UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CLEVE DUNN, JR., ET AL. Plaintiffs, v. EAST BATON ROUGE PARISH, ET AL., Defendants	CIVIL ACTION NO 3:24-cv-00521 HONORABLE SHELLY D. DICK DISTRICT JUDGE HONORABLE ERIN WILDER-DOOMES, MAGISTRATE JUDGE

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS STEVE RABORN, EAST BATON ROUGE PARISH REGISTRAR OF VOTERS

Defendant, Steve Raborn, in his official capacity as the East Baton Rouge Parish Registrar of Voters, respectfully submits this Memorandum in Support of his Motion to Dismiss.

I. INTRODUCTION

On August 10, 2022, in accordance with Louisiana Revised Statute 18:1922, and La. Const. art. III, § 6 following the decennial census of 2020, the Baton Rouge Metropolitan Council approved Ordinance 18596 reapportioning and redistricting East Baton Rouge Parish metropolitan council election districts. One of the Metropolitan Council members, joined by several voters, now sue to contest those districts under Section 2 of the Voting Rights Act and the 14th and 15 Amendments of the U.S. Constitution.

II. LAW AND ARGUMENT

Plaintiffs have named Steve Raborn, the East Baton Rouge Parish Registrar of Voter, as a Defendant herein. However, his name is only mentioned twice in the 42 page complaint filed by Plaintiffs, in the caption on page one and under the section titled "Parties" on page three. No claims anywhere in the complaint are alleged against Steve Raborn, and Plaintiffs have not cited any authority that would require the East Baton Rouge Parish Registrar of Voters to be named as a Defendant in this request for a preliminary and permanent injunction.

The claims against Steve Raborn should be dismissed as all of his duties as East Baton Rouge Parish Registrar of Voters are ministerial, and Plaintiffs use of shotgun pleadings has failed to put Steve Raborn on notice of what claims are being specifically brought against him.

A. Federal Rules of Civil Procedure 12(b)(6) Standard

"Federal pleading rules call for a 'short and plain statement of the claim showing that the pleader is entitled to relief,' Fed. R. Civ. P. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Garig v. Travis*, No. CV 20-654-JWD-RLB, 2021 WL 2708910 (M.D. La. June 30, 2021) citing *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 135 S. Ct. 346, 346–47, 190 L. Ed. 2d 309 (2014).

"Interpreting Rule 8(a) of the Federal Rules of Civil Procedure, the Fifth Circuit has explained: The complaint (1) on its face (2) must contain enough factual matter (taken as true) (3) to raise a reasonable hope or expectation (4) that discovery

will reveal relevant evidence of each element of a claim. 'Asking for [such] plausible grounds to infer [the element of a claim] does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal [that the elements of the claim existed]'. *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 257 (5th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 1965 (2007))." *Id.*

"Applying the above case law, the Western District of Louisiana has stated: Therefore, while the court is not to give the 'assumption of truth' to conclusions, factual allegations remain so entitled. Once those factual allegations are identified, drawing on the court's judicial experience and common sense, the analysis is whether those facts, which need not be detailed or specific, allow 'the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' [*Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009)]; *Twombly*, 55[0] U.S. at 556. This analysis is not substantively different from that set forth in *Lormand, supra*, nor does this jurisprudence foreclose the option that discovery must be undertaken in order to raise relevant information to support an element of the claim. **The standard, under the specific language of Fed. R. Civ. P. 8(a)(2), remains that the defendant be given adequate notice of the claim and the grounds upon which it is based.** The standard is met by the 'reasonable inference' the court must make that, with or without discovery, the facts set forth a plausible claim for relief under a particular theory of law provided that there is a 'reasonable expectation' that 'discovery will reveal relevant evidence of each element of the claim.' *Lormand*, 565

F.3d at 257; *Twombly*, 55[0] U.S. at 556. *Diamond Servs. Corp. v. Oceanografia, S.A. De C.V.*, No. 10-00177, 2011 WL 938785, at *3 (W.D. La. Feb. 9, 2011) (citation omitted)." *Id* (emphasis added).

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a motion to dismiss for failure of the complaint to state a claim on which relief can be granted. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, *ibid.; Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.,* 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain,* 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts 'are not bound to accept as true a legal conclusion couched as a factual allegation')." *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007).

B. Ministerial Duties

Although it is impossible to determine what specific duty Plaintiffs are claiming the Registrar of Voters has violated/owes them, all duties of the Registrar of Voters are ministerial in character, except as otherwise provided by law.

" 'The duties of the registrar are ministerial in character ....' Id. § 18:66(A). Under Louisiana law, '[m]inisterial duties are duties in which no element of discretion is left to the public officer. A ministerial duty is simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law'." *Hoag v. State*, 2004-0857 (La. 12/1/04); 889 So. 2d 1019, 1024 (citations omitted). *See Voice of*

the Experienced v. Ardoin, No. CV 23-331-JWD-SDJ, 2024 WL 2142991 (M.D. La. May 13, 2024).

C. Shotgun Pleadings

As discussed above, Plaintiffs only mention Steve Raborn twice in this action, and neither time neither time do they make any specific allegation against him. Plaintiffs lodge complaints against "Defendants," but such allegations are of no avail against a particular defendant. This Honorable Court has addressed these types of "Shotgun Pleadings" in *O'Neal v. Universal Prot. Serv., LLC*, No. CV 21-00737-BAJ-SDJ, 2022 WL 1631970 (M.D. La. May 23, 2022). "Finally, the fourth type of shotgun pleading ... is a complaint which **includes multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against."** *Id* citing *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1322–23 (11th Cir. 2015) (emphasis added).

"The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.*

This is precisely what Plaintiffs have done here. It is not an exaggeration to say that there is not one mention in the forty two page complaint filed by Plaintiffs of any relevant allegation against Steve Raborn in his official capacity of Registrar of Voters for East Baton Rouge Parish. Nor do the Plaintiffs cite any statute explaining how the Registrar is required to be named in this type of complaint. He is simply

lumped in with the other defendants without any notice of what claims he is called upon to defend.

CONCLUSION

For the foregoing reasons, the East Baton Rouge Parish Registrar of Voters contends that the Plaintiff's complaint fails to state a claim for which relief can be granted. Thus, the East Baton Rouge Parish Registrar of Voters suggests that defendant's motion to dismiss should be granted.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I HEREBY CERTIFY that this Memorandum in Support of Motion to Dismiss was filed electronically in the CM/ECF system, which provides a copy of the filing to all electronic filers.

s/Hunter N. Farrar
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