:19-cv-00479 JWD-EWD
v.	
STATE OF LOUISIANA; and R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana	

MOTION TO DISMISS BY DEFENDANT, R. KYLE ARDOIN, LOUISIANA SECRETARY OF STATE

Pursuant to Rule 12 and Rule 21 of the Federal Rules of Civil Procedure, Defendant, R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State, respectfully moves this Court to dismiss this case against him in its entirety.

I. The Case does not present a case or controversy as required by Art. III, §2, Cl. 1 of the United States Constitution and so the Court lacks jurisdiction. (FRCP 12(b)(1));

II. Nor does the Complaint state a claim upon which relief can be granted as to the Secretary of State for any alleged violation. (FRCP 12(b)(6);

III. Motion to dismiss under FRCP 21;

IV. The Secretary of State adopts the motion to dismiss (Doc 27) filed by the State of Louisiana:

A. The United States District Court for the Eastern District of Louisiana has exclusive jurisdiction under the *Chisom* Consent Decree;

B. Plaintiffs lack standing;

C. Subsequent decisions of the Supreme Court have called into question the

continued applicability of the Voting Rights Act to judicial districts requiring dismissal of this suit in its entirety; and

D. Alternative request for a more definite statement under FRCP 12(e).

Accordingly and for the reasons further articulated in the accompanying Memorandum in Support and the memorandum in support of the State of Louisiana motion to dismiss (Doc 27-1), the Defendant moves this Court to dismiss this action against Defendant R. Kyle Ardoin, Louisiana Secretary of State, in its entirety.

Submitted this 4th day of October, 2019.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed electronically and served on counsel for the parties by electronic notification by CM/ECF on October 4, 2019.

s/Celia R. Cangelosi
CELIA R. CANGELOSI

UNITED STATES DISTRICT COURT

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MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO FRCP 12(b)(1) and 12(b)(6) and 21
BY KYLE ARDOIN, LOUISIANA SECRETARY OF STATE

MAY IT PLEASE THE COURT:

This memorandum is submitted by defendant, R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State ("Secretary of State" or "Secretary Ardoin") in support of his motion to dismiss.

The Complaint

This action challenges the current system of apportioning Louisiana Supreme Court districts, memorialized in a consent decree entered by the Eastern District of Louisiana, as in violation of Section 2 of the Voting Rights Act. Plaintiffs are Louisiana State Conference for the Advancement of Colored People ("La NAACP"), and Anthony Allen and Stephanie Anthony, each a registered voter in East Baton Rouge Parish. Named as defendants are State of Louisiana and R. Kyle Ardoin, sued in his official capacity as Louisiana Secretary of State.

Plaintiffs seek the creation of a second majority African American Supreme Court district in the seven district plan. Plaintiffs contend that the current seven districts contain only one majority

African American district in violation of Section 2 of the Voting Rights Act. Plaintiffs seek declaratory and injunctive relief, and contend that unless enjoined, "Defendants" will continue to act in violation of Section 2 of the Voting Rights Act by conducting future elections for the Louisiana Supreme Court under the plan ordered by the Eastern District of Louisiana. In addition to declaratory and injunctive relief, Plaintiffs ask the Court to order a new method of election for the Louisiana Supreme Court.

"R. Kyle Ardoin" is mentioned only once in the Complaint (Doc 1 at ¶15), "Defendant R. KYLE ARDOIN is Secretary of State of Louisiana and is sued in his official capacity. The Secretary of State is the State's chief election officer. La. R.S. §18:421 (2017)." Secretary Ardoin is never mentioned by name or title any where else in the complaint. There is only one mention in the complaint of "Defendants", as a global term, in Doc 1, ¶70, "...Defendants will continue to act in violation of Section 2 of the Voting Rights Act by administering, implementing and conducting future elections for the Louisiana Supreme Court using an unlawful election method."

References are found throughout the Complaint to actions or conditions of "Louisiana" but not to the Secretary of State. See, for example, Doc 1, ¶¶ 2, 3, 4, 14, 17, 18, 34, 35, 36, 38, 43, 44, 46, 49, 50, 51, 52, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, and 68. See also the ¶5 request by plaintiffs for this Court to "...require the State to redraw the Louisiana Supreme Court districts...".

