

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

**KENNETH HALL**

*Plaintiff,*

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

v.

**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,  
TOM SCHEDLER, in his official  
capacity as the Louisiana Secretary of State,  
CITY OF BATON ROUGE,  
PARISH OF EAST BATON ROUGE, and  
BATON ROUGE CITY COURT**

*Defendants.*

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**PLAINTIFF KENNETH HALL’S MEMORANDUM IN OPPOSITION TO MOTION TO  
DISMISS FILED BY STATE OF LOUISIANA, LOUISIANA GOVERNOR PIYUSH  
“BOBBY” JINDAL AND ATTORNEY GENERAL JAMES “BUDDY” CALDWELL**

**MAY IT PLEASE THE COURT:**

Defendants, State of Louisiana, Louisiana Governor Piyush “Bobby” Jindal, and the Louisiana Attorney General James D. “Buddy” Caldwell (collectively “State Defendants”), filed Defendant’s Motion to Dismiss Complaint, First Amending and Supplemental Complaint, and Request for Preliminary and Permanent Injunction, *see* Docket No. 39. Although, we believe the Judge’s ruling of November 2, 2012,<sup>1</sup> disposed of all of the issues raised in State Defendant’s Motion to Dismiss (Doc. 39), to the extent the Court’s ruling did not dispose of Defendant’s motion to dismiss, Plaintiff, Kenneth Hall, files this Memorandum in Opposition.

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<sup>1</sup> R.Doc. 45.

### **PRELIMINARY STATEMENT**

State Defendants contend that this court lacks subject matter jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction pursuant to the provisions of 42 U.S.C. §1973, that Plaintiff Hall has not asserted a cause of action under his Complaint or First Amending and Supplemental Complaint, and that Plaintiff Hall has failed to state a claim for which relief can be granted as prayed for against the State Defendants.

### **LAW AND ARGUMENT**

The Fifteenth Amendment provides that the right to vote shall not be denied by the United States or by any State on account of race, color, or previous condition of servitude, and Congress was empowered to enforce this Amendment by Sections 2 and 5 of the Voting Rights Act of 1965. Various attempts by the States to discriminate against voters because of race or color have been invalidated by the courts under the Fifteenth Amendment of the U.S. Constitution. See *Guinn v. United States*, 238 U.S. 347, 59, L.Ed. 1340, 35 S.Ct. 926, (1915); *Lane v. Wilson*, 307 U.S. 268, 83 L.Ed. 1281, 59 S.Ct. 872 (1939).

Moreover, the United States Supreme Court in *Gomillion* held that the right of Blacks to vote in municipal elections under the Fifteenth Amendment is deemed violated when the state redefined the boundaries of the City of Tuskegee so as to remove from the city all but four or five of the Black voters while not removing a single White voter or resident. See *Gomillion v. Lightfoot*, 364 U.S. 339, 5 L.Ed. 2d 110, 81 S.Ct. 125(1960).

The Majority Rule Principle is implicit in the concept of ordered liberty. At the base of our civil and political institutions of elections is majority rule. Respect for a principle of justice so rooted in the traditions and conscience of America as to be ranked as fundamental is the principle of majority rule in the law of elections.

Adherence of a State of Louisiana maintained minority-class rule elective Judicial Election Plan for the City of Baton Rouge's City Court establishing a sub-district election system, which favors placing a minority class of White candidates as a majority on City Court shocks the conscience of those canons of decency and fairness, which express the notion of "we the people" in the Preamble to, the Articles of, and, Amendments to, the United States Constitution, as well as to the statutory civil rights and voting rights laws effectuating the Constitution.

Such weighted voting action by a state has been held as invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. See *Baker v. Carr*, 369 U.S. 186, 7 L.Ed. 2d 663, 82 S.Ct. 691 (1962). Likewise, such invidious discrimination should be declared in violation of the Majority Rule Principle and the Fifteenth Amendment.

The State Defendants' inaction to revise and update the Judicial Election Plan in accordance with (a) Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, (b) the Fourteenth and Fifteenth Amendments to the United States Constitution, and (c) democratic principles of majority rule and individualistic egalitarianism of the United States Constitution constitutes state action. See *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 6 L.Ed.2d 45, 52, 81 S.Ct. 856 (1961).

**A. This Court Has Subject Matter Jurisdiction.**

Plaintiff Hall, submits that this court has subject matter jurisdiction pursuant to 42 U.S.C. §1973c and §1983 – to enforce rights guaranteed by Section 2 and Section 5 of the Voting Rights Act and the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the United States Constitution and pursuant to 28 U.S.C §1331<sup>2</sup>– to hear any matter involving a federal question. In evaluating whether subject

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<sup>2</sup> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

matter jurisdiction exists, the court accepts all unconverted factual allegations as true. *Gibbs v. Buck*, 307 U.S. 66, 59 S.Ct. 725 (1939). The court views the allegations as a whole.

Accepting all uncontroverted factual allegations made by Plaintiff Hall as true, Plaintiff Hall has demonstrated a claim against the State Defendants over which this court has jurisdiction. This Honorable Court has jurisdiction over the subject matter of all of Plaintiff Hall's claims arising under 42 U.S.C. §1973 with respect to the State Defendants to issue declaratory or injunctive relief as this court deems necessary.

**B. Plaintiff Hall Has Stated a Cause of Action Upon Which Relief May be Granted.**

To survive a Rule 12(b)(6) motion to dismiss, Plaintiff Hall must plead enough facts “to state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1979 (2009). A claim is facially plausible when the plaintiff pleads facts that allow the court to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949. Plaintiff Hall submits that he has stated a cause of action against the State Defendants under 42 U.S.C. §1983 and 28 U.S.C §1331.

