CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

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

****

DECLINATORY AND PEREMPTORY EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE

NOW INTO COURT, through undersigned counsel, solely for the purposes of these exceptions, comes Defendant, R. Kyle Ardoin, in his official capacity as the Secretary of State for the State of Louisiana, who pleads declinatory and peremptory exceptions in response to the "Petition for Injunctive and Declaratory Relief," representing as follows:

DECLINATORY EXCEPTIONS

I.

The Secretary of State pleads the declinatory exceptions of improper venue, pursuant to La. Code Civ. Proc. art. 925(A)(4), and lack of subject matter jurisdiction, pursuant to La. Code Civ. Proc. art. 925(A)(6).

Improper Venue

II.

The Civil District Court of New Orleans is not the proper venue for this suit.

III.

Suits filed against the State or state agency, officer or employee of the state for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located, which is East Baton Rouge Parish, or in the parish in which the cause of action arose, again in East Baton Rouge Parish where the official acts sued upon occur. *See* La. R.S. 13:5104.

Lack of Subject Matter Jurisdiction

IV.

Additionally, this Court lacks jurisdiction over the subject matter of the action. Plaintiffs' petition does not present a justiciable controversy as the allegations of the petition are speculative, conjectural and theoretical, and this Court lacks jurisdiction to render a hypothetical and advisory opinion based upon events that may or may not come to pass.

V.

The court also lacks subject matter jurisdiction on the grounds that the plaintiffs ask the Court to intervene in a political process that lies within the authority of the legislative and executive branches of government.

VI.

Louisiana Constitution Article II, § 2 and the doctrine of Separation of Powers prohibits a court from issuing a judgment enjoining/mandating the exercise of legislative discretion. Although a court has authority to interpret and declare the law, the judicial branch has no authority to prohibit or require the legislature from enacting legislation or carrying out its constitutional decision-making authority.

VII.

The action seeking a declaration and injunction to prevent the use of 2011 congressional election districts for the 2022 congressional elections petitions to enjoin acts that are prohibited by constitution and statute so that any order by the Court would have no practical effect and change nothing such that the action is moot upon its inception.

PEREMPTORY EXCEPTIONS

VIII.

The Secretary pleads the following peremptory exceptions, raising the objection of no cause of action pursuant to La. Code Civ. Proc. art. 927(A)(4) and no right of action pursuant to La. Code Civ. Proc. Art. 927(A)(5).

No Cause of Action

IX.

Courts must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical or based on a contingency which may or may not arise. See, *American Waste & Pollution v. St. Martin Parish Police Jury*, 627 So.2d 158 (La.1993).

X.

Nothing in state law authorizes the Courts to usurp the constitutional authority of the executive and legislative branches based upon the cynical notion that the political branches of state government are certain to fail in developing a redistricting plan for U.S. congressional elections.

XI.

Further, viewed as an action for injunctive relief, plaintiffs fail to state a cause of action absent allegations of irreparable harm that is concrete, real and actual.

No Right of Action

XII.

Similarly, Plaintiffs have no right of action or standing in this case. Except in limited circumstances, an injunction may only be issued in favor of plaintiffs who may suffer irreparable injury, and Plaintiffs have not alleged they may suffer irreparable harm different from the general population.

XIII.

Plaintiffs lack standing against the Secretary of State who has no substantial role or authority in the reapportionment and/or redistricting process or decisions affecting where 2022 elections will be held and cannot cause the plaintiffs the kind of harm they complain of even if events unfold in the way plaintiffs anticipate they might.

XIV.

Further, and out of an abundance of caution, defendant avers that a determination of the constitutionality of the congressional redistricting at a preliminary injunction proceeding is impermissible. The constitutionality of a statute cannot be determined on a preliminary

injunction. *Barber v. Louisiana Workforce Commission*, 2015-1700 (La. 10/9/15), 176 So.3d 398. Constitutionality of an act of the legislature may be decided only after a trial of the merits rather than at the preliminary injunction stage.

WHEREFORE, the Secretary of State, for the reasons more fully expressed in the attached memorandum in support of these exceptions, prays that these exceptions be maintained and that the petition be dismissed at plaintiffs' cost and for full, general and equitable relief.

Respectfully submitted,

Celia R. Cangelosi
Bar Roll No. 12140
5551 Corporate Blvd., Suite 101
Baton Rouge, LA 70808
Telephone: (225) 231-1453
Facsimile: (225) 231-1456
Email: celiacan@bellsouth.net

And by:

JEFF LANDRY
ATTORNEY GENERAL

BY:

Carey T. Jones (LSBA #07474)
Jeffrey M. Wale (LSBA #36070)
Lauryn A. Sudduth (LSBA #37945)
Assistant Attorneys General
Louisiana Department of Justice, Civil Division
P.O. Box 94005
Baton Rouge, LA 70802
Telephone: (225) 326-6060
Facsimile: (225) 326-6098
Email: jonescar@ag.louisiana.gov
walej@ag.louisiana.gov
sudduthl@ag.louisiana.gov

Counsel for the Secretary of State

CERTIFICATE OF SERVICE

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

New Orleans, Louisiana, this 24th day of May, 2021.

Lauryn Sudduth

Lauryn A. Sudduth

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

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

****

RULE TO SHOW CAUSE

Considering the foregoing *Declinatory and Peremptory Exceptions*;

IT IS HEREBY ORDERED that Plaintiffs appear and show cause on the 20th day of August, 2021 at 10:00 via ZOOM a.m. why the Court should not sustain the declinatory and peremptory exceptions filed by Exceptor, R. Kyle Ardoin, in his official capacity as the Louisiana Secretary of State.

New Orleans, Louisiana this 24th day of May, 2021.

APRIL D DAVENPORT
LAW CLERK
Division "C"
BY ORDER OF THE COURT

A TRUE COPY
DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

CIVIL DISTRICT COURT

PARISH OF ORLEANS, STATE OF LOUISIANA

NUMBER 2021-03538 **DIVISION C – SECTION 10**

CAMERON ENGLISH, ET AL.