Motions to Dismiss filed by Defendant State of Louisiana and Adopted By Secretary of State

The only other defendant, State of Louisiana, has filed Motion To Dismiss Plaintiffs' Complaint, memorandum in support, and exhibits on grounds which are common to both defendants and which the Secretary of State desires to assert as well. Those ground include:

1. Lack of Subject Matter Jurisdiction

a. The United States District Court for the Eastern District of Louisiana has exclusive jurisdiction under the *Chisom* Consent Decree;

b. Plaintiffs have not pled an injury in fact that is redressable;

c. Plaintiffs lack a plausible and constitutional remedy;

d. Plaintiff NAACP lacks standing;

e. The individual plaintiffs lack standing; and

f. Section 2 of the Voting Rights Act no longer applies to judicial elections.

2. In the alternative, a request is made for plaintiffs to provide a more definite statement under Rule 12(c).

Rather than repeat these same arguments in this motion and memorandum, the Secretary of State hereby adopts and incorporates as part of this motion and memorandum the Motion To Dismiss filed by the State of Louisiana (Doc 27), the Memorandum In Support filed by the State of Louisiana (Doc 27-1), and Exhibits A, B and C attached to the State of Louisiana's motion to dismiss and memorandum in support.

Motions To Dismiss Filed By Secretary of State

The motions filed by the Secretary of State (other than those motions filed by the State of Louisiana and adopted by the Secretary of State) are:

1. FRCP 12(b)(1) motion to dismiss;

2. FRCP 12(b)(6) motion to dismiss; and

3. FRCP 21 motion to dismiss.

FRCP 12(b)(1) Motion To Dismiss

In addition to moving to dismiss on the same grounds urged by the State of Louisiana (Doc 27), Secretary Ardoin moves for dismissal of the complaint against him because the suit does not

present a case or controversy as required by Art. III of the U.S. Constitution.

In *Terrebonne Parish NAACP, et al. v. Jindal, et al,* Civil Action No. 14-069, Middle District of Louisiana, also a Section 2 voting rights case, the defendants there, the Louisiana Governor and Louisiana Attorney General, argued that the Louisiana Secretary of State, not the Governor or Attorney General was the proper defendant. The court found that the Secretary of State was neither a necessary nor indispensable party and that "complete relief may be afforded amongst" the Governor and Attorney General in that Section 2 voting rights case.[1] *Terrebonne Parish NAACP v. Jindal* (Doc 171, p. 11) The court stated, "The Secretary of State's duties with regard to election laws are established by the legislature, and he carries out election laws without regard to how election districts are formed or election methods are established." *Id.*

In short, the Secretary of State's duties are purely ministerial and the Secretary of State has no role at all at least in the remedial phase of a Voting Rights Act case. The Court noted that the Secretary of State would continue to carry out his ministerial duties and conduct elections pursuant to any remedial plan adopted by the Louisiana legislature or the court.

The Secretary of State was originally named as defendant in the *Terrebonne Parish NAACP* case. By Order of May 1, 2015 the Secretary of State was dismissed with prejudice as a defendant. (*Terrebonne Parish NAACP*, Doc 69) The plaintiffs requested the dismissal (*Terrebonne Parish*

[1]The court noted that the powers and duties of the Governor, as chief Executive Officer of the state, include reviewing and vetoing legislation, reviewing bills in the Legislature, drafting legislation upon request, formally recording his position on pending legislation, testifying in proceedings before the legislature, appointing a task force to address redistricting and having the power to call an extraordinary session of the Legislature to force it to address redistricting. The Attorney General's powers and duties were found to include obtaining preclearance, if required, for any voting changes impacting the judicial district at issue, attending the legislature during its session, advising other governmental entities on compliance with election law, and defending any remedial plan the Court may grant in a subsequent remedial challenge. *Terrebonne Parish NAACP,* Doc 171, pp. 10 and 11.

NAACP, Doc 68).

