

burden in opposing a motion for summary judgment.¹ That is all the Plaintiffs provide in their opposition.²

The Plaintiffs' opposition is wholly inadequate to legitimately oppose the State Defendants' summary judgment motion. The State Defendants are seeking summary judgment and the Plaintiffs have failed to provide any admissible evidence to oppose its motion. As the Attorney General's Motion to Strike³ provides in greater detail, the Plaintiffs' new arguments based on never disclosed material asserting a new theory of liability should not be considered by this Court when the Plaintiffs failed to include it in their multiple complaints, eight in total, or in their discovery responses.

Although the Plaintiffs' new statutory basis for the Attorney General's liability should be stricken, even if this Court chooses to allow it, it cannot defeat the State Defendants' summary judgment motion. State law claims "are not cognizable in a proceeding under *Ex parte Young* because state officials continue to be immunized from suit in federal court on alleged violations of state law brought under the federal courts' supplemental jurisdiction."⁴

The Plaintiffs put forth the oath of office for public officials and the Attorney General's constitutional duties to create an alleged obligation on the Attorney General. It is insufficient. Nothing in the oath of office or the Attorney General's constitutional duties create a duty on the Attorney General to play any role in the creation or modification of a judicial election section within a local municipality.⁵ Further, the Attorney General's position on the State Board of Election Supervisors⁶ is insufficient to establish a duty on the Attorney General as to the Judicial

¹ *Ramsey v. Henderson*, 286 F.3d 264, 269 (5th Cir. 2002); *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir. 1992).

² Rec. Doc. 310.

³ Rec. Doc. 340.

⁴ *Earles v. State Bd. of Certified Pub. Accountants of La.*, 139 F.3d 1033, 1039 (5th Cir. 1998).

⁵ Rec. Doc. 310, pg. 3-4.

⁶ This material is the subject of the Attorney General's Motion to Strike. Rec. Doc. 340.

Election Plan of 1993. The State Board of Election Supervisors was created and established in the Louisiana Department of State as provided in La. R.S. 36:802 and is set out in La. R.S. 18:23-27. The Attorney General is only one of seven member of this Board. La. R.S. 18:23. The Board requires a quorum of its members to act. No member of the Board can act alone on behalf of the Board. Although this is common procedure for all Louisiana State Boards and Commissions, it is also supported by La. Atty. Gen. Op. 81-1264. Since no single Board member can act on behalf of the Board, the Board's alleged failure to investigate places no liability on the individual members of the Board. Additionally, the Board's failure to bring the Baton Rouge City Court election sections to the attention of the legislature is of no significance. The Legislature according to the Plaintiffs' own material was well aware of the Baton Rouge City Court election sections based on the number of bills that had been brought before it. Therefore, whether or not the State Board of Election Supervisors investigated the Baton Rouge City Court election sections does not place a duty on the Attorney General as he is simply one of seven board members.

If the Plaintiffs take issue with the activities of the State Board of Election Supervisors, they could have filed suit against them. It appears they are trying to use their opposition memorandum to further amend their complaints for the ninth time, circumventing proper procedure. The claim against the Attorney General based on his role with the Board of Election Supervisors is simply a last stitch effort to find any possible way to say the Attorney General should have acted despite no constitutional or statutory duty on him to play a role in the legislative process regarding a local municipality's judicial election sections. As the State Defendants' summary judgment clearly articulates the Plaintiffs have not produced any material

that provides a causal connection between any specific acts by the Attorney General that caused the Plaintiffs alleged injury, nor does their opposition.

The materials set forth in the opposition memorandum as to the Governor is insufficient as well. The Plaintiffs provide the oath of office for every Louisiana elected official as justification for naming the Governor as a defendant where he has no causal connection to the alleged unconstitutional action in this matter. Based on the Plaintiffs' logic every single elected official in the state of Louisiana could be held responsible for any alleged unconstitutional action that occurs within the state despite having no constitutional or statutory authority to create, amend or perform the alleged unconstitutional act. Such a preposterous argument should not be considered by this Court.

Further, the Plaintiffs claim the Governor should have asserted himself into the creation/amendment of the Baton Rouge City Court election section, despite no constitutional or statutory authority to do so. The Plaintiffs even admit "[t]he Governor cannot himself reapportion the districts of the Baton Rouge City Court as that is a function given by the constitution to the Louisiana Legislature."⁷ The Plaintiffs attempt to create a duty out of thin air by asserting the Governor should have reported the Baton Rouge City Court election sections to the Legislature or sued the City of Baton Rouge. Yet, they fail to provide how this would have remedied their alleged harms. In the Plaintiffs own words the legislature was well aware of the Baton Rouge City Court election section.⁸ Nor do they point to any aspect of the Governor's powers and duties requiring such involvement on a local issue. The connection put forth by the Plaintiffs is tenuous at best and at the very least insufficient to be considered as legitimate evidence opposing the State Defendants' motion for summary judgment.

