

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL,
Plaintiff

* CIVIL ACTION 3:12-cv-657

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VERSUS

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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

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MAGISTRATE RICHARD L. BOURGEOIS

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**THE SECRETARY OF STATE'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

NOW INTO COURT, through undersigned counsel, comes Defendant, Tom Schedler, in his official capacity as the Louisiana Secretary of State "hereinafter referred to as "the Secretary of State") who submits to the Court the following proposed findings of fact and conclusions of law:

The Secretary of State's Proposed Findings of Fact

Allegations Against the Secretary of State

1. Plaintiffs initially sought a ruling and judgment declaring that the 1993 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

Amendment¹⁶; (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 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.”¹

2. Plaintiffs 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.²
3. Plaintiff, Kenneth Hall, has filed five Complaints in this action. In these Complaints, Plaintiff’s only specific factual allegations applicable to the Secretary of State were as follows:
 - Secretary of State Tom Schedler [is an] enforcement official, maintaining, executing, and enforcing the 1993 Judicial Election Plan in the form it currently exists.³

¹ See Ruling and Judgment on the Secretary of State’s Motion for Summary Judgment (Rec. Doc. 474).

² *Id.*

³ Complaint, Rec. Doc. 1 at par. 68.

- 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.⁴
- 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.⁵
- 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.⁶
- 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 term commencing January 1, 2013, with the attendant emoluments of office.⁷

⁴ Second Supplemental and Amending Complaint, Rec Doc. 74, at par. 9.

⁵ *Id.* at par. 31.

⁶ Third Supplemental and Amending Complaint, Rec. Doc. 76, at par. 11.

⁷ *Id.* at par. 18.

4. Plaintiff-Intervenor, Byron Sharper, alleged only the following factual allegations 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.⁸
 - 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.⁹
 - 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.¹⁰
 - 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.¹¹
 - 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 ...¹²
5. Plaintiffs' Complaints against the Secretary of State contain no assertions that the Secretary failed in any duty to investigate or report any allegations of unconstitutional apportionment.
6. Plaintiffs Complaints' against the Secretary of State contain no assertions that the Secretary failed to comply with his ministerial duties.
7. Plaintiffs have pursued claims against the Secretary of State only in his official capacity.

⁸ Intervenor-Plaintiff Byron Sharper's Complaint, Rec. Doc. 128, at par. 7.

⁹ *Id.* at par. 33.

¹⁰ *Id.* at par. 48.

¹¹ *Id.* at par. 49.

¹² *Id.* at par. 54(ii).

Factual Findings Made by the Court Prior to Trial

8. On June 2, 2014, the Secretary of State filed Motions for Summary Judgment seeking to dismiss Plaintiffs' claims.¹³
9. In the Court's Rulings and Orders on the motion, 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.
 - 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.

¹³ Rec. Docs. 290 and 291.

- 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

10. This 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.¹⁵

11. The Court further noted that Plaintiffs have not cited any binding federal law granting the Secretary of State the authority to determine the constitutionality of alleged unlawful state elections.¹⁶

12. 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."¹⁷

¹⁴ *Id.* at p. 2-4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at p. 20.

Claims Against the Secretary of State That Have Been Dismissed or Abandoned

13. Plaintiffs' claims against the Secretary arising under the First Amendment have been dismissed.
14. Plaintiffs' claims against the Secretary arising under the Fifteenth Amendment have been dismissed.
15. Plaintiffs' claims against the Secretary arising under the Equal Protection Clause of the Fourteenth Amendment have been dismissed.
16. Plaintiffs' claims against the Secretary arising under the application of "one person, one vote" principle have been dismissed.
17. Plaintiffs' claims against the Secretary arising under the Privileges and Immunities Clause have been dismissed.
18. 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.

Evidence Submitted at Trial

Evidentiary Basis to Prove Plaintiffs' Factual Allegations

19. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State performed any action to "execute" or "enforce" the 1993 Judicial Election Plan.
20. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any duty to "regulate enforcement" of the 1993 Judicial Election Plan.

21. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has the legal or administrative capacity or authority to enforce election laws in the manner that Plaintiffs request.
22. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has the authority or ability to grant Plaintiffs any essential aspect of the relief they seek.
23. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any authority or ability to “endorse” or not “endorse” the 1993 Judicial Election Plan.
24. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any discretion or ability to make a finding that an election plan is violative of federal law.
25. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has the authority or ability to refuse to hold elections.
26. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has the authority or ability to refuse to certify winning candidates.
27. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has failed in his constitutional or statutory duties.
28. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has discriminated against Plaintiffs or the African American community.
29. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State failed to treat Plaintiffs fairly and equally.

30. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State or his predecessors were involved in the creation of the 1993 Judicial Election Plan.
31. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any ability or authority to draw or redraw election districts.
32. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any ability or authority to create election districts.
33. No documentary or testimonial evidence was presented at trial to prove that Secretary of State has intentionally discriminated against Plaintiffs or the African American population of the City of Baton Rouge in relation to the subject matter of this litigation.
34. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has intentionally violated 42 U.S.C. § 1983 in relation to the subject matter of this litigation.
35. No documentary or testimonial evidence was presented at trial to support the contention that the Secretary of State was involved in the formation of the 1993 Judicial Election Plan.
36. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any authority to create, enact, or pass any laws regarding the apportionment or reapportionment of election districts for the Baton Rouge City Court.
37. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has any authority to apportion or reapportion election districts for the Baton Rouge City Court.

38. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State can or should refuse to hold elections.

39. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State intentionally violated the Voting Rights Act in relation to the subject matter of this litigation.

40. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State's duties are not ministerial.

41. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State's duties are discretionary.

Evidentiary Basis to Prove Plaintiffs' Cause of Action Arising Under the Due Process Clause of the Fourteenth Amendment

42. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State denied Plaintiffs their rights to life, liberty, or property.

43. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State denied Plaintiffs any meaningful opportunity to be heard.

44. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of their rights to procedural due process.

45. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of their rights to substantive due process.

46. No documentary or testimonial evidence was presented at trial to prove that the Secretary in any way violated the Due Process Clause of the Fourteenth Amendment.

Evidentiary Basis to Prove Plaintiffs' Cause of Action Due to Infringement of the Fundamental Right to Vote

47. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of their fundamental right to vote.
48. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of any ability to fairly participate in the electoral and political process.
49. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of any ability to vote for the candidates of their choice.

Evidentiary Basis to Prove Plaintiffs' Cause of Action Arising Under 42 U.S.C.A. § 1983

50. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State deprived Plaintiffs of any right secured by federal law.
51. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State caused Plaintiffs to be deprived of any of the rights they claimed to have been deprived of in this action.

Evidentiary Basis to Prove Plaintiffs' Cause of Action Arising Under Section 2 of the Voting Rights Act

52. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State violated Section 2 of the Voting Rights Act.
53. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State performed any action to dilute Plaintiffs' vote under the Voting Rights Act.
54. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State performed any action to deprive Plaintiffs' the opportunity to participate in the political process and to elect representatives of their choice.

Evidentiary Basis to Prove Allegations Made By Plaintiffs' Counsel at Trial in Response to Motion for Judgment on Partial Findings

55. No documentary or testimonial evidence was presented at trial to prove that the existence of unproven allegations of vote dilution in elections grants the Secretary of State any ability or authority to refuse to hold elections.
56. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State has the ability or authority to call elections.
57. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State is an essential party to this litigation.
58. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State would not be compelled to follow the ruling of this Court without being named as a defendant herein.
59. No documentary or testimonial evidence was presented at trial to support the allegation that the Secretary of State is the central figure in this case.
60. No documentary or testimonial evidence was presented at trial to support the allegation that the Secretary of State must be a party to this action in order for Plaintiffs to be granted a remedy herein.
61. No documentary or testimonial evidence was presented at trial to support the allegation that Plaintiffs will not be able to obtain a remedy if the Secretary of State is not named as a defendant herein.

Evidentiary Basis to Warrant an Award of Attorneys' Fees

62. No documentary or testimonial evidence was presented at trial to prove any wrongdoing on the part of the Secretary of State so as to warrant an award of attorneys' fees therefrom.

