UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

HOWARD ANTHONY BROWN and BELDEN BATISTE

VS.

CIVIL ACTION No. 17-9627
-JTM-KWR

TOM SCHEDLER, in his official capacity as Secretary of State; JEFF LANDRY, in his official capacity as Attorney General; Judge JAMES F. MCKAY, III, Judge EDWIN LOMBARD, Judge DANIEL L. DYSART, Judge ROSEMARY LEDET, Judge PAULA A. BROWN and Judge KERN A. REESE, in their official capacities

MOTIONS TO DISMISS FILED BY DEFENDANT, TOM SCHEDLER, IN HIS CAPACITY AS LOUISIANA SECRETARY OF STATE

NOW INTO COURT, through undersigned counsel, comes Defendant, Tom Schedler, in his capacity as Louisiana Secretary of State, who, for the reasons set forth in the accompanying *Memorandum in Support of Defendant Schedler's Motion To Dismiss* filed simultaneously herewith, moves to dismiss plaintiffs' amended complaint under Fed.R.Civ.P. 12(b)(1) and 12(b)(6) as follows:

1. This court lacks jurisdiction under the *Rooker-Feldman* doctrine (Fed.R.Civ.P. 12(b)(1));

2. This court lacks jurisdiction over the plaintiffs' requests to return their names to the ballot for the October 14, 2017 election as moot (Fed.R.Civ.P. 12(b)(1));

3. The court lacks jurisdiction over plaintiffs' state law claims for relief because the Eleventh Amendment bars all state law claims for injunctive or declaratory relief; no federal claims are asserted; and the Eleventh Amendment prevails (Fed.R.Civ.P. 12(b)(1));

4. The amended complaint fails to state a cause of action for relief under Section 5 of the Voting Rights Act (Fed.R.Civ.P. 12(b)(6)); and

5. Money damages are not an available form of relief under the Voting Rights Act (Fed.R.Civ.P. 12(b)(6)).

WHEREFORE, Defendant, Tom Schedler, in his capacity as Louisiana Secretary of State, prays that these motions be granted and plaintiffs' amended complaint be dismissed, with prejudice, at plaintiffs' cost.

Respectfully Submitted:

s/Celia R. Cangelosi
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Attorney for Defendant, Tom Schedler in his official capacity as Louisiana Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing *Motions to Dismiss Filed by Defendant, Tom Schedler, in His Capacity as Louisiana Secretary of State* was sent via U.S. Mail, properly addressed and with the proper postage, to the following pro se plaintiffs:

Howard Anthony Brown
4711 Marque Drive
New Orleans, LA 70127

Belden Batiste
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and sent via the court's electronic system to the following counsel of record:

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Baton Rouge, Louisiana, this 15th of November, 2017.

s/Celia R. Cangelosi
CELIA R. CANGELOSI

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MEMORANDUM IN SUPPORT OF DEFENDANT SCHEDLER'S MOTIONS TO DISMISS

MAY IT PLEASE THE COURT:

Defendant, Tom Schedler, in his official capacity as Louisiana Secretary of State (Secretary Schedler), was served with the Complaint (Doc 1) on September 26, 2017, and received the Amended Complaint (Doc 4) by mail on October 12, 2017. Secretary Schedler requested (Doc 5) an extension of time to file responsive pleadings, and was granted until November 15, 2017 (Doc 6).

Secretary Schedler timely files these motions to dismiss, urging dismissal of the amended complaint on the following grounds:

1. This court lacks jurisdiction under the *Rooker-Feldman* doctrine (Fed.R.Civ.P. 12(b)(1));

2. This court lacks jurisdiction over the plaintiffs' requests to return their names to the ballot for the October 14, 2017 election as moot (Fed.R.Civ.P. 12(b)(1));

3. The court lacks jurisdiction over plaintiffs' state law claims for relief because the Eleventh Amendment bars all state law claims for injunctive or declaratory relief; no federal claims are asserted; and the Eleventh Amendment prevails (Fed.R.Civ.P. 12(b)(1));

4. The amended complaint fails to state a cause of action for relief under Section 5 of the Voting Rights Act (Fed.R.Civ.P. 12(b)(6)); and

