

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL,  
*Plaintiff*

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CIVIL ACTION 3:12-cv-657

VERSUS

CHIEF JUDGE BRIAN A. JACKSON

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

MAGISTRATE RICHARD L. BOURGEOIS

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**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

**MAY IT PLEASE THE COURT:**

Defendant, Tom Schedler in his official capacity as the Louisiana Secretary of State ("the Secretary of State"), files this Memorandum in support of his Motion to Strike the Motion for Preliminary Injunction (Rec. Doc. 559) filed by Plaintiff, Kenneth Hall, and Intervenor, Byron Sharper (hereinafter "Plaintiffs"). For the reasons set forth hereinbelow, the Court should order stricken Plaintiff's Motion for Preliminary Injunction.

**I. BACKGROUND**

Following the completion of a six day bench trial, the Plaintiffs have filed a Motion for Preliminary Injunction, in which they have requested that this Honorable Court issue a preliminary injunction to restrain Defendants, including the Secretary of State, from qualifying candidates for the recently vacated Division "C" seat on the Baton Rouge City Court pending disposition of Plaintiffs' claims that the current method of electing judges to the Baton Rouge

City Court violates Section 2 of the Voting Rights Act. (See Rec. Doc. 559). The Plaintiffs have also asked for an order enjoining voting for the Special Election under the current election boundaries for the Baton Rouge City Court. The election at issue in the Motion for Preliminary Injunction is not scheduled until October 24, 2015, and qualifying would not occur until September 8-10, 2015.

## **II. LAW AND ARGUMENT**

Pursuant to Fed. R. Civ. P. 12(f) the Secretary of State herein requests that the Court strike the Plaintiffs' Motion for Preliminary Injunction for the reasons explained below.

### **A. THE PLAINTIFFS ARE NOT TRYING TO PROTECT THE STATUS QUO**

A preliminary injunction is generally designed to protect the status quo pending a trial on the merits. In this case, a bench trial on the merits was completed on November 19, 2015. (Rec. Doc. 539). Therefore, Plaintiffs' Motion for Preliminary Injunction does not seek relief in order to protect the status quo pending a trial on the merits.

The primary justification for the entry of a preliminary injunction is to preserve the trial court's ability to render a meaningful decision on the merits. *Canal Authority v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974). In this case, qualifying is not imminent. The election is not scheduled until October 24, 2015, and qualifying would not occur until September 8-10, 2015. Therefore, this Honorable Court still has a significant amount of time to render a decision on the merits of the Plaintiffs' case prior to qualifying or any election.

### **B. THE RELIEF REQUESTED IS DUPLICATIVE**

A motion for preliminary injunction at this juncture is improper and unwarranted, as the trial has already occurred. Moreover, it is duplicative of relief previously requested by the Plaintiffs. See Rec. Doc. 1, Paragraph 19(c), wherein Plaintiff Hall requests an injunction with

regard to qualifying candidates, and Paragraph 88(b)(i), wherein Plaintiff Hall prays for a preliminary and permanent injunction enjoining the Defendants from “further calling, holding, supervising or certifying any elections . . . under the Current Judicial Election Plan.” See also Rec. Doc. 133, Paragraph 28, wherein Intervenor Sharper prays for the Court to enter an order “enjoining Defendants . . . from administering, implementing, or conducting any future elections for the Baton Rouge City Court under the current sub-district method of electing judges”. The Plaintiffs’ request for injunctive relief was included within their initial claims, which were tried before this Court over the course of the six day bench trial.

**C. THE DEADLINE FOR FILING POST TRIAL BRIEFS HAS PASSED**

A reading of the Plaintiffs’ twenty-page Memorandum in Support of their Motion for Preliminary Injunction reveals that the Plaintiffs are simply supplementing their previously submitted proposed findings of fact and conclusions of law. Any supplementation would be untimely as post-trial briefs were due on December 10, 2014, and were limited to fifty pages. (Rec. Doc. 539). If the Plaintiffs believed that it was necessary to provide the Court with additional post-trial briefing, they should have requested leave of court to file a supplemental post-trial brief.

**D. THE SECRETARY OF STATE PLAYS NO ROLE IN QUALIFYING CANDIDATES FOR BATON ROUGE CITY COURT**

The Plaintiffs are asking that this Court issue a preliminary injunction to restrain Defendants, including the Secretary of State, from qualifying candidates for the recently vacated Division “C” seat on the Baton Rouge City Court. (See Rec. Doc. 559). However, the Secretary of State is not the qualifying official for candidates for Baton Rouge City Court Judge. See La. R.S. 18:461, *et seq.* Local and municipal candidates qualify for a primary election with the clerk of court for the parish in which the candidate is registered to vote. La. R.S. 18:462(B). On the

other hand, Article 7, Section 7 of the Louisiana Constitution charges the Secretary of State with preparing and certifying the ballots for all elections, promulgating all election returns, and administering the election laws, except those relating to voter registration and custody of voting machines. The Secretary of State has no power to call elections, refuse to hold elections, or refuse to certify candidates elected pursuant to election plans promulgated by the Legislature. His duties are purely ministerial and non-discretionary, and the Office of the Secretary of State will abide by any order entered by this Court, as has been the Secretary's position throughout this litigation.

**E. CONSIDERATION OF FACTS NOT PRESENTED AT TRIAL WOULD BE IMPROPER**

Further, to the extent that the Plaintiffs are asking this Honorable Court to rule on facts not presented at trial and not alleged in their Complaints, the determination would be improper.

**III. CONCLUSION**

WHEREFORE, Defendant, Tom Schedler in his official capacity as the Louisiana Secretary of State, prays that an Order be issued by this Court striking the Plaintiffs' Motion for Preliminary Injunction (Rec. Doc. 559).

Respectfully Submitted:

**SHOWS, CALI & WALSH, LLP**

/s/ Grant J. Guillot

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **8<sup>th</sup>** day of **June, 2015**, 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/ Grant J. Guillot

GRANT J. GUILLOT