

voters in the City of Baton Rouge, in violation of the United States Constitution and the Voting Rights Act of 1965. Plaintiffs further allege that the Plan (Act 609 of 1993 codified at La. R.S. 13:1952(4)(a)-(c)), which divides the City of Baton Rouge into two election Sections (Sections 1 and 2) and five election Divisions (Divisions A, B, C, D, and E), impermissibly dilutes the votes of African Americans, who now make up 54.3% of the total City population.¹

According to Plaintiffs, the Judicial Election Plan discriminates against African Americans because African American voters, who make up the majority of Section 1 and the City population, are allotted only two judges, while white voters, who make up the majority of Section 2 but a minority of the City population, are allotted three judges. Plaintiffs further allege that the Defendants' refusal to reapportion the City Court judges and/or redraw the geographic boundaries of the Divisions in accordance with the City of Baton Rouge's 2010 Census demographic data is an intentional attempt to dilute the votes of African Americans.²

Plaintiffs seek a ruling and judgment declaring that the Judicial Election Plan violates: (1) the First Amendment's guarantee of freedom of speech, made applicable to the States by the Equal Protection Clause of the Fourteenth Amendment; (2) Plaintiffs' fundamental right to vote, as protected by the Fourteenth Amendment; (3) the Equal Protection Clause of the Fourteenth Amendment; (4) the Due Process Clause of the Fourteenth Amendment; (5) the Privileges and Immunities Clause of the Fourteenth Amendment; (6) the Fifteenth Amendment; (7) Section 2 of the Voting Rights Act of 1965; (8) "penumbra rights of the Bill of Rights and/or the Due Process Clause of the Constitution of the United States"; (9) the "democratic principles of majority rule and individualistic egalitarianism" related to the "one person, one vote" principle of

¹ The recitation of facts contained herein is for the most part taken directly from the Court's findings as to Plaintiffs' allegations set forth in its Ruling and Judgment on the Secretary of State's Motion for Summary Judgment (Rec. Doc. 474).

² *Id.*

the Equal Protection Clause of the Fourteenth Amendment¹⁷; and (10) “the right of Majority Rule within the Due Process, Privileges and Immunities, and Equal protection Clauses of the Constitution of the United States.”³

They also request an injunction forbidding the Defendants from enforcing the Judicial Election Plan, including enjoining Defendants from “calling,” “holding,” “administering,” “implementing,” “supervising,” “conducting,” or “certifying” any future elections until Defendants devise and implement a judicial election system that complies with Section 2 of the Voting Rights Act. Plaintiffs further seek a ruling holding Defendants liable under Section 1983, and granting Plaintiffs attorneys’ fees pursuant to 42 U.S.C. § 1988. Finally, Plaintiffs request that, if the Court finds Defendants have violated the Fourteenth and Fifteenth Amendments, the Court “bail-in” the State of Louisiana pursuant to Section 3(c) of the Voting Rights Act.

Plaintiffs’ claims against the Secretary arising under the First Amendment, the Fifteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, the application of “one person, one vote” principle, and the Privileges and Immunities Clause have all been dismissed. Therefore, Plaintiffs’ remaining claims against the Secretary of State consist only of a Fourteenth Amendment claim arising under the Due Process Clause, a Fourteenth Amendment claim based upon infringement of the fundamental right to vote and the “right to majority rule,” a claim arising under 42 U.S.C. § 1983 (and 42 U.S.C. § 1988), and a claim arising under Section 2 of the Voting Rights Act of 1965.

A. Complaint Allegations

Plaintiff, Kenneth Hall, has filed five Complaints in this action. In these Complaints, Plaintiff’s only specific claims applicable to the Secretary of State are as follows:

³ *Id.*

- Secretary of State Tom Schedler [is an] enforcement official, maintaining, executing, and enforcing the 1993 Judicial Election Plan in the form it currently exists.⁴
- Defendant, Secretary of State of Louisiana, is an elected public official of the Defendant, State of Louisiana, and as such, is the Chief Executive Officer; he is charged with maintaining voter records, and is the enforcement officer of the State of Louisiana election laws, and as such, implements and maintains State of Louisiana and its municipal election standards, regulations, practices, and procedures as required by the State of Louisiana, the City of Baton Rouge, and the Parish of East Baton Rouge, particularly, governing and regulating enforcement of the previously identified discriminatory 1993 Judicial Election Plan.⁵
- All Defendants [including] the Secretary of State of Louisiana ... are particularly aware that the 1993 Judicial Election Plan redistricting the Baton Rouge City Court may seem fair on its face; nevertheless, their application of the Plan invidiously discriminates against, and adversely impacts, Plaintiff, as a citizen and voter, as their state action as individuals and/or public officials violate the equal protection of laws, the right to vote, due process of law, and Plaintiff's rights as a racial majority of the City of Baton Rouge, to communicate and associate the majority of power of his vote with that of similarly situated citizens.⁶
- Defendant, Secretary of State has the legal and administrative capacity, and authority to enforce the election laws of Louisiana and to grant Plaintiff Hall essential aspects of the relief sought particularly not to endorse, or enforce the challenged Judicial Election Plan, which contains the assignment of enumerated and selective voting precincts and sections in violation of federal law. Despite being aware of Plaintiff Hall's challenges to the 1993 Judicial Election Plan by holding elections for City Court on November 6, 2012 and December 8, 2012, in violation of Plaintiff's [sic] Halls [sic] constitutional rights.⁷
- The Secretary of State certifies all candidates elected for public office in Louisiana, particularly those winning candidates ... for the just held elections for City Court within 30 days of the general election. The Secretary of State will soon issue all (unopposed and the prevailing candidates in the December 8, 2012 election) commissions to all elected candidates elected for City Court, who are expected to receive those commissions and assume the office of City Court Judge ... for the six year

⁴ Complaint, Rec. Doc. 1 at par. 68.

⁵ Second Supplemental and Amending Complaint, Rec Doc. 74, at par. 9.

⁶ Id. at par. 31.

⁷ Third Supplemental and Amending Complaint, Rec. Doc. 76, at par. 11.

term commencing January 1, 2013, with the attendant emoluments of office.⁸

Plaintiff-Intervenor, Byron Sharper, alleges the following claims against the Secretary:

- Defendant, Tom Schedler, is the Chief Election Officer of the Defendant, State of Louisiana, with authority over elections in Louisiana, and he is sued both in his individual (personal) and official capacity as the Louisiana Secretary of State.⁹
- Yet Defendants, [including] Secretary of State ... have all failed in their constitutional and statutory duties to provide for equality of treatment under the law among citizens and voters of Baton Rouge in City Court elections.¹⁰
- Intervenor-Plaintiff seeks to enjoin Defendant, Tom Schedler, in his individual capacity from further enforcing (perspective [sic] relief) the challenged Judicial Election Plan, which is in violation of federal law.¹¹
- The State's Judicial Election Plan compels Defendant Schedler as Chief Elections Officer to discriminate against African American voting age population because of race, color, and residence, as assigned to designated precincts within Election Sections 1 and 2, and to enforce and carry out City Court elections according to voter and registration assignments designated in the Judicial Election Plan.¹²
- Intervenor-Plaintiff meets the basic qualifications as a qualified elector to vote for judges to Baton Rouge City Court, but is ... not treated fairly and equally as are white electors and candidates by the State of Louisiana, the Louisiana Legislature, and the Secretary of State in the application of the Judicial Election Plain [sic] in elections for City Court because of the gerrymandered election plan that establishes inequality in the voting age population ...¹³

B. Undisputed Facts

In the Court's Rulings and Orders on the Motions for Summary Judgment filed by the Secretary as to both Plaintiffs, it took the following facts to be undisputed:

- Hall does not possess any evidence that the Secretary of State has intentionally discriminated against Plaintiff or the African American population of the City of Baton Rouge in relation to the subject matter of this litigation.

⁸ Id. at par. 18.

⁹ Intervenor-Plaintiff Byron Sharper's Complaint, Rec. Doc. 128, at par. 7.

¹⁰ Id. at par. 33.

¹¹ Id. at par. 48.

¹² Id. at par. 49.

¹³ Id. at par. 54(ii).

- Hall does not possess any evidence to [establish] that the Secretary of State has intentionally violated 42 U.S.C. § 1983 in relation to the subject matter of this litigation.
- Hall does not possess any evidence to support the contention that the Secretary of State was involved in the formation of the 1993 Judicial Election Plan.
- [The Secretary of State] does not have any authority to create any laws regarding the apportionment or reapportionment of election districts for the Baton Rouge City Court.
- The Secretary of State does not have any authority to apportion or reapportion election districts for the Baton Rouge City Court.
- Hall does not contend that the Secretary of State can or should refuse to hold elections.
- There is no contention that the Secretary of State intentionally violated the Voting Rights Act in relation to the subject matter of this litigation.
- The Secretary of State's duties regarding elections are ministerial.
- The Secretary of State's duties regarding elections are non-discretionary.
- Sharper does not possess any evidence that the Secretary of State has intentionally discriminated against Plaintiff or the African American population of the City of Baton Rouge in relation to the subject matter of this litigation.
- Sharper does not possess any evidence to [establish] that the Secretary of State has intentionally violated 42 U.S.C. § 1983 in relation to the subject matter of this litigation.
- Sharper does not possess any evidence to support the contention that the Secretary of State was involved in the formation of the 1993 Judicial Election Plan.
- Sharper does not contend that the Secretary of State can or should refuse to hold elections.¹⁴