5. Money damages are not an available form of relief under the Voting Rights Act (Fed.R.Civ.P. 12(b)(6)).

THE AMENDED COMPLAINT

Plaintiffs, Howard Anthony Brown (Mr. Brown) and Belden Batiste (Mr. Batiste) each identify as "one of the People of the...Republic of Louisiana." [1] They filed the complaint against Tom Schedler, the Louisiana Secretary of State, and Jeff Landry, the Louisiana Attorney General. (Doc 1) The complaint was amended to add various state court judges as defendants. (Doc 4)

In *Statement of Facts* (Doc 4, pp.2-4), each plaintiff claims to have signed notice of candidacy for a New Orleans local office for the October 14, 2017 election. (Mr. Brown for assessor; and Mr. Belden for Council, District D.)

Each alleges that challenges were made to their candidacies for providing false answers on notices of candidacy to this question:

> If I am a candidate for any office other than United States senator or representative in congress, that for each of the previous five tax years, I have filed my federal and state income tax returns, have filed for an extension of time for filing either my federal or state income tax return or both, or was not required to file either a federal or state income tax return or both.

The challenges to candidacy were litigated in state court in Louisiana, and both were disqualified as candidates for the October 14, 2017 election. Both decisions are now final as the Louisiana Supreme Court denied writs in Mr. Brown's disqualification suit; and Mr. Batiste did not appeal the state district court decision adverse to him.

[1]The plaintiffs claim jurisdiction under 28 U.S.C. 1332. This is not a diversity case. They also claim jurisdiction on federal question. (Doc 4, p. 1, ¶ 3)

Plaintiffs allege that the Louisiana Fourth Circuit Court of Appeal "totally disregarded the Rule of Law, the record of the Lower Court and to a greater extent the Louisiana Constitution" (state law claims) in ruling on Mr. Brown's case.

The first mention of Secretary Schedler is found at p. 4 of the amended complaint where plaintiffs allege they received letters from Secretary Schedler informing "Plaintiffs' that their names are no longer on the ballot and will be off the ballot for the October 14, 2017 Local Government Election."

Plaintiffs allege that an attorney for the Secretary of State legal department and others stated "that there is no such preclearance submission on file" in response to requests for "the preclearance that was submitted to the U.S. Department of Justice for approval as it relates to the law that was used to disqualify us from the ballot. The Non-Payment of State Tax Law, regarding candidates running for office in Louisiana[2] or any other such laws that would have been enacted in total and willful violation of the Voting Right Act of 1965."

In *ARGUMENT* (Doc 4, pp. 4-10), plaintiffs assert that "a piece of Jim Crow Legislation passed in Louisiana; that deals with the nonpayment of state tax regarding candidate running for political office in Louisiana" "willfully and intentionally violates the Voting Rights Act passed by the U.S. Congress in 1965 and which was still in full force and effect until the U.S. Supreme Court ruling in the case of *Shelby County vs. Holder*, 570 U.S. 2 (2013)."

Plaintiffs contend that the Louisiana Constitution grants the Louisiana Fourth Circuit Court of Appeal and the Louisiana Secretary of State "no such authority to disqualify a candidate for such

[2]We presume plaintiffs are referring to La. R.S. 18:463(A)(2)(iv); although the citation is never provided.

a reason." They contend that the action taken to disqualify them was taken "with malicious intent, a blatant disregard for the rule of law and in total violation of the Louisiana Constitution of 1974, Article I, §10." (More state law claims.[3])

In *The History of the Voting Rights Act of 1965* (Doc 4, pp. 5-7), plaintiffs mention Sections 4 and 5 of the Voting Rights Act of 1965.

Under *Jim Crow Laws* (Doc 4, pp. 7-10), plaintiffs allege that the "law that was used against Mr. Brown and Mr. Batiste, as to disqualify them from actively participating in the Local Government Election on October 14, 2017 is in itself bias, ambiguous, discriminatory and possess a double standard in its application" such that "a candidate for any office other than United States Senator or Representative in Congress" "should have to reveal confidential and private information as a prerequisite just so that one can run for public office." Plaintiffs contend at the bottom of p. 7 that neither of them was "required to file as such" (not required to file tax returns?).

Plaintiffs contend that the implementation of a standard "by which a person running for public office have to reveal personal information where there is none to be given and take action against that person for not having any documentation to that effect" is unconscionable, unreasonable and violates a state law, La. R.S. 47:1508, and "H.R. 10612, 94th Congress Public Law 94-955, §1202(j)(k). Disclosure of Return and Return Information." (a reference to 26 U.S.C. 61303?)

