UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL
Plaintiff,
and

BYRON SHARPER
Plaintiff-Intervenor,

v.

STATE OF LOUISIANA, et al

Defendants.

CLASS ACTION

CIVIL ACTION NO.: 3:12-cv-657 BAJ/RLB

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF KENNETH HALL'S MOTION FOR CLASS CERTIFICATION

INTRODUCTION

Plaintiff submits this memorandum of law in support of his motion, pursuant to Federal Rule of Civil Procedure 23, to certify this lawsuit as a class action. The proposed class is defined as: All individuals who are presently and/or potentially eligible African American voters and future voting-age African Americans who reside, or will reside, in the City of Baton Rouge, Louisiana, specifically, Election Sections 1 and 2 as defined in LSA-R.S. §13:1952(4).

Plaintiff seeks to maintain this class pursuant to Federal Rule of Civil Procedure 23(b)(1) & (2) on the issues of whether Defendants engaged in unlawful discrimination; whether they should be enjoined from engaging in such discrimination in the future; and on plaintiff's claim for attorney fees pursuant to 42 U.S.C. §1973(*l*) and §1988.

FACTUAL BACKGROUND

Plaintiff Hall commenced this action against the State of Louisiana, Governor Piyush "Bobby" Jindal, Attorney General James "Buddy" Caldwell, East Baton Rouge Parish, City of

Baton Rouge, and Baton Rouge City Court (hereinafter collectively referred to as "Defendants") on grounds that the continued use of the remedial, legislatively created 1993 Judicial Election Plan [LSA-R.S. §13:1952(4)(a-d)] impermissibly dilutes and diminishes the voting strength of Plaintiff Hall, which violate the United States Constitution and several Federal civil rights statutes. In filing the Complaint, Plaintiff Hall pled the elements of a class action under Federal Rule of Civil Procedure 23. Plaintiff Hall now submits this memorandum in support of his motion for class certification pursuant to Rule 23.

The class action is a nontraditional litigation procedure permitting a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common or general interest to persons so numerous as to make it impracticable to bring them all before the court. *See Herbert B. Newberg & Alba Conte*, 1 Newburg on Class Actions, § 1.01, p. 1-2, 1-3 (3d ed. 1992). In considering a motion for class certification, the court does not reach the merits however there is necessarily some consideration of merits issues. In *Wall Mart Stores, Inc. v. Dukes* 131 S. Ct. 2541, 180 L.Ed. 2d 374, (2011) the Supreme Court analyzed the process as follows:

> Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc. We recognized in *Falcon* that "sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question," 457 U.S., at 160, 102 S.Ct. 2364, and that certification is proper only if "the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied," *id.*, at 161, 102 S.Ct. 2364; see *id.*, at 160, 102 S.Ct. 2364 ("[A]ctual, not presumed, conformance with Rule 23(a) remains ... indispensable"). Frequently that "rigorous analysis" will entail some overlap with the merits of the plaintiff's underlying claim. That cannot be helped. The analysis under Rule 23 must focus on the requirements of the rule, and if findings made in connection with those requirements overlap findings that will have to be made on the merits, such overlap is only coincidental. *Regents University of California v. Credit Suisse* 482 F. 2d 372 (5th Cir. 2007) p. 381. Instead, the determination whether class certification is appropriate can be made on the pleadings in light of the procedural requirements of Rule 23. *See, e.g.,*

> *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974); *see also, e.g., Weathers v. Peters Realty Corp.*, 499 F.2d 1197, 1201 (6th Cir. 1974); *Little Caesar Enterprises, Inc. v. Smith*, 172 F.R.D, 236, 241 (E.D. Mich. 1997) ("[i]n determining whether to certify a class, inquiry into the merits of plaintiff's claims is limited though "a judge should make whatever factual and legal inquiries are necessary under Rule 23 ... and if some of the considerations under Rule 23(b)(3) ... overlap the merits ... then the judge must make a preliminary inquiry into the merits."

Rule 23 sets forth the prerequisites for maintaining a class action and establishes that the use of the class action device is appropriate when:

> 1) (a) Prerequisites.
>
> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) The class is so numerous that joinder of all members is impracticable,
>
> (2) There are questions of law or fact common to the class,
>
> (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) The representative parties will fairly and adequately protect the interests of the class.

All of the above elements must be present for an action to be properly certified as a class action. The fundamental question however is quite specific. "What matters to class certification ... is not the raising of common 'questions'—even in droves—but, rather the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Dukes* p. 2251.