At trial, Plaintiffs presented no evidence or testimony to dispute these findings.

¹⁴ *Id.* at p. 2-4. These facts were also admitted by Plaintiffs in their responses to the Secretary of State's Written Discovery Requests. *See* Discovery responses attached hereto as Exhibits A and B.

C. Previous Court Findings

The Court dismissed Plaintiffs' claims against all Defendants arising under the Privileges and Immunities Clause¹⁵ and the "one person, one vote" principle.¹⁶ The Court found that the latter was inapplicable to the case at hand because the principle does not apply to judicial elections.¹⁷ The Court found, however, that this dismissal did not preclude Plaintiffs' Fourteenth Amendment vote dilution claim.¹⁸

Plaintiffs' First Amendment claim and Fourteenth Amendment vote dilution claim arising under the Equal Protection Clause were then dismissed against the Secretary of State on summary judgment.¹⁹ As to the Fourteenth Amendment claim, the Court reasoned that Plaintiffs failed to address whether the Secretary of State acted with discriminatory purpose, failing to point out any direct or circumstantial evidence to meet the necessary standards.²⁰

The Court also found in ruling on the Secretary of State's Motion in Limine, Motion for Summary Judgment, and Motion to Strike, that Plaintiffs' allegations relating to the Secretary of State's alleged "duty" to: (1) "investigate," "discover," and "report" unlawful elections to the Louisiana Legislature; and (2) "refuse to accept qualification papers from [City Court judge] candidates" where the election districts have not been reapportioned in accordance with state law were unconvincing and did not provide evidence of discriminatory intent.²¹ The Court further noted that Plaintiffs have not cited any binding federal law granting the Secretary of State the

¹⁵Rec. Doc. 214, 240.

¹⁶Rec. Doc. 214.

¹⁷*Id.*

¹⁸*Id.*

¹⁹Rec. Doc. 474.

²⁰*Id.* at p. 14.

²¹*Id.*

authority to determine the constitutionality of alleged unlawful state elections.²² The Court ultimately found that Plaintiffs' citation to these obligations was "insufficient to establish liability on the part of Defendants under the Voting Rights Act of 1965 and the United States Constitution."²³

D. Evidence Presented at Trial

Plaintiffs' presentation of testimony and evidence at trial during their case-in-chief omitted practically any reference to the Secretary of State. In fact, the references to the Secretary of State, aside from noting his duty as the keeper of voting records, came in the form of testimony concerning the lack of opposition by the Secretary or his predecessors to amend the City Court districts, including any negative involvement.²⁴

II. LAW AND ARGUMENT

Because the Plaintiffs have failed to present any evidence whatsoever tending to show that the Secretary of State violated their rights in any way, the remainder of Plaintiffs' claims against him must be dismissed as a matter of law.

A. Legal Standard

Federal Rule of Civil Procedure 52(c) provides that "[i]f during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party."²⁵ Judgment on partial findings entered under Federal Rule 52(c) is to be made after the district court has heard all of the "evidence

²² *Id.*

²³ *Id.* at p. 20.

²⁴ *See* Transcript Volume I attached hereto as Exhibit C at p. 244.

²⁵ *Bodin v. Vagshenian*, 462 F.3d 481 (5th Cir. 2006).

bearing on crucial issues of fact.”²⁶

The District Court ““is to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies.””²⁷ Rule 52(c) requires the district court to state its findings of fact and conclusions of law when entering a judgment as a matter of law. These requirements are meant “to engender care on the part of the trial judge in ascertaining the facts and to make possible meaningful review in the appellate courts.”²⁸ When dismissing a case pursuant to Rule 52(c), a court is not required to make any special inferences or review the facts in the light most favorable to the plaintiff.²⁹

B. Plaintiffs have failed to prove the requisite elements of a claim arising under the Due Process Clause of the Fourteenth Amendment against the Secretary of State.

