IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

VOICE of the EXPERIENCED, on behalf of itself and its members; POWER COALITION for EQUITY and JUSTICE, on behalf of itself and its members; and LEAGUE of WOMEN VOTERS of LOUISIANA, on behalf of itself and its members

Case: 3:23-cv-00331-JWD-SDJ

v.

R. KYLE ARDOIN, in his official capacity as Secretary of State of Louisiana

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Defendant, Nancy Landry, in her official capacity as Secretary of State of Louisiana (hereinafter "Defendant" or "Secretary Landry"), who respectfully submits the following memorandum in support of Defendant's Motion to Strike Plaintiffs' *First Amended Complaint for Declaratory and Injunctive Relief* (hereinafter "FAC") and Defendant's Motion to Dismiss Plaintiffs' FAC.[1]

I. BACKGROUND

a. Procedural History

Plaintiffs, Voice of the Experienced ("VOTE"), Power Coalition for Equity and Justice ("PCEJ" or "The Coalition") and League of Women Voters of Louisiana ("LWVLA" or "the League"), filed the instant suit on May 1, 2023, alleging that the documentation requirement for reinstatement of voter registration following suspension for conviction of a felony, as set forth in La. R.S. 18:177(A)(1), violates sections 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1) of the National

[1] Doc. 168.

Voter Registration Act ("NVRA") and the Equal Protection Clause of the Fourteenth Amendment.[2] On June 14, 2023, Defendant filed a Motion to Dismiss pursuant to F.R.C.P. 12(b).[3]

On May 13, 2024, the District Court denied Defendant's Motion to Dismiss as to Plaintiffs' equal protection claim and granted Defendant's Motion to Dismiss as to the NVRA claims and allowed Plaintiffs "leave to amend their *Complaint* to cure the…deficiencies, if they can do so."[4] The District Court ordered that "Plaintiffs shall have twenty-eight (28) days from the Court's ruling on Defendant's *Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)* (Doc. 32) in which to cure the above deficiencies regarding their NVRA claims if same can, in good faith, be cured."[5] Pursuant to this order, Plaintiffs' deadline to file an amended complaint was June 10, 2024.

On May 31, 2024, Plaintiffs filed a Motion to Extend Time to File Amended Complaint, seeking an additional 81 days (i.e. by August 30, 2024) to file an amended complaint.[6] On June 6, 2024, the Court granted Plaintiffs' Motion for Extension of Time and extended Plaintiffs' deadline to September 6, 2024.[7] On September 6, 2024, Plaintiffs filed their *FAC*.[8] On September 16, 2024, the Court granted Defendant's Unopposed Motion for Extension of Time to Respond to Plaintiffs' *FAC* and extended Defendant's deadline to October 4, 2024.

b. The Court's ruling on Defendant's Motion to Dismiss

The District Court granted Defendant's Motion to Dismiss as to Plaintiffs' NVRA claims on the following grounds: (1) Plaintiff VOTE failed to provide the requisite notice under the

[2] Doc. 1.
[3] Doc. 32.
[4] Doc. 155, p. 85-6.
[5] Doc. 155, p. 86.
[6] Doc. 159.
[7] Doc. 162.
[8] Doc. 168.

NVRA,[9] (2) any alleged violations of the NVRA other than those for which Plaintiffs PCEJ and LWVLA provided notice(52 U.S.C. §§ 20505(a)(1) and 20507(a)(1)) were dismissed,[10] and (3) La. R.S. 18:177(A)(1) "is not preempted by the NVRA because the statutes are not in direct conflict."[11] The Court dismissed Plaintiffs' NVRA claims without prejudice with leave to amend to cure the deficiencies regarding their NVRA claims identified by the Court, "if same can, in good faith, be cured."[12] The District Court also reminded Plaintiffs' counsel "of their obligations under Federal Rule of Civil Procedure 11(b)."[13] The Court denied Defendant's Motion to Dismiss as to Plaintiffs' equal protection claim, and Plaintiffs were not given leave to amend their equal protection claim.[14]

In dismissing Plaintiffs' NVRA claims on the grounds of lack of notice, the Court aptly cited *Scott v. Schedler,* 771 F. 3d 831 (5th Cir. 2014), which held that notice is a mandatory prerequisite to filing suit for alleged violations of the NVRA.[15] "[E]ach plaintiff must give their own NVRA notice and [] one plaintiff cannot piggyback to another plaintiff's NVRA notice."[16] The Court further found that "notice as to one potential NVRA violation is not the equivalent of notice as to all potential NVRA violations. Rather, a potential NVRA defendant must have notice of exactly what violation or violations have been alleged in order to have a meaningful opportunity to attempt complete compliance before facing litigation."[17]

Accordingly, the Court correctly concluded that Plaintiff VOTE "never gave proper notice under the NVRA" because the only relevant letter in which VOTE joined was sent fewer than 90

[9] Doc. 155, p. 55.
[10] Doc. 155, p. 57.
[11] Doc. 155, p. 70.
[12] Doc. 155, p. 86.
[13] *Id.*
[14] Doc. 155, p. 86.
[15] Doc. 155, p. 49-51.
[16] Doc. 155, p. 51, citing *Scott.*
[17] Doc. 155, p. 55, citing *Bellitto v. Snipes*, 268 F. Supp. 3d 1328, 1334 (S.D. Fla. 2017).

days before filing suit.[18] The Court also correctly concluded that Plaintiffs PCEJ and LWVLA put Defendant on notice of potential violations of 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1) only and dismissed any claims alleging other NVRA violations.[19] However, all of Plaintiffs' NVRA claims were ultimately dismissed without prejudice because the NVRA does not preempt La. R.S. 18:177(A)(1).

c. May 31, 2024 notice of alleged NVRA violations

On May 31, 2024, VOTE, PCEJ, and LWVLA sent Secretary Landry written notice of alleged violations of the NVRA pursuant to 52 U.S.C. § 20510(b).[20] This notice alleged that Louisiana's reinstatement procedure in La. R.S. 18:177(A) violates the following provisions of the NVRA: 52 U.S.C. §§ 20205(a)(1), 20205(a)(2), 20507(a)(1), 20507(a)(5), 20507(b)(1), 20508(b)(1), 20508(b)(2)(A), and 20508(b)(3).[21] On August 30, 2024, Secretary Landry responded to the letter.[22]

d. Plaintiffs' *FAC*

On September 6, 2024, Plaintiffs filed the *FAC*. Plaintiffs' *FAC* goes beyond merely attempting to cure the deficiencies of the NVRA claims and sets forth many factual allegations and claims that were not included in the initial *Complaint* or arose after the initial *Complaint* was filed.

The new allegations include (1) alleged violations of 52 U.S.C. 20205(a)(2), 20507(a)(5), 20507(b)(1), 20508(b)(1) and 20508(b)(2)(A) pursuant to the May 31, 2024 letter; (2) the Secretary of State's alleged statutory responsibility to ensure that parish registrars comply with the NVRA; (3) the alleged discriminatory and non-uniform application of the documentation

[18] Doc. 155, p. 55.
[19] Doc. 155, p. 57.
[20] Doc. 168-9.
[21] Doc. 168-9, p. 2.
[22] Doc. 168-10.

requirement of La. R.S. 18:177; (4) the alleged application of the documentation requirement of La. R.S. 18:177 to first-time registrants, individuals who were never incarcerated for felony convictions, or other individuals whose registrations were never suspended; (5) the alleged failure of the state's voter registration form and state-specific instructions for the federal registration form to include all eligibility criteria; and (6) the in-person appearance requirement of La. R.S. 18:177 as applied to individuals in parish jails.

With these new allegations, Plaintiffs attempt to supplement their initial *Complaint* and amend their equal protection claim without leave of court.[23] Defendant moves to strike Plaintiffs' *FAC* from the record pursuant to F.R.C.P. 12(f). In the alternative, if the Court denies Defendant's motion to strike in whole or in part, Defendant moves to dismiss Plaintiff's FAC for the reasons set forth herein below.

II. LAW AND ARGUMENT

MOTION TO STRIKE

Federal Rule of Civil Procedure 12(f) provides that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter…or motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."

a. Plaintiffs' NVRA claims

i. Amendment v. Supplementation of pleadings

Rule 15 of the Federal Rules of Civil Procedure sets forth the process by which a plaintiff may amend or supplement his Complaint. Rule 15(a) governs the amendment of pleadings, and Rule 15(d) governs the supplementation of pleadings. "The distinction between supplemental

[23] Doc. 155, p. 86.

pleadings and amended pleadings is more than one of mere nomenclature."[24] "[T]he important distinction between amended and supplemental pleading is when the events pleaded occurred."[25] "The *former relate to matters that occurred prior to the filing of the original pleading* and entirely replace the earlier pleading; *the latter deal with events subsequent to the pleading to be altered* and merely represent additions to or continuations of the earlier pleading."[26] "A supplemental pleading is designed to bring the action 'up to date' and to set forth new facts affecting the controversy that have occurred since the original pleading was filed."[27]

While the Fifth Circuit has held that Rule 15(a) "requires the trial court to grant leave to amend 'freely,' and the language of this rule 'evinces a bias in favor of granting leave to amend,'"[28] Rule 15(d) does not similarly provide that leave should be freely given.[29] Rule 15(d) provides, "[o]n motion and reasonable notice, the court *may*, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened *after the date of the pleading to be supplemented*."[30]

ii. Plaintiffs' *FAC* is a supplemental pleading.