63. No documentary or testimonial evidence was presented at trial to support an award for attorneys' fees against the Secretary of State arising under 42 U.S.C.A. § 1988.

64. No documentary or testimonial evidence was presented at trial to support an award for attorneys' fees against the Secretary of State arising under the Voting Rights Act (52 U.S.C.A. § 10310, formally cited as 42 U.S.C.A. § 1973l).

Undisputed Evidence Regarding Plaintiffs' Ability to Vote and the Actions of the Secretary of State

65. Plaintiff, Kenneth Hall, did not have any problems registering to vote.¹⁸

66. Plaintiff Hall registered to vote in 2004 when he turned eighteen years of age.¹⁹

67. Plaintiff Hall was provided a voter registration card when he registered to vote.²⁰

68. Plaintiff Hall requested an absentee ballot to vote for the November 2012 Baton Rouge City Court election.²¹

69. Plaintiff Hall was aware that there was a runoff election for the Baton Rouge City Court in December 2012.²²

70. Plaintiff Hall was in Council Bluffs, Iowa during the December 2012 runoff.²³

71. Plaintiff Hall did not request an absentee ballot for the runoff election in 2012.²⁴

72. Prior to 2012, Plaintiff Hall had never voted in a Baton Rouge City Court election.²⁵

73. Plaintiff-Intervenor, Byron Sharper, registered to vote in 1985, when he was a freshman at Southern University.²⁶

¹⁸ Transcript Vol. 1. At p. 104.

¹⁹ *Id.* at p. 99-100.

²⁰ *Id.* at p. 90.

²¹ *Id.* at p. 86.

²² *Id.* at p. 101.

²³ *Id.* at p. 101-102.

²⁴ *Id.* at p. 101.

²⁵ *Id.* at p. 102.

²⁶ *Id.* at p. 120.

74. Plaintiff-Intervenor Sharper did not vote in either of the 2012 elections for Baton Rouge City Court.²⁷
75. Plaintiff-Intervenor Sharper did not have any problems registering to vote.²⁸
76. Plaintiff-Intervenor Sharper has not had any problems going to the polls and voting.²⁹
77. Plaintiff-Intervenor Sharper has been able to elect his candidates of choice in Section 1.³⁰
78. Mr. Ernest Johnson does not have any direct knowledge that the Secretary of State actively opposed or did anything to oppose any efforts to amend the 1993 Judicial Election Plan.³¹
79. The Secretary of State's Office maintains voting records.³²
80. The Secretary of State's Office makes voting records available to the public through the Election Registration Information Network (ERIN).³³
81. ERIN is a voting registration database that holds election data for the entire State of Louisiana.³⁴
82. A member of the public may obtain data from the ERIN database by filing a public records request or by going to the Secretary of State's website.³⁵
83. The ERIN system contains voter registration names, addresses, and identifying voter information requested during registration.³⁶

²⁷ *Id.* at p. 109.

²⁸ *Id.* at p. 120.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at p. 243-244.

³² Transcript Vol. 4 at p. 246.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at p. 246-247.

84. The ERIN system contains election returns for past elections and will contain election returns for future elections.³⁷
85. Secretary of State Schedler elevated the outreach program for educating voters to a Deputy Secretary position that is now held by Mr. Sailor Jackson.³⁸
86. Secretary of State Schedler's office has doubled efforts across the state in order to educate voters.³⁹
87. The Secretary's office goes into schools and holds private elections for organizations such as the AFL-CIO, Mardi Gras Krewes, and anyone else who asks for them.⁴⁰
88. The Secretary of State's office educates people on the machines being used and provides opportunities for individuals to register to vote who have not registered.⁴¹
89. Louisiana is the first state in the nation to pass legislation to allow for preregistration of 16-year-olds and 17-year-olds.⁴²
90. Almost 85% of Louisiana's total eligible population is registered to vote.⁴³
91. Ninety-two percent of eligible African Americans in Louisiana are registered to vote.⁴⁴
92. The voter registration rate for non-African Americans in Louisiana is 77-78 % of those eligible.⁴⁵
93. The Secretary of State's office encourages and works with any organization willing to put on a voter registration drive in any locale.⁴⁶

³⁷ *Id.* at p. 247.