Plaintiffs allege that the "particular law in this case was drafted and adopted between 1976 and 2010 a time during which the voting rights act of 1965 was in full force and effect." Plaintiffs

[3]And state law claims that are not correct. La. R.S. 18:1410 provides "Upon receipt of a final judgment of a court of competent jurisdiction disqualifying a candidate, the Secretary of State shall remove the candidate's name from the ballot if the ballot has not been printed. If the ballot has been printed with the disqualified candidate's name, any votes received by the disqualified candidate shall be void and shall not be counted for any purpose whatsoever."

assert that "the law as it was drafted was done in willful defiance of the 1965 voting rights act with an intent to discriminate against certain individuals from participating in the political process."

Plaintiffs quote from two purported items: (1) a *Times Picayune* article where Secretary Schedler allegedly stated "He supports the repeal of... Section five...", and (2) a "note" signed by "an attorney for the department" allegedly stating "The Secretary of State does not have the authority or discretion to investigate, refuse to qualify a candidate, or refuse to place a candidate on the ballot on the grounds that he allegedly does not possess the qualifications for the office he seeks."

Finally, plaintiffs allege that "the laws" (more state laws) only allow "forty-eight hours to respond to a challenge that deals with general Elections."

In *CONCLUSION* (Doc 4, p. 10), plaintiffs contend that "The election qualification, prerequisite, standing and practices, and procedures that the State of Louisiana and ... the CITY OF NEW ORLEANS subjected us to, are procedures different from that in force and effect on November 1, 1964.", and violates the voting rights act of 1965 and the Louisiana Constitution.

Under *STATEMENT OF DAMAGES* (Doc 4, p. 10), plaintiffs contend "Defendants action in removing Plaintiffs from the ballot were intentional, willful, and with malicious intent of Plaintiff's protected rights to participate in the political arena."

Plaintiffs' request the following *RELIEF* (Doc 4, p. 10):

1. Declaratory judgment that defendants policies and practices violate plaintiffs Rights as to participate in the political process as outlined in the Voting Rights Act of 1965;

2. An immediate injunction to return Plaintiffs names back on the ballot for the October 14, 2017, Local Government Election;

3. Permanent injunction against all Defendants and their agencies from utilizing any of the Jim Crow Laws against candidates running for public office; and

4. Compensatory Damages against all defendants in the amount of Ten Million Dollars.

Essentially what plaintiffs are doing is seeking to collaterally attack the state court final judgments which disqualified each as a candidate for the October 14, 2017 election.

They seek a declaration that the judgments violate the Voting Rights Act, seek to have the state court decisions reversed and their names returned to the ballot for an election that has already occurred, and seek a permanent injunction against the enforcement of unspecified Jim Crow Laws against all candidates running for public office, as well as damages of $10,000,000.00.

MOTIONS TO DISMISS

Standard of Review

Review of a motion to dismiss for lack of subject matter jurisdiction under Fed.R.Civ.P. 12(b)(1) requires a court to "accept as true all material factual allegations in the complaint." *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). Allegations in the complaint should be construed in favor of the pleader. *Scheuer*, 416 U.S. at 237. A court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain,* 478 U.S. 265, 286 (1986). When the question to be considered is one involving the jurisdiction of federal courts, "jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Norton v. Larney,* 266 U.S. 511, 515 (1925), *accord, Walls v. Waste Resource Corp.,* 761 F.2d 311, 317 (6th Cir. 1985). The plaintiff bears the burden of proving that subject matter jurisdiction exists. *Walls*, 761 F.2d at 317, *citing, McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178, 189 (1936).

Review of a complaint for failure to state a claim under Fed.R.Civ.P. 12(b)(6) requires the Court to construe the complaint liberally in plaintiff's favor and accept all factual allegations and

permissive inferences as true. See *Sistrunk v. City of Strongville,* 99 F.3d 194, 197 (6th Cir. 1996). Despite this instruction to construe the complaint liberally in a plaintiff's favor, a complaint must contain "either direct or inferential allegations respecting all the material elements" and those allegations must amount to more than "bare assertions of legal conclusions." *Scheid v. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434, 436 (6th Cir. 1988) (quoting *Car Carriers, Inc. v. Ford Motor Co.,* 745 F.2d 1101, 1106 (7th Cir. 1984)). Ultimately, because a Fed.R.Civ.P. 12(b)(6) motion tests the sufficiency of the complaint, the Court's review amounts to a determination of whether it is possible for the plaintiff to prove any set of facts in support of his claim that would entitle him to relief. See *Miller v. Currie,* 50 F.3d 373, 377 (6th Cir. 1995).