Plaintiffs have littered their Complaints with statements that their due process rights have been violated, however, their Complaints and their evidence presented at trial provide no factual basis to support such claims against the Secretary of State. Accordingly, both Plaintiffs’ procedural due process claim and their substantive due process claim against the Secretary of State must be denied.

a. Plaintiffs have failed to prove the requisite elements for a claim for a Procedural Due Process violation against the Secretary of State.

Plaintiffs have not alleged a single fact to state a claim for procedural due process against the Secretary of State. Likewise, they have not proven that the Secretary of State has infringed on

²⁶ Samson v. Apollo Resources, Inc. 242 F.3d 629, 632 (5th Cir. 2001) *quoting* Fed. R. Civ. P. 52 (c).

²⁷ Aubey v. Noble Drilling, 24 F.3d 240, 1994 WL 242570, *1 (5th Cir. May 25, 1994) (Table, Text in Westlaw) *quoting* 9 Wright & Miller, Federal Practice and Procedure: Civil § 2371 at 225.

²⁸ See Gupta v. E. Tex. State Univ., 654 F.2d 411, 415 (5th Cir.1981) *citing* Ramirez v. Hofheinz, 619 F.2d 442, 445 (5th Cir.1980).

²⁹ Weber v. Gainey's Concrete Products, Inc., 159 F.3d 1356, 1998 WL 699047, at *1 n. 1 (5th Cir. Sep. 21, 1998) (Table, Text in Westlaw) *citing* Sanders v. General Servs. Admin., 707 F.2d 969, 971 (7th Cir.1983).

their procedural due process rights at trial. Accordingly, this claim against the Secretary of State must be dismissed.

“In order for a person to have a procedural due process claim that damages or other relief can remedy, he must have been denied life, liberty, or property protected by the Fourteenth Amendment.”³⁰ “Procedural due process considers not the justice of a deprivation, but only the means by which the deprivation was effected.”³¹ “What the Fourteenth Amendment does require, however, is an opportunity ... granted at a meaningful time and in a meaningful manner, for a hearing appropriate to the nature of the case.”³² “[T]he Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged ... before the owner is finally deprived of a protected property interest.”³³

The relevant test for a procedural due process claim is set forth in the matter of *Mathew v. Eldridge*.³⁴ In that matter, the Supreme Court noted that “‘(d)ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”³⁵ “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.”³⁶ It went on to state, “More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s

³⁰ *Wilson v. Birnberg*, 667 F.3d 591 (2012).

³¹ *Caine v. Hardy*, 943 F.2d 1406, 1411 (5th Cir.1991).

³² *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982).

³³ *Id.* 455 U.S. at 433.

³⁴ 424 U.S. 319, 96 S.Ct. 893.

³⁵ *Id.* at 334 *citing* *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961).

³⁶ *Id. citing* *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”³⁷

Plaintiffs have not alleged and have not proven that they have not had a meaningful opportunity to be heard by the Secretary of State. They have further not alleged anything in relation to the *Mathews v. Elridge* test set forth above. In fact, they have alleged over and over that they have been heard by the Legislature and all the defendants. They sought an injunction in this case prior to the election at issue and the Court heard their arguments prior to the denial of the injunction. They have also alleged that they have exercised their rights to testify before the Legislature and the Metropolitan Council of the City of Baton Rouge and the Parish of East Baton Rouge in relation to their claims. Plaintiffs have in no way asserted or proven that the Secretary owes them any more process than they have been given, either by him or anyone else.

Further, Plaintiffs have not alleged and have not proven that the Secretary of State has in any way infringed upon their rights to be heard on this issue. Plaintiffs did not dispute that the Secretary of State did not create the election plan at issue; they did not dispute that the Secretary of State has no power to reapportion election districts or to pass laws; and Plaintiffs did not dispute that the Secretary of State’s duties are purely ministerial and non-discretionary. There have been no allegations or evidence to support a claim that the Secretary did not perform any of his ministerial duties. Accordingly, Plaintiffs have failed to prove that the Secretary of State violated their rights to procedural due process, and as such, this claim must be dismissed in accordance with Fed. R. Civ. P. 52(c).

³⁷ *Id.* at 334-335; *See, e. g.*, *Goldberg v. Kelly*, *supra*, 397 U.S., at 263-271, 90 S.Ct., at 1018-1022.

- b. Plaintiffs have failed to prove the requisite elements for a claim for a Substantive Due Process violation against the Secretary of State.

Plaintiffs likewise cannot and have not supported a claim that the Secretary of State has violated their substantive due process rights. In fact, Plaintiffs cannot bring this claim at all.

