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.

NANCY LANDRY, in her official capacity as Secretary of State of Louisiana

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

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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 Reply 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. MOTION TO STRIKE

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"), failed to seriously address the basis for Defendant's Motion to Strike. The Motion to Strike is based upon (1) Plaintiffs' non-compliance with the Federal Rules of Civil Procedure for supplementing pleadings, (2) Plaintiffs' non-compliance with the Order from this Court granting them leave to amend their complaint on a limited basis, and (3) the prejudice to Defendant.

Plaintiffs contend the Court granted them leave to amend their complaint and that their

[1] Doc. 168.

FAC was filed in accordance with this Court's order; however, Plaintiffs ignored the Court's order which granted them leave on a very limited basis, as follows: "to cure the…[NVRA Claim] deficiencies, *if they can do so*." (Emphasis Added)[2] The Court dismissed Plaintiffs' NVRA claims, noting the following deficiencies: (1) Plaintiff VOTE failed to provide the requisite notice under the NVRA,[3] (2) Plaintiffs PCEJ and LWVLA only provided notice with respect to violations of 52 U.S.C. §§ 20505(a)(1) and 20507(a)(1)) and any NVRA claims related to other NVRA statutes were dismissed,[4] and (3) Plaintiffs have not plead proper claims because La. R.S. 18:177(A)(1) "is not preempted by the NVRA because the statutes are not in direct conflict."[5]

The Court warned Plaintiffs that the leave to amend was limited to only NVRA claims which "can, in good faith, be cured" and reminded Plaintiffs' counsel "of their obligations under Federal Rule of Civil Procedure 11(b)."[6] Plaintiffs were not given leave to amend their equal protection claim.[7] Plaintiffs contend that the Court's order granting them an extension of time to file the FAC somehow broadened the scope of their leave to amend. This is an inaccurate representation of the Court's Order. In a text-only order, referring to the order wherein the limited leave to amend was granted [Doc. 155], this Court granted Plaintiffs' requested extension of time but provided no further relief to Plaintiffs, nor was any other relief requested by Plaintiffs.[8]

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Despite the limitations on the leave to amend, and the reminder of their FRCP Rule 11 obligations, Plaintiffs failed to adhere to the parameters set by this Court for amendment of their complaint. Plaintiffs initiated a new NVRA Notice letter to Defendant which they then used as the basis of their FAC. Despite the ruling from this Court that La. R.S. 18:177(A)(1) is not preempted

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[2] Doc. 155, p. 85-6.
[3] Doc. 155, p. 55.
[4] Doc. 155, p. 57.
[5] Doc. 155, p. 70.
[6] Doc. 155, p. 86.
[7] Doc. 155, p. 86.
[8] Doc. 162.

by the NVRA, Plaintiffs once again filed NVRA claims against Secretary Landry claiming the requirements of La R.S. 18:177(A)(1) violate the NVRA.

Plaintiffs recognize and admit that this Court already ruled on the preemption issue. In their May 31, 2024 letter to Secretary Landry the Plaintiffs wrote, "[W]e are aware that the federal district court in *VOTE v. Landry* indicated disagreement with this position [restoration of the right to vote is automatic to those who have been released from that order or who have not been incarcerated pursuant to it within the last five years], *see* Order on Mot. to Dismiss, ECF No. 155, *VOTE v. Landry*, 3:23-cv-331 (M.D. La. May 13, 2024), but we nonetheless maintain that this is the correct interpretation of Louisiana's rights restoration process and reserve this position for the purpose of any potential appeal of the district court's decision."[9] *See* also page 5 of Ex. 9 attached to Plaintiffs' FAC wherein Plaintiffs wrote, "[W]e maintain that the district court erred in understanding reinstatement as part of the voting rights restoration process."

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Despite a clear understanding of this Court's ruling on Plaintiffs' prior NVRA claims, Plaintiffs again alleged in the FAC that reinstatement is automatic and the documentation requirement of La. R.S. 18:177(A)(1) is an NVRA violation. In Counts One and Two, Plaintiffs contend that individuals whose registration has been suspended for felony conviction and who are no longer under an order of imprisonment or have not been incarcerated pursuant to the order of imprisonment for at least five years are automatically eligible to vote and the documentation requirement of La. R.S. 18:177(A)(1) violates Section 6 and 8 of the NVRA.[10] These claims were already brought by Plaintiffs in their original complaint and were dismissed by this Court. See Doc. 1, ¶ 43, where Plaintiffs allege,

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[9] *See* page 5, footnote 1 of Ex. 9 attached to Plaintiffs' FAC – May 31, 2024 Letter to Secretary Landry
[10] *See* Doc. 168, ¶¶108-140.

> Pursuant to the Louisiana constitution, voting rights restoration has always been automatic for those who are no longer under an order of imprisonment. Indeed, the constitution does not empower the legislature to infringe upon the right to vote of otherwise qualified citizens who are not under an order of imprisonment, regardless of prior felony conviction. Yet the re- registration process for these individuals requires them to submit additional documentary proof of eligibility to become active voters and to be able to cast a ballot.