Earlier in the *Terrebonne Parish NAACP* case, the Secretary of State moved for dismissal claiming lack of case or controversy and failure to state a claim against him. In finding Article III standing under the factors set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), the Court found a casual connection between the injury suffered and the complained of conduct, and rejected the Secretary of State's argument that "his duties are purely ministerial and concerned with mechanics of conducting elections and therefore, he is without power to enforce, defend, or change the laws governing the voting scheme in the State." (*Terrebonne Parish NAACP*, Doc 32, p. 5.) The Court accepted this same argument in its later ruling on the motion to dismiss filed by the Governor and Attorney General. See *Terrebonne Parish NAACP,* Doc 171, p. 11, "The Secretary of State's duties with regard to election laws are established by the legislature, and he carries out election laws without regard to how election districts are formed or election districts are established."

Further distinguishing the earlier holding in the *Terrebonne Parish NAACP* case (Doc. 32), is the fact that the State of Louisiana is a defendant in the instant case. A judgment against the State of Louisiana will be binding on all its subordinate officials, such as the Secretary of State. See *Tuncia - Biloxi Tribe of La. v. U.S.,* 577 F.Supp.2d 382, 416-417 (D.C. Dist., 2008) ("where a suit binds the United States, it binds its subordinate officials.")

In *Haspel & Davis Milling & Planting Co. v. Board of Levee Commissioner of the Orleans Levee District*, 493 F.3d 570 (5 Cir., 2007) the State of Louisiana's motion to intervene was denied, because the interest of the State was adequately represented by defendant Levee Board. Where one state party adequately represents the interests of the state, there is no need for another state party with similar interests and objectives to be made defendant in the case. (*Haspel*, p. 578)

To have both the State and the Secretary of State in the case, where a judgment against the State will be binding on the Secretary of State, a purely ministerial officer who will conduct elections as established by the Legislature or Court, is a waste of state resources. The cost to the State is doubled by the inclusion of both defendants, twice the attorney fees, filing additional or duplicate motions, more discovery, more costs incurred, longer trial time and motion hearing time, to name only a few. Should defendants prevail in the litigation, plaintiffs could face paying these duplicate attorney fees and costs.

As the State of Louisiana, not the Secretary of State, is the only defendant capable of affording the remedy plaintiffs seek, the forced defense by one with ministerial duties only and no duty to defend the existing districts, should be dismissed from this suit.

Whether the motion to dismiss is considered under Rule 12(b)(1) or Rule 12(b)(6) or Rule 21 or any other motion, it is ripe for consideration by the Court. Rule 12 does not provide an exhaustive list of all preliminary motions. See Rule 7(b)(1).

Motion To Dismiss Under Rule 12(b)(1) Standards

The Secretary of State moves to dismiss the claims against him under FRCP 12(b)(1) because the suit does not present a case or controversy as required by Art. III of the U.S. Constitution. Any injury arising out of the formation of the Louisiana Supreme Court districts or the method of electing justices is not traceable to any conduct, act, duty or authority of the Secretary of State. The Secretary of State has no direct stake in an apportionment of the Louisiana Supreme Court election districts. Secretary Ardoin's duties and responsibilities with respect to elections are primarily ministerial and concerned with the mechanics of holding elections. *Terrebonne Parish NAACP*, Doc 171. The Secretary of State has no role in drawing judicial election districts or establishing the methods of

electing justices. The plaintiffs' alleged injury owes to the conduct of other departments or branches of the State, not the Secretary of State.

When a Motion to Dismiss is predicated on Rule 12(b)(1), the court first resolves the jurisdictional issues. *Ramming v. United States*, 281 F. 3d 158, 161 (5 Cir. 2001). The determination of whether a case or controversy exists is jurisdictional. *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 239-241 (1937). When addressing a lack of subject matter jurisdiction, the court can base its decision on (1) the complaint standing alone, (2) the complaint supplemented by undisputed facts evidenced in the record, and (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. There is no presumption of the truthfulness of plaintiffs complaint allegations when determining whether the court has jurisdiction. *Montez v, Department of Navy,* 392 F. 3d. 147, 149 (5. Cir. 2004).

The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. The plaintiffs constantly bear the burden of proof that jurisdiction does in fact exist. *Ramming v. United States*, 281 F. 3d. 158, 161 (5 Cir. 2001), citing *McDaniel v. United States*, 899 F. Supp. 305, 307 (E. D. Tex. 1995) and *Menchaca v. Chrylser Credit Corp*. 613 F. 2d. 507, 511 (5 Cir. 1980).

