

NINETEENTH JUDICIAL DISTRICT

PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

NUMBER C-716690

SECTION 24

**JAMES BULLMAN, KIRK GREEN, STEPHEN HANDWERK, DARRYL MALEK-
WILEY, AMBER ROBINSON, and POOJA PRAZID**

VERSUS

**R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS
LOUISIANA SECRETARY OF STATE**

*******CONSOLIDATED WITH*******

NUMBER C-716837

SECTION 25

**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
("NAACP") LOUISIANA STATE CONFERENCE, POWER COALITION FOR EQUITY
AND JUSTICE, DOROTHY NAIRNE, EDWIN RENÉ SOULÉ, ALICE WASHINGTON,
AND CLEE EARNEST LOWE**

VERSUS

**R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS
LOUISIANA SECRETARY OF STATE**

**MEMORANDUM IN SUPPORT OF EXCEPTIONS OF LACK OF SUBJECT MATTER
JURISDICTION AND NO RIGHT OF ACTION**

MAY IT PLEASE THE COURT:

In these consolidated cases, the principal Plaintiffs and the Intervenor/Plaintiff challenge the 2011 U.S. Congressional districts in Louisiana as malapportioned based upon current census data. Since the filing of the challenge, the Louisiana Legislature adopted new Congressional districts, and the 2011 districts thereupon ceased to exist. The 2011 districts cannot be revived or recreated so that this case has been rendered moot for lack of a justiciable controversy, and this Court has been deprived of subject matter jurisdiction. Moreover, neither Plaintiffs or Intervenor/Plaintiffs claim harm or injury and are without a right or injury. The suits should be dismissed with prejudice.

MOOTNESS

The absence of any justiciable controversy then deprives this Court of subject matter jurisdiction. *Duplantis v. La. Bd. of Ethics*, 00-1750 (La. 03/23/01), 782 So. 2d 582, 589. Where the purpose of the injunctive relief sought is to prevent specifically threatened future conduct, but the act sought to be enjoined has already been committed or accomplished, there can be no ground

for an injunction. *Felder v. Pol. Firm, L.L.C.*, 2014-1266 (La. App. 1 Cir. 4/24/15), 170 So. 3d 1022, 1026. A court will not review a case when only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue. *Tobin v. Jindal*, 2011-0838 (La. App. 1 Cir. 2/10/12), 91 So. 3d 317, 321. If a case is moot, there is no subject matter jurisdiction on which the judgment can operate. *Id.* The controversy must exist at every stage of the proceeding, and jurisdiction may abate if the case becomes moot. *Id.*

While jurisprudential exceptions to mootness were discussed by the Louisiana Supreme Court in the seminal case of *Cat's Meow, Inc. v. City of New Orleans Through Dep't of Fin.*, 98-0601 (La. 10/20/98), 720 So. 2d 1186, 1197, those exceptions have no applicability here. The districts challenged by the suit, 2011 U.S. Congressional districts in Louisiana no longer exist, and no injunctive relief can be granted now that new districts have been adopted by the legislature. There is no risk to the plaintiffs that the 2011 districts will be revived or utilized for congressional elections. The districts no longer exist. Any question raised by this litigation no longer has practical significance and would be purely academic. Nor would a decree by the court give practical relief or effect. *Id.* at 1193-1194.

The condition about which the primary Plaintiffs and Intervenor/Plaintiffs complain has abated and the need for relief ended with the adoption of new congressional districts. There is no possibility of prospective relief, and no collateral consequences flow from the cessation of the 2011 districts. *Felder*, supra. 1029.

NO RIGHT OF ACTION

The claims of the primary Plaintiffs and the Intervenor/Plaintiff that they suffered harm or injury by the malapportioned 2011 congressional districts similarly ceased with the adoption of new congressional districts such that Plaintiffs and Intervenor/Plaintiffs, if they ever did, no longer have a right of action against the Secretary of State. The peremptory exception in Louisiana serves to have Plaintiff's action declared legally nonexistent. La. Code Civ. P. art. 923.

Absent viable allegations that they will suffer some harm as a result of the 2011 congressional districts, Plaintiffs and Intervenor/Plaintiffs are without a colorable interest that is essential to maintaining suit under La. Code Civ. P. art. 681. See, *Bradix v. Advance Stores Company, Inc.*, 2017-0166 (La. App. 4 Cir. 8/16/17), 226 So. 3d 523. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy

is presented to the court. *Mouton v. Dep't of Wildlife & Fisheries for State of La.*, 95-0101 (La. App. 1 Cir. 6/23/95), 657 So. 2d 622, 626, *writ denied*, 95-2161 (La. 11/17/95), 663 So. 2d 710, and *writ denied*, 95-2164 (La. 11/17/95), 663 So. 2d 711. No one is affected by the former congressional districts because they no longer exist. Plaintiffs and Intervenor/Plaintiffs are no different. They are not affected by the former districts and cannot maintain a cause of action. Their suits must be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has on this date been served upon all known counsel of record by electronic mail at the email address provided.

This 30th day of March, 2022.

/s/ Jeffrey M. Wale
Jeffrey M. Wale