VERUS

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

****

MEMORANDUM IN SUPPORT OF EXCEPTIONS ON BEHALF OF THE SECRETARY OF STATE

MAY IT PLEASE THE COURT:

To borrow from Saints lore, this is the coulda, woulda, shoulda case. Nothing in the plaintiffs' petition is real or factual – the allegations are all might be's. Plaintiffs' claims rest on future events that may or may not come to pass. They rely upon pure conjecture and speculation based upon little else than the plaintiffs' cynical view of the state of Louisiana politics. The allegations of the petition are mere conclusory statements bereft of factual content rather than facts that can be determined through the litigation process. This suit is tantamount to plaintiffs suing for damages alleging that they are substantially certain to be injured in a car crash because Louisianans are such bad drivers.

Beyond that, what is wrong with this suit?

1. **The suit is filed in the wrong venue.** Orleans Parish is an improper venue because the operative events described in the petition all occur (or are presupposed to occur) in East Baton Rouge Parish. Congressional reapportionment and redistricting is a matter for the Legislature and the Governor, both of whom carry out their official acts in East Baton Rouge Parish.

2. **The Court lacks subject matter jurisdiction.** The case does not present a justiciable controversy capable of resolution by the court. Plaintiffs ask the court to issue an advisory opinion based upon a hypothetical set of facts. Moreover, pre-enforcement of the Legislature's and Governor's responsibilities by the court would violate the separation of powers

established in La. Const. art. II, § 2 of the Louisiana Constitution. The courts cannot invade the province of the legislative and executive branches of government on the grounds that a group of plaintiffs want them to take over the functions of all three branches. The case presents a political question, and the Courts cannot interject themselves into the political process.

3. **Plaintiffs do not state a cause of action.** Plaintiffs fail to allege facts as required by the Louisiana pleading requirements in La. Code Civ. P. arts. 854, 891. Rather, the petition imagines a set of possibilities that, like Pinocchio's wish, may or may not come true. Plaintiffs allege no more than something has a chance of happening. Were the Court to assume as true, for the no cause analysis, that something unforeseen could happen in the congressional redistricting process, it would still have no basis in fact or law for granting plaintiffs a remedy.

4. **Plaintiffs have no right of action.** Plaintiffs lack the kind of real and actual interest required by La. Code. Civ. P. art. 681. Plaintiffs do not show that they have a special interest in redistricting apart from the general public. Additionally, any harm that may befall plaintiffs from a particular reapportionment or redistricting plan that might occur in the future is entirely speculative, and plaintiffs have no right to contest a reapportionment or redistricting plan that has not been devised or put in place, much less yet been taken up politically.

Moreover, plaintiffs make no showing that they have standing to sue the Secretary of State in connection with reapportionment and redistricting. Plaintiffs allege that reapportionment and redistricting are the responsibility of the "political branches" of state government, not the Secretary of State, who has no substantial connection or involvement in the redistricting process.

The Secretary of State has excepted to the petition on the foregoing grounds, and each and every of his exceptions should be maintained and the case dismissed.

STATEMENT OF THE CASE

Plaintiffs filed this suit in the Civil District Court for Orleans Parish on April 26, 2021, the same day that the 2020 Census Apportionment Results were delivered to the President. Generally, plaintiffs claim potential violations of Article I, Section 2 of the United States Constitution asserting congressional malapportionment in Louisiana's 2011 congressional districts and La. Const. art. I, Sections 7 and 9 for curtailment of associational rights.

But, the petition does not pretend to be based on existing facts that might afford these plaintiffs some relief. Consider these allegations lifted directly from plaintiffs' petition:

- There is no reasonable prospect that Louisiana's political branches will reach consensus to enact a lawful congressional district plan in time to be used in the upcoming 2022 elections. Petition ¶ 4.
- Because Louisiana's political branches will likely fail to enact a new congressional district plan, this Court should intervene to protect the constitutional rights of plaintiffs and voters across this state. Petition ¶ 5.
- By mid-to-late August 2021, the U.S. Secretary of Commerce will deliver to Louisiana its redistricting data file in a legacy format, which the state may use to tabulate the new population of each political subdivision. On or around September 30, 2021, the U.S. Secretary of Commerce will deliver to Louisiana that same detailed population data showing the new population of each political subdivision in a tabulated format. Petition ¶ 22.
- The partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election. Petition ¶ 27.
- This increases the already significant likelihood the political branches will reach an impasse this cycle and fail to enact a new congressional district plan, leaving the existing plan in place for next year's election. Petition ¶ 28.
- Given the delay in publication of the 2020 Census data and the near-certain deadlock among the political branches in adopting a new congressional district plan, it is significantly unlikely that the legislative process will timely yield a new plan. Petition ¶ 41.

Plaintiffs do not allege that the Governor and the Legislature have developed and put into effect any reapportionment plan for congressional elections beginning in 2022. Neither do plaintiffs allege that the Secretary of State or anyone else proposes to utilize current congressional districts drawn in 2011 to hold the regular congressional elections in 2022. The petition alleges that plaintiffs' rights might be affected depending on what happens with respect

to congressional reapportionment and redistricting, which is not yet underway, and secondarily that their rights might be prejudiced should the State decide to move forward with the 2022 congressional elections based upon the 2011 election districts from the last decennial reapportionment, which plaintiffs do not allege is proposed or even under consideration.

Plaintiffs petition seeks to invoke the Court's jurisdiction on the off chance they might have a cause of action at some point in the future. They claim, not that they are, but that they might be aggrieved by partisan indecision in the congressional redistricting process upon the speculative and groundless proposition that the political branches of state government will fail to develop a consensus plan before census data is even reported.

As defendant, the Secretary of State excepts to the fictive nature of the petition by raising the declinatory exceptions of Improper Venue and Lack of Subject Matter Jurisdiction and the peremptory exceptions of No Cause of Action and No Right of Action.