This was not in compliance with the Court's Order. Re-urging and/or re-stating the same NVRA claims does not cure the deficiencies of the original complaint. As such, Plaintiffs NVRA claims should be stricken.

Plaintiffs' NVRA claims in Counts Three and Four also fail to adhere to this Court's limited order allowing amendment of the complaint to cure deficiencies. Counts Three and Four add new NVRA claims alleging the registrars are not uniformly applying the documentary requirement of La. R.S. 18:177(A)(1), thereby allegedly resulting in differential treatment from parish to parish. This is a supplemental allegation which Plaintiffs did not have leave of court to add. Plaintiffs first gave Defendant notice of this allegation in the May 31, 2024 letter, an event which occurred subsequent to the filing of the petition. Plaintiffs were only granted leave to *amend* to cure deficiencies if they can. Plaintiffs were not granted leave to supplement the complaint to add new allegations.[11]

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Plaintiffs' allegations in Count Five likewise attempt to re-litigate this Court's ruling that reinstatement is a different process than registration[12] in violation of the Court's leave to amend.

Plaintiffs' claims in Count Six attempt to amend their Equal Protection Claims which also violate the Court's ruling as leave was not granted to amend the Equal Protection Claims.[13]

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[11] Leave to amend to add supplemental allegations was required because the deadline for amendment of pleadings expired on November 15, 2023. Doc. 119.

[12] Doc. 155, pg. 69. "… 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 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."

[13] Doc. 155.

Plaintiffs argue that the FAC should not be stricken because it has "relation to the controversy."[14] Whether or not the allegations in the FAC bear any "relation to the controversy" is irrelevant to the issue of Plaintiffs' failure to comply with this Court's order and the Federal Rules of Civil Procedure. This argument ignores the basis for Defendant's Motion to Strike. Nevertheless, the allegations in the FAC do not bear any relation to the controversy because the Plaintiffs were not given permission to supplement their complaint, nor were the Plaintiffs given permission to amend their Equal Protection claims or to re-urge their same failed preemption claims.

The Fifth Circuit has allowed district courts to strike entire pleadings, including an amended complaint, due to failure to request and be granted leave of court.[15] In *Bobby's Country Cookin' LLC v. Waitr Holdings, Inc.,* No. 19-CV-552, 2020 WL 97391, at *2 (W.D. La. Jan. 7, 2020) the court granted Waitr's motion to strike because although Bobby's was "permitted to amend its pleading … as a matter of course, it needed leave of court to file a supplemental complaint." The Court also considered that Waitr did not have an opportunity to oppose the filing of the supplemental pleading. Plaintiff contends that Defendant already had an opportunity to oppose the FAC when Defendant opposed Plaintiffs' Motion for Extension of Time to File the FAC. This is incorrect. Defendant's opposition to Plaintiffs' Motion for Extension of Time to File the FAC focused on the reasons why Plaintiffs should not be allowed additional time to file their FAC.[16]

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[14] Doc. 180, p. 9.

[15] *Munoz v. Seton Healthcare, Inc.*, 557 F. App'x 314, 318 (5th Cir. 2014); *Yoon v. Garg*, No. 23-20519, 2024 WL 2861855, at *5 (5th Cir. June 6, 2024).

[16] *See* Doc. 160. Defendant contended that Plaintiffs failed to follow Local Rule 7(a) and also lacked good cause for the extension of time, including that Plaintiffs apparently intended to supplement their complaint which did not support a basis of good cause to extend the time to amend their complaint.

Lastly, Plaintiffs contend they would be prejudiced if the Motion to Strike is granted because they would be forced to either request leave to amend their complaint in this matter or file a new lawsuit. This argument ignores the fact that discovery was nearly complete and the time for amendment of pleadings expired when the Court granted Plaintiffs limited leave to amend. Plaintiffs cannot claim prejudice when the FAC exceeds the bounds of the Court's order. Allowing Plaintiffs to proceed with the FAC will require additional time for discovery and dispositive motions, all of which will prejudice the Defendants.

For these reasons, and those submitted in the Memorandum in Support of Motion to Strike, Defendant's Motion to Strike should be granted and Plaintiffs' FAC should be stricken in its entirety.

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II. <u>MOTION TO DISMISS</u>

Should this court deny Defendant's Motion to Strike in whole or in part, Defendant 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).

1. Article III standing.

Plaintiff, the Coalition, contends it sufficiently alleged a perceptible impairment from diversion of resources because it spends more time explaining the documentation requirement to individuals on the suspended list and does not have as much time to reach other voters not on the suspended list. This is not a cognizable injury sufficient to establish organizational standing. The Fifth Circuit in *Louisiana Fair Hous. Action Ctr., Inc. v. Azalea Garden Properties, L.L.C.*, 82 F.4th 345, 354 (5th Cir. 2023) explained that a plaintiff organization can establish cognizable injury

if it can show its "ability to pursue its mission is 'perceptibly impaired' because it has 'diverted significant resources to counteract the defendant's conduct[.]' "[17] "The organization's purportedly injurious counteractions must " 'differ from its routine [ ] activities.' "[18]

The Coalition's "11-touch program" where it claims it must spend extra time engaging with suspended individuals is a routine activity of the Coalition and advances its mission. This alleged resource diversion does not differ from the Coalition's routine activities; thus the Coalition has not alleged a cognizable injury for organizational standing.