Though styled as an amended complaint, Plaintiffs' *FAC* contains significant supplementations to their initial complaint because it alleges events subsequent to the initial *Complaint* filed on May 1, 2023.[31]

Specifically, Plaintiffs allege the following subsequent events:

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[24] *Bobby's Country Cookin' LLC, et al. v. Waitr Holdings, Inc.*, 19-CV-552, 2020 WL 97391 (W.D. La. Jan. 7, 2020), citing *US ex rel. Kinney v. Stoltz*, 2002 WL 523869, at *3 (D. Minn. Apr. 5, 2002).
[25] *Dean v. Ford Motor Credit Co.*, 885 F.2d 300, 302 (5th Cir. 1989).
[26] *Id.,* citing 6 C. Wright & A. Miller, Federal Practice & Procedure, § 1504 at 540 (1971) (emphasis in original).
[27] *Blackwell v. Thai Speed, Inc.*, No. C 07-4629 SBA, 2008 WL 782556, at *2 (N.D. Cal. Mar. 24, 2008).
[28] *Lyn Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002) (quoting *Chitimacha Tribe of La. v. Harry L. Laws Co., Inc.*, 690 F.2d 1157, 1162 (5th Cir. 1982)).
[29] *Burns v. Exxon Corp.*, 158 F.3d 336, 343 (5th Cir.1998)
[30] Fed. R. Civ. P. 15 (emphasis added).
[31] R. Doc. 168.

- "On May 31, 2024, Plaintiffs sent a notice letter to Defendant Landry, alleging violations of the NVRA. *See* Ex. 9."[32]
- "On August 30, 2024, Defendant responded to Plaintiffs' notice letter. *See* Ex. 10. Defendant rejected Plaintiffs' allegations but stated that 'a reminder of the uniform felony procedures will be sent to all registrars of voters which will include the relevant election laws, including the 2021 amendment to La. R.S. 18:102.' *Id.* at 6."[33]
- "More than ninety days have elapsed since Plaintiffs sent their May 31, 2024 notice letter. To date, Defendant has not cured the paperwork requirement. This suit follows."[34]
- "Plaintiffs complied with the NVRA's notice requirement by providing Defendant with written notices of the violation on…May 31, 2024. *See* Exs…9. Defendant has failed to correct the violation within the ninety-day period required under 52 U.S.C. § 20510(b)(1) and set forth in Plaintiffs'…May 31, 2024 correspondence."[35]
- "Plaintiffs complied with the NVRA's notice requirement by providing Defendant with written notices of the violation on May 31, 2024. *See* Ex. 9. Defendant has failed to correct the violation within the ninety-day period required under 52 U.S.C. § 20510(b)(1) and set forth in Plaintiffs' May 31, 2024 correspondence."[36]

The foregoing allegations undoubtedly arose after Plaintiffs filed their initial *Complaint* on May 1, 2023 and thus constitute events subsequent to the initial *Complaint.* As such, these purported "amendments" are supplementations to Plaintiffs' initial *Complaint.*

Moreover, all allegations based upon the May 31, 2024 letter are, likewise, supplementations to Plaintiffs' initial *Complaint.* As the Court found in its ruling on Defendant's Motion to Dismiss, "Plaintiffs [PCEJ and LWVLA] properly put the Secretary on notice of potential violations of 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1)," exclusively, and thus, 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1) are the only alleged NVRA violations at issue in the present suit.[37]

[32] Doc. 168, para. 105.
[33] Doc. 168, para. 106.
[34] Doc. 168, para. 107.
[35] Doc. 168, paras. 132 (Count 1) and 139 (Count 2).
[36] Doc. 168, paras. 159 (Count 4) and 166 (Count 5).
[37] Doc. 155, p. 57.

The May 31, 2024 letter alleges violations of the NVRA beyond 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1), namely, 20205(a)(2), 20507(a)(5), 20507(b)(1), 20508(b)(1), 20508(b)(2)(A), and 20508(b)(3).[38] Consequently, Plaintiffs' *FAC* attempts to allege violations of not just 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1), but also 20205(a)(2), 20507(a)(5), 20507(b)(1), 20508(b)(1) and 20508(b)(2)(A).[39]

Specifically, Count 3 alleges that Secretary Landry is statutorily responsible for "some registrars requiring the paperwork of all individuals with prior felony convictions, regardless of whether they are first-time or 'suspended' registrants," even though this "violate[s] the Secretary's written guidance.[40] Count 4 alleges that "[t]he paperwork requirement results in the differential treatment of similarly situated eligible voters…by imposing different obligations on 'suspended' voters and other voters"[41] and that "the application of the paperwork requirement is disuniform across parishes,"[42] in violation of 52 U.S.C. § 20507(b)(1). Count 5 alleges that "if reinstatement is considered an eligibility criterion ['for restoration of voting rights'], Defendant's state registration form and instructions for the federal form violate the NVRA for failing to specify it as such,"[43] in violation of 20507(a)(5), 20508(b)(2)(A), and 20205(a)(2).

None of these new allegations are included in Plaintiffs' initial *Complaint.* Plaintiffs' initial *Complaint* concerns only the documentation requirement of La. R.S. 18:177 for suspended voters,

[38] Doc. 168-9, p. 2.
[39] Plaintiffs' First Amended Complaint does not allege a violation of 20508(b)(3).
[40] Doc. 168, para. 143, 148. Plaintiffs allege that first-time registrants and individuals with felony convictions who never lost the right to vote are required by *some* registrars to provide documentation in violation of "the NVRA's mandate that eligible voters be registered and its prohibition on additional paperwork requirements under the 'accept and use' provision. 52 U.S.C. § 20507(a)(1); 52 U.S.C. § 20508(b)(1); 52 U.S.C. §§ 20505(a)(1), (2)." Doc. 168, para. 146. *See also* paras. 2, 8, 45, 59, 60, 61, alleging that first-time registrants and individuals who were never incarcerated are required by some registrars to provide documentation.
[41] Doc. 168, para.154.
[42] Doc. 168, para. 155.
[43] Doc. 168, para. 161.

not the documentation requirement as purportedly applied to first-time registrants or other non-suspended voters,[44] and alleges three violations of 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1):

> (1) "Louisiana's refusal to register facially eligible applicants based solely on their prior 'suspension' due to a past felony conviction violates Section 8 of the NVRA;"[45]
> (2) "Louisiana's paperwork requirement to prove eligibility for 'suspended' applicants with past convictions is 'inconsistent with the NVRA's mandate that States accept and use the Federal Form' [i.e. 52 U.S.C. § 20505(a)(1)];"[46] and
> (3) "The paperwork requirement imposed on suspended voters with past felony convictions violates Section 6 and Section 8 because it exceeds the information necessary for election officials to assess an applicant's eligibility…".[47]

There are no allegations in the initial *Complaint* that the documentation requirement of La. R.S. 18:177 is applied in a discriminatory or non-uniform fashion across parishes,[48] nor are there allegations that Louisiana's state voter registration form or the state-specific instructions for the federal registration form fail to specify all voter eligibility criteria.[49] Likewise, there are no allegations that the Secretary of State is responsible for ensuring compliance with the NVRA by the parish registrars.[50]

Defendant was not notified of the additional alleged violations of the NVRA set forth in Counts 3, 4, and 5 until the May 31, 2024 letter, which was sent well-after Plaintiffs filed suit on May 1, 2023. The NVRA requires that written notice of alleged violations be provided more than 90 days *prior* to filing suit, not provided during the pendency of an existing suit.[51] Written notice joined by VOTE, PCEJ, and LWVLA alleging additional NVRA violations, provided more than

[44] *Cf.* Counts 3 and 4 of Plaintiffs' Amended Complaint (Doc. 168, paras. 143 and 154).
[45] Doc. 1, para. 92.
[46] Doc. 1, para. 96, citing *Arizona v. Inter Tribal Council of Arizona, Inc.,* 570 U.S. 1 (2013).
[47] Doc. 1, para. 98.
[48] *Cf.* Count 4 of Plaintiffs' Amended Complaint (Doc. 168, paras. 152-159).
[49] *Cf.* Count 5 of Plaintiffs' Amended Complaint (Doc. 168, paras. 160-166).
[50] *Cf.* Count 3 of Plaintiffs' Amended Complaint (Doc. 168, paras. 141-151).
[51] 52 U.S.C. § 20510(b).

one year after filing suit, does not yield an *amendment* to cure the deficiencies. If anything, it yields a *supplementation* to the existing suit.

iii. Plaintiffs did not have leave of court to supplement their original *Complaint.*

Plaintiffs were required by F.R.C.P. 15(d) to obtain leave of court before filing a supplemental complaint. Leave to amend to cure the deficiencies of their NVRA claims did not relieve Plaintiffs of the obligation to seek leave to supplement their *Complaint* with new NVRA claims. Since Plaintiffs have never requested leave to supplement their *Complaint*, the *FAC* should be stricken.

iv. Plaintiffs' *FAC* should be stricken in its entirety.

Federal Rule of Civil Procedure 15(d) does not permit supplemental pleadings to be filed without leave of court. Courts routinely strike entire pleadings which are not authorized by the rules.[52] In *Munoz v. Seton Healthcare, Inc.*, the Fifth Circuit found that the district court did not abuse its discretion in striking an amended complaint filed without leave of court.[53] Similarly, in *Yoon v. Garg*, the Fifth Circuit found that the district court did not abuse its discretion in striking a supplemental brief and second application for temporary restraining order where plaintiff "failed to seek leave of court to file either and where both would have resulted in significant prejudice to the defendants."[54] Here, as discussed above, Plaintiffs' *FAC* is, in substance, a supplemental

[52] *Blackwell v. Thai Speed, Inc.*, No. C 07-4629 SBA, 2008 WL 782556, at *3–4 (N.D. Cal. Mar. 24, 2008) (order granting motion to strike supplemental complaint styled as an amended complaint filed without leave of court); *Jones v. Warden Ross Corr. Inst.*, No. 2:11-CV-871, 2012 WL 3245521, at *1 (S.D. Ohio Aug. 9, 2012) (order granting motion to strike response to answer); *Oy Tilgmann, AB v. Sport Pub. Int'l, Inc.*, 110 F.R.D. 68, 70–71 (E.D. Pa. 1986) (order granting motion to strike amended answer filed without leave of court); *Marmolejo v. Penzone*, No. CV1703421PHXGMSESW, 2018 WL 3997661, at *2 (D. Ariz. Aug. 21, 2018) (order granting motion to strike reply to answer).

