

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL,
Plaintiff

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CIVIL ACTION 3:12-cv-657

VERSUS

CHIEF JUDGE BRIAN A. JACKSON

STATE OF LOUISIANA, PIYUSH
("BOBBY") JINDAL, in his official
capacity as Governor of the State of
Louisiana, JAMES "BUDDY"
CALDWELL, in his official capacity as
Attorney General, and TOM
SCHEDLER, in his official capacity as
the Louisiana Secretary of State, CITY
OF BATON ROUGE, PARISH OF
EAST OF BATON ROUGE, and
BATON ROUGE CITY COURT,
Defendants

MAGISTRATE DOCIA L. DALBY

**MEMORANDUM IN SUPPORT OF MOTION ON BEHALF OF THE STATE OF
LOUISIANA, LOUISIANA GOVERNOR BOBBY JINDAL AND LOUISIANA
ATTORNEY GENERAL JAMES D. "BUDDY" CALDWELL TO DISMISS
COMPLAINT, FIRST AMENDING AND SUPPLEMENTAL COMPLAINT AND
REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION**

MAY IT PLEASE THE COURT:

The State of Louisiana ("the State") and Louisiana Governor Bobby Jindal ("Governor Jindal") and Louisiana Attorney General James D. "Buddy" Caldwell ("Attorney General Caldwell"), in their official capacities, submit this memorandum in support of their motion to dismiss Plaintiff's Complaint, First Amending and Supplemental Complaint and Request for Preliminary and Permanent Injunction.¹ For the reasons discussed herein, Plaintiff's suit should be dismissed, with prejudice, at his cost.

¹ Movants filed their motion pursuant to and in accordance with the Court's order of October 29, 2012, Doc. 32, without waiving any defenses known or unknown and reserving the right to amend and supplement this motion as/should ordinary proceedings progress.

A. INTRODUCTION

Plaintiff, a Louisiana citizen², filed the instant suit against the State of Louisiana and three of its elected officials in their official capacities only.³ Subsequently, Plaintiff amended his complaint to add as defendants the City of Baton Rouge, the Parish of East Baton Rouge and “Baton Rouge Court”.⁴ The plaintiff alleges that the method for electing Baton Rouge City Court Judges violates the federal Voting Rights Act (“VRA”). Plaintiff seeks declaratory and injunctive relief. Movants herein show that this suit against the State, Governor Jindal and Attorney General Caldwell is barred by the Eleventh Amendment. Additionally, and in the alternative, a careful review of the entirety of both the original and amending and supplemental complaints reveals that is no valid basis for the joinder of Governor Jindal or Attorney General Caldwell as defendants.

B. LAW AND ARGUMENT

1. The Eleventh Amendment Bars This Suit

Plaintiffs bring this suit against the State of Louisiana and three of its elected officials in their official capacities only. This Court does not have jurisdiction over such claims, as they are barred by the Eleventh Amendment. Only in limited circumstances—when the federal law clearly abrogates the states’ sovereign immunity, or when the states themselves voluntarily waive immunity—are states subject to suit in federal court. Those circumstances do not exist in this matter, and Plaintiff’s claims against the State, Governor Jindal and Attorney General Caldwell must be dismissed.

² Doc. 1, par. 4.

³ Doc. 1, pars. 5-9.

⁴ Doc. 13, pars.4-6.

The Eleventh Amendment forbids federal courts from entertaining a suit brought by a citizen against his own state.⁵ Congress may abrogate this immunity or a state may waive it, but such waiver must be express and unequivocal.⁶ “A general authorization for suit in federal court is not the kind of unequivocal statutory language sufficient to abrogate the Eleventh Amendment.”⁷ It is also well-settled that lawsuits against government officials acting in their official capacities are considered to be lawsuits brought against the entity of which they are agents,⁸ and the law is clear that state officials may invoke Eleventh Amendment sovereign immunity when they are sued in their official capacities.⁹ The immunity from suit constitutionally protected by the Eleventh Amendment applies to both monetary and injunctive relief¹⁰ unless certain narrow exceptions, not present here, apply.

a. Louisiana has not waived sovereign immunity

This Court and the United States Court of Appeals for the 5th Circuit have repeatedly recognized that Louisiana has not waived its immunity generally from suit in federal court.¹¹ La. R.S.13:5106(a) provides that “no suit against the state shall be instituted in any court other than a Louisiana state court.” Plaintiff’s claims are purportedly brought pursuant to 42 USC Section 1983 and the VRA.¹² It is well settled that Louisiana has not waived its sovereign immunity

⁵*Pennhurst State Sch. v. Halderman*, 465 U.S. 89, 98 (1984); *Voisin’s Oyster House, Inc. v. Guidry*, 799 F. 2d 183, 185-86 (5th Cir. 1986).

⁶*See Edelman v. Jordan*, 415 U.S. 651, 673 (1974); *Welch v. Dep’t of Highways*, 780 F. 2d 1268, 1271-63 (5th Cir. 1986).

⁷*Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 246, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985)).

⁸*See Kentucky v. Graham*, 105 S.Ct. 3099 (1985); see also *Baker v. Putnal*, 75 F.3d 190 (5th Cir. 1996).