CONGRESSIONAL REDISTRICTING AT A GLANCE

The suit relates to the redistricting of U.S. Congressional districts, and a brief word about that process might prove helpful.

Elections for United States Senators and members of the House of Representatives are obviously different. Senators are elected every 6 years. U.S. Const. art. I, § 3, cl. 1. Two Senators are elected from each state. *Id.* Senators are elected statewide so that their election districts are coterminous with the boundaries of the state and need not be changed to take account of population changes.

Members of the United States House of Representatives are apportioned and elected by another process. They are elected every two years. U.S. Const. art I, § 2, cl. 1. Membership of the House of Representatives is apportioned by Congress, which allocates the number of representatives for each state based upon that state's population according to decennial census data. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2. Once Congress apportions the number of members to which each state is entitled, the states then establish districts from which one representative per district is elected. 2 USC § 2a(a-c). In order to ensure that each citizen's vote is weighted equally (one-man-one-vote), representative districts must be roughly equal in population. *Wesberry v. Sanders*, 376 U.S. 1 (1964).

The job of drawing districts with equal populations for the election of members of Congress falls to state legislative bodies pursuant to U.S. Const. art. I, § 4, cl. 1. Under 2 USC §2a(a), election districts are re-drawn every 10 years following each decennial census in order to maintain the population balance necessary for the one-man-one-vote principle. Assigning the number of House members for each state is called "reapportionment." Re-drawing congressional election districts is referred to as "redistricting," although "reapportionment" and "redistricting" are sometimes used interchangeably.

Louisiana has chosen to redistrict U.S. Congressional districts by statute. The districts adopted in 2011 are found at La. R.S. 18:1276.1. With respect to the enactment of statutes, the Louisiana Constitution provides that, "[t]he legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives." La. Const. art. III, § 1. The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Thus, redistricting in Louisiana is a political process assigned to the Legislature and the Governor. The work of redistricting occurs in the state capitol where both the legislature and the governor perform their official duties.

LAW AND ANALYSIS

I. Declinatory Exceptions

A. Improper Venue

The Secretary of State excepts to venue pursuant to La. Code Civ. P. art. 925(4). The Civil District Court is not the proper venue in which to adjudicate this cause of action. Specifically, La. R.S. 13:5104 provides in pertinent part that:

> All suits filed against the state of Louisiana or any state agency or against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises.

Suit can be brought against the State in the judicial district in which the state capitol is

located or in the district having jurisdiction in the parish in which the cause of action arose. Under either prong of the statute, the proper venue is the Nineteenth Judicial District in East Baton Rouge Parish.

There can be little argument that Louisiana's state capitol is located in East Baton Rouge Parish. The Nineteenth Judicial District is the court in and for East Baton Rouge Parish, and accordingly, constitutes a proper venue to bring this suit under La. R.S. 13:5104(A).

East Baton Rouge is also the Parish in which the action will arise, if ever it does. Congressional maps will be drawn, redistricting debated, bills passed and redistricting approved or vetoed at the state capitol. Thus, all of the operative events relating to redistricting upon which plaintiffs' claims depend will occur in East Baton Rouge.

Plaintiffs also request an order enjoining the Secretary of State from using the 2011 congressional districts for the 2022 congressional elections. Plaintiffs do not, because they cannot, allege that such a plan or proposal is in the works, but even if there were, all decisions relating to that plan would occur in East Baton Rouge Parish, which again makes the Nineteenth Judicial District the court of proper venue for the case. This is not to suggest that the Secretary of State could or would use a prior decennial congressional election plan once the deadline for congressional redistricting has passed. However, for venue purposes any such decision would be made by state officials who carry out their duties in East Baton Rouge Parish.

Courts have routinely held that the parish where the state capitol is located is the appropriate venue, insofar as the relief requested involves forcing state agents to perform ministerial duties. *Anderson v. State of Louisiana, et al.*, 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431; *Cameron Parish Police Jury v. McKeithen*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La. 10/23/02), 827 So.2d 1148; *Abshire v. State, through Dept. of Ins.*, 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La. 6/24/94), 640 So.2d 1332. No further need for comment on venue for suits against state agencies.

The seminal case on where a suit arises, *Colvin v. Louisiana Patient's Compensation*

Fund Oversight Board, et al,[1] determined "where the cause of action arose" to be the place where the operative facts occurred. After noting the differing standards applied to La. R.S. 13:5104(A) by the various appellate circuits throughout the state, the Supreme Court explained:

> Courts of appeal have recognized that the question of what constitutes the situs of a cause of action has been the source of much consternation among the circuits and has eluded a precise definition. *Anderson v. State*, 05-0551 (La.App. 3 Cir. 11/2/05), 916 So.2d 431, 435, *writ denied*, 05-02493 (La.6/2/06), 929 So.2d 1243; *Commercial Nat. Bank in Shreveport v. First Nat. Bank of Fairfield, Tex.*, 603 So.2d 270 (La.App. 2 Cir.), *writ denied*, 605 So.2d 1151 (La.1992); *V.C. Nora, supra*; *Abshire v. State, through Dept. of Ins.*, 93-923 (La.App. 3 Cir. 4/6/94), 636 So.2d 627, *writ denied*, 94-1213 (La.6/24/94), 640 So.2d 1332. After reviewing the applicable law and the purpose of the venue statutes, we agree with and adopt the test first set for by the Fourth Circuit in *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524. In *Avenal*, the court held that "**the place where the operative facts occurred which support plaintiff's entitlement to recovery is where the cause of action aris[es]" for venue purposes under La. R.S. 13:5014(A).**
>
> In this case, the operative facts which support plaintiffs' entitlement to recovery, i.e., the PCFOB's administrative decision not to settle their claims, all occurred in East Baton Rouge Parish. Indeed, several courts have held that where a state agency's ministerial or administrative actions are called into question, East Baton Rouge offers the only appropriate forum, as that is both "the district in which the state capitol is located" and "the district having jurisdiction in the parish in which the cause of action arose." *Anderson v. State*, *supra*; *Cameron Parish Police Jury v. McKeithan*, 02-1202 (La.App. 3 Cir. 10/14/02), 827 So.2d 666, *writ denied*, 02-2547, 02-2548 (La.10/23/02), 827 So.2d 1148, 1149; *Abshire v. State*, *supra*.
>
> . . .
>
> A contrary conclusion could result in undue encumbrances upon the state's governing apparatus at its very highest reaches, an absurd consequence we are certain could not have been intended by the redactors of our code of civil procedure. *See generally Turner v. Collector of Revenue*, 209 So.2d 301 (La.App. 4 Cir.1968).[2]

