

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

LINDSAY GARCIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil No. 3:26-cv-01528
v.	)	
	)	Judge David C. Joseph
JEFF LANDRY, in his official capacity	)	Magistrate Judge
as Governor of the State of Louisiana;	)	Kayla D. McClusky
ELIZABETH B. MURRILL, in her official	)	
capacity as Attorney General; and	)	
NANCY LANDRY, in her official capacity	)	
as Secretary of State,	)	
	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS

Plaintiffs’ opposition (ECF 48) confirms their claims are unfit for judicial review. It reveals they lack standing, and their four theories to avoid mootness all fail: (1) their request for declaratory relief is moot, (2) the capable-of-repetition exception is inapplicable, (3) they lack standing to assert others’ voting rights, and the Court cannot order that legislatively voided votes be counted, (4) and their Uniformed and Overseas Citizens Absentee Voting Act (the “Overseas Act”) claim is unripe and factually inaccurate. The Court should grant the motion and dismiss for lack of subject-matter jurisdiction.

ARGUMENT

I. PLAINTIFFS’ OPPOSITION REVEALS THEY LACK STANDING.

Plaintiffs sued over temporary executive actions suspending the now-passed May 16 and June 27 congressional primaries after the Supreme Court held Louisiana’s SB-8 map unconstitutional and this Court renewed its injunction against using that map “for any election.” Order, *Callais v. Louisiana*, No. 3:24-cv-00122 (W.D. La. Apr. 30, 2026), ECF 261. That left the

State with no usable congressional map. Act 2 enacted new maps, and Act 7 canceled the primaries, voided votes already cast in those contests, and set new November and December election dates.

Plaintiffs' opposition confirms that they challenge the Governor's and Secretary's response to *Callais*. They seek a declaration that no "genuine emergency existed" after the Supreme Court's decision and the renewed injunction in *Callais*. ECF 48 at 6. That is a collateral attack on the renewed injunction. Their apparent theory—that the Attorney General should have sought an emergency stay of the renewed injunction—targets an unreviewable discretionary litigation decision that violates no one's rights. *See Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 270 (5th Cir. 1976). The Attorney General is "the chief legal officer of the state" with discretion to determine how to assert or protect "any right or interest of the state" in "any civil action or proceeding." La. Const. art. IV, § 8.

Plaintiffs could have intervened in *Callais* to, for example, seek to stay the injunction or a separate injunction commanding the Secretary to count "the votes already cast." ECF 48 at 1. Indeed, one Plaintiff here (Ms. Jewett) successfully intervened in *Callais*.¹ Order, *Callais*, No. 3:24-cv-00122 (W.D. La. May 27, 2026), ECF 296. Yet she has not asked the *Callais* Court whether (a) its injunction created a "genuine emergency" requiring suspension of congressional primaries, (b) the suspension was "unconstitutional," or (c) the Overseas Act commands a mandatory injunction (conflicting with the *Callais* injunction) that the Secretary must count "votes already cast" under the SB-8 map. ECF 48 at 1. What the State does "going forward" is the question before the *Callais* Court. Order, *Callais*, No. 3:24-cv-00122 (W.D. La. June 17, 2026), ECF 316 (ordering briefing of "scope of the remedial proceedings"). Plaintiffs' suggestion that they can amend their Complaint "to conform the[ir] claims to Act 7" is the question the *Callais* parties

¹ The point is not that the other Plaintiffs would have satisfied Rule 24 but that they needed to try.

propose to brief there. Parties' Joint Proposal, *Callais*, No. 3:24-cv-00122 (W.D. La. June 24, 2026), ECF 320 at 2 (“Any party objecting to SB 121 must file a brief setting forth the legal basis for its objection.”).

At bottom, this suit is a collateral attack on the *Callais* injunction and should be dismissed as such.² No injunction or declaration against the challenged executive acts can change that the *Callais* injunction stopped the State from going forward with the May and June congressional primaries. So even if Plaintiffs could amend to challenge Acts 2 and 7, the *Callais* injunction means they cannot show an injury that is fairly traceable to either Act that their requested relief would redress.

Plaintiffs thus lack standing and recognize as much. ECF 48 at 6 (arguing “the live declaratory claim” should go forward even if other “request[s] for relief tied to the May primary [are] moot” and they should be allowed to “add” a plaintiff covered by the statute).