[53] *Munoz v. Seton Healthcare, Inc.*, 557 F. App'x 314, 318 (5th Cir. 2014).

[54] *Yoon v. Garg*, No. 23-20519, 2024 WL 2861855, at *5 (5th Cir. June 6, 2024).

pleading that was filed without leave of court in violation of Rule 15(d).[55] It should be stricken in its entirety as an unauthorized pleading.

In *Bobby's Country Cookin' LLC, et al. v. Waitr Holdings, Inc.*, the plaintiffs filed a First Amended Class Action Complaint in response to the Motion to Dismiss filed by the defendant.[56] The defendant thereafter filed a Motion to Strike, arguing that the First Amended Class Action Complaint should be stricken because it was a supplemental rather than an amended complaint, for which plaintiff needed leave of court to file.[57]

The Western District of Louisiana found that the First Amended Class Action Complaint contained allegations based upon conduct that occurred prior to the filing of Plaintiff's initial complaint, as well as allegations related to events that occurred after the initial complaint was filed.[58] Therefore, the court concluded that the First Amended Class Action Complaint was "properly characterized as an amended *and* supplemental pleading."[59] The court found that under the plain language of Rule 15(a)(1)(B) and Rule 15(d), the plaintiff was permitted *to amend* its pleading in response to the defendant's motion to dismiss as a matter of course; however, it needed leave of court to file a supplemental complaint.[60] Since the plaintiff failed to request leave to supplement its initial complaint, the Motion to Strike the First Amended Class Action Complaint in its entirety was granted.[61]

[55] *Dells, Inc. v. Mundt*, 400 F. Supp. 1293, 1295 (S.D.N.Y. 1975) ("Because the 'Verified Amended Complaint' includes 'transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented', it should properly have been entitled 'Amended and Supplemental Complaint', and leave of Court should have been sought before filing it.").
[56] *Bobby's Country Cookin' LLC, et al. v. Waitr Holdings, Inc.*, 19-CV-552, 2020 WL 97391 (W.D. La. Jan. 7, 2020).
[57] *Id*. at *1.
[58] *Id.*
[59] *Id*.
[60] *Id*. (emphasis added).
[61] *Id.*

Here, similar to *Bobby's Country Cookin',* Plaintiffs' *FAC* contains allegations related to events that occurred after the initial *Complaint* was filed on May 1, 2023, as discussed above. While Plaintiffs were undoubtedly permitted to amend the NVRA claims set forth in their initial *Complaint,* they were required to seek leave of court to file a supplemental complaint. Since Plaintiffs failed to request leave to supplement their initial *Complaint,* their *FAC* should be stricken in its entirety, as in *Bobby's Country Cookin'.*

b. Plaintiffs' Equal Protection claim

Plaintiffs' *FAC* contains several amendments to Plaintiffs' equal protection claim (Count 6). Paragraphs 169, 171, 176, and 177 of Count 6 of the *FAC* contain additions and/or deletions from the corresponding paragraphs of Count 2 of the initial *Complaint,* paragraphs 106, 107, 113, 115, respectively.[62] Paragraph 170 of the *FAC* revised and replaced paragraph 112 of the initial *Complaint.*

The most significant amendment, however, was the addition of the allegations in paragraphs 178 and 179 of the *FAC:*

> 178. For example, individuals whose previous registration is suspended and are currently in jail for a misdemeanor or pre-trial, cannot meet the State's in-person requirements for reinstatement. And upon information and belief, Defendant provides no policy or exception to the paperwork requirement which would allow those incarcerated individuals to reinstate their registration. As a result, Defendant's policy results in the total denial of voter registration for certain eligible, incarcerated individuals.
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> 179. Finally, Defendant's policy results in the differential treatment of eligible individuals. Because of the confusing policy, parish registrars often apply the paperwork requirement to individuals for whom the requirement does not apply, such as first-time registrants or individuals who were never incarcerated for their conviction. As a result, whether the paperwork requirement applies to an individual with a felony conviction arbitrarily boils down to their parish of registration.

[62] Doc. 168 and Doc. 1.

These allegations are entirely absent from the initial *Complaint.*

First, Plaintiffs' initial *Complaint* contains no allegations whatsoever pertaining to individuals in jail who seek reinstatement of a suspended voter registration. Tellingly, Plaintiffs' *FAC* also adds allegations related to VOTE's alleged work with persons incarcerated in parish jails, in an effort to allege standing to bring such a claim.[63] Second, while Plaintiffs' initial *Complaint* does not challenge the in-person appearance requirement of La. R.S. 18:177, paragraph 178, as well as paragraphs 58 and 77, of the *FAC* indicate that Plaintiffs apparently now challenge the in-person appearance requirement of La. R.S. 18:177, at least as applied to individuals in jail.

Finally, Plaintiffs' initial *Complaint* challenges only the documentation requirement of La. R.S. 18:177 as applied to suspended voters seeking reinstatement and does not challenge the documentation requirement as purportedly applied to first-time registrants or "individuals who were never incarcerated for their conviction," as alleged in paragraph 179 of the *FAC.*[64] Plaintiffs allege in the initial *Complaint* that voters seeking reinstatement of suspended registrations "are treated differently than new registrants with past convictions," to whom the documentation requirement does not apply.[65] Yet, paragraph 179, as well as paragraphs 2, 8, 45, 59, 60, 61, indicate that Plaintiffs now apparently challenge the documentation requirement as allegedly applied to first-time registrants and/or individuals who were never incarcerated for felony conviction and thus, not subject to the documentation requirement of La. R.S. 18:177.

[63] *See* Doc. 168, paragraphs 18, 19, 20, 21. *See also* paragraphs 58 and 77 and Request for Relief (D), which adds "including currently incarcerated individuals." Doc. 168, p. 46.
[64] *See also* Doc. 168, paras. 2, 8, 45, 59, 60, 61.
[65] Doc. 1, para. 106.

None of these amendments to Plaintiffs' equal protection claim are permitted. As discussed above, the Court's order following the ruling Defendant's Motion to Dismiss allowed Plaintiffs leave to amend to cure the deficiencies in their NVRA claims only:

> **IT IS FURTHER ORDERED** that Plaintiffs shall have twenty-eight (28) days…in which to cure the above deficiencies regarding their NVRA claims if same can, in good faith, be cured.[66]

Plaintiffs were not given leave to amend their equal protection claim and have not requested leave.

Moreover, the Scheduling Order entered by the Court on November 6, 2023 provided that the deadline to amend the pleadings was November 15, 2023.[67] The order clarified that "[a]mendments sought after this deadline may be permitted in accordance with the good cause standard of Rule 16 of the Federal Rules of Civil Procedure. This deadline does not preclude leave to amend following a ruling on the pending motion to dismiss."[68] The November 15, 2023 amendment deadline has not been renewed by subsequent scheduling orders.[69] Plaintiffs have never sought to amend the November 15, 2023 deadline in order to amend their equal protection claim and cannot do so now.

These amendments to Plaintiffs' equal protection claim, filed without leave of court, violate the Federal Rules of Civil Procedure.[70] Therefore, Plaintiffs' *FAC* should be stricken in its entirety as an unauthorized pleading (*see* Section II(A)(iv), supra).

[66] Doc. 155, p. 86 (emphasis added).
[67] Doc. 119.
[68] Doc. 119, FN 1.
[69] *See* Docs. 143 and 152.
[70] *See Amerisourcebergen Drug Corp. v. Am. Associated Druggists, Inc.*, No. CIV.A. 05-5927, 2007 WL 1463062, at *2 (E.D. Pa. May 18, 2007) (second amended counterclaim, which added four new causes of action and constituted a "substantial alteration" to the previous pleading, was stricken. "United was, thus, required to obtain leave of court or the written consent of ABDC to file the new claims. Since neither leave nor consent was obtained, we find that this pleading was filed in violation of the Federal Rules of Civil Procedure.").

c. Defendant will be prejudiced if Plaintiffs' *FAC* is not stricken.

Despite the reminder to counsel "of their obligations under Federal Rule of Civil Procedure 11(b),[71] Plaintiffs went well-beyond the Court's limited leave to amend their *Complaint* to cure the deficiencies of their NVRA claims. Instead of simply amending their existing NVRA claims, Plaintiffs supplemented their complaint without leave of court to include new alleged NVRA violations, notice of which was not provided until more than one year after Plaintiffs filed the instant suit. Additionally, although the Court denied Defendant's Motion to Dismiss as to Plaintiffs' equal protection claim, Plaintiffs exploited the Court's leave as an opportunity to also amend their equal protection claim after the deadline to amend the pleadings.