“Where another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff’s claims under that explicit provision and not the more generalized notion of substantive due process.”³⁸ In this matter, Plaintiffs have alleged that Defendants have violated their rights under the procedural due process clause and the equal protection clause of the Fourteenth Amendment as well as the violation of their fundamental right to vote. Plaintiffs have also alleged that Defendants violated their due process rights under the Fifteenth Amendment and their right to freedom of speech under the First Amendment. Accordingly, Plaintiffs cannot and have not supported a claim arising under the substantive due process clause of the Fourteenth Amendment.

Even if Plaintiffs could allege this claim, however, they have been unable to prove any infringement thereof by the Secretary of State. Plaintiffs’ factual support for infringement of their Fourteenth Amendment rights arises solely out of the allegations of vote dilution. This Court has already determined that Plaintiffs have been unable to support their allegations against the Secretary of State based upon these facts. Plaintiffs have likewise presented no other evidence or testimony to support a claim that the Secretary of State has violated their due process rights in any other way. Accordingly, Plaintiffs cannot sustain a substantive due process claim for the same reasons they cannot sustain an equal protection claim. And because they have proven neither, Plaintiffs’ substantive due process claim must be dismissed.

³⁸ *Wilson v. Birnberg*, 667 F.3d 591 (5th Cir. 2012) *citing* *Conn v. Gabbert*, 526 U.S. 286, 293, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999).

C. Plaintiffs have failed to prove the requisite elements of a claim for infringement of the fundamental right to vote pursuant to the Fourteenth Amendment against the Secretary of State.

Plaintiffs' claim alleging violation of their fundamental right to vote seems to correspond to Plaintiffs' claims arising under the substantive due process clause, however, because it has been listed separately by Plaintiffs and the Court, the Secretary of State will address it separately. It also appears that Plaintiffs' allegations concerning infringement of their right to vote likewise cannot be separated from their claim for vote dilution, a claim for which this Court ruled that the Secretary of State cannot be held liable in this action. Notwithstanding this fact, however, Plaintiffs have again failed to prove that the Secretary of State performed any action to deny them this right.

- a. Plaintiffs' claims for violation of their right to vote is not separate from their claims for vote dilution.

Like those allegations above, Plaintiffs have listed a claim of alleged infringement of their fundamental right to vote numerous times in their complaints. But in terms of factual support, aside from the same exact factual allegations asserted as to vote dilution, Plaintiffs have not alleged (and have not proven) any way which their voting rights have been violated. Plaintiffs have claimed that "Defendants' actions and the current 1993 Judicial Election Plan have resulted in the denial of Plaintiff's basic human and civil right to fairly participate in the electoral and political process, the right to vote, and the right to vote for candidates of [their] choice as other citizens of Baton Rouge." But aside from their factual allegations concerning the alleged dilution of their votes, Plaintiffs have not stated and not presented evidence as to how they have been unable to fairly participate in the electoral process or how they have been unable to vote as a result of the election plan or actions of the parties at issue. In essence, Plaintiffs' claims for violation of their right to vote are inseparable from that of their claim for vote dilution.

Accordingly, this claim must also be dismissed for the same reasons that Plaintiffs' vote dilution claim under the Equal Protection Clause was dismissed.

- b. Plaintiffs have not proven any infringement of their fundamental rights to vote based upon the facts at issue in this action.

Even if the Court found that the fundamental right to vote claim is not inextricably linked the vote dilution claim, however, this claim still must fail. Plaintiffs have not factually alleged and have not introduced a single piece of evidence or submitted any testimony tending to prove that the Secretary of State performed any action to infringe upon Plaintiffs' fundamental right to vote. Plaintiffs have further not alleged or proven that the Secretary has denied them access to the polls or that he has denied them the ability to cast their ballots.

In fact, Plaintiffs have testified that they have not had any difficulty registering to vote or casting their ballots in elections (although the inability to do so is not at issue in this case).³⁹ Plaintiffs further have not presented any evidence tending to prove that the Secretary of State performed any action to infringe on Plaintiffs' right to vote for a candidate of their choice in this action. In fact, Intervenor-Sharper testified that he did not have any problems electing candidates of his choice in Section 1 where he resides and where he is able to elect two judges to the Baton Rouge City Court.⁴⁰ Accordingly, no right to vote of Plaintiffs has been infringed by the Secretary of State and this claim must be dismissed as a matter of law.

D. Plaintiffs have failed to prove the requisite elements of a claim against the Secretary of State arising under 42 U.S.C. § 1983.