Federal Courts Have An Obligation to Ensure Their Jurisdiction

It is a principle of first importance that the federal courts are courts of limited jurisdiction. Charles Alan Wright*, Law of Federal Courts*, *15*, West Publishing Co., (2d Ed. 1970). Federal courts have an obligation to ensure their jurisdiction, and when a federal court finds that it has no jurisdiction, it must dismiss the case.

In *Stockman v. FEC*, 138 F.3d 144, 151 (5th Cir. 1998), the Fifth Circuit held: "Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims. It is incumbent on all federal courts to dismiss an action whenever it appears that subject matter jurisdiction is lacking. "This is the 'first principle of federal jurisdiction.'" *Id*. (quoting Hart & Wechsler, *The Federal Courts and the Federal System 835* (2d Ed. 1973)); see also *Telecommunications Research and Action Center v. FCC*, 750 F.2d 70, 75 (D.C. Cir. 1984) ("Jurisdiction is, of necessity, the first issue for an Article III court.")."

Federal courts have limited jurisdiction. They lack the power to adjudicate clams falling

outside the jurisdiction conferred by the Constitution or federal statute. The federal courts have a special obligation to satisfy themselves of their own jurisdiction. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 73 (1997).

Summarizing the law applicable to a federal district court's obligation to determine its own jurisdiction, a California district court observed in *Lacava v. Merced Irrigation Dist.*, U.S. Dist. LEXIS 102876 (E.D. Cal. 2012):

> "As a court of limited jurisdiction, this court must consider whether jurisdiction exists pursuant to Article III of the United States Constitution and dismiss the action if jurisdiction is lacking. If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action. The defense of subject matter jurisdiction can be raised at any time and is not waivable. Lack of subject matter jurisdiction should be raised by a motion to dismiss; however, failure to do so is not fatal to the claim." [internal citations omitted]

This fundamental obligation of the federal courts to police their own jurisdiction is set out in Rule 12(h)(3) in the following terms:

> "Rule 12. Defenses and Objections: When and How Presented; Consolidating Motions; Waiving Defenses; Pretrial Hearing
>
> (h) Waiving and Preserving Certain Defenses.
>
> (3) Lack of Subject Matter Jurisdiction. If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." [emphasis supplied]

Thus, the courts have as their first obligation, to determine whether they have subject matter jurisdiction. The determination of jurisdiction is one that the court cannot ignore.

Because Rule 12(b)(1) attacks on a court's jurisdiction must be considered and resolved before addressing other Rule 12(b)(6) motions that implicate a claim's merits, we will address the Rule 12(b)(1) challenges first, the resolution of which may obviate the need for considering the Rule

12(b)(6) motions here. See *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1220, 1244, 163 L.Ed.2d 1097 (2006).

I. This Court Lacks Jurisdiction To Hear This Case Under *Rooker Feldman* Doctrine (Rule 12(b)(1)

Under the *Rooker Feldman* doctrine, a federal court lacks subject matter jurisdiction to review or modify the judgment of state courts unless there is a federal statute that specifically permits such review. *Union Planters Bank Nat'l Assn.*, 369 F.3d 457, 462 (5th Cir. 2004). Here plaintiffs are seeking to reverse the final state court judgments disqualifying each as a candidate in the October 14, 2017 election. No federal statute exists or is cited by the plaintiffs which would allow for such review.

The styling of the complaint in the form of a voting rights act violation cannot circumvent the *Rooker Feldman* doctrine, as absent a specific delegation (and none are contained in the Voting Rights Act), federal district courts as courts of original jurisdiction lack appellate jurisdiction to review, modify, or nullify final orders of state courts. See *Liedtke v. State Bar of Texas,* 18 F.3d 315, 317 (5th Cir. 1994).