The present suit has been pending since May 1, 2023. The deadline to amend the pleadings expired almost a year ago, on November 15, 2023. By supplementing the NVRA claims and amending the equal protection claim, Plaintiffs now seek to introduce new issues into the pending suit, almost a year and a half after it was filed. Until the Scheduling Order deadlines were ultimately suspended to allow Plaintiffs additional time to file an amended complaint,[72] the parties were on pace to complete fact discovery by the June 14, 2024 deadline.[73] These new allegations and claims, if allowed to proceed, will require additional fact discovery after it was nearly complete, not to mention additional arguments in pre-trial motions and issues for trial. All of this will serve only to "delay the disposition of the claims" against Defendant, thereby resulting in prejudice to Defendant.[74]

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[71] Doc. 155, p. 86.
[72] *See* Doc. 161 (June 4, 2024 order extending discovery deadlines by 30 days); Doc. 164 (June 18, 2024 order suspending all Scheduling Order deadlines).
[73] *See* R. Doc. 156 and 147.
[74] *See Haralson v. Campuzano*, 356 F. App'x 692, 699 (5th Cir. 2009). *See also Oy Tilgmann, AB v. Sport Pub. Int'l, Inc.*, 110 F.R.D. 68, 70–71 (E.D. Pa. 1986) (moving party demonstrated prejudice on motion to strike amended answer filed without leave of court when the case had been pending more than fourteen months and "nine depositions have been taken, numerous documents have been exchanged, interrogatories have been filed and answered, cross-motions for summary judgment have been heard and decided, and the discovery period was ordered closed.").

MOTION TO DISMISS

Alternatively, if this Court denies Secretary Landry's Motion to Strike in whole or in part, Secretary Landry seeks dismissal of Plaintiffs' claim on the basis of lack of subject matter jurisdiction pursuant to F.R.C.P. 12(b)(1); for failure to state a claim for relief against her arising under the NVRA and the Equal Protection Clause of the Fourteenth Amendment pursuant to F.R.C.P. 12(b)(6); and failure to join a party under Rule 19 pursuant to F.R.C.P. 12(b)(7).

A. Lack of subject matter jurisdiction pursuant to F.R.C.P. 12(b)(1)

The burden of proof for a Rule 12(b)(1) Motion to Dismiss lies with the party asserting jurisdiction.[75] A claim is properly dismissed pursuant to F.R.C.P. 12(b)(1) for lack of subject matter jurisdiction when the court lacks statutory authority or constitutional power to adjudicate the claim.[76] "When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits."[77]

1. Plaintiffs do not have Article III standing.

Plaintiffs in this case are nonprofit corporations. Organizational plaintiffs such as these must demonstrate standing under Article III, which requires an "injury in fact" that is not hypothetical, that is concrete and particularized, that is fairly traceable to and redressable by the Defendant.[78] "An association or organization can establish an injury-in-fact through either of two theories, appropriately called associational standing and organizational standing. Associational standing is derivative of the standing of the association's members, requiring that they have standing and that the interests the association seeks to protect be germane to its purpose. By

[75] *Hall v. Louisiana*, 983 F. Supp. 2d 820, 828 (M.D. La. 2013) (citing *Celestine v. TransWood, Inc*., 467 F. App'x 317, 318 (5th Cir. 2012)).
[76] *In re: FEMA Trailer Formaldehyde Prods. Liab. Litig*., 668 F.3d 281, 286 (5th Cir. 2012).
[77] *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001).a
[78] *Crenshaw-Logal v. City of Abilene, Tex.*, 436 Fed.Appx. 306, 308 (5th Cir.2011).

contrast, organizational standing does not depend on the standing of the organization's members. The organization can establish standing in its own name if it meets the same standing test that applies to individuals."[79]

The Fifth Circuit has held that nonprofit corporations can suffer Article III injury when a defendant's actions frustrate their missions and force them to divert significant resources to counteract the defendant's conduct.[80] For resource diversion to apply, the defendant's conduct must significantly and perceptively impair the organization's ability to provide its "activities – with the consequential drain on the organization's resources."[81] The injury must be concrete and demonstratable.[82] Not every diversion of resources to counteract the defendant's conduct establishes injury in fact.[83] The organization's purportedly injurious counteractions must "differ from its routine activities."[84]

Recently, the Fifth Circuit held diversion of resources, alone, does not constitute an injury-in-fact.[85] In *Azalea Gardens*, the plaintiff, Louisiana Fair Housing Authority Center (LaFHAC), a non-profit organization whose mission and purpose is to "eradicate housing discrimination in Louisiana," alleged that the defendant, Azalea Gardens Properties, was engaged in discrimination in violation of the Fair Housing Act (FHA).[86] To accomplish its mission, LaFHAC employs testers to conduct investigations to help it determine if housing providers are engaged in discrimination in violation of the FHA.[87] LaFHAC asserted organizational standing and the Fifth Circuit dismissed LaFHAC's suit on the basis that it lacked standing.

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[79] *OCA-Greater Houston v. Texas*, 867 F.3d 604, 609–10 (5th Cir.2017).
[80] *N.A.A.C.P. v. City of Kyle, Texas*, 626 F.3d 233, 238 (5th Cir. 2010).
[81] *Id.*
[82] *N.A.A.C.P.,* 626 F.3d at 238 (5th Cir. 2010).
[83] *Id*.
[84] *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020).
[85] See *Louisiana Fair Housing Action Center, Inc. v. Azalea Garden Properties, LLC*, 82 F. 4th 345 (5th Cir. 2023).
[86] *Id*, 82 F.4th at 349 (5th Cir. 2023).
[87] *Id*.

LaFHAC asserted three categories of injuries: "(1) expenditures from its investigation of the complex, (2) expenditures from 'narrowly targeted' 'education and outreach activities,' and (3) the diversion of resources away from other planned activities."[88] The Fifth Circuit concluded that any investigative activities conducted by LaFHAC regarding Azalea Gardens Properties is not a cognizable injury because investigations are a routine activity of the organization.[89] Second, the Fifth Circuit held that the education and outreach activities of LaFHAC are also routine activities of the organization and thus not a cognizable injury.[90] Lastly, the Fifth Circuit concluded that LaFHAC's "alleged diversion of resources away from other planned activities" is not a cognizable injury because LaFHAC failed "to allege how its diversion of resources impaired its ability to achieve its mission."[91] Importantly, the Fifth Circuit found that LaFHAC failed to explain how the purported diversion of resources postponed, curtailed, or cancelled the planned activities or how it affected LaFHAC's ability to achieve its mission.[92] The Fifth Circuit further opined that "the efforts taken to counteract alleged discrimination at Azalea Garden would appear to advance, rather than impair, LaFHAC's mission of eradicating housing discrimination. And as we have explained, those efforts likely fall within the ambit of LaFHAC's routine activities."[93]"'[D]iverting' resources from one core mission activity to another, *i.e.*, prioritizing which 'on-mission' projects, out of many potential activities, an entity chooses to pursue, does not suffice – organizations daily must choose which activities to fund, staff, and prioritize."[94]

[88] *Id*, 82 F.4th at 351 (5th Cir. 2023)
[89] *Id*.
[90] *Id*.
[91] *Id*, 82 F.4th at 353 (5th Cir. 2023)
[92] *Id*.
[93] *Id*.
[94] *Id*, 82 F.4th at 355 (5th Cir. 2023).

This case involves the statutory requirement of La. R.S. 18:177(A)(1) which was in effect before both VOTE and Power Coalition were formed.[95] Further, the statutory requirement of La. R.S. 18:177(A)(1) only recently became a priority of the League. Plaintiffs cannot seriously contend that they are diverting resources to counteract a longstanding, existing law.

i. Power Coalition For Equity and Justice

The Coalition describes itself as a "nonpartisan coalition of community-based organizations" (not of individual members) which "educates and empowers voters across Louisiana."[96] The Coalition's voting related activities include "outreach to voters impacted by the criminal legal system in Louisiana… to provide voter registration, education, and engagement to eligible individuals with prior felony convictions, most of whom are Black Louisianans."[97]

The Coalition reports that it "diverts significant resources from its other activities related to its core mission to assist voters with registering to vote after suspension."[98] The Coalition contends it runs an "11-touch program" aimed at engaging with voters 11 times during an election cycle and that its employees and volunteers participating in this voter engagement are trained to educate individuals on the statutory requirement of La. R.S. 18:177(A)(1).[99] The Coalition avers its phone bankers have to spend additional time speaking with individuals on the suspended list about the statutory requirement of La. R.S. 18:177(A)(1).[100] The Coalition alleges that "[a]bsent the paperwork requirement, PCEJ would be able to reach additional voters, and resources expended on educating voters about the onerous reinstatement process would otherwise be spent

[95] La. R.S. 18:177(A)(1) became effective in 1998. According to the records of the Secretary of State, VOTE was organized in 2004 and PCEJ was organized in 2018.
[96] Doc. 168, ¶23.
[97] *Id*.
[98] Doc. 168, ¶24.
[99] *Id*.
[100] *Id*.

on Power Coalition's engagement with more Louisiana voters, registering voters, and encouraging them to vote."[101]

The Coalition has not alleged a cognizable injury and therefore lacks standing to bring this suit. First, as explained in more detail herein, this Court has already concluded that the statutory requirement of La. R.S. 18:177(A)(1) is not preempted by the NVRA and thus is not a violation of the NVRA.[102] The Coalition's standing argument is premised on the allegation that the statutory requirement of La. R.S. 18:177(A)(1) is unlawful, in violation of the NVRA. Because this Court has already ruled that the statutory requirement of La. R.S. 18:177(A)(1) is lawful, there is no injury-in-fact with respect to the said requirement or any alleged efforts by the Coalition to counteract same.