The facts alleged in this case that are undisputed are plainly sufficient to support grant of Plaintiff's motion for certification. Plaintiff Kenneth Hall is an African American citizen, resident of the United States and a resident of, a qualified elector and a registered Democratic voter in the City of Baton Rouge, Parish of East Baton Rouge, Louisiana, which is located within

the electoral and territorial boundary of the State of Louisiana's 1993 Judicial Election Plan, Section 2's sub-district. Complaint at ¶4. His interest in the fairness and integrity of the judicial system and the appearance of fairness and integrity in the judicial system is shared with and common to every other African American resident of the City of Baton Rouge. Neither the numbers of representative parties nor their financial interests is controlling in determining whether the Plaintiff will fairly and adequately protect the interests of this class. A single plaintiff may represent the entire class, no matter how small his claim may be, if other factors indicate that he will fairly and adequately protect the interests of his class. *Epstein v. Weiss*, 50 F.R.D. 387, 391 (E.D. La. 1970).

This is an action to enjoin violations of Section 5 of the Voting Rights Act of 1965, as amended 42 U.S.C. §1973. This is also an action to declare and to enjoin violations of (a) Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, as guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution, (b) the democratic principles of majority rule and individualistic egalitarianism of the United States Constitution, and (c) to enjoin and declare violations of Plaintiff Hall's civil and voting rights that are guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

Injunctive relief is the only procedural remedy Plaintiff and absent class members have under Section 5 of the Voting Rights Act of 1965. As the court so eloquently stated in *United States v. State of Louisiana, at el*, 952 F.Supp. 1151 (W.D. LA 1997), "an injunction is the ***only*** remedy available for a §5 violation. [I]n the context of a §5 violation that must be remedied by a three-judge panel like this one, a trial on the merits is not an option. The Supreme Court has made it abundantly clear that our sole job is to ensure timely compliance with §5." 952 F. Supp

at 1161. (Emphasis added.). It is transparent that an injunction under Section 5 that affects the procedure for electing candidates for office can not be issued so as to protect Plaintiff alone.

Section 5 of the Voting Rights Act of 1965 provides that "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect in the City of Baton Rouge, Louisiana; in the Parish of East Baton Rouge, Louisiana; and/or in the State of Louisiana on November 1, 1964, ***may not*** be lawfully implemented unless the State of Louisiana, or other appropriate authority with the power to enact or administer voting changes such as the City of Baton Rouge or the Parish of East Baton Rouge obtain a declaratory judgment from the United States District Court for the District of Columbia that the changes do not have the purpose, and will not have the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. §1973c; *McCain v. Lybrand*, 465 U.S. 236, 256, 104 S.Ct. 1037, 1049, 79 L.Ed.2d 271 (1984). (Emphasis added.)

However, such change may be implemented without such judgment if it has been submitted to the United States Attorney General, and the Attorney General has not interposed an objection within sixty days. 42 U.S.C. §1973c. Administrative and judicial preclearance require the submitting jurisdiction to demonstrate that the proposed changes in voting do not have the purpose or effect "of denying or abridging the right to vote on account or race or color." 42 U.S.C §1973c. Put simply, the submitting jurisdiction must prove that the voting change does not have a retrogressive effect. *See Holder v. Hall*, 512 U.S. 874, 883, 114 S.Ct. 2581, 2587, 129 L.Ed.2d 687 (1994), (plurality opinion); *Clark v. Roemer*, 500 U.S. 646, 111 S. Ct. 2096, 114 L. Ed. 2d 691 (1991) p. 2100.

Plaintiff Hall's Original Complaint (R. Doc 1) requests relief pursuant to Section 5 of the Voting Rights Act of 1965, in paragraphs: b(i) and b(ii). Plaintiff's First Amending and

Supplemental Complaint (R. Doc 13) requests relief pursuant to Section 5 of the Voting Rights Act of 1965, in paragraphs a - e.

Plaintiff Hall's remedy at law is for a Section 5 injunction with respect to election of judges to the Baton Rouge City Court, under any changes by the State of Louisiana, the Parish of East Baton Rouge, and/or the City of Baton Rouge to voting qualifications or prerequisites to voting, or standard, practice or procedure, particularly the current 1993 Judicial Election Plan. Plaintiff Hall contends that the Defendants did not obtain preclearance and/or a judgment from the Justice Department or the United States District Court for the District of Columbia prior to or after passing of numerous provisions of law enacted from the effective date of Section 5 of the Voting Rights Act of 1965.