II. ANY DECLARATION OF THE LEGALITY OF THE CHALLENGED EXECUTIVE ACTS WOULD BE AN IMPERMISSIBLE ADVISORY OPINION.

Plaintiffs expressly request an advisory opinion: They seek an injunction or declaration that the Governor and Secretary may not “declar[e] another emergency and suspend[] a future primary, runoff, or general election” because Plaintiffs might again be “a candidate who intends to seek office again and a voter who intends to vote.” ECF 48 at 4. That is quintessentially advisory. *Id.* at 6.

The motion to dismiss relies on *undisputed* facts—enactment of Acts 2 and 7—that have rendered the challenged executive acts inoperative. *See Ramming v. United States*, 281 F.3d 158,

² Consolidating this case with *Callais* is not an option because three-judge jurisdiction is lacking here. *See* ECF 25; ECF 44.

161 (5th Cir. 2001) (Subject-matter jurisdiction can be assessed by “the complaint supplemented by undisputed facts evidenced in the record.”). As “the party asserting jurisdiction” Plaintiffs “constantly bear[] the burden of proof that jurisdiction does in fact exist,” including “for a Rule 12(b)(1) motion.” *Id.* They cannot satisfy that burden because the challenged executive acts no longer have operative effect.

“Generally, any set of circumstances that eliminates actual controversy after the commencement of a lawsuit renders that action moot.” *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006). Specifically, “a case challenging a[n] . . . executive order . . . usually becomes moot” if it “has expired or been repealed.” *Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020); *see also U.S. Navy SEALs 1–26 v. Biden*, 72 F.4th 666, 672 (5th Cir. 2023) (executive mandates “no longer in effect” mooted request for equitable relief). That rule applies here twice over: The Executive Order expired on May 30, *see* ECF 1-2 at 3, and Acts 2 and 7 superseded it.

Plaintiffs nonetheless urge the Court to declare the challenged executive acts unconstitutional because a “continuing government policy” remains that “could again affect” them. ECF 48 at 4. A “declaration that the State may not suspend a federal election by executive fiat,”³ they argue, would be effective relief because it will “govern the State’s conduct in the next cycle and beyond.” *Id.* But that just confirms the advisory nature of the relief sought. Article III bars opinions that “cannot affect the rights of litigants in the case before them” and would merely “advis[e] what the law would be upon a hypothetical state of facts.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)); *Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) (*per curiam*). Plaintiffs’ “subjective fear” of a similar future emergency

³ Neither the executive order nor the emergency certification were “by executive fiat” or “unilateral” executive acts. ECF 48 at 4, 6. They were both expressly authorized by Louisiana Revised Statute § 18:401.1.

is an “ingenious academic exercise in the conceivable,” not a live controversy. *Preiser*, 422 U.S. at 403; *see Golden v. Zwickler*, 394 U.S. 103, 110 (1969).

The challenged acts have been superseded by Acts 2 and 7, and the Executive Order expired on May 30, 2026. *See* ECF 1-2 at 3. What remains is “an abstract dispute” over expired and superseded executive acts. *Alvarez v. Smith*, 558 U.S. 87, 93 (2009). A declaration of their legality would alter no legal relationship between the parties, reinstate no primary, count no votes, and change neither the *Callais* injunction nor Acts 2 and 7. The Supreme Court regularly rejects such declaratory relief. *See Golden*, 394 U.S. at 108–09; *Mattis*, 431 U.S. at 172–73; *Preiser*, 422 U.S. at 401–02.

Nor does *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974) help Plaintiffs. There, the challenged government policy was “fixed and definite” and “not contingent upon executive discretion.” *Id.* at 124. By contrast, the executive acts challenged here are (a) discretionary, *see* La. R.S. § 18:401.1(B); (b) expired, *see* ECF 1-2 at 3; and (c) superseded by Acts 2 and 7, which now govern Louisiana’s 2026 congressional election. Declaring expired executive acts unlawful would yield only an advisory opinion about “the State’s conduct in the next cycle and beyond.” ECF 48 at 4. The Court accordingly lacks jurisdiction and dismissal is in order.