³⁸ *Id.* at p. 250.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at p. 250-251.

⁴³ *Id.* at p. 251.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at p. 252.

94. Secretary Schedler's office was the first in Louisiana to run advertisements leading up to elections regarding elections and registration deadlines.⁴⁷

95. The Secretary's office runs radio and on-line advertisements.⁴⁸

96. The Secretary's office maintains social media pages on Facebook, Twitter, and Instagram.⁴⁹

97. The Secretary of State's office has created and launched an award-winning mobile app called "Geaux Vote" which is the first app in the nation created for the purpose of voter assistance.⁵⁰

98. The Geaux Vote app won an award through the National Association of Secretaries of State for its innovative program to engage the public in voting.⁵¹

99. Through the Geaux Vote app, voters may discover their polling locations and sample ballots for upcoming elections.⁵²

100. The Geaux Vote app is available for free on any adaptable smart phone.⁵³

101. Voters can use the app to mark how they wish to vote and can bring it with them into the polling location to assist them in voting for the candidates they choose.⁵⁴

102. Through the Geaux Vote app, a voter can determine if he is an active or inactive voter and can obtain directions to his polling location.⁵⁵

103. The Geaux Vote app also provides live election returns on election night.⁵⁶

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at p. 252-253.

⁵² *Id.* at p. 253.

⁵³ *Id.* at p. 253-254.

⁵⁴ *Id.* at p. 253.

⁵⁵ *Id.*

⁵⁶ *Id.*

104. In the 2012 Presidential election the Secretary of State's Geaux Vote site and app had over 1.9 million hits. In the November 4, 2014, election, the site had over 3 million hits with 67% of those for downloading the app on election day.⁵⁷

105. In addition to smartphones, voters can access Geaux Vote through an Ipad or through the internet website www.geauxvote.com.⁵⁸

106. People in Louisiana can register to vote at Registrars of Voters' offices, the offices of motor vehicles or those qualified may register at public services offices or those of their vendors.⁵⁹

107. Louisiana is the second state in the nation to offer on-line voter registration.⁶⁰

108. Through on-line registration, a person can register to vote any time and any place where she can have access to a computer.⁶¹

Factual Findings Made By the Court During Trial

109. At the trial of this matter, this Court stated, "I've heard no evidence to suggest that the Secretary of State has done anything improper other than to do what the legislature has ordered him to do."⁶²

110. The Court further stated, "... the Secretary of State really had no active role in the creation of the districts or anything like that, but is simply following the laws enacted by the legislature."⁶³

111. The Court further acknowledged that arguments made by Plaintiffs' Counsel regarding the alleged necessity of the Secretary of State's status as a party related only to

⁵⁷ *Id.*

⁵⁸ *Id.* at p. 254.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Transcript Vol. 6 at p. 161.

⁶³ *Id.*

Plaintiffs' claims arising under Section 2 of the Voting Rights Act, and not to Plaintiffs' claims arising under any provision of the Constitution.⁶⁴

Ultimate Findings of Fact

112. No finding has been made at this time by any Court that the 1993 Judicial Election Plan is unconstitutional.
113. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State violated Plaintiffs' rights arising under the Fourteenth Amendment, 42 U.S.C.A. § 1983, or Section 2 of the Voting Rights Act.
114. No documentary or testimonial evidence was presented at trial to prove that any actions of the Secretary of State warrant the awarding of attorneys' fees to Plaintiffs.
115. No documentary or testimonial evidence was presented at trial to prove that the Secretary of State's actions herein warrant the imposition of a remedy arising under Section 3(c) of the Voting Rights Act.

The Secretary of State's Proposed Conclusions of Law

Duties and Abilities of the Secretary of State

1. The powers and duties of the Secretary of State are set forth in Article 4 § 7 of the Louisiana State Constitution.
2. Article 4 § 7 provides:

There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. He shall prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter

⁶⁴ *Id.*

registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted by the legislature and retain the originals thereof; and countersign and keep an official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law.