⁹*Edelman, supra*, at 663.

¹⁰*See, e.g., Cozzo v. Tangipahoa Parish Council--President Government*, No. 00-30104 (5th Cir. 2002), 279 F.3d 273.

January 10, 2002

¹¹*See, e.g., Patterson v. Stalder*, 2007 WL 2479830 (W.D.La. Aug. 27, 2007)) (not reported in F.Supp.2d), citing *Usry v. Louisiana Department of Highways*, 459 F.Supp. 56, 63-64 (E.D.La.1978); *Kiper v. Louisiana State Bd. of Elementary and Secondary Education*, 592 F.Supp. 1343 (M.D.La.), *aff’d* 778 F.2d 789 (5th Cir.1985).

¹² Doc. 1, the original complaint, at par. 2, cites Section 1983 as a basis for jurisdiction and relief. It appears that this basis was abandoned in Doc. 13, the First Amending and Supplemental Complaint, though “all factual allegations” of the original complaint were re-alleged by reference (Doc. 13 at par. 8). As a result, movants herein

from Section 1983 actions,¹³ and Plaintiff has made no showing that Louisiana has waived its right to sovereign immunity with respect to this suit under the VRA.

b. Congress has not abrogated sovereign immunity as to Plaintiff's claims

The Supreme Court has held that Congress did not intend to abrogate the states' immunity to suit in Section 1983 claims.¹⁴ Additionally, the VRA does not expressly abrogate sovereign immunity to allow this plaintiff to sue the State or Governor Jindal and Attorney General Caldwell in their official capacities under the circumstances alleged by him. The provisions of the VRA cited by Plaintiff, Sections 1973c and 1973j(d), do not expressly provide a private right of action against a State, but rather authorize an action by the United States Attorney General. Thus, no Congressional abrogation can be found in the specific statutes invoked by Plaintiff.

2. Plaintiff has failed to state a claim on which relief can be granted

a. For injunctive relief

Plaintiff has a four-pronged burden of proof in order to obtain injunctive relief. . It is clear from the arguments made herein as well as those of the Louisiana Secretary of State, adopted by reference as if copied herein *in extenso*, that Plaintiff cannot meet his burden in this case. Accordingly, the request for preliminary injunction should be denied.

b. Governor Jindal

Other than general conclusory allegations scattered throughout Plaintiff's original and first amending and supplemental complaint, the only direct allegations against Governor Jindal

will forego extended Section 1983 analysis. Suffice it to say that if such a claim is in fact being asserted against the State or state actors in their official capacities, that claim is not legally valid. To the extent that Plaintiff believes or intends that any Section 1983 allegations remain in this case, the citations herein show clearly that they must be dismissed.

¹³ *Kervin v. City of New Orleans*, 2006 WL 2849861 *2 (E.D. La. 9/28/2006).

¹⁴ *Quern v. Jordan*, 440 U.S. 332, 99 S.Ct. 1139, 59 L. Ed. 2d 358 (1979).

are found in the original complaint¹⁵ at paragraphs 67-68 and 72-73. It is clear these allegations are insufficient to state a claim under either Section 1983 or the VRA. Further, Plaintiff has alleged no actionable facts whatsoever showing that Governor Jindal, in his official capacity, has violated Plaintiff's constitutional rights in any way. Lastly, Plaintiff has failed to show that Governor Jindal is the proper party to provide the relief requested by Plaintiff. Based on all the foregoing, Plaintiff cannot maintain this action against Governor Jindal and Governor Jindal should be dismissed as a defendant from this suit.

c. Attorney General Caldwell

Neither the original nor the first amending and supplemental complaint makes any direct allegations as to any actionable conduct by Attorney General Caldwell. Further, Plaintiff makes no showing that Attorney General Caldwell is the property party to provide the relief requested by Plaintiff. There is absolutely no basis for Attorney General Caldwell to be a defendant in this matter, and he should be dismissed.

d. For declaratory relief or attorney fees

Since Plaintiff has no valid cause of action on his substantive claims under either the VRA or 42 USC Section 1983, he is not entitled to declaratory relief or attorney fees arising therefrom.

C. CONCLUSION

The Plaintiff's suit against the State of Louisiana and Governor Bobby Jindal and Attorney General James D. "Buddy" Caldwell, in their official capacities, is barred by the Eleventh Amendment. Even if it were not barred, Plaintiff has failed to state a claim on which relief can be granted against them. Movants respectfully request that the Court dismiss the

¹⁵Doc. 1.

claims against them with prejudice at Plaintiff's cost.

RESPECTFULLY SUBMITTED,

**JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL**

/s/ Patricia H. Wilton

BY: PATRICIA H. WILTON (#18049)

WILLIAM P. BRYAN III (# 26826)

ASSISTANT ATTORNEYS GENERAL

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Counsel for the State of Louisiana, Louisiana Governor

Bobby Jindal and Louisiana Attorney General James D.

"Buddy" Caldwell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **1st** day of **November, 2012**, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, and notice will be sent to counsel for Plaintiff, KENNETH HALL, by operation of the court's electronic filing system.

/s/ Patricia H. Wilton

PATRICIA H. WILTON