Because the court's jurisdiction is implicated, the court must assess the plaintiffs' standing against the Secretary of State. *Coastal Habitat Alliance v. Patterson*, 601 F.Supp.2d 868 (W.D. Tx. 2008).

The Case or Controversy Requirement of Article III

Federal court are of limited jurisdiction, which means they may only hear cases as provided by the Constitution and federal law. *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152

(1908). Article III of the Constitution confines the federal courts to adjudicating actual "cases" and "controversies". *Allen v. Wright*, 468 U.S. 737, 751 (1984). This is so because the Federal Judiciary's authority to exercise judicial review and interpret the Constitution exists on the necessity that it do so in the course of the judicial function of deciding cases. *Marbury v. Madison*, 5 U.S. 137 (1803)

If a dispute is not a proper case or controversy, the courts have no business in deciding it or expounding on the law in the course of doing so. No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal court jurisdiction to actual cases or controversies. *Raines v. Byrd,* 521 U.S. 811, 818 (1997). A controversy exists only when the facts alleged show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a judgment. *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The exercise of judicial power is legitimate only in the last resort and as a necessity in the determination of real, earnest and vital controversy between parties. *Muskrat v. United States*, 219 U.S. 346 (1911).

Were the federal courts merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding, the concept of "standing" would be quite unnecessary. But the "cases and controversies" language of Art. III forecloses the conversion of courts of the United States into judicial versions of college debating forums. *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 473 (1982).

Requirement of Standing and Elements Necessary to Prove Standing

Article III standing enforces the Constitution's case or controversy requirement. *Daimler*

Chrysler Corporation v. Charlotte Cuno, et al., 547 U.S. 332, 341-342 (2006); *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 11 (2004). Standing is an essential part of the case or controversy requirement of Art. III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Because the court's jurisdiction is implicated, the court must assess plaintiffs' standing against defendant Secretary of State. *Coastal Habitat Alliance v. Patterson*, 601 F.Supp.2d 868 (W.D. Tx. 2008), citing *James v. City of Dallas*, 254 F.3d. 551 (5 Cir. 2001). The plaintiffs must prove standing to invoke the court's jurisdiction. The irreducible constitutional minimum of standing contains three elements: (1) plaintiffs must have suffered an injury in fact, (2) there must be a causal connection between the injury and the defendant conduct complained of by the plaintiffs -- the injury must be traceable to a challenged action of the defendant, and (3) it must be likely that the injury will be redressed by a favorable decision against the defendant. *Lujan*, 560-561. Absent proof of the three elements of standing, the court has no jurisdiction over the claim.

The Court Lacks Subject Matter Jurisdiction Over the Claim Against the Secretary of State in This Case

Applying the principles on case or controversy, in *Clerk of Chickasaw County v. Wallace*, 646 F.2d 151, 160 (5 Cir. 1981), a group of persons confined under Mississippi civil commitment laws challenged the constitutionality of commitment procedures in a suit naming the county judges and clerks as defendants. The court found that the judges and clerks did not have a sufficient personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues on which the court so largely depends. Rather than dismissing the case for lack of a case or controversy, the court allowed plaintiffs to substitute and prosecute the case against the state officials that did have the requisite stake in defending the state's interest. The court made it clear that the judges and clerks who lacked an adversarial interest in the contest should

not remain as defendants in the case.

Going to the substantive basis of the suit, plaintiffs allege that having only one majority African American district in the seven Supreme Court districts deprives African American voters an opportunity to participate in the political process and elect candidates of their choice violating Section 2 of the Voting Rights Act. Plaintiffs further contend "Defendants" act in violation of Section 2 by administering, implementing, and conducting future elections for the Louisiana Supreme Court using "an unlawful election method." Only one statement is made about Defendant Secretary of State in ¶ 15 of Doc 1, "The Secretary of State is the State's chief election officer." Plaintiffs ask the Court to order a new method of election for the Louisiana Supreme Court, one that contains a second majority African American district, never alleging any specific duty or relationship on the part of the Secretary of State. .

Assuming that the plaintiffs' claims have legitimacy, nothing about their grievance implicates the Secretary of State. Like the judges and clerks in *Chickasaw County*[2], the Secretary of State does not have the requisite personal stake or interest in the outcome of the controversy to assure the concrete adverseness which sharpens the presentation of issues upon which the courts depend.