3. The Secretary of State's duties are purely ministerial.
4. The Secretary of State's duties are non-discretionary.
5. No law provides that the Secretary of State has any ability or authority to pass laws.
6. No law provides that the Secretary of State has any ability or authority to draw or redraw election districts.
7. No law provides that the Secretary of State has any ability or authority to apportion or reapportion election districts.
8. No law provides that the Secretary of State has any ability or authority to call elections.
9. No law provides that the Secretary of State has any ability or authority to refuse to hold elections called by the Legislature or the Governor.
10. No law provides that the Secretary of State has any ability or authority to refuse to hold elections under election plans promulgated by the Legislature.
11. No law provides that the Secretary of State has any ability or authority to refuse to certify candidates elected pursuant to election plans promulgated by the Legislature.

Legal Findings Relating Voter Registration and the Secretary of State's Compliance with the NVRA

12. People in Louisiana may register at driver's license facilities, by mail, online, at offices of registrars of voters, at public assistance agencies (if qualified), and at disability offices.⁶⁵
13. An action arising under the National Voter Registration Act (42 U.S.C.A. § 1973gg *et seq.*) was brought against the Louisiana Secretary of State in the United States District Court for the Eastern District of Louisiana in 2011.⁶⁶
14. The matter went to trial in 2012.⁶⁷
15. No other action brought against the Louisiana Secretary of State arising under the NVRA from 2011 to the present has proceeded to trial or final judgment.
16. In that matter, the United States Fifth Circuit Court of Appeal dismissed Plaintiff's claims against the Secretary of State, finding that the Secretary of State's actions therein did not violate the NVRA or Plaintiff's rights thereunder.⁶⁸

Plaintiffs' Causes of Action

Fourteenth Amendment Due Process Claims

17. "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."⁶⁹
18. "Procedural due process considers not the justice of a deprivation, but only the means by which the deprivation was effected."⁷⁰

⁶⁵ La. R.S. 18: 114-116 (West. 2014).

⁶⁶ Scott v. Schedler, 2014 WL 5801354 (5th Cir. 2014).

⁶⁷ *Id.* at p. 8-9.

⁶⁸ *Id.*

⁶⁹ Wilson v. Birnberg, 667 F.3d 591 (2012).

19. “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.”⁷¹
20. “[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.”⁷²
21. The relevant test for a procedural due process claim is set forth in the matter of *Mathew v. Eldridge*.⁷³
22. 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.”⁷⁴ “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.”⁷⁵ 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 interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”⁷⁶

⁷⁰ *Caine v. Hardy*, 943 F.2d 1406, 1411 (5th Cir.1991).

⁷¹ *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982).

⁷² *Id.* 455 U.S. at 433.

⁷³ 424 U.S. 319, 96 S.Ct. 893.

⁷⁴ *Id.* at 334 *citing* *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961).

⁷⁵ *Id.* *citing* *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972).

⁷⁶ *Id.* at 334-335; *See, e. g.*, *Goldberg v. Kelly*, *supra*, 397 U.S., at 263-271, 90 S.Ct., at 1018-1022.

23. Plaintiffs have not alleged nor have they proven that they have not had a meaningful opportunity to be heard by the Secretary of State.
24. Plaintiffs have not proven that any official action of the Secretary of State affected their private interest.
25. Plaintiffs have not alleged nor have they proven that any procedures used by the Secretary of State erroneously deprived them of such interest.
26. Plaintiffs have not alleged nor have they proven the probable value of any procedural safeguards.
27. Plaintiffs have not proven that the Secretary of State in any way violated their rights to procedural due process under the Fourteenth Amendment.
28. “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.”⁷⁷
29. 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 assert a claim herein arising under the substantive due process clause of the Fourteenth Amendment.
30. Plaintiffs have not proven that the Secretary of State in any way violated their rights to substantive due process.

⁷⁷ *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).