Alternatively, the Coalition attempts to claim a diversion of resources in order to satisfy standing. This Court previously found that the Coalition had standing with respect to the original Complaint; but the basis for that decision was the extent to which the Coalition alleged it made efforts to counteract the statutory requirement of La. R.S. 18:177(A)(1).[103]

However, as found by the Fifth Circuit in *Azalea Gardens,* the efforts taken by the Coalition to counteract the statutory requirement of La. R.S. 18:177(A)(1) (i.e. educate suspended felons on voting requirements), advance rather than impair the Coalition's mission (i.e. to educate and empower voters across Louisiana). Voter education outreach efforts are a routine activity of the Coalition, and if a phone banker must take a few additional minutes with a suspended felon to discuss the statutory requirement of La. R.S. 18:177(A)(1), that is not considered a diversion of resources from the Coalition's mission because it constitutes voter outreach and education. As the

[101] *Id*.
[102] Doc. 155, pg. 70.
[103] *Id* at pg. 44.

Fifth Circuit held in *Azalea Gardens*, diverting resources from one core mission activity to another does not suffice to establish a cognizable injury for standing purposes.

ii. League of Women Voters of Louisiana

The League is a "nonpartisan, nonprofit organization" that seeks to "encourage informed and active participation in government," "increase voter understanding of major public policy issues, and influence public policy through education and advocacy," and "ensures that all eligible individuals have the opportunity and information needed to vote, with a particular focus on traditionally underrepresented and underserved communities, including voters impacted by the criminal legal system."[104] The League claims that it "diverts significant resources from its other activities related to its core mission to assist its constituents and other community members with the voting rights restoration process for Louisianans with past felony convictions."[105] In particular, the League contends it has had to divert resources from its priorities of educating impacted voters to help them "navigate the process" of complying with the statutory requirement of La. R.S. 18:177(A)(1).[106]

The League has not alleged a cognizable injury and therefore lacks standing to bring this suit. First, as explained in more detail herein, this Court has already concluded that the statutory requirement of La. R.S. 18:177(A)(1) is not preempted by the NVRA and thus is not a violation of the NVRA.[107] Thus, there is no injury-in-fact with respect to the statutory requirement of La. R.S. 18:177(A)(1) or any alleged efforts by the League to counteract same.

Alternatively, the League failed to allege a diversion of resources from its planned mission. Based on the League's own allegations, voter education and voter outreach are part of its mission.

[104] Doc. 168, ¶25.
[105] *Id*.
[106] *Id*.
[107] Doc. 155, pg. 70.

The fact that the content of some of that education and outreach may be related to the statutory requirement of La. R.S. 18:177(A)(1), which has been in effect in Louisiana since 1997, does not demonstrate injury-in-fact. In fact, the efforts the League claims to take to counteract the statutory requirement of La. R.S. 18:177(A)(1) (i.e. helping impacted voters navigate the process) advance rather than impair the League's mission (i.e. voter education and outreach).[108] The League defines its mission as seeking to ensure that all eligible individuals "have the opportunity and the information needed to vote." The League is simply fulfilling its mission when it educates individuals on the statutory requirement of La. R.S. 18:177(A)(1).[109] As the Fifth Circuit held in *Azalea Gardens*, diverting resources from one core mission activity to another does not suffice to establish a cognizable injury for standing purposes.

iii. Voice of the Experienced (VOTE)

Unlike the Coalition and the League, Plaintiff VOTE appears to rely on both organizational and associational theories of standing. "Associational standing is derivative of the standing of the association's members, requiring that they have standing and that the interests the association seeks to protect be germane to its purpose. By contrast, organizational standing does not depend on the standing of the organization's members. The organization can establish standing in its own name if it meets the same standing test that applies to individuals."[110]

a. Associational Standing

VOTE alleges that it "is aware of members who had their voter registration suspended because of a felony conviction, became eligible to vote, and have been required to provide documentary proof of their eligibility before the State allowed them to register to vote."[111] VOTE

[108] *Azalea Gardens Properties, LLC*, 82 F.4th at 353 (5th Cir. 2023)
[109] Doc. 168, ¶25.
[110] *OCA-Greater Houston v. Texas, 867 F.3d 604, 609–10 (5th Cir.2017).*
[111] *Id* at ¶19.

also contends it is "aware of eligible, suspended voters in parish jails who sought registration and were required to provide documentary proof of their eligibility, but could not provide documentation because of their eligibility."[112] According to VOTE, some of these individuals were unable to vote in state and federal elections because they were unable to obtain the documentation verifying their eligibility in time.[113] VOTE claims that these members are harmed by the "onerous" process under Louisiana law that requires them to provide documentation to prove their eligibility to register to vote, despite their facial eligibility.

To establish associational standing, a membership organization must identify at least one member "who has sustained or is immediately in danger of sustaining some direct injury as a result of the challenged official conduct."[114] The requirement to name at least one affected member is mandatory, and the court cannot merely "accept[] the organization's self-description of the activities of its members" and determine that "there is a statistical probability that some of those members are threatened with concrete injury."[115] Here, VOTE does not identify a single member who is allegedly affected by the documentation requirement of La. R.S. 18:177, much less an injury to any of its members.

As explained in more detail herein, this Court has already concluded that the statutory requirement of La. R.S. 18:177(A)(1) is not preempted by the NVRA and thus is not a violation of the NVRA.[116] VOTE failed to allege an injury-in-fact to its members because the alleged injury is simply the fact that its members must comply with the statutory requirement of La. R.S.

[112] *Id*. These persons are not alleged to be members of VOTE.
[113] *Id*.
[114] *Funeral Consumers All., Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 344 (5th Cir. 2012).
[115] *Summers v. Earth Island Inst.*, 555 U.S. 488, 497–98, 129 S. Ct. 1142, 1151, 173 L. Ed. 2d 1 (2009).
[116] Doc. 155, pg. 70.

18:177(A)(1), which has already been determined to be a valid, enforceable requirement. Therefore, VOTE fails to establish associational standing on behalf of any members.

b. Organizational Standing

VOTE likewise fails to establish organizational standing. VOTE describes itself as "a nonpartisan, grassroots nonprofit organization" which "advocates to restore the full human and civil rights for people who are incarcerated and people who are formerly incarcerated."[117] VOTE contends its work includes areas of "voting rights, medical rights, and employment rights."[118] VOTE avers it "actively engage[s] eligible voters incarcerated in parish jails by registering them to vote, following up with them on if they need additional documentation of eligibility, and ensuring access to absentee ballots. VOTE also engages its membership through direct organizing, voter education, registration drives, and know-your-rights workshops."[119]

VOTE alleges that the statutory requirement of La. R.S. 18:177(A)(1) resulted in VOTE "diverting significant resources to educate voters on the [statutory requirement of La. R.S. 18:177(A)(1)] and help suspended voters navigate the process of complying with it," which VOTE alleges that it would not have to do but for the statutory requirement of La. R.S. 18:177(A)(1).[120]

VOTE has not alleged a cognizable injury and therefore lacks standing to bring this suit. First, as explained in more detail herein, this Court has already concluded that the statutory requirement of La. R.S. 18:177(A)(1) is not preempted by the NVRA and thus is not a violation of the NVRA.[121] Thus, there is no injury-in-fact with respect to the statutory requirement of La. R.S. 18:177(A)(1) or any alleged efforts by VOTE to counteract same.

[117] Doc. 168, ¶ 18.
[118] *Id*.
[119] *Id*.
[120] *Id* at ¶21.
[121] Doc. 155, pg. 70.

Alternatively, VOTE failed to allege a diversion of resources from its planned mission. Based on VOTE's own allegations, its mission is restoration of full human and civil rights to formerly incarcerated individuals including voting rights, which it accomplishes through voter education and voter outreach and following up with individuals in parish prison who need documentation of eligibility to vote. The fact that the content of some of that education and outreach may be related to the statutory requirement of La. R.S. 18:177(A)(1), which has been in effect in Louisiana since 1997, does not demonstrate injury-in-fact. In fact, the efforts VOTE claims to take to counteract the statutory requirement of La. R.S. 18:177(A)(1) (i.e. voter education and helping impacted voters navigate the process) advance rather than impair VOTE's mission (i.e. full restoration of human and civil rights of formerly incarcerated individuals).[122] VOTE is simply fulfilling its mission when it educates formerly incarcerated individuals on the statutory requirement of La. R.S. 18:177(A)(1).[123] As the Fifth Circuit held in *Azalea Gardens*, diverting resources from one core mission activity to another does not suffice to establish a cognizable injury for standing purposes.

Since Plaintiffs failed to establish Article III standing, all claims must be dismissed for lack of subject matter jurisdiction.

2. NVRA Standing

The NVRA allows a private right of action for civil enforcement provided prerequisites are met prior to filing suit. A person aggrieved by a violation of the NVRA must first provide written notice of the violation to the state's chief election official. Only if the violation is not corrected within 90 days after receipt of notice of the violation (or within 20 days after receipt of the notice if the violation occurred within 120 days before the election for federal office) may the person

[122] *Azalea Gardens Properties, LLC*, 82 F.4th at 353 (5th Cir. 2023)
[123] Doc. 168, ¶25.

aggrieved bring a civil action for declaratory and injunctive relief.[124] In the context of standing to bring a private action pursuant to 52 U.S.C. §20510(b), "failure to provide notice is fatal."[125] "No standing is therefore conferred if no proper notice is given since the 90-day period never runs."[126]

Secretary Landry challenges the standing of all Plaintiffs to bring the NVRA claims related to their May 31, 2024 letter (attached as Ex. 9 to Doc. 168) on account of Plaintiffs' failure to send pre-suit notice as required by 52 U.S.C. §20510(b)(1).[127] Secretary Landry also challenges the standing of VOTE to bring any NVRA claims against Secretary Landry for failure to send any pre-suit notice as required by 52 U.S.C. §20510(b)(1). Lastly, Secretary Landry challenges the standing of the Coalition and the League to bring any NVRA claims for which pre-suit notice as required by 52 U.S.C. §20510(b)(1) has not been provided. Plaintiffs have the burden to clearly set forth facts sufficient to satisfy Article III standing requirements.[128] Secretary Landry incorporates by reference as if included herein the arguments included in the *Memorandum in Support of Motion to Dismiss* [Doc. 32-1] related to her challenge of Plaintiffs' standing under the NVRA.

