

**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*;

Plaintiffs,

Civil No. 3:23-cv-00331-JWD-SDJ

v.

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

Defendant.

STATUS REPORT

A. JURISDICTION

What is the basis for the jurisdiction of the Court?

Plaintiffs: This action is brought under 42 U.S.C. § 1983, 52 U.S.C. §§ 20507 and 20510, and the United States Constitution. This Court therefore has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

This Court has personal jurisdiction over the Defendant because he is a citizen of Louisiana.

Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) because the Defendant resides in this District and because a substantial portion of the events giving rise to these claims occurred in the Middle District of Louisiana.

Defendant: Defendant is Kyle Ardoin in his official capacity as Louisiana Secretary of State. This Court lacks subject matter jurisdiction. Defendant is entitled to sovereign immunity as

to Plaintiffs' claims of alleged equal protection violations. Additionally, there is no case or controversy under Article III because none of the Plaintiffs have standing to bring equal protection claims or claims arising under the National Voter Registration Act ("NVRA"). Plaintiff Voice of the Experienced (VOTE) also lacks standing under the NVRA because it did not send notice of the alleged violations as required by 52 U.S.C. §20510(b).

B. BRIEF EXPLANATION OF THE CASE

1. Plaintiffs' claims:

Plaintiffs challenge Louisiana's unlawful requirement that voter registrants who temporarily lost the right to vote after a felony conviction, but have since had that right restored pursuant to Louisiana law, provide documentary proof of eligibility to re-register to vote (the "Paperwork Requirement"). Plaintiffs' claims arise under the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment.

2. Defendant's claims:

Plaintiffs continue to mischaracterize the voters at issue in the present case as those who have "temporarily lost the right to vote after a felony conviction but have since had that right restored pursuant to Louisiana law." However, the voters at issue in the present case are those who had their voter registrations suspended for conviction of a felony pursuant to La. R.S. 18:176 and who must satisfy the requirements of La. R.S. 18:177(A) in order to have their voter registration reinstated once eligible to do so.

As stated above, Defendant maintains that the Court lacks subject matter jurisdiction over all of Plaintiffs' claims. Nevertheless, since 1997, Louisiana law has required that documentation from the appropriate corrections official be submitted to the registrar of voters in order to reinstate the voter registration of a person whose registration was suspended for conviction of a felony. *See* La. R.S. 18:177(A). This process does not violate the NVRA or the Equal Protection Clause of the Fourteenth Amendment.

First, state law preempts the NVRA in the area of felon disenfranchisement and re-enfranchisement. 52 U.S.C.A. § 20507(a)(3)(B). It is well established that voting eligibility with regard to felon disenfranchisement and re-enfranchisement is an issue of State law. *See American Civil Rights Union v. Philadelphia City Commissioners*, 2016 WL 472118 (E. D. Pa. 2016); *Simmons v. Galvin*, 575 F.3d 24, 37 (1st Cir. 2009); *Hayden v. Pataki*, 449 F.3d 305, 321 (2d Cir. 2006); *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1234 n. 39 (11th Cir. 2005).

Second, Plaintiffs do not have prudential standing to assert the equal protection rights of third parties. Plaintiffs do not have a close relationship with any suspended voters who are eligible to have their registration reinstated, nor is there any hindrance to such persons' ability to protect their own legal interests.

Finally, the documentation requirement of La. R.S. 18:177 does not pose a severe burden on the right to vote but rather, is reasonable, nondiscriminatory, and justified by the state's interest of ensuring voter eligibility, preventing voter fraud, and ensuring election integrity. Moreover, the State has a rational basis for requiring a person whose voter registration was suspended for conviction of a felony to present documentation from the appropriate corrections official in order to reinstate his voter registration. Persons whose voter registrations were suspended for conviction

of a felony are not similarly situated to persons who were not registered to vote prior to their felony convictions.

C. PENDING MOTIONS

List any pending motion(s), the date filed, and the basis of the motion(s):

1. Plaintiffs' motions:

- Motion for Preliminary Injunction (ECF No. 21)
 - Filed on May 22, 2023
 - Plaintiffs move for a preliminary injunction on the basis of their claim under the National Voter Registration Act.

2. Defendant's motions:

Motion to Dismiss (R. Doc. 32) – filed on June 14, 2023; Defendant moves to dismiss Plaintiffs' claims for lack of subject matter jurisdiction pursuant to F.R.C.P. 12(b)(1) and for failure to state a claim for relief pursuant to F.R.C.P. 12(b)(6).

Defendant also contemplates filing a Motion to Compel to compel complete responses to discovery.

D. ISSUES

List the principal legal issues involved and indicate whether or not any of those issues are in dispute:

Plaintiffs:

- Whether the Paperwork Requirement violates Sections 6 and 8 of the NVRA — disputed;

- Whether the Paperwork Requirement violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution — disputed.