Even prior to *Colvin* the Louisiana Supreme Court's 1991 decision in *Devillier, et al. v. State of Louisiana, et al.*, 590 So.2d 1184 (La.1991), held:

> This suit is not based on a cause of action which arose against a state agency in St. Martin Parish. Although the event which gave rise to the fine assessed by the state agency occurred in St. Martin Parish, this suit was filed to declare the unconstitutionality of the statute under which the fine was assessed. An action to prohibit a state agency from assessing a statutory fine based on the unconstitutionality of the statute must be brought in East Baton Rouge Parish.

---

[1] *Colvin v. Louisiana Patient's Compensation Fund Oversight Board, et al.*, 06-1104 (La. 1/17/07), 947 So.2d 15.

[2] *Id.*, 947 So.2d at 13 (Emphasis added) (citing *Avenal v. State, Dept. of Natural Resources*, 95-0836 (La.App. 4 Cir. 11/30/95), 668 So.2d 1150, *writ denied*, 96-198 (La.1/26/96), 667 So.2d 524.

In more recent cases, the courts have made it clear that the operative events giving rise to a suit occur in East Baton Rouge Parish when an administrative decision of the state or a state agency in brought into question. *LeBlanc v. Thomas*, 2008-2869 (La. 10/20/09), 23 So. 3d 241. By the same token, the Louisiana Supreme Court found that venue in a case involving administrative decisions in settlements in the Road Home program arose in the parish where the administrative decisions were made (East Baton Rouge) not in the parish where plaintiffs homes sustained damage. *Roger v. Anpac Louisiana Ins. Co.*, 2010-1099 (La. 11/19/10), 50 So. 3d 1275.

East Baton Rouge is the proper and exclusive venue for the plaintiffs' actions. The operative facts, whether in developing a redistricting plan or deciding the appropriate districts for the 2022 elections, take place in East Baton Rouge Parish. The creation of the congressional plan will occur only in East Baton Rouge Parish. Any decision to use the 2011 plan for other elections would be made by state political officials who carry out their duties in East Baton Rouge Parish.

Plaintiffs' petition should be dismissed pursuant to La. Code Civ. P. art. 121. In the alternative, the Court may transfer the case to the 19th JDC, East Baton Rouge Parish pursuant to La. R.S. 13:5104(A) in accordance with *Habig v. Popeye's Inc.*, 553 So. 2d 963 (La. Ct. App. 1989).

B. <u>Lack of Subject Matter Jurisdiction</u>

"It is fundamental in our law that courts sit to administer justice in actual cases and that they do not and will not act on feigned ones, even with the consent of the parties." *St. Charles Par. Sch. Bd. v. GAF Corp.*, 512 So. 2d 1165, 1173 (La. 1987), *on reh'g* (Aug. 7, 1987).

Jurisdiction is defined as the "legal power and authority of a court to hear and determine an action or proceeding involving the legal relations of the parties, and to grant the relief to which they are entitled." La. Code Civ. P. art. 1. Jurisdiction over subject matter is "the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the rights asserted." La. Code Civ. P. art. 2.

Subject matter jurisdiction is created by either the constitution or a legislative enactment, and cannot be waived or conferred by the consent of the parties. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is null and void. La. Code Civ. P. art. 3. The First Circuit Court of Appeal summarized the law governing an objection of lack of subject matter jurisdiction in *Citizens Against Multi-Chem v. Louisiana Dep't of Envtl. Quality:*

> A court's power to grant relief is premised upon its subject matter jurisdiction over the case or controversy before it, which cannot be waived or conferred by consent. *Wilson v. City of Ponchatoula,* 2009–0303 (La.10/9/09), 18 So.3d 1272. The district courts have exclusive original jurisdiction over most matters, and concurrent original jurisdiction with trial courts of limited jurisdiction. *See* La. Const. art. V, § 16. Subject matter jurisdiction is a threshold issue, insofar as a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *See* La. C.C.P. art. 2; *IberiaBank v. Live Oak Circle Dev., L.L.C.,* 2012–1636 (La.App. 1 Cir. 5/13/13), 118 So.3d 27, 30.
>
> The objection of lack of subject matter jurisdiction is used to question the court's legal power and authority to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the right asserted. *See* La. C.C.P. art. 2; *IberiaBank,* 118 So.3d at 30....
>
> Subject matter jurisdiction cannot be waived by the parties, and the lack thereof can be recognized by the court at any time, with or without a formal exception. *See* La. C.C.P. arts. 3 and 925(A)(6); *IberiaBank,* 118 So.3d at 30. A declinatory exception pleaded before or in the answer must be tried and decided in advance of the trial of the case. La. C.C.P. art. 929. At the trial of a declinatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. La. C.C.P. art. 930.

13-1416 (La. App. 1 Cir. 5/22/14); 145 So.3d 471, 474–75, *reh'g denied* (6/13/14), *writ denied,* 14-1464 (La. 10/10/14); 151 So.3d 586.

Absent jurisdiction, a court is without legal authority to hear and decide a case.

i. *Subject matter jurisdiction and the necessity of a justiciable controversy*

It is well settled in the jurisprudence of this state that courts will not decide abstract, hypothetical, or moot controversies or render advisory opinions with respect to such controversies. *Cat's Meow, Inc. v. City of New Orleans, Dept. of Finance*, 98-0601 (La. 10/20/98); 720 So.2d 1186, 1193; *see also Shepherd v. Schedler*, 15-1750 (La. 01/27/16); 209 So.3d 752, 764. Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 815.