Plaintiffs filed the instant suit on May 1, 2023. In the original Complaint, Plaintiffs alleged the pre-suit notice consisted of the following letters to Secretary Ardoin: August 26, 2022 letter, October 28, 2022 letter, and March 31, 2023 letter.[129] In the *FAC*, Plaintiffs contend that pre-suit notice consists of the following letters to Secretary Ardoin and/or Secretary Landry: October 22, 2020 letter, August 26, 2022 letter, October 28, 2022 letter, March 31, 2023 letter, and May 31,

[124] 52 U.S.C. §20510(b)(2).
[125] *Scott v. Schedler,* 771 F.3d 831, 836 (5th Cir. 2014).
[126] *Id.*, citing *Ga. State Conference of the NAACP v. Kemp*, 841 F.Supp.2d 1320, 1335 (N.D. Ga. 2012).
[127] Secretary Landry also contends, as set forth in more detail herein, Plaintiffs are unable to bring any other NVRA claims on the basis that all NVRA claims related to the original Complaint and the pre-suit notices associated therewith were dismissed by this Court in Doc. 155.
[128] *Sierra Club v. Morton*, 405 U.S. 727 (1972).
[129] Doc. 1, ¶78, 80, 83.

2024 letter.[130]

For purposes of an NVRA violation for this case, this Court has held that the date of filing suit, May 1, 2023, is the controlling date for determining the timeliness of the 90 day notice letter.[131] As this Court noted, "'[t]he apparent purpose of the notice provision is to allow those violating the NVRA the opportunity to attempt compliance with its mandates before facing litigation.' *Ga. State Conf. of NAACP*, 841 F. Supp. 2d at 1335."[132] Accordingly, this Court has already held that the March 31, 2023 letter did not constitute adequate notice under the NVRA because fewer than 90 days transpired between the March 31, 2023 letter and the filing of this suit on May 1, 2023.[133] For those same reasons, the May 31, 2024 letter cannot serve as the requisite NVRA notice letter for the instant litigation, as the notice was afforded long after this suit was filed on May 1, 2023. The late notice, given more than one year after suit was filed, does not satisfy the notice requirements of 52 U.S.C. §20510 "… If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), … the aggrieved person may bring a civil action …". Thus, the May 31, 2024 letter does not constitute adequate pre-suit notice under the NVRA, and Plaintiffs lack standing with respect to any and all NVRA violations included in the May 31, 2024 letter.

This Court has already concluded that all NVRA claims brought by VOTE are dismissed for failure to comply with the pre-suit notice requirements of 52 U.S.C. §20510(b)(1).[134] VOTE did not set forth any additional facts or information in the *FAC* to show it provided Secretary Landry with adequate pre-suit notice under 52 U.S.C. §20510(b)(1). This Court found that VOTE's

[130] Doc. 168, ¶95-105. While Plaintiffs allege that VOTE's October 22, 2020 letter constitutes pre-suit notice, Plaintiffs do not allege that such letter serves as notice of any of the five counts alleging NVRA violations. *See* paras. 132, 139, 159, 166.
[131] *Id* at pg. 51. ("Instead, VOTE needed to have their filed their own notice letter 90 days prior to May 1, 2023.")
[132] *Id* at pg. 53.
[133] Doc. 155, pg. 51.
[134] Doc. 155, pg. 51-55.

March 31, 2023 letter failed to comply with the requirements of 52 U.S.C. §20510(b)(1) because fewer than 90 days transpired between the letter and the filing of the suit.[135] This Court also determined that since VOTE was not included in the August 26, 2022 and October 28, 2022 letters, it could not "piggyback" on the Coalition's and the League's pre-suit notice letters.[136] This Court further concluded that the October 22, 2020 letter did not constitute adequate pre-suit notice for purposes of VOTE's NVRA claims.[137]

> Second, at the preliminary injunction hearing, Norris Henderson, executive director of VOTE, was questioned about the October 22, 2020 letter and explained that the letter was "complaining about the implementation of Act 636." (Doc. 120 at 117).[5] Mr. Henderson recalled that after the letter was sent, VOTE worked together with the Secretary of State and agreed upon the language for Act 127 of 2021, which the Secretary of State agreed not to oppose. (*Id.*) VOTE worked with the Secretary of State, Representative Jenkins, author of Act 127, and VOTE's lobbyist in the passage of Act 127 of 2021. (*Id.* at 117–18.)
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> Again, "[t]he apparent purpose of the notice provision is to allow those violating the NVRA the opportunity to attempt compliance with its mandates before facing litigation." *Ga. State Conf. of NAACP*, 841 F. Supp. 2d at 1335. Mr. Henderson's Testimony proves that the October 22, 2020 letter does not serve this purpose. Following the October 22, 2020 letter, the Secretary of State worked with VOTE to help pass legislation to cure the NVRA violation alleged therein. After Act 127 was passed and implemented, Power Coalition and the League submitted their August 26, 2022 letter, which describes alleged NVRA violations following the implementation of Act 127…[138]

The only new information VOTE included in the *FAC* regarding its pre-suit notice is the May 31, 2024 letter. That letter does not constitute pre-suit notice under 52 U.S.C. §20510(b)(1) for the same reasons the March 31, 2023 does not constitute pre-suit notice. Hence, VOTE failed to comply with the pre-suit notice requirements of 52 U.S.C. §20510(b)(1) and all NVRA claims

[135] *Id* at pg. 51. ("There are less than 90 days between the March 31, 2023 letter and May 1, 2023 when Plaintiffs filed suit, and thus the March 31, 2023 letter cannot constitute proper NVRA notice.")
[136] *Id*. ("The Fifth Circuit has made clear that each plaintiff must give their own NVRA notice and that one plaintiff cannot piggyback to another plaintiff's NVRA notice. Scott, 771 F.3d at 835–86.")
[137] *Id* at pg. 52-55.
[138] *Id* at pg. 53.

alleged by VOTE must be dismissed.

This Court held the Coalition and the League provided pre-suit notice as to only alleged violations of 52 U.S.C. §§ 20505(a)(1) and 20507(a)(1) as those are the only NVRA sections identified in the August 26, 2022 Notice to Sue letter.[139] For reasons explained hereinabove, the May 31, 2024 letter does not provide sufficient pre-suit notice for which the Plaintiffs may allege NVRA violations. With respect to the NVRA claims of the Coalition and the League, their NVRA claims are limited to alleged violations of 52 U.S.C. § 20505(a)(1) and 20507(a)(1) identified in the August 26, 2022 Notice to Sue Letter.[140] For the reasons set forth in the *Memorandum in Support of Motion to Dismiss* [Doc. 32-1], this Court's Ruling [Doc. 155], and for reasons previously explained herein, Secretary Landry contends the Coalition and the League are limited to bringing NVRA claims alleging violations of only 52 U.S.C. § 20505(a)(1) and 20507(a)(1) that were identified in the August 26, 2022 letter.

3. Sovereign Immunity for Equal Protection Claims

Secretary Landry is entitled to sovereign immunity for Plaintiffs' claims arising under the Equal Protection Clause of the Fourteenth Amendment for the reasons set forth in Defendant's Motion to Dismiss Plaintiffs' original Complaint and Reply Memorandum, which are adopted and incorporated by reference herein.[141]

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[139] Doc. 155, pg. 57.

[140] Exhibit 1 to Plaintiffs' Complaint [Doc. 1] is an August 22 or August 26, 2022, unsigned letter from the Coalition, the League, and the National Council of Jewish Women, which is not a party to this matter. *See* R. Doc. 15-2. Exhibit 2 shows that the notice letter the defendant received was an August 30, 2022 letter and not an August 22, or August 26, 2022, letter. *See* Doc. 17-2. In Exhibit 6, the Coalition and the League acknowledge that the first notice letter was the August 30, 2022 letter: "Our first notice letter of August 30, 2022 informed you that … violates the National Voter Registration Act." *See* Doc. 17-6.

[141] Doc. 32-1 and Doc. 65.