Fourteenth Amendment Claims for Infringement of the Fundamental Right to Vote

31. Plaintiffs' claim for violation of their fundamental right to vote is inseparable from that of their claim for vote dilution arising under the Fourteenth Amendment, a claim which has already been dismissed by this Court.
32. Plaintiffs have not proven that the Secretary of State prevented them from fairly participating in the electoral and political process.
33. Plaintiffs have not proven that the Secretary of State prevented them from voting or from voting for the candidate of their choice.
34. Plaintiffs have not proven that the Secretary of State in any way violated their fundamental right to vote.

Claims Arising under 42 U.S.C.A. § 1983

35. "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 provision safeguards certain rights conferred by federal statutes."⁷⁸
36. "Section 1983 does not create substantive rights; rather, it merely provides a remedy for deprivations" of federal constitutional or statutory rights.⁷⁹
37. 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."⁸⁰
38. Plaintiffs sole remaining claims against the Secretary of State brought pursuant to Section 1983 are those arising under the Due Process Clause of the Fourteenth Amendment and

⁷⁸ *Blessing v. Freestone*, 520 U.S. 329, 340 (1997) *citing* *Main v. Thiboutot*, 448 U.S. 1 (1980).

⁷⁹ *San Jacinto Sav. & Loan v. Kacal*, 928 F.2d 697, 700 (5th Cir.1991).

⁸⁰ *See Victoria W. v. Larpenter*, 369 F.3d 475, 482 (5th Cir. 2004).

Plaintiffs' claims for infringement of their fundamental right to vote under the Fourteenth Amendment.

39. Plaintiffs have not shown that the Secretary of State deprived them of any right secured by these federal laws or any other.
40. Plaintiffs have not shown that there was any deprivation of any of their rights caused by the Secretary of State.

Claims Arising under Section 2 of the Voting Rights Act

41. To establish a Section 2 violation on a vote dilution theory, Plaintiffs must meet the two-part test set out in *Thornburg v. Gingles*.⁸¹ First, plaintiffs must satisfy, as a threshold matter, three preconditions. Specifically, the minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the minority's preferred candidates. Failure to establish all three of these elements defeats a Section 2 claim.⁸² Second, if the preconditions are proved, plaintiffs must then prove that based on the totality of circumstances, they have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.⁸³
42. In any civil case, a plaintiff must prove that the defendant caused the harm alleged.
43. Plaintiffs have not proven that the Secretary of State did anything to dilute their votes.

⁸¹ 478 U.S. 30 (1986).

⁸² *Fairley v. Hattiesburg*, 584 F.3d 660, 667 (5th Cir. 2009) *citing* *Sensley v. Albritton*, 385 F. 3d 591, 595 (5th Cir. 2004).

⁸³ *Id.*

44. Plaintiffs have not proven that the Secretary of State caused, created, or sustained any alleged vote dilution suffered by Plaintiffs.
45. Plaintiffs have not proven that the Secretary of State had any involvement in the creation or sustaining of the 1993 Judicial Election Plan that allegedly dilutes their votes.
46. Plaintiffs have not proven that the Secretary of State has any impact or influence on the size or compactness of election districts.
47. Plaintiffs have not proven that the Secretary of State has any impact or influence on the cohesiveness of election districts.
48. Plaintiffs have not proven that the Secretary of State has any impact or influence on the voting patterns of individuals.
49. Plaintiffs have not proven that the Secretary of State has the authority or ability to change any of these factors.
50. Plaintiffs have not proven that the Secretary of State has had any impact on the minority's opportunity to participate in the political process and elect candidates of their choice.
51. Plaintiffs have not proven that the Secretary of State has violated their rights under Section 2 of the Voting Rights Act.

Claims for Attorneys Fees' Pursuant to 42 U.S.C.A. §1988

52. "In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of [Title 42] ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such

officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction."⁸⁴

53. Plaintiffs have not proven that the Secretary of State violated 42 U.S.C.A. § 1983 and therefore have not proven that attorneys' fees are warranted therefor.

54. Plaintiffs have not proven that they are the prevailing party in their claims against the Secretary of State arising under 42 U.S.C.A. § 1983.

55. Plaintiffs have not proven that the Secretary of State has committed any wrongdoing so as to infringe their civil rights.