The Secretary has no duty or obligation to pass, defend or enforce laws establishing the district boundaries or the method of electing the justices. See, *Okpalobi v. Foster*, 244 F.3d 405, 425-427. There is no justiciable adversity between the plaintiffs and the Secretary of State with regard to plaintiffs' complaint. The Secretary did not create the Louisiana Supreme Court districts. He has no power to change the districts. The particular districts were established by a Consent Decree in a case in the Eastern District of Louisiana. (See motion to dismiss (Doc 27) filed by State

[2]*Clerk of Chickasaw County v. Wallace*, 646 F.2d 151 (5 Cir. 1981).

of Louisiana.)

The Secretary's duties with respect to elections for the Louisiana Supreme Court are purely ministerial. He has no discretion in their exercise. See *Terrebonne Parish NAACP*, Doc 171. The Secretary exercises election responsibilities without regard to how election districts are formed or election methods are established. If this Court reconfigures the districts for elections in the Louisiana Supreme Court, the Secretary of State will go about its business of printing ballots, delivering voting machines, tabulating votes, etc. in accordance with the terms set by lawmakers or the court. Any judgment rendered against the State of Louisiana in this case will be binding on the Secretary of State.

Traceability

Analyzed in terms of the *Lujan* factors, the court need not address whether plaintiffs have sufficiently alleged injury because any injury claimed in the Complaint is not fairly traceable to the Secretary of State. See *Friends of the Earth, Inc. v. Crown Central Petroleum Corporation,* 95 F.3d 358, 360 (5 Cir. 1996).

The second requirement for Article III standing is traceability. *Lujan* requires a causal connection between the injury complained of and the defendant's conduct, that the injury must be fairly traceable to the challenged action of the defendant.

If the injury-in-fact prong focuses on whether the plaintiff suffered harm, then the traceability prong focuses on who inflicted that harm. The plaintiffs must establish that the Secretary of State's challenged actions (none are challenged specifically in the Complaint), and not the actions of some third party, caused the plaintiffs' injury. *Toll Bros., Inc. v. Twp. of Readington*, 555 F.3d 131, 142 (3 Cir. 2009).

The Secretary of State is neither empowered to create judicial districts, establish election methods or enforce laws that do. If the formation of districts or the establishment of election methods have the effect of diluting African American voting strength for elections to the Louisiana Supreme Court, the injury is not traceable to the Secretary of State as a matter of law or a matter of fact. The Secretary of State cannot say what the law is or what it should be. He has no power to change it. He cannot deviate from duties assigned to him by law. All of these matters are assigned to other branches or departments of state government. (In contrast see the discussion of the Attorney General's duties, the Governor's duties and duties of the legislature in fn. 1 of this memorandum.) Defendant State of Louisiana can represent the interests of those parties; and the Secretary of State, with ministerial duties only, will be bound by any decision against the State.

Helpful to the analysis, *Constitution Party v. Cortes*, 712 F.Supp.2d 387 (E.D. Pa. 2010). There, the Constitution Party, Green Party and Libertarian Party challenged the constitutionality of certain sections of the Pennsylvania Election Code alleging that those sections place unreasonable burdens on non-major party candidates. Plaintiffs sued the Secretary of the Commonwealth, justices, judges and other state officials. The court granted a motion to dismiss for lack of standing finding that the plaintiffs failed to show that the injury complained of, even if provable, was traceable to the defendants.

> Moreover, neither the judicial nor executive defendants have the power to change the law. The Justices and Judges adjudicate claims brought by private parties who challenge the nomination paper under the statute, and Mr. Johns and Mr. Krimmel merely process the court's orders. The Executive Defendants simply administer the process created by statute. *Cortes*, 397

The Secretary of State finds himself in the same position here. Although he has been made a defendant in the suit, he did nothing and in fact had no authority to create the district or method

of electing justices to the Louisiana Supreme Court. He simply administers the process created by statute. The Complaint is silent as to any duty of the Secretary of State specifically that caused plaintiffs' harm.