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." A declaratory judgment action is designed to provide a means for adjudication of rights and obligations in cases involving an actual controversy that has not reached the stage where either party can seek a coercive remedy. *Code v. Dep't of Pub. Safety & Corr*, 11-1282 (La. App. 1 Cir. 10/24/12); 103 So.3d 1118, 1126, *writ denied*, 12-2516 (La. 1/23/13); 105 So.3d 59. The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. *Id.* at 1127. But our jurisprudence has limited the availability of declaratory judgment by holding that "courts will only act in cases of a present, justiciable controversy and will not render merely advisory opinions." *Id.*

Because of the almost infinite variety of factual scenarios with which courts may be presented, a precise definition of a justiciable controversy is neither practicable nor desirable. *Id.* However, a justiciable controversy has been broadly defined as one involving "adverse parties with opposing claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." *Id.* (quoting *Prator v. Caddo Parish*, 04-0794 (La. 12/1/04); 888 So.2d 812, 816). A justiciable controversy for declaratory judgment purposes is one involving uncertain or disputed rights in "an immediate and genuine situation," and must be a "substantial and actual dispute" as to the legal relations of "parties who have real, adverse interests." *Id.* (quoting *Prator*, 888 So.2d at 817).

The Louisiana Supreme Court discussed "justiciable controversy" relative to declaratory judgment actions in *Abbott v. Parker*, explaining:

> A "justiciable controversy" connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of conclusive character. Further, the plaintiff should have a legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

249 So.2d 908, 918 (La. 1971); *see also Prator*, 888 So.2d at 815–17. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or

based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So.2d 158, 162 (La. 1993). The absence of any justiciable controversy then deprives this Court of subject matter jurisdiction. *See Duplantis v. La. Bd. of Ethics*, 00-1750 (La. 03/23/01), 782 So. 2d 582, 589 (courts are without jurisdiction to render advisory opinions and may only review matters that are justiciable).

Consequently, a declaratory action cannot generally be maintained unless it involves some specific adversary question or controversy asserted by interested parties and is based on an existing state of facts. *Tugwell v. Members of Bd. of Hwys.*, 83 So.2d 893, 899 (La.1955). Declaratory relief is not available to an applicant unless the case presents an actual and existing justiciable controversy, not a hypothetical one La. Code Civ. P. art.1881; *LA Independent Auto Dealers Ass'n v. State*, 295 So.2d 796 (La.1974); *Rambin v. Caddo Parish Police Jury*, 316 So.2d 499, 501 (La.App. 2 Cir. 1975).

In the case of an injunction under La. Code Civ. P. art 3601, the same rule holds true. The courts cannot indulge in speculative and theoretical exercises upon a supposed set of facts. "It is well settled that courts should not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies." *Balluff v. Riverside Indoor Soccer II, L.L.C.*, 07-780 (La. App. 5 Cir. 3/11/08), 982 So. 2d 199, 201. Injury that may never materialize cannot form the basis of a plea for injunctive relief.

Plaintiffs' petition for declaratory judgment and injunctive relief fails to assert a justiciable controversy. Plaintiffs do not allege that a reapportionment plan for the 2022 congressional elections has been put in place nor that the Governor and the legislature have developed and put into effect any reapportionment plan for congressional elections beginning in 2022. Neither do plaintiffs allege that the Secretary of State or anyone else proposes to utilize current congressional districts drawn in 2011 to hold the regular congressional elections in 2022. The petition alleges primarily that plaintiffs rights might be effected in the future depending on what happens with congressional redistricting, which is not yet underway, and secondarily that their rights may be prejudiced should the State decide to move forward with the 2022 congressional elections based upon the 2011 election districts from the last decennial

reapportionment, which plaintiffs do not allege is proposed, under consideration or even legally possible.

The kind of "what if" scenarios posited by plaintiffs do not present a justiciable controversy ripe for adjudication. This Court lacks subject matter jurisdiction over the case.

ii. *The Separation of Powers Provision in the Louisiana Constitution Precludes the Court's Involvement in the Political Process of Reapportionment and Redistricting*

The redistricting of U.S. Congressional offices apportioned by Congress is a unique political process to be conducted by the state legislature subject to veto by the Governor to the exclusion of the district courts. The redistricting process precludes the Court's usurpation of the role of the two political branches of government, and the Court cannot preempt the political branches as the plaintiffs ask them to do. The Court's engagement in the formulation of districts reaches beyond the authority given them in the Constitution.

The United States Constitution provides in Article I, § 4, cl. 1 that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." The U.S. Supreme Court noted the role of legislative bodies in redistricting congressional election districts: "[O]ur precedent teaches that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum and the Governor's veto." *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n,* 576 U.S. 787 (2015).

Louisiana has chosen to establish congressional districts through the enactment of a statute in accordance the ordinary legislative process. La. R.S. 18:1276.1. The process is inherently political to be carried out by the political branches of government. The three branches of state government in Louisiana are established in La. Const. art. II, § 1 as the legislative, executive and judicial branches, each with powers fixed by the Constitution. Article II, § 2 provides that no one branch of government can exercise power belonging to another.

In that regard, the Louisiana Legislature is invested with the power to pass laws. The Louisiana Constitution provides that, the legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. La. Const. art. III, § 1. The legislature

shall enact no law except by a bill introduced during that session. La. Const. art. III, § 15. The Governor is vested with the authority to approve or veto bills pursuant to La. Const. art. III, § 18. Because Louisiana has chosen to redistrict congressional election districts by statute, the legislature is responsible for congressional redistricting in Louisiana, subject to the Governor's approval or veto of any such redistricting plan.