56. Plaintiffs have not proven that they are entitled to an award for attorneys' fees from the Secretary of State under 42 U.S.C.A. § 1988.

Claims for Attorneys' Fees Pursuant to the Voting Rights Act

57. "In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs."⁸⁵

58. The Secretary of State is a separate and distinct party from the State of Louisiana, the Attorney General, the Governor, and the City-Parish of Baton Rouge.

59. Plaintiffs have not proven that they are the prevailing party in their claims against the Secretary of State arising under the Voting Rights Act.

60. Plaintiffs have not proven that the Secretary of State has committed any wrongdoing so as to infringe their rights under the fourteenth or fifteenth amendments.

⁸⁴ 42 U.S.C.A. § 1988 (West, 2014).

⁸⁵ 52 U.S.C.A. § 10310, formerly cited as 42 U.S.C.A. § 1973*l*.

61. Plaintiffs have not proven that they are entitled to attorneys' fees under the Voting Rights Act.

Remedies Arising Under Section 3(c) of the Voting Rights Act

62. Section 3(c) of the Voting Rights Act (42 U.S.C. § 1973a(c)) provides:

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section [1973b \(f\)\(2\)](#) of this title: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

63. Case law discussing Section 3 of the Voting Rights Act is limited, as a remedy under this Section was seldom sought prior to the United States Supreme Court decision in *Shelby County v. Holder*.

64. In order for a Court to impose continuing jurisdiction over a State or political subdivision under Section 3(c) of the Voting Rights Act, the Court must first enter a finding that the State or political subdivision has violated the Fourteenth or Fifteenth Amendment of the United States Constitution. 42 U.S.C. § 1973a(c).

65. More than one violation of the Fourteenth or Fifteenth Amendment must be shown in order to impose continuing preclearance requirements over a State or political subdivision under Section 3(c) of the Voting Rights Act.⁸⁶
66. Other courts have considered the following questions in determining whether constitutional violations suffice to impose preclearance requirements under Section 3(c): “Have the violations been persistent and repeated? Are they recent or distant in time? Are they the kinds of violations that would likely be prevented, in the future, by preclearance? Have they already been remedied by judicial decree or otherwise? How likely are they to recur? Do political developments, independent of this litigation, make recurrence more or less likely?”⁸⁷
67. A court’s imposition of preclearance requirements through the imposition of Section 3(c) should be limited in scope and time and tailored in nature, concerning only specific election conditions upon which violations have been found and within the jurisdictions where such violations have been found.⁸⁸
68. Plaintiffs have not proven the requisites for the imposition of a Section 3(c) remedy in this matter concerning the City Court of Baton Rouge or the State of Louisiana.

The Secretary of State’s Duties to Comply with the Court’s Order if No Longer Named as a Defendant in this Action

69. No law or jurisprudence provides that the Secretary of State is a necessary party to litigation involving vote dilution.
70. No law or jurisprudence provides that the Secretary of State is a necessary party to litigation involving redistricting.

⁸⁶ Jeffers v. Clinton, 740 F.Supp. 585, 600 (E.D. Ark. 1990).

⁸⁷ *Id.* at 601.

⁸⁸ *Id.* at 601-602.

71. No law or jurisprudence provides that the Secretary of State is a necessary party to litigation arising under Section 2 of the Voting Rights Act.
72. If the Court were to find that the 1993 Judicial Election Plan is unconstitutional, the Secretary is required by law, whether he is a party to this litigation or not to forego the holding of any elections under that plan.
73. If the Legislature is compelled to enact another election plan for the City Court of Baton Rouge, the Secretary of State is required by law, whether he is a party to this litigation or not, to hold elections under that plan.
74. If the Court orders that new election districts be drawn for the City Court of Baton Rouge, the Secretary of State is required by law, whether he is a party to this litigation or not, to forego the holding of elections under the 1993 Election Plan.
75. If the Court orders that new election districts be drawn for the City Court of Baton Rouge, the Secretary of State is required by law, whether he is a party to this litigation or not, to hold elections under the plan that has been ordered.

Respectfully Submitted:

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