The *Rooker Feldman* doctrine applies to cases such as this "brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and involving district court review and rejection of those judgments." *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317 (5th Cir. 1994), *citing Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). Plaintiffs admit they are state court losers in the suits object to their candidacies and that the judgments were rendered prior to the filing of this suit. They complain of the adverse effects of the state court judgments and ask this court to reverse those determinations and reinstate each of them as candidates for election,

both declaratory and injunctive relief.

So clearly *Rooker Feldman* deprives this court of jurisdiction to consider plaintiffs' claims for injunctive and declaratory relief. See *Liedtke v. State Bar of Texas*, 18 F.3d 315, 318 (5th Cir. 2006).

Plaintiffs claim for damages are likewise barred by the *Rooker Feldman* doctrine if "inextricably intertwined with the state court judgment". As the Fifth Circuit has held, a plaintiff cannot circumvent the *Rooker Feldman* doctrine by asserting claims perhaps not raised in the state court proceeding or claims framed as original claims for relief. *U.S. v. Shepherd,* 23 F.3d 923, 924 (5th Cir. 1994). If a federal court is confronted with issues that are "inextricably intertwined" with a state judgment, the court is "in essence being called upon to review the state court and federal review is prohibited." *U.S. v. Shepherd, citing District of Columbia Court of Appeal v. Feldman,* 460 U.S. 462, 482 n. 16 (1983). The complaint itself shows the interrelation (inextricable intertwining) of the damage claim to the state court judgments. See *Statement of Damages* in amended complaint (Doc 4, p. 10), "Defendants action in removing Plaintiffs from the ballot were intentional, willful and with malicious intent of Plaintiffs' protected rights to participate in the political arena."

Thus, *Rooker Feldman* deprives this court of jurisdiction over this entire suit, the claims for injunctive relief, for declaratory relief, and for damages. Inasmuch as this court lacks jurisdiction, this Rule 12(b)(1) motion should be granted and the entire amended complaint dismissed.

ALTERNATIVELY,

II. The Plaintiffs' Claim For Injunctive Relief "To Return Plaintiffs' Names Back On The Ballot for the October 14, 2017 Local Government Election" Was Rendered Moot By the October 14, 2017 election. (Rule 12(b)(1)

Article III of the Constitution confines the federal courts to adjudicating actual "cases" and "controversies." *Allen v. Wright*, 468 U.S. 737, 750. The case or controversy doctrine provides fundamental limits on federal judicial power in our system of government. *Allen v. Wright*, 468 U.S. 737, 750.

To qualify as a case fit for federal court adjudication, an actual controversy must be extant at all stages of the litigation, not merely at the time the complaint is filed. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68 (1997). A claim becomes moot and thus no longer justiciable "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Motient Corp. v. Dondero*, 529 F.3d 532, 537 (5 Cir. 2008).

In *Wilson v. Birnberg,* 667 F.3d 591 (5th Cir. 2012), Mr. Wilson sought declaratory and injunctive relief to have his name placed on the primary ballot for a November 2010 election in Houston, Texas, an election that had already occurred. The Fifth Circuit dismissed that claim as moot:

> "Generally a request for an injunction is moot 'upon the happening of the event sought to be enjoined.' *Harris v. City of Houston*, 151 F.3d 186, 189 (5th Cir. 1998). The requested injunctive relief included orders that would have affected the November 2010 election, such as placing Wilson's name on the ballot. That is now impossible. Claims supporting that remedy are moot. *Willy v. Admin. Review Bd.,* 423 F.3d 483, 494, n. 50 (5th Cir. 2005)." *Wilson v. Birnberg,* 667 F.3d 591, 595.

See also *Smith v. Winter*, 782 F.2d 508, 510 (5th Cir. 1986), citing *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 1951, 23 L.Ed.2d 491, 502 (1969), where the Fifth Circuit found a

claim for injunctive relief to prevent an election which had already occurred to be moot.

A like result is compelled here and deprives this Court of jurisdiction to consider the plaintiffs' claims for the requested injunctive relief.

With the occurrence of the October 14, 2017 election, all issues in this case as presented in the amended complaint (Doc 4) for injunctive relief to return names to a ballot for that past election are moot. A federal court has no constitutional authority to resolve those issues this case presents and those claims should be dismissed.