Rredistricting of congressional election districts belongs to the legislature and the Governor as the political branches of state government, not to the courts. The judicial branch of state government is not permitted to infringe upon the express powers of the legislative and executive branches by Article II, § 2 of the Constitution. *Hoag v. State*, 2004-0857, 889 So. 2d 1019, 1022. The courts are not allowed to make decisions reserved to the legislature and the Governor. The courts of the state have uniformly upheld the legislature's powers free from interference by the courts to adopt and amend laws. The function of the judiciary is to interpret laws; it is the legislature's function to draft and enact them. *Mathews v. Steib*, 2011-0356 (La. App. 1 Cir. 12/15/11), 82 So. 3d 483, 486, *writ denied*, 2012-0106 (La. 3/23/12), 85 So. 3d 90. The amendment of a statute is addressed to the legislature and not the courts. *Succession of Farrell*, 200 La. 29, 34, 7 So. 2d 605, 606 (1942).

Plaintiffs here ask this Court to exercise powers that it does not have under the Louisiana Constitution. Plaintiffs invite the Court to intervene in the congressional redistricting process and usurp the powers expressly granted to the legislature by both the U.S. and Louisiana Constitutions. The Court are not given such power in the Louisiana Constitutional scheme. Accordingly, this Court lacks jurisdiction to intercede in redistricting congressional election districts, a task assigned to the political branches. This Court must decline plaintiffs' invitation to involve itself in a political process.

iii. The State is Barred from Using 2011 Districts for the 2022 Congressional Elections, and Plaintiffs' Claim In That Regard is Moot

Plaintiffs ask the Court to issue an order declaring the 2011 congressional election districts to be inoperable for the 2022 congressional elections in Louisiana. However, the Constitution and laws command that the State redistrict for the 2022 elections, and the objective plaintiffs seek has been accomplished by operation of law. See, U.S. Const. art. I, § 2, cl. 3;

amend. XIV, § 2; 2 USC § 2a. The requested court order would merely direct the defendant to follow the law that is already in place, and such a court order would have no practical effect and would change nothing. The states are required to draw new districts based upon changes in population assuming that the census numbers reflect the need for reconfiguration of the districts. The states have no discretion. Louisiana must elect their allotted members of the House of Representatives from new districts following each decennial census. The law leaves no dispute or controversy for the Court to resolve in that regard.

An issue is moot when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." *In re E.W.*, 09–1589 (La.App. 1 Cir. 5/7/10), 38 So.3d 1033, 1037. Thus, a case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. *Stevens v. St. Tammany Par. Gov't*, 2016-0197 (La. App. 1 Cir. 1/18/17), 212 So. 3d 562, 566–67. If the case is moot, then "there is no subject matter on which the judgment of the court can operate." *Ulrich v. Robinson*, 2018-0534 (La. 3/26/19), 282 So. 3d 180, 186.

When a judgment can change nothing, it is deemed moot. "A "moot" case is one in which a judgment can serve no useful purpose and give no practical effect. When a case is moot, there is simply no subject matter on which the judgment of the court could operate. *State in Int. of J.H.*, 2013-1026 (La. App. 4 Cir. 3/19/14), 137 So. 3d 748, 750 [internal citations omitted].

A case is moot when whatever it is that the plaintiff sued for has already happened or happened in the course of litigation. In such cases, a court pronouncement would not change anything.

Here, plaintiffs' petition the Court to declare that 2011 districts cannot be used for the 2022 congressional elections, and the Secretary of State should be enjoined from doing so. Plaintiffs want to enjoin what the Constitution and applicable statutes expressly prohibit by mandating that states redistrict congressional election districts every 10 years so that congressional elections must be held in reconfigured election districts. U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2; 2 USC § 2a. Plaintiffs want to declare and enjoin the defendant from doing something he cannot do under the law without even alleging that any such actions are contemplated or imminent.

A condition to be enjoined in litigation must currently exist or be imminent. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 618.

Additionally, plaintiffs' allegations with regard to the use of 2011 congressional election districts are entirely speculative and refer to an uncertain event, not even rumored to the Secretary's knowledge, leaving the Court without any basis to act. *Id.* Plaintiffs do not allege that a violation of constitutional and statutory law is contemplated by any Louisiana official much less that such an event is real or imminent. A condition to be enjoined in litigation must currently exist or be imminent. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 618. A party cannot just take a notion without any factual basis that someone might violate the law and sue to stop them. Yet, the plaintiffs have done so here.

The Court lacks jurisdiction to entertain a plea that is moot by virtue of statutory and constitutional mandates that accomplish plaintiffs' objective. Any order the court might issue in response to plaintiffs' plea would be surplusage and have no practical effect and would change nothing. The claim relative to the existence and use of 2011 congressional election districts is moot.

II. Peremptory Exceptions

A. No Cause of Action

The petition in this case does not state a cause of action. The function of the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993); *Copeland v. Treasure Chest Casino, LLC*, 01-1122 (La. App. 1 Cir. 6/21/02); 822 So.2d 68, 70. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. Code Civ. Proc. art. 931. The exception is triable on the face of the pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. *Richardson v. Richardson*, 02-2415 (La. App. 1 Cir. 7/9/03); 859 So.2d 81, 86. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is

legally entitled to the relief sought. *Perere v. Louisiana Television Broadcasting Corp.*, 97-2873 (La. App. 1 Cir. 11/6/98); 721 So.2d 1075, 1077.

Since Louisiana has retained a system of fact pleadings, conclusory allegations of a plaintiff do not set forth a cause of action. *Montalvo v. Sondes*, 93-2813, 93-2813 (La. 5/23/94); 637 So.2d 127, 131. Conclusions of law, as opposed to factual statements, are improper to state causes of action. *Nat'l Gypsum Co. v. Ace Wholesale, Inc.*, 98-1196 (La. App. 5 Cir. 6/1/99); 738 So.2d 128, 130. Vague references, suppositions, and legal conclusions cannot take the place of succinct and definite facts upon which a cause of action must depend. *Jackson v. Home Depot, Inc.*, 04-1653 (La. App. 1 Cir. 6/10/05); 906 So.2d 721, 728. A court should sustain the exception when the allegations of the petition, accepted as true, afford no remedy to the plaintiff for the particular grievance. *Harris v. Brustowicz*, 95-0027 (La. App. 1 Cir. 10/6/95); 671 So.2d 440, 442.

