

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

LINDSAY GARCIA, et al.,

Plaintiffs,

v.

JEFF LANDRY, in his official capacity as
Governor of the State of Louisiana; ELIZABETH
B. MURRILL, in her official capacity as Attorney
General; and NANCY LANDRY, in her official
capacity as Secretary of State,

Defendants.

Civil No. 3:26-cv-01528-DCJ-KDM

Judge David C. Joseph

Magistrate Judge Kayla D. McClusky

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

The State asks this Court to dismiss this action as moot, arguing that because the Legislature later passed Acts 2 and 7, declaring the Governor's suspension of the congressional primary unlawful would have no legal effect and could not reinstitute the May closed primary. That argument attacks a remedy that Plaintiffs do not seek. Plaintiffs do not ask this Court to turn back the calendar. They seek three forms of relief that remain fully available: a declaratory judgment that the emergency certification and the executive suspension of a federal congressional election were unconstitutional; an order ensuring that the votes already cast are counted; and an order requiring compliance, going forward, with the federal law that protects military and overseas voters.

Each defeats mootness. The suspension of an imminent election is the paradigm of conduct that evades review, because the election date passes long before any court can rule. The declaratory relief Plaintiffs seek is effective relief that governs the State's recurring conduct. The right to have lawfully cast votes counted is a live and concrete interest. And Act 7 did not cure but created a

continuing violation of the Uniformed and Overseas Citizens Absentee Voting Act. The State, which bears a formidable burden to establish mootness through its own voluntary conduct, cannot carry it. On a Rule 12(b)(1) motion that takes the Complaint's allegations as true, this case readily survives and should proceed to a decision on the merits. The motion should be denied.

BACKGROUND

On April 29, 2026, the Supreme Court affirmed that Louisiana's prior congressional map was an unconstitutional racial gerrymander, and the next day, the three-judge court in *Callais v. Landry*, No. 3:24-cv-00122 (W.D. La.), renewed its injunction barring the State from using that map. The State had litigated that case to judgment over more than two years.

With the closed congressional primary underway, the Secretary of State certified an election emergency, and the Governor issued Executive Order No. JML 26-038, suspending the congressional primary elections. By its terms, the Order remains in effect unless terminated by operation of law. On information and belief, by the time the Order issued, absentee ballots, including ballots for military and overseas voters, had already been transmitted and in part returned, and those ballots were left uncounted when the primary was suspended. Plaintiffs, a candidate for Congress and a registered Louisiana voter, promptly sued to challenge the certification and the Order under the First, Fourteenth, and Fifteenth Amendments, the Elections Clause, Section 2 of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the Louisiana Constitution, and sought emergency relief.

Only afterward did the Legislature enact Act 7, which rescheduled the congressional elections to an open primary on November 3, 2026, and an open general election on December 12, 2026, and Act 2, which adopted a new congressional map. On the strength of those later enactments, the State now moves under Rule 12(b)(1) to dismiss the entire action as moot.

LEGAL STANDARD

A case is moot only when no effective relief of any kind can be granted. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). So long as the parties retain a concrete interest in the outcome, however small, the controversy persists. *Id.* The party invoking mootness bears the burden of establishing it, and that burden is formidable where the asserted mootness rests on the movant's own voluntary

conduct. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013); *Friends of the Earth, Inc. v. Laidlaw Env'l Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

The State brings its motion under Rule 12(b)(1). Where, as here, the motion is a facial attack that rests on supervening statutes rather than on any factual challenge to the controversy Plaintiffs pleaded, the Court accepts the Complaint's well-pleaded allegations as true and construes them in Plaintiffs' favor. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Williamson v. Tucker*, 645 F.2d 404, 412–13 (5th Cir. 1981); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Taken as true, the allegations establish a live controversy and the availability of effective relief, which is all that is required to defeat the motion and proceed.

ARGUMENT

I. THE CHALLENGED SUSPENSION EVADES REVIEW AND IS CAPABLE OF REPETITION.

The controversy falls squarely within the exception for conduct capable of repetition yet evading review. The exception applies when the challenged action is too short in duration to be fully litigated before it ceases, and there is a reasonable expectation that the same complaining party will be subject to the same action again. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam); *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016). The State invokes *Murphy* and *Already* for the general rule, but ignores that this exception is at its zenith in election cases, where the calendar almost always overtakes the litigation. *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Norman v. Reed*, 502 U.S. 279, 287–88 (1992); *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Davis v. Federal Election Comm'n*, 554 U.S. 724, 735–36 (2008).

The evading-review prong is plainly satisfied. An emergency suspension of an election is, by design, fleeting. By the time any plaintiff can brief, argue, and obtain a ruling, the scheduled election date has passed, and the suspension has spent its force. That is the precise feature that enables such orders to evade review and the reason federal courts retain jurisdiction to decide them. The State's own conduct illustrates the point: it suspended an election that was underway, ensuring that no court could pass on the legality of the suspension before the date arrived.

The repetition prong is satisfied because the Governor has not disclaimed the power he exercised. Executive Order No. JML 26-038 provides that the suspension remains in effect unless terminated by operation of law, and the emergency framework on which it rests remains intact. Nothing prevents the Governor from declaring another emergency and suspending a future primary, runoff, or general election, and Plaintiffs, a candidate who intends to seek office again and a voter who intends to vote, would once more be subject to that action. A reasonable expectation of recurrence is all the doctrine requires. *Davis*, 554 U.S. at 735–36.