III. This Court Lacks Subject Matter Jurisdiction Over the Plaintiffs' State Law Claims For Relief Because The Eleventh Amendment Bars All State Law Claims For Injunctive or Declaratory Relief; No Federal Claims Are Asserted; The Eleventh Amendment Prevails (Rule 12(b)(1)

The plaintiffs allege that defendants have violated the La. Const., 1974, Art. I, §10, and La. R.S. 47:1508 and other state laws for which citation not provided. They seek declaratory and injunctive relief. Plaintiffs' claims against defendants for violations of state law are barred by the Eleventh Amendment of the U.S. Constitution.

The Eleventh Amendment to the United States Constitution reads:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The language of the amendment has been construed by the United States Supreme Court as an "affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III." *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98 (1984), 104 S.Ct. 900, 79 L.Ed.2d 67. In *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890), the Supreme Court held that, despite the limited terms of the amendment, a federal court could not

entertain a suit brought by a citizen against his own State. *Pennhurst State School*, 465 U.S. at 98.

Of course, sovereign immunity may be waived, and the Supreme Court has held that a State may consent to suit against it in federal court, so long as that consent is unequivocally expressed. However, "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state." *Pennhurst State School*, 465 U.S. at 100 (quoting *Employees v. Missouri Public Health & Welfare Dep't*, 411 U.S.279, 280, 93 S.Ct. 1614, 36 L.Ed.2d 251 (1973)). Moreover, in the absence of consent, a suit in which the State or one of its agencies or departments is named as the defendant is absolutely barred by the Eleventh Amendment. *Pennhurst State School*, 465 U.S. at 100. "This jurisdictional bar applies regardless of the nature of the relief sought." *Id.*

In *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1907), the United States Supreme Court recognized an exception to the general rule embodied in the Eleventh Amendment. This exception allows suits against state officials for the purpose of enjoining the enforcement of a federally unconstitutional state statute. *Okpalobi v. Foster*, 244 F.3d 405, 411 (5th Cir. 2001). In *Young*, a federal court enjoined the Attorney General of the State of Minnesota from bringing suit to enforce a state statute that allegedly violated the Fourteenth Amendment. The theory of the case was that "an unconstitutional enactment is 'void' and therefore does not 'impart to the state official any immunity from responsibility to the supreme authority of the United States.'" *Pennhurst State School*, 465 U.S. at 102 (quoting *Ex Parte Young*, 209 U.S. 123 at 160, 28 S.Ct. at 454.) The U.S. Supreme Court limited *Young's* scope in *Pennhurst, supra*, to federal sources of law. The Supreme Court held that plaintiffs may not sue state officials in federal court for violations of state law. *Pennhurst*, 465 U.S. at 106.

The Supreme Court has long held that, in determining whether the doctrine of *Ex Parte Young* applies in a particular circumstance, a court need only conduct a "straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 296, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (emphasis added). Thus, in *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 98, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), the Court held that the Eleventh Amendment bars a federal court from issuing an injunction against state officials directing them to comply with state law. *Pennhurst State School*, 465 U.S. at 106. The Court pointed out in *Pennhurst* that, when a plaintiff alleges that a state official has violated state law, "the entire basis for the doctrine of *[Ex Parte] Young* and *Edelman* disappears." *Id.* The Court stated further:

> A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment. We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law.

Pennhurst State School, 465 U.S. at 106.

It is thus clear that this suit in federal court seeking injunctive relief against state officials on the ground of their alleged violations of state law is barred by the Eleventh Amendment. The United States Court of Appeals for the Fifth Circuit has held that the Eleventh Amendment not only bars claims for injunctive relief based on state law, but also bars claims for declaratory relief based on state law. *Holloway v. Walker*, 765 F.2d 517, 525 (5th Cir. 1985), *cert. denied*, 106 S.Ct. 605 (1985).

The defendants are all state officials within the meaning of *Pennhurst State School* and its progeny. All the statutory provisions referred to above are state laws, and the plaintiffs allege that state officials violated those state laws. Finally, the amended complaint seeks both injunctive and declaratory relief from this Court. Because the Eleventh Amendment bars federal courts from granting injunctive and declaratory relief against state officials for claims based upon state law, this Court must dismiss the plaintiffs' state law claims in the amended complaint for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1).