With respect to the use of 2011 districts to hold 2022 elections, plaintiffs do not plead any colorable allegations that the Secretary of State has the authority or intention to do so. Plaintiffs simply argue almost as a *non sequitur* that the Court should declare that the 2011 district map cannot be used to hold 2022 elections. The law dictates that the State redraw the districts for congressional elections in 2022. Plaintiffs' cause of action in that regard is not only rendered moot by the statutory framework for redistricting, but the petition makes no allegations to suggest that there is some claim to the contrary.

Further, the plaintiff must have no legally protectable and tangible interest at stake, and the dispute alleged is not of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based on a contingency which may or may not arise. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury,* 627 So.2d 158, 162 (La.1993). Further, a case is not ripe for review unless it raises more than a generalized, speculative fear of unconstitutional action. *State v. Rochon,* p. 7, 11–0009 (La.10/25/11), 75 So.3d 876, 882.

Plaintiffs here seek a declaratory judgment on speculative allegations that the defendant might do something at some undefined point in the future. Their allegations do no more than

suggest a mere possibility of something occurring rather than setting out specific, particularized and immediate concrete facts that are actual and existing. Were the Court to accept plaintiffs' allegations as true, it would have nothing more than rank speculation to act on, which the courts unanimously hold cannot form the basis for a cause of action. See, *Purpera v. Robinson*, 2020-0815 (La. App. 1 Cir. 2/19/21), *writ denied,* 2021-00406 (La. 5/11/21).

Plaintiffs' reliance upon a 2019 American Community Survey in the petition adds little to state a cause of action to declare 2011 districts malapportioned. At this juncture, the relative population estimates for 2011 districts are immaterial. There is no election proposed or pending using the 2011 districts. Moreover, plaintiffs concede that the data they rely on in their petition is outdated coming from a 2019 American Community Survey. Pet. at 4, ¶ 24. Putting aside the issue of the intervening events since 2019 such as the COVID-19 pandemic and a record-breaking 2020 hurricane season that saw five hurricanes hit Louisiana[3], the American Community Survey is not and does not purport to be official census data. The Census is "an official count of the population, which determines congressional representation" that "[c]ounts every person living in the 50 states, District of Columbia, and the five U.S. territories."[4] Conversely, the American Community Survey is only sent to a "sample of addresses (about 3.5 million) in the 50 states, District of Columbia, and Puerto Rico" to gather data that shows how people live and work in order to provide information about the social and economic needs of the community.[5]

Plaintiffs' plea for a court takeover of the redistricting process thus rests on pretty spongy ground. Pleading unreliable data merely highlights that the census data that will ultimately serve as the basis for reapportionment is lacking at this stage of the process. In fact, plaintiffs themselves admit in their pleadings that the operative data for reapportionment and redistricting will not be released until this fall. Pet at 4, ¶ 22.

Nor do plaintiffs allege plausible facts to support their claim that the partisan divide in our executive and legislative branches will lead to the "significant likelihood the political

---

3 Wells, C., 2020. *2020 hurricane season officially ends; here are the records it set.* [online] NOLA.com. Available at: <https://www.nola.com/news/hurricane/article_d17ea1e2-2e5b-11eb-bcf4-f70bcbd968ee.html> [Accessed 7 May 2021].

4 The United States Census Bureau. 2020. *ACS and the 2020 Census*. [online] Available at: <https://www.census.gov/programs-surveys/acs/about/acs-and-census.html> [Accessed 7 May 2021].

5 *Id.*

branches will reach an impasse this cycle." Who made that up? The Legislature and the Governor pass bills into law on a pretty frequent basis, and the plaintiffs' dim view of their ability to do so here is not the kind of factual allegation essential to plead a cause of action.

The same holds true for the plea for injunctive relief. Plaintiffs failed to allege a basic foundational requirement for injunctive relief: actual or imminent harm irreparable to the plaintiffs. *Louisiana Fed'n of Tchrs. v. State*, 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763. Actual or imminent harm can hardly be asserted in the absence of an actual and existing redistricting plan. Plaintiffs thus failed to state a cause of action for injunctive relief.

Louisiana law provides that an injunction shall issue only "in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law." La. Code Civ. P. art. 3601(A). The hypothetical harm claimed by the plaintiffs' in this case is not particularized as to them as opposed to the public at large in each of the congressional districts. A plaintiff must have a real and actual interest in the action he asserts, La. Code Civ. P. art. 681. Without a showing of some special interest separate and distinct from the interest of the public at large, plaintiff will not be permitted to proceed. *League of Women Voters of New Orleans v. City of New Orleans,* 381 So. 2d 441, 447 (La. 1980). There is no colorable allegation that these plaintiffs are situated any differently than any other member of the general public with respect to congressional districts, and their failure to so allege is fatal to their injunction plea.

Defendants' Exception of No Cause of Action should be maintained with respect to both injunctive and declaratory relief.

B. No Right of Action

Plaintiffs fail to demonstrate a real and actual interest in the matter asserted in the petition. La. Code Civ. P. art. 681. Nothing in the plaintiffs' allegations shows that they have a "real and actual" interest in this case; instead, their interest is hypothetical and theoretical based upon conjecture and speculation. "[W]hether a litigant has standing to assert a claim is tested via an exception of no right of action." *Bradix v. Advance Stores Co., Inc.*, 2017-0166 (La. App. 4 Cir. 8/16/17), 226 So. 3d 523, 528. Here, as in *Bradix,* the plaintiffs do not assert that they

presently possess a claim, have sustained or may imminently suffer some injury. Until they do, if they ever do, they have no right of action to assert and lack standing to bring the suit.