Defendant:

- Whether Defendant is entitled to sovereign immunity as to Plaintiffs' claims of alleged equal protection violations – disputed
- Whether all Plaintiffs have organizational standing under Article II – disputed
- Whether Plaintiff VOTE has associational standing under Article II – disputed
- Whether Plaintiff VOTE has standing under the NVRA – disputed
- Whether state law preempts the NVRA as to felon disenfranchisement and re-enfranchisement – disputed
- Whether La. R.S. 18:177(A) preempts Section 20505(a)(1) or 20507(a)(1) of the NVRA – disputed
- Whether the documentation requirement of La. R.S. 18:177(A) violates Section 20505(a)(1) or 20507(a)(1) of the NVRA¹ – disputed
- Whether the documentation requirement of La. R.S. 18:177(A) violates the Equal Protection Clause of the Fourteenth Amendment – disputed

E. DAMAGES

Separately, for each party who claims damages or an offset, set forth the computation of damages or the offset:

¹ Defendant submits that Section 20505(a)(1) or 20507(a)(1) of the NVRA are the only provisions in dispute because those are the only provisions of the NVRA identified in the pre-suit notice from Plaintiffs Power Coalition and League of Women Voters.

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1. Plaintiff's calculation of damages:

Not applicable. Plaintiffs seek injunctive and declaratory relief in this action.

2. Defendant's calculation of offset and/or plaintiff's damages:

Not applicable. Plaintiffs seek injunctive and declaratory relief in this action.

F. SERVICE:

Identify any unresolved issues as to waiver or service of process, personal jurisdiction, or venue:

None.

G. DISCOVERY

1. Initial Disclosures:

- A. Have the initial disclosures required under FRCP 26(a)(1) been completed?

YES NO

In accordance with Local Rule 26(b), the parties shall provide their initial disclosures to the opposing party no later than 7 days before the date of the scheduling conference, unless a party objects to initial disclosures during the FRCP 26(f) conference and states the objection below.

- B. Do any parties object to initial disclosures?

YES NO

For any party who answered *yes*, please explain your reasons for objecting.

Defendant objects to exchanging initial disclosures prior to the Court's ruling on his Motion to Dismiss.

2. Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

- Plaintiffs asked Defendant to produce: (1) the most recent list of voters whose registrations have been marked “suspended” by the Secretary of State, and (2) the most recent list of ineligible voters provided to the Secretary of State from the Department of Corrections.

By defendant(s):

- Defendant requested the following discovery from Plaintiffs: (1) the names and contact information for all felons who have been suspended for conviction of a felony and who have attempted to obtain reinstatement by using the federal mail in form or the state mail in form and who have encountered problems with respect there to; and who are members of any plaintiff organization, including the date of birth and mother’s maiden name for each individual so that the records may be located for the correct individuals; (2) the parish where reinstatement was sought and the date reinstatement was sought, and the problems encountered by each individual in obtaining reinstatement after suspension for conviction of a felony.
3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery. (For example: are there any confidential business records or medical records that will be sought? Will information that is otherwise privileged be at issue?)

A protective order was entered on June 23, 2023 (ECF No. 45).

The parties discussed the production of electronically stored information (“ESI”). Plaintiffs proposed the language below, but Defendant did not agree to the inclusion of an ESI agreement in

the Status Report, and Defendant objects to Plaintiffs' inclusion of the proposed ESI language here.

The following was the language that Plaintiffs proposed to Defendant:

The parties agree to further discuss limiting the scope of production of any electronically stored information, including through the use of search terms, accessibility, date limitations, and key witnesses. The parties have agreed that in order to minimize expense and inconvenience to the parties and third parties, they will formulate all requests for ESI with as much specificity as possible.

The parties have agreed that, where reasonably feasible, the format for the production of electronically stored information will be tiff-image or PDF files with appropriate load files—with the limited exception of any files that are not easily converted to image format, such as .dat, Excel and Access files, which may need to be produced in native format to allow review—bates-stamped and with metadata included. To the extent that parties seek to exchange files in other formats or without metadata, the Parties will meet and confer about the best means for producing the data. The parties agree that the method of production shall be by email (within file size limitations) or FTP.

The parties agree to meet and confer regarding alternative production formats, including native files or pdf, should the producing Party find that it is unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.

The parties agree to continue to discuss in good faith the production of ESI and believe any disputes can be resolved without Court intervention. In the absence of agreement on any issue

regarding the discovery of electronically stored information, the parties shall request a conference by appropriate motion made after a good faith meet and confer with the opponent.

4. Discovery from experts:

Identify the subject matter(s) as to which expert testimony will be offered:

By plaintiff(s):

Expert disclosures will be made at the time imposed by the Court in its scheduling order.

By defendant(s):

Defendant objects to Plaintiffs' refusal to identify the subject matter(s) as to which expert testimony may be offered. Since Defendant does not anticipate hiring any expert witnesses, except to rebut any expert testimony offered by Plaintiffs, he cannot identify the subject matter(s) as to which he may offer expert testimony until Plaintiffs do so.

H. PROPOSED SCHEDULING ORDER

1. If the parties propose an alternative timeframe for exchanging initial disclosures, please provide that proposed deadline:

Defendant proposes that initial disclosures be made after the Court has ruled on the pending Motion to Dismiss.