Plaintiff Hall's Original Complaint (R. Doc 1) also requests relief pursuant to Section 2 of the Voting Rights Act 1965, as guaranteed by the 14th and 15th Amendments to the United States Constitution and the Majority Rule Principle, as articulated in paragraphs b(i-v) and c - i.

Plaintiff Hall alleges that the Defendants violated Section 2 of the Voting Rights Act. The complaint specifically alleges that the minority vote in the City of Baton Rouge has been impermissibly diluted by the election of judges pursuant to the 1993 Judicial Election Plan and that the plan as structured has had retrogressive effect compounded by the fact that the former minority class citizens have become the majority in population, voting age population and number of registered voters in the City of Baton Rouge. Plaintiff Hall also alleges systematic and sequential facts that support invidious discrimination by the Defendants based on race in the process of electing judges to the Baton Rouge City Court.

Defendants continue to use and operate the unconstitutional 1993 Judicial Election Plan and as a result, Plaintiff Hall's vote, and the vote of each absent class member, is, and will

continue to be diluted. This unlawful practice has caused Plaintiff Hall and absent class members to become subject to the jurisdiction of an unlawfully elected City Court that lacks the appearance of racial impartiality because votes cast by white residents have greater weight under the present system than do the votes of African American electors like Plaintiff Hall and absent class members.

Plaintiff Hall, therefore, seeks various types of relief, including, but not limited to a declaration that Defendants have violated his constitutional rights pursuant to the Fourteenth and Fifteenth Amendment to the United States Constitution; orders enjoining Defendants from continuing to discriminate on the basis of race in the continued use, operation, and maintenance of the 1993 Judicial Election Plan; declarations that the 1993 Judicial Election Plan are a violation of Section 2 of the 1965 Voting Rights Act and an award of reasonable attorneys' fees. Again, because the relief sought would change an election process in which all class members have a right to participate, the declaratory judgment and injunctions sought by Plaintiff Hall would necessarily apply to all class members and be common to all class members because it is impossible for the Court to grant relief that would be specific to Plaintiff Hall.

ARGUMENT

I. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS ESTABLISHED BY FEDERAL RULE OF CIVIL PROCEDURE 23.

A lawsuit may be certified as a class action if the proposed class meets all of the requirements of Rule 23(a) and fits within one of the subcategories of Rule 23(b). *Senter v. General Motors Corp.*, 532 F.2d 511, 522 (6th Cir. 1976), *cert. denied*, 429 U.S. 870 (1976). Class certification is appropriate in this case under any "rigorous analysis" of the Rule 23 requirements set out by the court in *Dukes*, supra.

A. The Proposed Class Meets the Requirements of Rule 23(a).

Rule 23(a) contains four prerequisites that must be satisfied for a lawsuit to proceed as a class action:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members of the class is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

All four elements are met here, as discussed in detail below.

1. Numerosity

The numerosity requirement of Rule 23(a)(1) is met when Plaintiff demonstrates the "impracticality" of joinder; the rule does not require "impossibility." *Little Caesar Enterprises, Inc. v. Smith*, 172 F.R.D. 236, 242 (E.D. Mich. 1997); 1 H. NEWBERG & A. CONTE, NEWBERG ON CLASS ACTIONS, ¶ 3.03 (3rd ed. 1992) (hereinafter "NEWBERG"). Plaintiff Hall can satisfactorily demonstrate that the number of potential class members is too large for joinder even if Plaintiff Hall does not know the exact number of class members. *Senter v. General Motors Corporation*, 532 F.2d 511, 523 n.24 (6th Cir. 1976); *In re Consumers Power Co. Securities Litigation*, 105 F.R.D. 583, 601 (E.D. Mich. 1985, *see also* 7A WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE 1762 (2d ed. 1986) (hereinafter "WRIGHT MILLER").

The class may include persons already harmed by the Defendants' conduct, as well as persons who will be harmed in the future. *See, e.g., Bromley v. Michigan Education Assn.*, 178 F.R.D. 148, 162 (E.D. Mich. 1998); *Smith v. Babcock*, 748 F. Supp. 501, 506 (E.D. Mich. 1990), *vacated an other grounds*, 951 F.2d 350 (6th Cir. 1991); *Afro American Patrolmen's League v. Duck*, 366 F. Supp. 1095, 1099 (N.D. Ohio 1973) ("the really important persons

affected by this [class action] litigation" were future minority applicants), *aff'd in relevant part, remanded on other grounds*, 503 F.2d 294, 298 (6th Cir. 1974).