⁷ Rec. Doc. 310, pg. 3.

⁸ The Plaintiffs assert that seven different bills were brought to the Legislature to modify the current structure of the Baton Rouge City Court election sections. Rec. Doc. 315.

Additionally, the claim that the Governor failed to sue the City of Baton Rouge based on the Baton Rouge City Court election sections is enough of a causal connection is preposterous. First, how would a lawsuit by the Governor remedy the Plaintiffs' alleged harms? Second, when has the Governor of Louisiana ever filed suit against a political subdivision of the state regarding a purely local issue? The answer is it would not remedy the Plaintiffs' alleged wrongs, nor has the Governor ever taken such extraordinary action.⁹ These attempts at a causal connection are insufficient to overcome the clear evidentiary support put forth in the summary judgment that the Governor cannot remedy the Plaintiffs' alleged harms. Since the Governor has no ability to remedy the Plaintiffs' alleged wrongs the causes of action against him must be dismissed as requested in the State Defendants' motion for summary judgment.

In their opposition the Plaintiffs failed to respond to several arguments put forth by the State Defendants. They did not submit any evidence to provide that the Attorney General or Governor have intentionally discriminated against them regarding the Baton Rouge City Court election sections. Further, the Plaintiffs' opposition is silent as to the State Defendants' argument regarding suits against the State Defendants in their individual capacities based on § 1983. In fact in the pretrial order submitted to this Honorable Court, the Plaintiffs admit they are only suing the Defendants in their official capacity.¹⁰ Thus, without any material facts presented by the Plaintiffs in opposition and based on the law the State Defendants are entitled to summary judgment as to Plaintiffs' § 1983 claims, which according to this Court is

(1) a Section 1983 claim that is the 1993 Judicial Election Plan violates the First Amendment's guarantee of freedom of speech, made applicable to the States by the Equal Protection Clause of the Fourteenth Amendment;

⁹ To the best of the State Defendants' knowledge the Louisiana Governor has never filed suit in a purely local matter against a political subdivision of the state.

¹⁰ Rec. Doc. 315, pg. 2; In fact the Plaintiffs' summary judgment motion itself states "[p]laintiffs sued Defendants Piyush "Bobby" Jindal, in his official capacity as Governor of the State of Louisiana; James D. "Buddy" Caldwell, in his official capacity as the Attorney General for the State of Louisiana." (Rec. Doc. 288).

- (2) a Section 1983 claim that the 1993 Judicial Election Plan infringes Hall's [and Sharper's] fundamental right to vote, as protected by the Fourteenth Amendment;
- (3) a Section 1983 claim that the 1993 Judicial Election Plan violates the Equal Protection Clause of the Fourteenth Amendment;
- (4) a Section 1983 claim that the 1993 Judicial Election Plan violates the Due Process Clause of the Fourteenth Amendment;
- (5) a Section 1983 claim that the 1993 Judicial Election Plan violates the Fifteenth Amendment;
- (6) a Section 1983 claim that the 1993 Judicial Election Plan violates Section 2 of the Voting Rights Act of 1965; and
- (7) a Section 1983 claim that the 1993 Judicial Election Plan violates the "democratic principles of majority rules and individualistic egalitarianism" relates to the "one person, one vote" principle of the Equal Protection Clause of the Fourteenth Amendment.

Although this Honorable Court applied the *Ex Parte Young* exception to the Governor and Attorney General's Eleventh Amendment Immunity, that exception only allows suits to continue against those in their official capacity for the limited purposes of seeking to enjoin enforcement.¹¹ Therefore, the Plaintiffs' claims for money damages under § 1983 should be dismissed.

Additionally all of the Plaintiffs' claims under § 1983 should be dismissed. The Plaintiffs provide no response to the State Defendants' argument that their § 1983 claims are prescribed.¹² Summary judgment should be granted if the nonmoving party does not provide any facts or law to demonstrate a basis under which they can recover.¹³ The State Defendants' clearly provide that based on § 1983 requirements and Louisiana law the Plaintiffs' claims have prescribed because all were aware of this alleged violation well beyond the one year prescriptive period. The Plaintiffs' silence supports granting the State Defendants' summary judgment as to all § 1983 claims based on prescription. Therefore, this Court should enter an order granting summary judgment to the State Defendants for all of the Plaintiffs' claims under § 1983.

¹¹ Rec. Doc. 214.

¹² Rec. Doc. 289-1, pg. 7-8.

¹³ *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1071 (5th Cir.1994).

WHEREFORE, the State Defendants pray that their Motion for Summary Judgment be granted.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **8th** day of **July, 2014**, 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 Plaintiffs, and all other counsel of record by operation of the court’s electronic filing system.

/s/ Jessica MP Thornhill
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