III. PLAINTIFFS’ CLAIMS ARE NOT CAPABLE OF REPETITION.

Plaintiffs’ invocation of the “capable of repetition yet evading review” exception fails. That exception “applies only in exceptional situations” where the same complaining party reasonably expects the same alleged harm to recur. *City of L.A. v. Lyons*, 461 U.S. 95, 109 (1983); *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam). Plaintiffs must establish that this exception applies. *Libertarian Party v. Dardenne*, 595 F.3d 215, 217 (5th Cir. 2010). A “theoretical possibility” of recurrence is insufficient; they must show a “reasonable expectation” or

“demonstrated probability” of recurrence to *them*. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam) (quoting *Weinstein*, 423 U.S. at 149). They cannot do so.

The challenged executive acts responded to a unique emergency: *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), issued on the eve of the May congressional primary and the resulting renewed *Callais* injunction. Those decisions required suspension of the underway-congressional-primary and a new map because (again) the State could not use the SB-8 map “for any election.” Order, *Callais v. Louisiana*, No. 3:24-cv-00122 (W.D. La. Apr. 30, 2026), ECF 261. The Legislature resolved that emergency through Acts 2 and 7. Plaintiffs ask the Court to speculate that, “in the next [election] cycle and beyond,” (a) they will be a “candidate who intends to seek office again and a voter who intends to vote,”—in which districts under which map they do not say; (b) another eve-of-primary Supreme Court decision will invalidate those unknown districts; (c) a district court will prohibit the State from using that unknown map; (d) the Secretary will certify another emergency in response to those decisions; (e) the Governor will issue another suspension order; and (f) the *same Plaintiffs* will be affected in the *same way*. ECF 48 at 4. That “chain of events is too tenuous to satisfy a requirement of reasonable expectation” of repetition. *Pierce v. Winograd*, 757 F.2d 714, 716 (5th Cir. 1985); *see also Alaska v. USDA*, 17 F.4th 1224, 1229 (D.C. Cir. 2021).

Plaintiffs’ assertion that the Governor “has not disclaimed the power he exercised” misses the mark. ECF 48 at 4. Plaintiffs have not challenged the statute granting that discretion. *See* La. R.S. § 18:401.1(B). In all events, that the government retains statutory discretion that “could again affect the plaintiffs,” ECF 48 at 4, does not establish they are reasonably likely to suffer the same alleged harm, *see Smith v. Winter*, 782 F.2d 508, 510 (5th Cir. 1986). They have not alleged, much less introduced, the “type of evidence presented in most election law cases” meeting the capable-of-repetition exception—that the Governor and Secretary “unlawfully” suspended elections in the

past, their actions reflect “a policy or a consistent pattern of behavior that [they have] determined to continue,” or that the suspension “was *prescribed* by statute.” *Libertarian Party*, 595 F.3d at 218 (emphasis added). Of course, the Louisiana statute granting *discretion* to declare election emergencies does not *require* the exercise of that discretion. *See* Prescribe, Black’s Law Dictionary (12th ed. 2024) (“To dictate, ordain, or direct; to establish authoritatively (as a rule or guideline).”).

The extraordinary circumstances here are not reasonably likely to recur, much less to affect these same Plaintiffs in the same way. They thus have not established that their claims are capable of repetition, yet evading review.

IV. THE VOLUNTARY-CESSATION DOCTRINE DOES NOT APPLY.

Plaintiffs’ invocation of the voluntary cessation doctrine similarly fails. That Act 7 “did not repeal the emergency statutes” and the Governor and Secretary “remain free” to exercise their statutory discretion is not enough. ECF 48 at 5, 6. If retaining statutory discretion defeated mootness, no challenge to any expired emergency order would ever become moot. That is not the law. *See Spell*, 962 F.3d at 179; *U.S. Navy SEALs 1–26*, 72 F.4th at 672.

Nor did the Governor or Secretary withdraw their acts in response to this litigation to evade this Court’s review; an independent branch superseded them. The voluntary cessation doctrine targets defendants who “engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where [they] left off.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). It does not apply when independent actors moot the case. *See Iron Arrow Honor Soc’y v. Heckler*, 464 U.S. 67, 71–72 (1983) (per curiam); *Kremens v. Bartley*, 431 U.S. 119, 129 (1977); *Am. Bar Ass’n v. FTC*, 636 F.3d 641, 648 (D.C. Cir. 2011). Although the Governor “encouraged” legislation after *Callais*, ECF 1-2 at 2, neither he nor the Secretary could compel it. The Legislature

could have let the suspension expire on May 30, *see id.*, and adjourned on June 1 without acting. *See* La. Const. art. III, § 2(3).