The identity of the electors in Election Sections 1 and 2 of the 1993 Judicial Election Plan as of October 12, 2012 is known. Election Sections 1 and 2 as of October 1, 2012 had 70,866 Black registered voters constituting (52.4%) of the voting population.[1] Thus, just the sheer number of past and future registered voters who are subject to discrimination plainly makes joinder impracticable. *See, e.g., Bittinger v. Tecumseh Products Company*, 123 F.3d 877, 884 n.1 (6th Cir. 1997) (rejecting as "frivolous" the contention that a class of 1,100 did not meet the numerosity requirement of the rules); *Michigan State University Faculty Ass'n. v. Michigan State University*, 93 F.R.D. 54, 56 n.1 (W.D. Mich. 1981) (class of 319 members found sufficient) (when a class numbers in the hundreds or thousands, the impracticability of joinder is obvious"); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of American, UAW v. Acme Precision Products, Inc.*, 515 F. Supp. 537, 540 (E.D. Mich. 1981) (certifying class of only 78 members).

Moreover, even if numerosity were an issue, the requirement is relaxed when Plaintiff Hall, as here, seeks injunctive or declaratory relief. *See Smith v. Babcock*, 748 F. Supp. 501, 505 (ED. Mich. 1990), vacated on other grounds, 951 F.2d 350 (6th Cir. 1991). Consequently, there cannot be any serious doubt that Plaintiff Hall's proposed class satisfies the numerosity requirement of Rule 23(a).

[1] Louisiana Secretary of State, Registration Statistics is attached hereto as Exhibit A. The number 17 designates the registered voters that are for the Parish of East Baton Rouge. The acronym CCT designates the City Court of Baton Rouge. The acronyms X1 and X2 designate Election Sections 1 and 2 of the Judicial Election Plan, respectively.

2. Commonality

The "commonality" requirement of Rule (23)(a) means only that there must be some question of law or fact common to the class. "The commonality test 'is, qualitative rather than quantitative, that is there need be only a single issue common to all members of the class.'" *In re American Medical Systems, Inc.* 75 F.3d 1069, 1090 (6th Cir. 1996) (*quoting* 1 NEWBERG 3.10). Sufficient commonality is shown where the allegations are that the party opposing the class engaged in some course of conduct that affects a group of persons and gives rise to a cause of action. *Id.* In this case, Plaintiff Hall's allegations demonstrate significant commonality of both facts and law. By its nature, "[r]ace discrimination is peculiarly class discrimination." *Senter v General Motors Corporation*, 532 F.2d 511, 524 (6th Cir. 1976); *General Telephone Co. v. Falcon*, 457 U.S. 147, 157 (1982) ("suits alleging racial or ethnic discrimination are often by their very nature class suits, involving class wide wrongs and that '[c]ommon questions of law or facts are typically present'") (quoting *East Texas Motor Freight System Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977)).

The Supreme Court in *Dukes* at page 2551 entered the following comment about commonality:

> Commonality requires the plaintiff to demonstrate that the class members "have suffered the same injury," (internal citation omitted). This does not mean merely that they have all suffered a violation of the same provision of law. Title VII, for example, can be violated in many ways—by intentional discrimination, or by hiring and promotion criteria that result in disparate impact, and by the use of these practices on the part of many different superiors in a single company. Quite obviously, the mere claim by employees of the same company that they have suffered a Title VII injury, or even a disparate-impact Title VII injury, gives no cause to believe that all their claims can productively be litigated at once. Their claims must depend upon a common contention—for example, the assertion of discriminatory bias on the part of the same supervisor. That common contention, moreover, must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.

The Complaint here alleges a systematic use of race as a factor in the continued use, operation, and maintenance of the 1993 Judicial Election Plan. This is not a case in which Plaintiff Hall alleges that the discriminatory practices applied to him alone; all members of the African American race suffer (and will suffer) injury. These common injuries in fact also have common legal remedies -- claims under 42 U.S.C. §§ 1973 and 1983. Plaintiff Hall's action, therefore, unquestionably satisfies the "commonality" requirement of Rule 23(a).