The Original Complaint specifically provides that the minority vote in the City of Baton Rouge has been impermissibly diluted by the election of judges pursuant to the Judicial Election Plan [LSA-R.S. §13:1952(4)b-d] and has had retrogressive effect compounded by the fact that the former minority class citizens have become the majority in population, voting age population and number of registered voters. Moreover, the entire complaint holistically alleges systematic and sequential facts that support invidious discrimination by the State Defendants based on race.

More specifically the Original Complaint shows that African Americans now constitute at least 54.3% of the City of Baton Rouge total population. As of October 12, 2012, the total number of Black registered voters was 71,375 (52.4%); the total number of White registered

voters was 58,411 (42.9%); and the total number of Other race voters was 6,330 (4.7%). See Docket No. 1, p. 11, paragraph 43.

Plaintiff Hall has sufficiently pled allegations – factual allegations 13-84 of the Original Complaint – that the State Defendants violated Section 2 of the Voting Rights Act, the Majority Rule Principle and the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the United States Constitution and – factual allegations as alleged in the First Amending and Supplemental Complaint – that the State Defendants violated Section 5 of the Voting Rights Act of 1965. Plaintiff Hall’s Original Complaint specifically provides that the African American vote in the City of Baton Rouge has been impermissibly diluted by the election of judges pursuant to the Judicial Election Plan [LSA-R.S. §13:1952(4)b-d].

**C. Plaintiff Hall Stated a Claim Upon Which Relief May be Granted.**

*a. Section 2 of the Voting Rights Act of 1965*

Plaintiff Hall’s Original Complaint specifically provides that the African American vote in the City of Baton Rouge has been impermissibly diluted by the election of judges pursuant to the Judicial Election Plan [LSA-R.S. §13:1952(4)b-d]. The United States Supreme Court held in *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991), that judicial elections are included within the ambit of 42 U.S.C. §1973 and §1973c. Plaintiff Hall submits that this court can enter an order – whether declaratory or injunctive – finding that the State Defendants violated Section 2 of the Voting Rights Act of 1965 and the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the United States Constitution.

Taking the well-pleaded facts of the complaint as true, paragraphs 19-21 of the Original Complaint, show the change in voting demographics in the City of Baton Rouge. The Complaint also alleges that the population shifted to majority black and that black voters are concentrated in

Election Section 2. The complaint further alleges that because of the current Judicial Election Plan, the weight of plaintiff's vote is reduced. The Judicial Election Plan, as written, places a restriction on Plaintiff's right to vote for the candidates of his choice.

Although, the Supreme Court ruled in *Wells v. Edwards*, 409 U.S. 1095, 93 S.Ct. 904, 34 L.Ed.2d 679 (1973), that the "one-man, one-vote" principle does not apply to the Judicial Branch, which was decided based upon the unique facts presented in this case, Plaintiff Hall submits that the Louisiana Legislature incorporated the "one-man, one vote" principle of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the United States Constitution into the 1993 Judicial Election Plan. During the hearing before the Judicial Committee in support of Senate Bill 1126, former State Senator John Michael Guidry (now a judge on the Court of Appeal, First Circuit) pronounced the 1993 Judicial Election Plan was statutorily created based on the principle of "one-person, one-vote" of the United States Constitution, in contrast to *Wells vs. Edwards*.

As alleged in the Original Complaint, then Senator John Michael Guidry testified that Election Section 1 and Election Section 2 of the 1993 Judicial Election Plan would be based on "one man, one vote." It is well settled that the state can grant more rights than the federal government. This federal principle "one-man, one-vote" has been codified into state law by Act 609 and now all judges to the Baton Rouge City Court have to be elected based upon this concept.

*b. Section 5 of the Voting Rights Act of 1965*

Moreover, Plaintiff Hall has sufficiently pled a Section 5 violation with respect to the State Defendants. Section 5 of the Voting Rights Act of 1965 provides that "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting"

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

To the extent the State Defendants did not seek preclearance and/or a judgment from the Justice Department or the United States District Court for the District of Columbia prior to or after passage of provisions of law that constituted a “voting change” different from that in force or effect in the City of Baton Rouge/Parish of East Baton Rouge and/or in the State of Louisiana on November 1, 1964, Plaintiff has stated a cause of action for violation of Section 5.

Accordingly, this Honorable Court has authority to issue declaratory and injunctive relief as prayed for in Plaintiff’s Original Complaint and his First Amending and Supplemental Complaint for violations of the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the Constitution pursuant to Section 2 and 5 of the Voting Rights Act of 1965 against the State Defendants pursuant to 42 U.S.C. §1983. This Honorable Court further has jurisdiction to grant equitable relief as required by law, including but not limited to attorney fees pursuant to 42 U.S.C. §1988.

### **CONCLUSION**

Plaintiff Hall asks this Honorable Court to deny Defendant State of Louisiana, Louisiana Governor Piyush “Bobby” Jindal, and Louisiana Attorney General James “Buddy” Caldwell’s Motion to Dismiss for all reasons stated above.

**RESPECTFULLY SUBMITTED:**

*The Law Office of Ronald R. Johnson*

s/ Ronald R. Johnson

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 16<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing Memorandum in Opposition to Defendant Secretary of State's Motion to Dismiss was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

Baton Rouge, Louisiana, this 16<sup>th</sup> day of November, 2012.

/s/ Ronald R. Johnson

**RONALD R. JOHNSON**