2. Recommended deadlines to join other parties or to amend the pleadings:

Plaintiffs' proposed deadline: November 24, 2023

Defendant's proposed deadline: August 25, 2023

3. Filing all discovery motions and completing all discovery except experts:

Plaintiffs' proposed deadline: February 2, 2024

Defendant proposes a 100-day time period for discovery, starting after the Court issues a ruling on Defendant's Motion to Dismiss.

4. Disclosure of identities and resumés of expert witnesses and exchange of expert reports (if appropriate, you may suggest different dates for disclosure of experts in different subject matters):

Plaintiffs' proposed deadline: February 16, 2024

Defendant objects to Plaintiffs' proposal of simultaneous disclosure and exchange of expert reports by the parties. Defendant does not anticipate hiring any expert witnesses, except to rebut any expert testimony that may be offered by Plaintiffs. Defendant cannot engage any experts to rebut Plaintiffs' experts until he receives Plaintiffs' expert reports. Accordingly, Defendant proposes a deadline of 30 days after the Court issues a ruling on Defendant's Motion to Dismiss for Plaintiffs to disclose the identities and resumes of expert witnesses and produce their expert reports.

Defendant proposes a deadline of 60 days after production of Plaintiffs' expert reports for Defendant to disclose the identities and resumes of expert witnesses and produce expert reports. (however, at this time, Defendant does not anticipate hiring

any expert witnesses but reserves the right to hire expert(s) in the event Plaintiffs hire experts).

6. Completion of discovery from experts:

Plaintiffs' proposed deadline: March 16, 2024

Defendant proposes a deadline of 60 days from Defendant's deadline to produce expert reports.

7. Filing dispositive motions and Daubert motions:

Plaintiffs' proposed deadline: April 2, 2024

Defendant proposes a deadline of 60 days from the expiration of the expert discovery deadline.

8. All remaining deadlines and the pre-trial conference and trial date will be included in the initial scheduling order. The deadlines will be determined based on the presiding judge's schedule, within the following general parameters.¹ The parties should not provide any proposed dates for these remaining deadlines.

a. Deadline to file pre-trial order² (approximately 16 weeks after dispositive motion deadline).

b. Deadline to file motions in limine (approximately 20-22 weeks after dispositive motion deadline).

¹ The date ranges provided for the new deadlines, pre-trial conference, and trial date are a general guideline only. The actual dates may vary depending on the complexity of a particular case. All requests for subsequent changes to the deadlines set in the scheduling order under number 7 must be by motion directed to the presiding judge.

² In cases assigned to United States District Judge John W. deGravelles, prior to the filing of the pretrial order, the parties will exchange or make available for inspection all exhibits which the parties will or may introduce at trial.

- c. Deadline to file an affidavit of settlement efforts (approximately 22-24 weeks after dispositive motion deadline).
 - d. Deadline to submit joint jury instructions, voir dire, verdict forms, and trial briefs to the presiding judge (approximately 25-27 weeks after dispositive motion deadline).
 - e. Pre-trial conference date (approximately 18-20 weeks after dispositive motion deadline).
 - f. Trial date (approximately 27-29 weeks after dispositive motion deadline).
9. If the general outline of proposed deadlines does not fit the circumstances of your particular case, please provide a proposed joint schedule of deadlines which is more appropriate for your case.

Plaintiffs propose, subject to the Court's availability, that the pre-trial conference be held on July 1, 2024, and that a trial date be set for July 15, 2024.

I. TRIAL

1. Has a demand for trial by jury been made?

[] YES [X] NO

2. Estimate the number of days that trial will require.

Plaintiffs anticipate that they will need 20 hours to present their case.

Defendant anticipates that he will need 1 to 2 days to present his case.

J. OTHER MATTERS

Are there any specific problems the parties wish to address at the scheduling conference?

Plaintiff: [] YES [X] NO
Defendant: [X] YES [] NO

- i. If the answer is *yes*, please explain:

Defendant: Defendant would like to discuss deferring the setting of a scheduling order and the deadlines contained therein until after the Court has ruled on the motion to dismiss, which includes motion for dismissal for lack of subject matter jurisdiction.

- ii. If the answer is *no*, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report? **CHECK “NO” IF YOU HAVE NOT SUBMITTED**

JOINT PROPOSED DEADLINES.

YES NO

K. SETTLEMENT

1. Please set forth what efforts, if any, the parties have made to settle this case to date.
2. Do the parties wish to have a settlement conference:

YES NO

If your answer is *yes*, at what stage of litigation would a settlement conference be most beneficial?

L. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE

You have the right to waive your right to proceed before a United States District Judge and may instead consent to proceed before a United States Magistrate Judge.

Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. § 636(c), to have a Magistrate Judge handle all the remaining pretrial aspects of this case and preside over a jury or bench trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this court:

[] YES [X] NO

If your response was “yes” to the preceding question, all attorneys and unrepresented parties should sign the attached form to indicate your consent.

Report dated: August 3, 2023

/s/Valencia Richardson

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