3. Typicality

The "typicality" requirement of Rule 23 (a) overlaps and merges with the "commonality" requirement. *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13, 102 S.Ct. 2364, 72 L.Ed. 2d. 740 (1982). Typicality exists where plaintiff's claims and those of other class members arise from the same event or course of conduct. See 1 NEWBERG 3.13, at 3-76. As discussed above regarding the element of "commonality," plaintiff's claims of unlawful discrimination arise from Defendants' continued use, operation, and maintenance of the 1993 Judicial Election Plan that adversely affect all African American voters in the sub-districts. Accordingly, Plaintiff Hall's claims satisfy the typicality requirements of Rule 23(a).

4. Adequacy of Representation

The adequacy of representation requirement also tends to merge with the commonality and typicality requirements of Rule 23(a). *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157, 102 S.Ct. 2364, 2370, 72 L.Ed. 2d. 740. The Fifth Circuit looks to two criteria for satisfaction of the "adequacy of representation" element: (1) the class representatives' willingness and ability to serve and (2) conflicts of interest between the named plaintiffs and the class they

seek to represent. *Langbecker v. Electronic Data Systems Corp.*, 476 F.3d 299, 314, (5th Cir. 2007).

Both criteria are clearly met in this case. Plaintiff Hall is an African American citizen, resident of the United States and a resident of, qualified elector and registered Democrat in the City of Baton Rouge and Parish of East Baton Rouge, which is located within the electoral and territorial boundary of the State of Louisiana's 1993 Judicial Election Plan, Section 2's sub-district.

In *Lance v. Coffman*, 549 U.S. 437, 127 S. Ct. 1194, 167 L.Ed. 2d 29 (2007), United States Supreme Court held that a plaintiff must have a particular interest in a case or controversy to have standing to bring the action beyond that created by simple membership in the general public. This requirement is satisfied in the instant matter for the named plaintiff and for each unnamed class member by the fact that they have experienced vote dilution by the operation of the 1993 Judicial Election Plan. *See Whitcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1858, 29 L..Ed. 2d 363 (1971).

Plaintiff Hall is represented by counsel who are well knowledgeable in the law and who have years of experience is class action litigation. He has able counsel to represent the class in this proceeding.

B. The Proposed Class Fits Squarely Within Rule 23(b)(1) & (2).

When the prerequisites of Rule 23(a) are satisfied, an action may be maintained as a class action when it qualifies under any one of three conditions set forth in Rule 23(b). An action can qualify and be certified under more than one of the Rule 23(b) scenarios. *See, e.g., Mertz v. Harris*, 497 F. Supp. 1134, 1139 (S.D. Tex. 1980) (certifying class under Rules 23(b)(1) & (2)); *Dale Electronics, Inc. v. R.C.L. Electronics, Inc.*, 53 F.R.D. 531, 536-37 (D.N.H. 1971)

(class certified under Rules 23(b)(1) & (2)); l NEWBERG, 4.08. In this case, Plaintiff seeks certification under both Rules 23(b)(1) & (2).

1. Plaintiff Hall's Claims Qualify for an Injunctive and Declaratory Class Under Rule 23(b)(2).

Rule 23(b)(2) permits class certification when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). These elements are met in the present case. As discussed above, Plaintiff Hall alleges that Defendants discriminate in a categorical manner on the basis of racial identity, and Plaintiff Hall seeks both declaratory and injunctive relief from Defendants' unlawful practices. The relief sought is far both present and future African American voters.

"Lawsuits alleging class-wide discrimination are particularly well suited for 23(b)(2) treatment since the common claim is susceptible to a single proof and subject to a single injunctive remedy." *Senter v. General Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976). Plaintiff's case therefore, presents a paradigm for certification under Rule 23(b)(2). *See also Amchem Products, Inc. v. Windsor*, 117 S. Ct. 2231, 2245 (1997) ('[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of class actions permitted by 23(b)(2)); *Smith v. University of Washington Law School*, No. 97-335Z, 1998 WL 199286 (W.D. Wash. April 22, 1998) (granting motion for Rule 23(b)(2) class certification in action challenging racially discriminatory admissions policies of the University of Washington Law School); Fed. R. Civ. P. 23(b)(2) Advisory Committee's Notes (offering as an illustration of 23(b)(2) a civil rights case "where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of enumeration"); 1 NEWBERG 4.11 at 4-39.

2. Plaintiff's Claims Also Qualify for Class Certification under Rule 23(b)(1).

A class action may be certified under Rule 23(b)(1) if the "prosecution of separate actions by or against individual members of the class would create risk of" either:

> (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) adjudications with respect to individual members of the class which would as a practical be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

Federal Rule of Civil Procedure 23(b)(1).