To have standing the plaintiff must assert an adequate interest in himself, which the law recognizes, against a defendant having a substantial adverse interest. *Howard v. Administrators of Tulane Educ. Fund*, 2007-2224 (La. 7/1/08), 986 So. 2d 47, 54. Plaintiffs fail on both counts – fail to assert an existing adequate interest in future redistricting of congressional districts and fail to show a substantial adverse interest on the part of the Secretary of State who has no role in redrawing congressional election districts.

The foundation for plaintiffs' suit consists in the allegation that "the partisan division among Louisiana's political branches makes it extremely unlikely they will pass a lawful congressional redistricting plan in time to be used during the upcoming 2022 election" … "leaving the existing plan in place for the next year's election." Pet. at 5, ¶ 27-28. Plaintiffs' claims as set out in the petition lie against the "political branches" of state government rather than the Secretary of State. And even at that, plaintiffs' bet that the political branches will fail does not implicate the Secretary of State. The Secretary of State will not fail to redistrict anything. He is not involved in the process. Plaintiffs have no grievance against him and no standing to sue him.

Plaintiffs fare no better claiming that the failure to timely yield a new plan "is likely to significantly, if not severely, burden plaintiffs' First Amendment right to association." Pet. at 8, ¶ 41. The phrase "is likely to" is innately hypothetical, and therefore insufficient to form a justiciable controversy that will result in injury to these particular plaintiffs. "Without a showing of a special interest that is separate and distinct from the interest of the general public, a plaintiff may not proceed." *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Hotel Royal, L.L.C.*, 2009-0641 (La. App. 4 Cir. 2/3/10), 55 So. 3d 1, 7, *on reh'g* (Jan. 5, 2011), *writ denied*, 2011-0258 (La. 4/29/11), 62 So. 3d 112. For this Court to act, plaintiffs are required to give the Court something to act on, i.e. a "special interest which is separate and distinct from the interest of the public at large." *All. For Affordable Energy v. Council of City of New Orleans*, 96-0700 (La. 7/2/96), 677 So. 2d 424, 428. Absent such a showing, they do not have a right of action.

Recently, the Louisiana Supreme Court in *Soileau v. Wal-Mart Stores, Inc.,* 2019-0040, p. 6 (La. 6/26/19); 285 So.3d 420, 425, dismissed a case based upon the plaintiff's failure to demonstrate convincingly that a real and actual dispute had been presented. Citing *St. Charles Parish School Bd. v. GAF, Corp.*, the Court ruled that the plaintiff based her claims on "abstract harm she might suffer in the future" and that "[t]he injury resulting from this purported conflict of interest is not based on any actual facts or occurrences; rather, she asks the court to assume that she will suffer harm if certain hypothetical facts occur." *Soileau*, 285 So.3d at 425. The Louisiana Supreme Court ruled that, "[w]e decline to render an advisory opinion based on facts which may or may not occur at some unspecified time in the future." *Id.*

The Court's reasoning in *Soileau* applies here. Plaintiffs' claims are purely about things that may or may not occur. As plaintiffs themselves allege, the requisite Census data has yet to be delivered to the proper state officials. Plaintiffs do not allege that the Legislature and the Governor have developed or adopted any redistricting plan. Plaintiffs allege merely that the Legislature and the Governor have the responsibility to develop a redistricting plan at some point in the future and then proceed to disparage their ability to fulfill their responsibilities to redistrict. Plaintiffs' claims are purely hypothetical, and this Court should refrain from rendering a speculative judgment based upon what might or might not occur in congressional redistricting.

Plaintiffs do not allege that reapportionment or redistricting have yet happened. Clearly, plaintiffs have no standing to assert any right or injury particularly where they have brought no justiciable controversy to the Court.

But even to the extent plaintiffs seek merely to restrain the Secretary, they still fail to make a showing of personal "interest" to establish a justiciable controversy. All that the Petition alleges is speculative, theoretical harms. Because plaintiffs have failed to show that they have a right to sue according to the applicable standards, this Court should sustain the defendant's exception of no right of action. *See Howard*, 2007-2224 (La. 7/1/08), 986 So. 2d at 59 (noting that an exception of no right of action is the proper vehicle to challenge a plaintiff's standing).

Then there is the question of standing to sue the Secretary of State who has no appreciable role in redistricting congressional office. The plaintiffs allege no such role for the Secretary. Neither the United States nor the Louisiana Constitution assign him a substantive role

in the process. Plaintiffs do not allege that the Secretary might cause them some grievance when redistricting does occur. The Secretary of State does not enforce any of the redistricting statutes, and nothing in the petition's allegations show that the Secretary proposes an election plan in which the expired districts will be used, much less that the Secretary of State has the authority to do so. Absent some showing that the Secretary has a connection to congressional redistricting or that the plaintiffs will be injured by anything the Secretary has authority to do, they simply do not have standing to sue him.

CONCLUSION

Plaintiffs brought this matter in the improper venue, do not present a justiciable controversy for this Court's determination, failed to properly allege a cause of action, and lack the right or standing to bring suit For the foregoing reasons, the Secretary of State respectfully requests that this Court sustain these exceptions and dismiss plaintiffs' petition at plaintiffs' cost.

Respectfully submitted,

Celia R. Cangelosi
Bar Roll No. 12140
5551 Corporate Blvd., Suite 101
Baton Rouge, LA 70808
Telephone: (225) 231-1453
Facsimile: (225) 231-1456
Email: celiacan@bellsouth.net

And by:

JEFF LANDRY
ATTORNEY GENERAL

BY:
Carey T. Jones (LSBA #07474)
Jeffrey M. Wale (LSBA #36070)
Lauryn A. Sudduth (LSBA #37945)
Assistant Attorneys General
Louisiana Department of Justice, Civil Division
P.O. Box 94005
Baton Rouge, LA 70802
Telephone: (225) 326-6060
Facsimile: (225) 326-6098
Email: jonescar@ag.louisiana.gov
walej@ag.louisiana.gov
sudduthl@ag.louisiana.gov

Counsel for the Secretary of State

CERTIFICATE OF SERVICE

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

New Orleans, Louisiana, this 24th day of May, 2021.

Lauryn A. Sudduth