Redressability

The third element of standing is redressability, it must be likely that the injury will be redressed by a favorable decision against the defendant. *Lujan*, 561. This element of standing is missing in the present case. See *Terrebonne Parish NAACP*, Doc 171. The Secretary is powerless to cure the ill raised by the plaintiffs. There is no contention by plaintiffs that he has any authority allowing him to do so. Like the defendants in *Constitution Party v. Cortes*, he has no authority to change the law. He has no power to enforce it. His office could do nothing to resolve the plaintiffs' complaints. Any judgment against Secretary Ardoin cannot address the underlying question, whether the election districts for the Louisiana Supreme Court should be changed if determined to be in violation of Section 2 of the Voting Rights Act.

Exercising jurisdiction against the Secretary of State in this case would compel the Secretary to engage in litigation in which his Department has no stake, interest, role or duty in order to address a complaint that his office has no power to cure. The burdens of litigation and the threat of attorneys fees should not be visited on the Secretary of State where the court lacks jurisdiction over the claim made against him, and where the State of Louisiana is a defendant. Any judgment against the State would bind all state officials, particularly Secretary Ardoin, if needed.

This Rule 12(b)(1) motion be granted and the Secretary of State dismissed as a party to this action.

FRCP 12(b)(6) Motion To Dismiss

Pursuant to Rule 12(b)(6), a district court may dismiss a complaint, or any part of it, for failure to state a claim upon which relief can be granted if plaintiffs have not set forth factual allegations in support of each claim against any defendant that would entitle plaintiffs to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007).

Factual allegations must be enough to raise a right to relief above the speculative level. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In order "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955, 167 L.Ed.2d 929). A claim has facial plausibility only when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* It follows that "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-'that the pleader is entitled to relief.' " *Id.* at 1950.

A Court does not look beyond the factual allegations in the pleadings to determine whether relief should be granted. See *Spivey v. Robertson,* 197 F.3d 772, 774 (5th Cir. 1999); *Baker v. Putnal,* 75 F.3d 190, 196 (5th Cir. 1996). A court must accept all well-pleaded facts as true and liberally construe all factual allegations in the light most favorable to the plaintiff. *City of Clinton v. Pelgrim's Pride Corp.*, 632 F.3d 148, 152-153 (5th Cir. 2010). *A & M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997). "Dismissal is appropriate when the complaint 'on its face show[s] a bar to relief.' " *Cutrer v. McMillan*, 308 Fed. Appx. 819, 820 (5th Cir. 2009) (quoting *Clark v. Amoco*

Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986)).

The Complaint

The Secretary of State is mentioned by name only once throughout the 70 paragraph Complaint. See para. 15. There is only one reference to "Defendants" as a unit. See paragraph 70.

Paragraph 15 notes that the Secretary of State is sued in his official capacity as Louisiana Secretary of State. The paragraph does not list the Secretary of State's duties and states only that he is the State's chief election officer. We know from the opinion in *Terrebonne Parish NAACP* (Doc 171) that the Secretary of State has only ministerial duties.

In paragraph 70 of the Complaint, the allegations are made against "Defendants" collectively, and speak of no duty required of the Secretary of State.

Claims Against The Secretary of State Should Be Dismissed

The Secretary of State did not adopt the current districts for the Louisiana Supreme Court which have only one majority minority district nor did the Secretary of State maintain this method by refusing to change the districts as the Secretary of State is not empowered to change a court order or a Louisiana law. Nowhere are facts alleged to show that this defendant, the Secretary of State, has the legal ability to effectuate amendments to Louisiana law. Therefore, his ministerial application of current Louisiana law and a consent decree cannot be attributed to the Secretary of State, and the Complaint lacks any plausible factual allegations to make that link.

The plaintiffs have failed to state a claim against the Secretary of State for any alleged violation. The Rule 12(b)(6) motion should be granted and all claims against the Secretary of State dismissed.

FRCP 21 Motion To Dismiss

Motions under FRCP 12 are not the only preliminary motions that can be filed. See Rule 7(b). FRCP 21 provides in part: "on motion or on its own the court may at any time add or drop a party." The court may order dismissal of a party such as the Secretary of State subject to the need to protect all parties from unfair prejudice. *Newman Green, Inc. v. Alfonzo-Larrain,* 109 S.Ct. 2218, 2223 (1980).

Rule 21 is applicable here. It has been applied to suits for declaratory judgment, *F.X. Hooper Co., Inc. v. Samuel M. Langston Co., et al,* 56 F.Supp. 577 (D. New Jersey, 1944) and suits for injunctive relief (*Zambelli v. Fireworks Manufacturing Co., Inc. v. Wood,* 592 F.3d 412, 420-421 (3 Cir. 2010).