The scenarios described in paragraphs (1)(A) & (B) are really two sides of the same coin; paragraph (A) views the class determination from the perspective of the party opposing the class, while paragraph (B) approaches the issue from the side of the proposed class members. See 1 NEWBERG 4.03, at 4-11. The provision of (b)(1)(A) recognizes that Defendants have an interest in avoidance of a multiplicity of actions by individuals that may result in inconsistent outcomes requiring incompatible standards of conduct for the Defendants. *Id.* The language of (b)(1)(B), on the other hand, addresses the concern of members of the plaintiff class that litigation of the named plaintiff's cast may impair or impede the ability to protect the interests of the remaining members of the class. Cases, for example, where there is a limited fund from which a large class of plaintiffs seek to recover are frequently certified as a class action under Rule 23(b)(1)(B). *See, e.g., In re Jackson Lockdown/MCO Cases*, 107 F.R.D. 703, 711-12 (E.D. Mich. 1985); 1 NEWBERG, 4.09, at 4-31 ("most common use of (b)(1)(B) class actions is in limited fund cases").

In this case, the considerations of both (b)(1)(A) & (B) make a (b)(1) class certification appropriate. Plaintiff Hall challenges the current sub-districts for the election of judges for the Baton Rouge City Court. Any effective remedy of the constitutional and statutory civil rights violations compels a result whereby Defendants must change their conduct not just as to Plaintiff Hall but as to all other electors in Election Sections 1 and 2. *See, e.g., Cullen v. New York State Civil Service Commission*, 435 F. Supp. 546, 562 (E.D. N.Y. 1977) ("The alleged conduct is either legal, or it is illegal, as to all members of the class, and the defendants must act or be allowed to act in the same way as to all members of the class . . . Viewed in this light, multiple litigation creates a very real risk that the defendants will be held to incompatible standards of conduct, and therefore this action is entitled to class certification under 23(b)(1)(A)"); *See also National Treasury Employees Union v. Reagan*, 509 F. Supp. 1377, 1340-41 (D.D.C. 1981) (class of federal employees challenging hiring freeze certified under 23(b)(1)(A)).

Notably, however, in addition to fulfilling the requirements of Rule 23(a) and 23(b)(2), Plaintiff Hall's claims are well suited for class certification for reasons in addition to fulfilling the requirements of the rules. First, during the pendency of a class action, the statute of limitations is tolled on the individual claims of the unnamed class members. *See, e.g., American Pipe & Construction, v. Utah*, 414 U.S. 538, 554 (1974). Absent certification, the unnamed class members risk expiration of the statute of limitations on their claims unless each member files suit separately. Secondly, class certification means that each class member has the benefit of or is bound by the res judicata effects of class-wide adjudications. *See, e.g., Barney v. Holzer Clinic, Ltd.*, 110 F.3d 1207, 1213 n. 10 (6th Cir. 1997). For example, a determination of liability as to the class removes the need to litigate that issue as part of individual claims for compensatory damages.

CONCLUSION

For all the foregoing reasons, Plaintiff Kenneth Hall, respectfully requests the Court to grant the motion for class certification pursuant to Rule 23(b)(1) & (2).

RESPECTFULLY SUBMITTED:

The Law Office of Ronald R. Johnson

_s/ *Ronald R. Johnson*_____
Ronald R. Johnson (La Bar Roll No. 14402)
Law Offices of Ronald R. Johnson
5550 North Foster Drive
Baton Rouge, Louisiana 70805
Telephone: (225) 356-3408
Facsimile: (225) 356-4438
ronaldjohnson@bellsouth.net

Stephen M. Irving (La Bar Roll No. 7170)
Steve Irving, LLC
111 Founders Drive
Baton Rouge, Louisiana 70810
Telephone: (225) 752-2688
Facsimile: (225) 752-2663
steve@SteveIrvingLLC.com

Joel G. Porter (La Bar Roll 21825)
Attorney at Law
1208 Julia Street
Baton Rouge, Louisiana 70802
Telephone: (225) 978-1955
Facsimile: (225) 456-2886
Joel9962@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2014, a true and correct copy of the foregoing Memorandum in Support of Motion to Certify As Class Action was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

Baton Rouge, Louisiana, this 10th day of March, 2014.

/s/ *Ronald R. Johnson*
RONALD R. JOHNSON