In *Ferrand v. Schedler,* 2011 WL 3268700, at *5 and *6 (E.D. La. 2012), a case later tried by this court, Judge Africk did just that, he dismissed all state law claims seeking judgment pursuant to state law.

Further, no federal constitutional claims are raised, granting defendant Secretary of State immunity over the entirety of the requests for declaratory and injunctive relief under the Eleventh Amendment to the United States Constitution.[4]

IV. The Amended Complaint Fails to State A Claim For Relief Under Section 5 of the Voting Rights Act (Rule 12(b)(6)

Reading the amended complaint in the light most favorable to these pro se plaintiffs, it appears that they may be attempting to assert a claim under Section 5 of the Voting Rights Act with the allegations that "the particular law in this case was drafted and adopted between 1976 and 2010 a time during which the voting rights act 1965 was in force and effect" coupled with another claim

[4]To the extent the complaint alleges a violation of federal law (Doc 4, p. 8), 28 U.S.C. 6103(c) allows a taxpayer to obtain his return and return information from the United States (just as La. R.S. 47:1508B(1) allows a taxpayer to get a copy of his return from the state of Louisiana). Neither the federal law nor the state law is violated by the La. R.S. 18:463(A)(2)(iv) requirement of disclosure for purposes of notices of candidacy or use as evidence in suits objecting to candidacy.

that "There is no such preclearance submission on file."

On June 25, 2013, the United States Supreme Court declared Section 4(b) of the Voting Rights Act unconstitutional. *Shelby Country v. Holder*, 133 S.Ct. 2612 (2013). In so doing the Court held that the "formula used in that section can no longer be used as a basis for subjecting matters to preclearance." As a result the Voting Rights Act no longer has a formula by which federal authorities may determine which jurisdictions are subject to preclearance under Section 5.

It is clear that *Shelby County* has immobilized Section 5 of the Voting Rights Act; however, the Supreme Court did not expressly indicate whether *Shelby County* should be applied retroactively.

Other courts, including district courts within the Fifth Circuit, specifically in Louisiana and Mississippi, have held that *Shelby County* is to be given retroactive effect. See *Hall v. Louisiana*, 973 F.Supp.2d 675, 683-684 (M.D. La. 2013); *Thompson v. Attorney General of Mississippi,* 129 F.Supp.2d 403, 488-489 (S.D. Mississippi 2015).

Thus, the amended complaint, insofar as it may be read to allege that La. R.S. 18:463(A)(2(iv) violates Section 5 of the Voting Rights Act for alleged failure to obtain preclearance, fails to state a claim for violation of Section 5 of the Voting Rights Act. Thus, the Voting Rights Act claim should be dismissed.

V. The Amended Complaint Fails To State A Claim For Money Damages--Money Damages Are Not An Available Form of Relief Under the Voting Rights Act. (Rule 12(b)(6)

Plaintiffs seek compensatory damages of $10,000,000.00. But no such remedy is available under the Voting Rights Act. See *Vandez v. While*, 719 F.2d 1265, 1266 (5th Cir. 1983); and *Forman v. City of Dallas*, 999 F.Supp. 505, 512 (N.D. Tex. 1998).

This claim for money damages should be dismissed for failure to state a claim for which

relief can be granted.

CONCLUSION

Secretary Schedler submits that the *Rooker Feldman* doctrine deprives the court of jurisdiction over the entire amended complaint requiring dismissal of the entire case under Rule 12(b)(1).

In the alternative, Secretary Schedler submits other grounds for dismissal of all or part of plaintiffs' claims. For instance, the court lacks jurisdiction over the injunctive request for return of plaintiffs' name to the ballot for an election that has already occurred, requiring dismissal of those particular claims as moot.

In the further alternative, this motion to dismiss establishes that this Court lacks jurisdiction over the state law claims asserted by the plaintiffs, alleging unconstitutionality under state law and other violations of state law, requiring dismissal for lack of jurisdiction.

Should any claim survive the Rule 12(b)(1) motions, the plaintiffs have failed to state a claim for either violation of Section 5 of the Voting Rights Act or a claim for damages, requiring dismissal of those two claims.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing *Memorandum in Support of Defendant Schedler's Motions to Dismiss* was sent via U.S. Mail, properly addressed and with the proper postage, to the following pro se plaintiffs:

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Baton Rouge, Louisiana, this 15th of November, 2017.

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