II. PLAINTIFFS SEEK A DECLARATORY JUDGMENT THAT THE SUSPENSION WAS UNCONSTITUTIONAL, WHICH IS EFFECTIVE RELIEF.

The State argues that enjoining the Executive Order would have no legal effect because Act 7 has superseded it. That argument addresses only injunctive relief tied to the May primary; it ignores the declaratory relief Plaintiffs seek. Plaintiffs ask this Court to declare that the Secretary’s emergency certification and the Governor’s suspension of a federal congressional election were unconstitutional and unlawful. A declaratory judgment to that effect is effective relief that defeats mootness.

The point is settled. In *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 121–23 (1974), the Supreme Court held that the end of the precipitating event did not moot a claim for declaratory relief challenging a continuing governmental policy, because the policy remained in force and could again affect the plaintiffs. So too here. The Declaratory Judgment Act authorizes courts to declare the rights of parties in a case of actual controversy, 28 U.S.C. §§ 2201–2202, and an actual controversy persists wherever the dispute is definite and concrete and admits of specific relief through a decree of conclusive character. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). The State’s own authorities ask only whether effective relief can be granted. *Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 431 (5th Cir. 2013); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006). A declaration that the State may not suspend a federal election by executive fiat is effective relief, and it will govern the State’s conduct in the next cycle and beyond.

**III. A LIVE CONTROVERSY REMAINS OVER THE COUNTING OF VOTES
ALREADY CAST AND OVER COMPLIANCE WITH FEDERAL LAW PROTECTING
MILITARY AND OVERSEAS VOTERS.**

The right to vote includes the right to have one's vote counted. *United States v. Classic*, 313 U.S. 299, 315 (1941); *Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964); *Gray v. Sanders*, 372 U.S. 368, 380 (1963). On information and belief, before the Order issued, absentee and military and overseas ballots had been transmitted, and some had been cast and returned, for the suspended primary. Those ballots were left uncounted. A live controversy therefore remains over whether those votes will be counted, and an order requiring that they be counted, or declaring their nullification unlawful, is effective relief that the rescheduling in Act 7 does not touch.

The Uniformed and Overseas Citizens Absentee Voting Act independently keeps this case alive. UOCAVA requires States to transmit validly requested absentee ballots to covered military and overseas voters not later than forty-five days before a federal election. 52 U.S.C. § 20302(a)(8)(A); see 52 U.S.C. § 20301 et seq. Act 7 makes compliance for the December 12, 2026 election arithmetically impossible: the field for that election is not fixed until the November 3, 2026 primary concludes, yet the forty-five-day window for the December election closes in late October, before the primary occurs. Far from mooting this case, Act 7 created a fresh, ongoing violation of federal law that this Court can remedy by directing UOCAVA-compliant procedures. Tellingly, the State's motion does not mention UOCAVA or the uncounted ballots at all.

**IV. THE STATE CANNOT MANUFACTURE MOOTNESS THROUGH ITS OWN
LATER LEGISLATION.**

A defendant's voluntary cessation of challenged conduct moots a case only if the defendant carries the heavy burden of showing that it is absolutely clear the conduct could not reasonably be expected to recur. *Laidlaw*, 528 U.S. at 189; *West Virginia v. EPA*, 597 U.S. 697, 719 (2022); *Already*, 568 U.S. at 91. The mere repeal or amendment of a challenged measure does not suffice where the actor remains free to return to its old ways. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982).

Act 7 does not meet that standard. It is the Legislature's rescheduling of a single election. It did not repeal the emergency statutes the Secretary invoked, and it did not disclaim the executive authority the Governor asserted to suspend a federal election by order. The actors whose conduct

Plaintiffs challenge, the Governor and the Secretary, remain free to repeat that conduct at the next perceived emergency. It is therefore not absolutely clear that the challenged conduct cannot recur, and the State has not carried its formidable burden.

V. THE COMPLAINT WITHSTANDS THIS RULE 12(b)(1) MOTION AND SHOULD PROCEED TO THE MERITS.

The State's motion is, at most, a facial attack premised on supervening statutes. It does not negate the live controversy Plaintiffs have pleaded, and it does not engage the declaratory, vote-counting, and UOCAVA relief that remains available. Taking the Complaint's allegations as true, Plaintiffs have stated a live case or controversy, and dismissal is improper. *Ramming*, 281 F.3d at 161. Whether a genuine emergency existed, whether lawfully cast votes were left uncounted, and whether the suspension of a federal election by executive order was constitutional are questions to be resolved on a developed record, not on a motion to dismiss. Indeed, the Elections Clause commits the times, places, and manner of congressional elections to the Legislature, subject to Congress, not to unilateral executive suspension, U.S. Const. art. I, § 4; *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8–9 (2013); and federal law fixes the day for choosing Representatives, 2 U.S.C. § 7; *Foster v. Love*, 522 U.S. 67, 69–72 (1997). Those merits questions confirm that this case should proceed, not be dismissed.

At a minimum, dismissal of the entire action is improper. Even if the Court were to view some request for relief tied to the May primary as moot, the live declaratory claim, the claim to have cast votes counted, and the UOCAVA claims would remain. The proper course is to deny the motion, or at most to dismiss only any moot request while permitting the live claims to proceed, with leave to amend freely given to conform the claims to Act 7 and, if the Court wishes, to add a covered UOCAVA voter as a plaintiff. *Foman v. Davis*, 371 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a)(2).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss so that this action may proceed to the merits. In the alternative, Plaintiffs request leave to amend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, a copy of the foregoing was filed electronically and served on all counsel of record through the Court's CM/ECF system.

/s/ Donald C. Hodge, Jr.