B. Failure to state a claim for relief pursuant to F.R.C.P. 12(b)(6)

In the event that the Court determines that all three Plaintiffs meet the requirements of Article III standing and NVRA Standing, Plaintiffs have failed to state a claim for relief against Secretary Landry. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead enough facts "to state a claim to relief that is plausible on its face."[142] A claim is facially plausible when the plaintiff pleads facts that allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged."[143] "A court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff."[144] The court is not, however, bound to accept as true legal conclusions couched as factual allegations.[145]

i. NVRA Claims

Plaintiffs' NVRA claims (Counts 1-5) are preempted by state law. This Court has already determined that Plaintiffs failed to state a claim under the NVRA because La. R.S. 18:177 does not conflict with the NVRA.[146] In their *FAC*, Plaintiffs again allege that the statutory requirements of La. R.S. 18:177(A)(1) violate the NVRA. Plaintiffs make no new or different allegations concerning the reinstatement process itself but simply attempt to re-package their allegations to this Court. For the reasons discussed in Secretary Landry's Motion to Dismiss Plaintiffs' original Complaint [Doc. 32] and the Ruling and Order of this Court [Doc. 155], Plaintiffs' NVRA Claims (Counts 1-5) in the FAC must be dismissed for failure to state a claim. Secretary Landry adopts

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[142] *Ashcroft v. Iqbal,* 556 U.S. 662, 663 (2009)(quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)).
[143] *Iqbal,* 556 U.S. at 678.
[144] *Lormand v. U.S. Unwired, Inc.,* 565 F .3d 228, 232-33 (5th Cir.2009); *Baker,* 75 F.3d at 196 (5th Cir.1996).
[145] *Iqbal,* 129 S.Ct. at 149-50; *Anderson v. Law Firm of Shorty Dooley & Hall,* 2009 WL 3837550, 2(E.D. La., 2009).
[146] Doc. 155. ("Since La. R.S. § 18:177(A)(1) determines the eligibility of those who were registered to vote prior to disenfranchisement, the Court finds that, assuming all allegations in Plaintiffs' Complaint to be true, as the Court is bound to do when analyzing a Rule 12(b)(6) Motion to Dismiss, Plaintiffs have not plead proper claims under the NVRA. Louisiana Revised Statutes § 18:177(A)(1) is not preempted by the NVRA because the statutes are not in direct conflict.

and incorporates by reference the arguments in the Motion to Dismiss Plaintiffs' original Complaint and in the Memorandum in Support [Doc. 32-1] as if specifically set forth herein.

In Count 1, Plaintiffs contend that individuals who were previously registered to vote but had their registrations suspended due to conviction of a felony should not be subject to the documentation requirement of La. R.S. 18:177(A)(1) in order to reinstate their registration once they are no longer under an order of imprisonment.[147] Plaintiffs' argument in this regard is the same "automatic reinstatement" allegation that this Court rejected in its Ruling and Order. "The parties dispute whether the right to vote for those subject to La. R.S. § 18:177(A)(1) is restored automatically or upon completion of the statute's paperwork requirement. However, an analysis of Louisiana's Election Code shows that the right to vote of those subject to La. R.S. § 18:177(A)(1) is restored upon completion of the statute's paperwork requirement."[148]

Plaintiffs ask this Court to consider the "paperwork requirement" as "a requirement of voter registration rather than a requirement of voter restoration."[149] Plaintiffs argue that, "[b]ecause voters who are no longer under an order of imprisonment have the right to vote…the paperwork requirement must be construed as a requirement of voter registration rather than a requirement of voter restoration, and its imposition on this class violated the NVRA."[150] This is misguided. As this Court correctly held, "those subject to La. R.S.§ 18:177(A)(1) have suspended rather than cancelled registrations (*id.* § 18:176(A)(3)(b)). Thus, such registrations are still "in effect," just in an inactive state, and since never cancelled, re- registering would create duplicate registrations. Therefore, Louisiana has developed a reinstatement process by which suspended registrations can become active, allowing those with reinstated registrations the eligibility to vote. Given this, the

[147] Doc. 168, ¶110.
[148] Doc. 155, pg. 69.
[149] Doc. 168, p.33.
[150] *Id*.

Court finds that the Legislature has made a clear distinction between registration and reinstatement, and those subject to La. R.S. § 18:177(A)(1) are not eligible to vote until completing the statute's paperwork requirement."[151] The reinstatement process is not the same as registration or re-registration; therefore, La. R.S. 18:177(A)(1) does not conflict with the NVRA.

In Count 2, Plaintiffs contend the statutory requirement of La. R.S. 18:177(A)(1) is a requirement for re-registration "imposed on individuals who already have the right to vote under Louisiana law" once they have no longer been incarcerated for the past five years. [152] For these reasons, Plaintiffs contend the statutory requirement of La. R.S. 18:177(A)(1) violates the NVRA. Again, this allegation is erroneous. As explained above and in Secretary Landry's Memorandum in Support of Motion to Dismiss original Complaint and the Court's Ruling and Order, registration and reinstatement are not the same process, and reinstatement is not re-registration. The NVRA does not preempt state law on the issue of felon voting rights restoration, and thus, La. R.S. 18:177 does not conflict with the NVRA.

In Count 3, Plaintiffs claim that "Defendant's paperwork requirement has created confusion that has resulted in some registrars requiring the paperwork of all individuals with prior felony convictions, regardless of whether they are first-time or 'suspended' registrants" and "for individuals with prior felony convictions who were never ineligible to vote."[153] Although Plaintiffs agree that Secretary Landry's written guidance to registrars does not comport with the alleged actions of the registrars, Plaintiffs contend Secretary Landry is somehow responsible "to ensure that such denials do not occur."[154] In Count 4, Plaintiffs contend that the alleged practices of registrars requiring the paperwork of all individuals with prior felony convictions is non-

[151] Doc. 155, pg. 69.
[152] Doc. 168, ¶138.
[153] Id at ¶143 & 144.
[154] *Id* at ¶148.

uniform and discriminatory, and Secretary Landry "has violated, and continues to violate, the NVRA through her failure to enforce Section 8 of the NVRA as it relates these facially eligible applicants, and this practice is thus pre-empted by the NVRA."[155]

Plaintiffs failed to state a claim against Secretary Landry under Counts 3 and 4. First, Louisiana's felon disenfranchisement law is not preempted by the NVRA so there is no NVRA violation with respect to the statutory requirement of La. R.S. 18:177(A)(1), for reasons explained herein. Second, Plaintiffs complain of the alleged actions of the registrars, over whom Secretary Landry has no control. Rather, the chief State election official is "responsible for coordination of State responsibilities" under the NVRA.[156] "Coordination of State responsibilities" does not include ensuring compliance with the NVRA by the parish registrars. The Secretary of State's duties with respect to registrars and voter registration are to "direct and assist" the registrars.[157]

Moreover, the Secretary of State is not the employer of the parish registrars and thus cannot be held responsible for their actions or inactions. The registrar for a particular parish is hired by the parish governing authority.[158] The Secretary of State has no authority to appoint a registrar, even in the event of a vacancy in the position.[159] Likewise, the Secretary of State has no authority to remove or suspend a registrar from office.[160] Additionally, the powers, duties, and responsibilities of the registrars are granted to them by law and are not determined by the Secretary of State.[161] Thus, Secretary Landry has no authority over the actions or inactions of the

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[155] *Id* at ¶158.
[156] 52 U.S.C.A.§20509 and La. R.S. 18:18(A)(6).
[157] La. R.S. 18:18(A)(2). *See* also, La. R.S. 18:58(A) ("Subject to the direction of the Secretary of State and as provided by law, the registrar in each parish shall be responsible for the registration of voters in the parish he serves and for the administration and enforcement of the laws and rules and regulations of the Secretary of State relating to the registration of such voters.").
[158] La. R.S. 18:51 and La. R.S. 18:51.1.
[159] La. R.S. 18:51.1(C).
[160] La. R.S. 18:53(A).
[161] *State v. Ctr. for Tech & Civic Life*, 2021-670 (La.App. 3 Cir. 3/30/22, 24–25); 350 So.3d 534, 549, *writ denied,* 2022-00721 (La. 6/28/22); 341 So.3d 568.

registrars and is not in violation of the NVRA for any alleged activities of the registrars with respect to voter registration or reinstatement.

In Count 5, Plaintiffs aver, "if reinstatement is considered an eligibility criterion [for restoration of voting rights], Defendant's state registration form and instructions for the federal form violate the NVRA for failing to specify it as such." This Court has already considered Plaintiffs' argument that the NVRA governs Louisiana's reinstatement procedure and dismissed same.[162] In opposition to Secretary Landry's Motion to Dismiss Plaintiffs' Complaint [Doc. 32], Plaintiffs argued that the NVRA controls Louisiana's process for reinstating the registration of eligible individuals after felony conviction.[163] The Court disagreed, stating "Louisiana Revised Statutes § 18:177(A)(1) is not preempted by the NVRA because the statutes are not in direct conflict. Instead, La. R.S. § 18:177(A)(1) is an illustration of Louisiana acting pursuant its long-recognized power to determine the voting eligibility of those with felony convictions, a power that is also acknowledged within the NVRA itself. *See* 52 U.S.C. § 20507(a)(3)(B)."[164] Hence, the NVRA does not control Louisiana's reinstatement process, and Plaintiffs' allegations that Secretary Landry is violating the NVRA with respect to reinstatement are unfounded.

ii. Equal Protection Claims

In the event that the Court determines that Secretary Landry is not entitled to sovereign immunity, Plaintiffs have failed to state a claim for relief arising under the Equal Protection Clause of the Fourteenth Amendment. In the interest of judicial efficiency, Defendant adopts and incorporates by reference the argument set forth in Defendant's Motion to Dismiss Plaintiffs'

[162] Doc. 155, pg. 57-70.
[163] Doc. 58, pg. 23, *See* also Doc. 155, pg. 58.
[164] Doc. 155, pg. 70.

original Complaint, as well as Defendant's Reply Memorandum regarding Plaintiffs' equal protection claim[165] and further submits as follows:

Defendant maintains that none of the Plaintiffs have prudential standing to bring equal protection claims on behalf of third parties. In denying Defendant's Motion to Dismiss Plaintiffs' original Complaint, the Court considered and found that only Power Coalition satisfied the third-party standing requirements, finding, in part that Power Coalition sufficiently alleged a close relationship with a third party.[166] As discussed above in Defendant's Motion to Strike, Plaintiffs improperly amended their equal protection claim to add new claims on behalf of "individuals whose previous registration is suspended and are currently in jail for a misdemeanor or pre-trial, [who] cannot meet the State's requirements for reinstatement."[167] Yet, only Plaintiff VOTE alleges that it "engage[s] eligible voters incarcerated in parish jails by registering them to vote, following up with them on if they need additional documentation of eligibility, and ensuring access to absentee ballots."[168] VOTE does not identify these individuals, nor does VOTE claim that these individuals are members, which belies the existence of a close relationship as required to establish prudential standing.[169]

In any event, Plaintiffs have failed to allege that La. R.S. 18:177 violates the equal protection clause. Although the Court properly applied the *Anderson/Burdick* framework to Plaintiffs' equal protection claims in the ruling on Defendant's Motion to Dismiss,[170] Plaintiffs apparently still wish the Court to analyze their equal protection claims under a rational basis/heightened scrutiny test.[171] Secretary Landry maintains that the appropriate framework is the

[165] Doc. 32-1; Doc. 65.
[166] Doc. 155, p. 82.
[167] Doc. 168, para. 178.
[168] Doc. 168, para. 18; *see also* paras. 19-21.
[169] *See Kowalski v. Tesmer*, 543 U.S. 125, 129–30 (2004).
[170] Doc. 155, p. 83.
[171] *See* R. Doc. 168, paragraphs 180-182.