In *Zambelli v. Fireworks Manufacturing Co., Inc. v. Wood,* 592 F.3d 412, 420-421 (3 Cir. 2010), things considered by the court in deciding whether to dismiss under Rule 21 were "consideration of efficiency, fairness and judicial economy", citing *Caterpillar Inc. v. Lewis,* 19 U.S. 61, 75 (1996) and *Newman-Green, Inc. v. Alfonzo-Larrain,* 490 U.S. 826, 836 (1989). Also to be considered is whether the Secretary of State is dispensable to the action.[3] In so determining, *Zambelli* considered Rule 19, *Required Joinder of Parties*, more or less in reverse. Rule 19(b) establishes "equity and good conscience" as a basis for making the required determination. Other specified factors in Rule 19(b) are (as changed somewhat to meet this situation):

(1) The extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

[3]Although in the *Terrebonne Parish NAACP* case, the court considered the Secretary of State an indispensable party in his first cited ruling (Doc 22), the State of Louisiana was not a party to that action. The later ruling (Doc 171) found the Secretary of State neither necessary nor indispensable and in fact dispensable.

(2) The extent to which any prejudice could be lessened or avoided by (enumerated measures);

(3) Whether a judgment rendered in the person's absence would be adequate; and

(4) Whether the plaintiff would have an adequate remedy if the party seeking dismissal would be dismissed.

Factors (3) and (4) are satisfied by the State of Louisiana being the other defendant in the case, as a judgment against the State of Louisiana would bind the Secretary of State. The claims against both defendants are exactly the same, as would be the defenses.

Factor (1) is satisfied for the same reason. No prejudice will result to any party in this case. The Secretary of State will be bound by any judgment rendered against the State of Louisiana. The State of Louisiana has competent counsel that can adequately represent the interests of the State as well as the Secretary of State, two parties sharing the same objectives in the litigation, defense of the laws of Louisiana.

Not only no prejudice, but benefits to all parties and the court would result from the dismissal of the Secretary of State. The Louisiana state general fund would benefit as it would not be faced with expending double attorney fees and double costs in raising two like defenses in the same litigation. Judicial economy would be served by having only one defendant representing Louisiana's interest. The plaintiffs would benefit by having only one adversary in the suit and not facing double costs and double attorney fees in the event the defendant prevails.

The lack of prejudice coupled with actual benefit to all parties make consideration of the second factor unnecessary. The dismissal of the Secretary of State is efficient, fair and serves judicial economy.

The Court is urged to consider these factors, use its discretion, to act with "equity and good

conscience" and in the interests of justice "on just terms" and dismiss without prejudice the Secretary of State as a defendant in this case. To maintain the Secretary of State as a defendant would be not only superfluous but duplicate expenses for the state (and possibly for the plaintiffs). By the dismissal, judicial economy would prevail and judicial resources be reserved.

CONCLUSION

Dismissal of the Secretary of State should be granted under FRCP 12(b)(1) and 12(b)(6) with prejudice. A dismissal without prejudice would be the proper remedy if granted under FRCP 21.

The motion to dismiss filed by the State of Louisiana (Doc 27) provides other meritorious grounds for dismissal of both defendants in this case.

Respectfully Submitted:

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Attorney for R. Kyle Ardoin, Louisiana Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed electronically and served on counsel for the parties by electronic notification by CM/ECF on October 4, 2019.

s/Celia R. Cangelosi
CELIA R. CANGELOSI

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

LOUISIANA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; ANTHONY ALLEN; and STEPHANIE ANTHONY	Civil Action No. 3:19-cv-00479 JWD-EWD
v.	
STATE OF LOUISIANA; and R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana	

ORDER

Considering the *Motion To Dismiss By Defendant, R. Kyle Ardoin, Louisiana Secretary of State*:

IT IS HEREBY ORDERED that all claims against defendant R. Kyle Ardoin in his official capacity as Louisiana Secretary of State, are dismissed with prejudice.

Baton Rouge, Louisiana, this _____ day of _____, 2019.

_____
JOHN W. deGRAVELLES
Judge, Middle District of Louisiana