“Section 1983 imposes liability on anyone who, under the color of state law, deprives a person of ‘any rights, privileges, or immunities secured by the Constitution and laws.’ This

³⁹ See Transcript Vol. I attached hereto as Exhibit C at p. 104, 120.

⁴⁰ *Id.* at p. 120.

provision safeguards certain rights conferred by federal statutes.”⁴¹ “Section 1983 does not create substantive rights; rather, it merely provides a remedy for deprivations” of federal constitutional or statutory rights.⁴² Section 1983 is therefore the mechanism by which Plaintiffs have asserted their federal claims above against the Defendants, including the Secretary of State. To establish Section 1983 liability, a plaintiff must show: “(1) a deprivation of a right secured by federal law (2) that occurred under color of state law, and (3) was caused by a state actor.”⁴³

All of Plaintiffs’ claims brought pursuant to § 1983 are discussed above. Plaintiffs have failed to prove that the Secretary of State violated a single one of them in this action. Accordingly, Plaintiffs have failed to prove that there was any deprivation of their federal rights (rights granted by the Fourteenth Amendment) caused by the Secretary of State (a state actor).

Plaintiffs have failed to demonstrate that any official action or inaction by the Secretary of State’s office, by the Secretary himself, or by his predecessors and their offices have in any way infringed upon their rights discussed above. And because the underlying claims must be dismissed, so must their claim arising under § 1983.

E. Plaintiffs have failed to prove the requisite elements of a claim against the Secretary of State arising under Section 2 of the Voting Rights Act.

- a. Plaintiffs have failed to prove that the Secretary of State diluted their votes or that he played any part in the creation or continuation of a plan that allegedly does so. Accordingly, Plaintiffs have failed to prove that the Secretary of State has violated their rights arising under Section 2 of the Voting Rights Act.

Plaintiffs’ claims arising under Section 2 of the Voting Rights Act are based upon the theory of vote dilution. They claim that the apportionment of voting districts for Baton Rouge City Court as set forth in the 1993 Judicial Election Plan dilute their ability to vote. But Plaintiffs

⁴¹ Blessing v. Freestone, 520 U.S. 329, 340 (1997) *citing* Main v. Thiboutot, 448 U.S. 1 (1980).

⁴² San Jacinto Sav. & Loan v. Kacal, 928 F.2d 697, 700 (5th Cir.1991)

⁴³ See Victoria W. v. Larpenter, 369 F.3d 475, 482 (5th Cir. 2004).

have admitted that the Secretary of State had no part in the creation of the 1993 Judicial Election Plan; that the Secretary of State does not have the ability or authority to reapportion election districts; and that the Secretary of State does not have the authority to refuse to hold elections under the Plan. Plaintiffs likewise have failed to prove these facts at trial and have failed to prove that the Secretary of State played any role in the alleged dilution of Plaintiffs' votes.

And while a plaintiff must prove the requisite elements set forth in the case of *Thornburg v. Gingles* in order to prove a claim for vote dilution, the first factor that must actually be proven is that the party against whom he brought the claim caused, created, or sustained such dilution. This is not unique to a vote dilution claim, but rather a requisite in any civil claim. The party held liable must be the party who caused the harm. In this case, Plaintiffs have failed to prove that the Secretary of State, a separate entity and separate party from the State of Louisiana, diluted their votes in any way. Accordingly, Plaintiffs claims against the Secretary of State arising under Section 2 of the Voting Rights Act must also be dismissed.

F. Plaintiffs have failed to prove any other wrongdoing on the part of the Secretary of State in relation to this action.

Plaintiffs have lastly failed to prove any other wrongdoing by the Secretary of State under any other Constitutional provision or any other federal statute. Plaintiffs have conceded that the Secretary of State never discriminated against them, and Plaintiffs have never alleged or proven that the Secretary of State has been unresponsive to their needs or the needs of other minorities. Accordingly, the Secretary of State is entitled to a judgment as a matter of law dismissing him from this action.

III. CONCLUSION

WHEREFORE, Defendant, Tom Schedler in his official capacity as the Louisiana Secretary of State, prays that his Motion for Judgment on Partial Findings Pursuant to Fed. R.

Civ. P. 52(c) be granted and that all claims against him in this action be dismissed in their entirety.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 17th day of **November, 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, **KENNETH HALL** and **BYRON SHARPER**, and all other counsel of record by operation of the court's electronic filing system.

/s/ Beth P. Everett

BETH P. EVERETT