Anderson/Burdick framework, which this Court previously applied. Nevertheless, regardless of the framework applied, Plaintiffs failed to state an equal protection claim against Secretary Landry.

The *Anderson/Burdick* rubric requires examination of Louisiana's felony reinstatement procedure under the following lens: (1) whether the process poses a 'severe' or instead a 'reasonable, nondiscriminatory' restriction on the right to vote and (2) whether the state's interest justifies the restriction.[172] In analyzing a State's election laws under the *Anderson/Burdick* framework, Courts have considered the burden to the voters as a whole, and not just a small number of voters.[173]

Plaintiffs' FAC challenges, for the first time, the in-person appearance requirement of La. R.S. 18:177 as applied to suspended individuals who "are currently in jail for a misdemeanor or pre-trial."[174] These individuals necessarily constitute a small subset of all individuals eligible for reinstatement (which Defendant maintains is, itself, a small number of voters). Thus, the alleged burden of the in-person appearance requirement as applied to suspended individuals who "are currently in jail for a misdemeanor or pre-trial" does not meet the severity threshold because it is limited to only to a small number of affected persons.

Moreover, Louisiana's interests in requiring that the reinstatement documentation be presented in person to the registrar are the same as its interests in requiring documentation at all: verification of voter qualification, preventing voter fraud and ensuring election integrity.[175] These interests are sufficient to justify the in-person appearance requirement of La. R.S. 18:177 for all individuals seeking reinstatement.[176]

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[172] *Burdick v. Takushi*, 504 U.S. 428, 434 (cleaned up); *see also Richardson v. Texas Sec'y of State*, 978 F.3d 220, 233 (5th Cir. 2020).
[173] *Id.*; *see also Crawford v. Marion Cnty. Election Bd.,* 553 U.S. 181, 203 (2008).
[174] Doc. 168, para. 178.
[175] R. Doc. 168-3 (cited as Exhibit 3 to Complaint), ECF p. 5.
[176] *See Richardson, supra*, at 233, wherein the Fifth Circuit found that Texas's interest in preventing voter fraud associated with its mail-in ballot system was sufficient to justify the signature verification requirements; *see also*

Plaintiffs' FAC also alleges for the first time that "parish registrars often apply the paperwork requirement to individuals for whom the requirement does not apply…As a result, whether the paperwork requirement applies to an individual with a felony conviction arbitrarily boils down to this parish of registration."[177] This is not sufficient to allege a violation of the equal protection clause. "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination."[178] "Even arbitrary administration of a statute, without purposeful discrimination, does not violate the equal protection clause."[179] Here, Plaintiffs allege that *confusion* causes some parish registrars to require documentation from individuals to whom the requirement does not apply, not intentional or purposeful discrimination. Therefore, these allegations do not state a claim for violation of the equal protection clause.

Accordingly, Plaintiffs failed to assert an equal protection claim against Defendant because the felony reinstatement procedure does not pose a severe burden on the right to vote but rather, is reasonable, nondiscriminatory, and justified by the state's interests. Louisiana's felony reinstatement procedure survives scrutiny under the *Anderson/Burdick* framework, as well as under the rational basis/heightened scrutiny test for the reasons stated in Doc. 32-1. Thus, Plaintiffs

Crawford, supra, at 203 (2008), wherein the Supreme Court found Indiana's interest in preventing voter fraud and ensuring voter confidence associated with its photo-identification requirement was sufficient to justify the requirement.

[177] Doc. 168, para. 179.

[178] *Snowden v. Hughes*, 321 U.S. 1, 8 (1944).

[179] *Lindquist v. City of Pasadena, Tex.*, 656 F. Supp. 2d 662, 703–04 (S.D. Tex. 2009), *aff'd sub nom. Lindquist v. City of Pasadena Texas*, 669 F.3d 225 (5th Cir. 2012), citing *E & T Realty v. Strickland,* 830 F.2d 1107, 1114 (11th Cir.1987); *see also Rickett v. Jones,* 901 F.2d 1058, 1060–61 (11th Cir.1990) ("Mere error or mistake in judgment when applying a facially neutral statute does not violate the equal protection clause. There must be intentional discrimination.").

have failed to allege a violation of the Equal Protection Clause of the Fourteenth Amendment in their First Amended Complaint.

C. Failure to Join a Required Party Pursuant to F.R.C.P. 12(b)(7)

A party may move for dismissal of an action in federal court on the basis that the plaintiff has failed to join a party under Rule 19.[180] Rule 19 requires joinder of a party for the following reasons:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. Rule 19(a)(1).

The parish Registrars of Voters ("registrars") are indispensable parties because in their absence, the court cannot accord complete relief among existing parties.

In Count 3, Plaintiffs allege that "Defendant's paperwork requirement has created confusion that has resulted in some registrars requiring the paperwork of all individuals with prior felony convictions, regardless of whether they are first-time or 'suspended' registrants" and "for individuals with prior felony convictions who were never ineligible to vote."[181] However, Plaintiff contends that registrars are "[violating] the Secretary's written guidance," in requiring paperwork for such registrants.[182] Similarly, in Count 4, Plaintiffs allege that "in practice, the paperwork requirement is disuniform across parishes. Even though additional paperwork is not required…

[180] F.R.C.P. Rule 12(b)(7).
[181] Doc. 168, ¶143 & 144.
[182] Doc. 168, ¶148.

some parish registrars still require it."[183] Once again, it is the registrars who are alleged to be acting in violation of the law and guidance provided by Secretary Landry. As discussed above, the Secretary of State does not employ the registrars, nor is she responsible for ensuring their compliance with law. Therefore, if the registrars are not joined, the court cannot accord complete relief.

Accordingly, Plaintiffs failed to join a party under Rule 19 and Defendant's Rule 12(b)(7) motion should be granted and Plaintiffs' claims regarding the registrars should be dismissed.

CONCLUSION

The Court explicitly granted Plaintiffs "leave to amend their *Complaint* to cure the… deficiencies" of their NVRA claims, pursuant to Federal Rule of Civil Procedure 15(a).[184] To cure the two deficiencies related to NVRA notice, Plaintiffs needed to show that VOTE provided notice more than 90 days prior to filing suit on May 1, 2023 and that PCEJ and LWVLA provided notice of alleged NVRA violations other than 52 U.S.C. §§ 20205(a)(1) and 20507(a)(1) more than 90 days prior to filing suit on May 1, 2023.

Despite filing a 48-page "*Amended" Complaint,* Plaintiffs did not amend to cure the deficiencies of their NVRA claims. Rather, Plaintiffs chose to supplement their NVRA claims without leave of court and to amend their equal protection claim without leave of court and well-past the expiration of Court's November 15, 2023 deadline to amend pleadings. These unauthorized supplementations and amendments will result in prejudice to Defendant by introducing new issues to defend nearly a year and a half after suit was filed and will further delay disposition of this matter. Therefore, Defendant moves to strike Plaintiffs' *First Amended Complaint* in its entirety.

[183] Doc. 168, ¶155
[184] Doc. 155, p. 84-85.

In the alternative, should this Court deny Defendant's Motion to Strike in whole or in part, Defendant moves to dismiss Plaintiffs' claims pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(b)(7) for the reasons set forth herein.

WHEREFORE, for the foregoing reasons, Defendant, Nancy Landry, in her official capacity as Secretary of State of Louisiana, respectfully requests that this Honorable Court grant the Motion to Strike, and in the alternative grant the Motion to Dismiss. Defendant further prays for all full, general, and equitable relief as allowed by law.

Respectfully submitted:

/s/ Celia R. Cangelosi
CELIA R. CANGELOSI
Bar Roll No. 12140
7914 Wrenwood Blvd, Suite D
Baton Rouge, LA 70809
Telephone: (225) 231-1453
Email: celiacan@bellsouth.net

SHOWS, CALI, & WALSH, LLP
/s/ John C. Walsh
John C. Walsh (La. Bar No. 24903)
john@scwllp.com
Jeffrey K. Cody (La. Bar No. 28536)
jeffreyc@scwllp.com
Mary Ann M. White (La. Bar No. 29020)
maryannw@scwllp.com
Caroline M. Tomeny (La. Bar No. 34120)
caroline@scwllp.com
628 St. Louis Street (70802)
P.O. Drawer 4425
Baton Rouge, Louisiana 70821
Telephone: (225) 346-1461
Facsimile: (225) 346-1467
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2024, a copy of the foregoing has on this date been served upon all counsel of record via CM/ECF system and has been filed electronically with the Clerk of Court using the CM/ECF system.

/s/ Caroline M. Tomeny
Caroline M. Tomeny