Because the Executive Order expired by its terms, ECF 1-2 at 3, and Acts 2 and 7 nullified the executive acts' operative effect, the voluntary-cessation doctrine cannot resurrect Plaintiffs' moot claims.

V. PLAINTIFFS LACK STANDING TO ASSERT CLAIMS UNDER THE OVERSEAS ACT AND OTHERS' "RIGHT TO VOTE."

Plaintiffs' right-to-vote and Overseas-Act claims fail for four reasons. *First*, Plaintiffs lack standing to raise others' voting rights. *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975). They assert, on “information and belief,” that absentee and overseas ballots were transmitted for the suspended primary. ECF 48 at 5. They claim a live controversy remains over whether those votes will be counted and that a mandatory injunction “requiring that they be counted” is effective relief. *Id.* But they acknowledge no plaintiff is covered by the Overseas Act, *id.* at 6, and they cannot keep this case alive by invoking unidentified voters' abstract rights, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Warth*, 422 U.S. at 499.

Second, even if Plaintiffs had standing, commanding the State to count ballots cast under the SB-8 map is impossible without first addressing the conflict such a mandatory injunction would create with (a) the Supreme Court's holding that the SB-8 map is an unconstitutional racial gerrymander, *Callais*, 146 S. Ct. at 1163; (b) the *Callais* prohibitory injunction against using that map for any election, and (c) Act 7's declaration that any ballots cast under the SB-8 map are “void and not counted.” ECF 45-2. Plaintiffs do not even attempt to resolve that conflict. *No lawful election* thus exists in which to count those votes.

Third, Plaintiffs assert Act 7 “created a fresh, ongoing violation of federal law.” ECF 48 at 5. But they do not challenge Act 7; they challenge the superseded executive actions, which even

if declared unlawful, would not alter Act 7. ECF 48 at 6. Even if they could amend to challenge Act 7, that question is before the *Callais* Court, and all Plaintiffs but Ms. Jewett declined the opportunity expressly given to intervene there. *Callais v. Louisiana*, No. 3:24-cv-00122 (W.D. La. May 6, 2026), ECF 269. Also, any relief from Act 7 would not change the *Callais* prohibitory injunction that continues to prohibit counting ballots cast under the SB-8 map. Plaintiffs thus lack an injury traceable to Act 7 and redressable by granting relief from Act 7, rendering futile any amendment to challenge Act 7. *Lujan*, 504 U.S. at 560–61.

Fourth, Plaintiffs’ Overseas Act claim is unripe. They do not claim they have been denied a ballot for the upcoming congressional election or that the State has failed to transmit their ballots. Instead, their prediction of future noncompliance with the Overseas Act is premature. *Lyons*, 461 U.S. at 102. Plaintiffs’ belief that Act 7 makes compliance with the Overseas Act “impossible” is inaccurate. ECF 48 at 5. Act 7 is surrounded by a body of law ensuring timely transmission of election materials. Federal law allows the State to request a hardship waiver of the Overseas Act’s 45-day deadline. 52 U.S.C. § 20302(g). State law authorizes the Secretary to “take all actions reasonably necessary” to ensure third-party overseas voters can vote despite contrary Election Code provisions. La. R.S. § 18:1308(A)(2)(f)(i). Act 7 fixes the candidate universe before relevant Overseas Act transmission dates and sets qualifying for August 5–7, 2026, and nominating petitions due by July 9, 2026. ECF 45-2. Louisiana’s special-ballot statutes also require congressional special absentee ballots and allow overseas voters to rank primary candidates for general election use. La. R.S. §§ 18:1306(A)(4), 18:1308.2(A)(2), 18:1308(A)(2). These laws render Plaintiffs’ Overseas Act claim unripe and subject to dismissal.

CONCLUSION

For these reasons, the Court lacks subject-matter jurisdiction and should dismiss the case. At minimum, the Court should dismiss the claims for injunctive relief and those under the Overseas

Act as even Plaintiffs acknowledge their injunctive claims are moot and they lack standing to bring claims under the Overseas Act.

Dated: June 29, 2026

Respectfully submitted,

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