The League contends it "ensures that all eligible individuals have the opportunity and information needed to vote," with a focus on "voters impacted by the criminal legal system" but it must divert resources away from registering and engaging more Louisiana voters in order to educate and assist individuals whose registration has been suspended for felony conviction.[19] This is not a cognizable injury because voter education and engagement with voters impacted by the criminal legal system are routine activities of the League and such activities advance its mission. Thus, the League has not alleged a cognizable injury for organizational standing.

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VOTE also failed to establish organizational standing. VOTE works in the area of voting rights, including engaging its membership in voter education, but yet claims it is required to divert "significant resources to educate voters on the paperwork requirement and help suspended voters navigate the process of complying with it."[20] This is not a cognizable injury because voter education and assistance are routine activities of VOTE and do not perceptibly impair VOTE's mission but advance the mission. Further, VOTE failed to state what activities were canceled,

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[17] *Azalea Gardens Properties, L.L.C.*, citing *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020) (quoting *N.A.A.C.P. v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010)).
[18] *Azalea Gardens Properties, L.L.C.*, citing *Tenth St. Residential Ass'n*, 968 F.3d at 500 (alterations in original) (quoting *City of Kyle*, 626 F.3d at 238).
[19] Doc. 168, ¶25.
[20] *Id* at ¶¶18 and 21.

postponed, or curtailed due to the alleged diversion of resources. VOTE's allegations regarding a diversion of resources are conclusory and do not establish organizational standing.

Additionally, VOTE claims to have engaged in several activities to counteract the documentation requirement such as holding public education workshops and creating original resources and materials; however, the Supreme Court has stated organizations cannot spend their way into standing. In *Food & Drug Admin. v. All. for Hippocratic Med.,* 602 U.S. 367, 394, 144 S. Ct. 1540, 1563–64, 219 L. Ed. 2d 121 (2024), the Supreme Court held "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way."

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2. NVRA Standing

Plaintiffs contend that this Court's leave to amend contemplated that they would draft and send a new NVRA notice letter. For the reasons stated in Defendant's Memorandum in Support of Motion to Strike and Motion to Dismiss and above in this reply brief related to the Motion to Strike, Defendant disagrees with Plaintiffs' assertion. Plaintiffs contend "courts regularly permit parties to cure NVRA notice defects by amending their complaint" but cite no Fifth Circuit cases for this proposition.[21] 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.

[21] Doc. 180, p. 23.

3. Sovereign Immunity

For the reasons stated in Defendant's Memorandum in Support of Motion to Strike and Motion to Dismiss, Defendant is entitled to sovereign immunity. Plaintiffs' claim that a communication sent to registrars by Defendant in August of 2024 constitutes an instruction and somehow defeats Defendant's sovereign immunity is misplaced. Defendant's communications to registrars are simply direction and assistance to the registrars pursuant to La. R.S. 18: 18(A)(2) which does not constitute enforcement.

4. Failure to State NVRA Claims

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Plaintiffs once again challenge the reinstatement process found in La. R.S. 18:177(A)(1) and declare that it violates the NVRA. Plaintiffs contend that their allegations differ from the original complaint and "address, respond to, and work within the Court's previous findings."[22] However, Plaintiffs' NVRA claims in the FAC do not cure any of the deficiencies noted by the Court in its ruling which found that the NVRA does not preempt La. R.S. 18:177(A)(1) and the documentation requirement is not an NVRA violation.

Plaintiffs contend that the documentation requirement "cannot be a prerequisite to restoration for people who cannot constitutionally be denied the right to vote."[23] However, Plaintiffs ignore this Court's ruling 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."[24]

Plaintiffs further urge that the Secretary of State is responsible for alleged non-uniform application of La. R.S. 18:177(A)(1) by registrars. Plaintiffs' contentions ignore the statutes which provide the powers and duties with respect to the registrars and the Secretary of State. The

[22] Doc. 180, p. 27.
[23] Id at p. 28.
[24] Doc. 155, pg. 69.

Secretary of State's duties with respect to registrars and voter registration are to "direct and assist" the registrars.[25] The registrars are responsible for registration of voters.[26]

5. Non-joinder of Party

Plaintiffs complain that the registrars are not uniformly applying the law with respect to the documentation requirement, despite Defendant's correct instructions related thereto. However, Plaintiffs claim that the registrars are not necessary parties to this litigation. The Secretary of State's powers and duties with respect to registrars are to direct and assist.[27] Defendant properly discharged this duty when she provided accurate and uniform instructions to the registrars. Plaintiffs' claims in Counts 3 and 4 of the FAC cannot properly be lodged against the Defendant. The registrars are necessary parties if the Court does not dismiss or strike the allegations in Counts 3 and 4.

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WHEREFORE, for the foregoing reasons and those stated in Defendant's Memorandum in Support of Motion to Strike and Motion to Dismiss, 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:

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[25] La. R.S. 18:18(A)(2).
[26] 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.").
[27] La. R.S. 18:18(A)(2).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 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
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