

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JOHNNY DUNCAN
Plaintiff

CIVIL ACTION NO. 15-5486

VERSUS

SECTION: "B"

**STATE OF LOUISIANA, LOUISIANA SECRETARY OF
STATE OFFICE, SECRETARY OF STATE TOM
SCHEDLER, TANGIPAHOA PARISH COUNSEL,
TANGIPAHOA PARISH CLERK OF COURT OFFICE,
CLERK JULIAN DUFRECHE, TANGIPAHOA PARISH
REGISTRAR OF VOTERS OFFICE, AND
TANGIPAHOA PARISH REGISTRAR OF VOTERS
JOHN RUSSELL**
Defendants

JUDGE: IVAN L.R. LEMELLE

MAG.: SALLY SHUSHAN

TRIAL BY JURY DEMANDED

**RULE 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED, RULE 12(f) MOTION TO STRIKE AND
RULE 12(b)(1) MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendants, Tangipahoa Parish Clerk of the Court Office ("Tangipahoa Clerk of Court") and Tangipahoa Parish Clerk of Court, Julian Dufreche, individually and in his official capacity ("Dufreche") move this court pursuant to F.R.C.P. 12(b)(6) to dismiss plaintiff's 42 U.S.C §1983 claims for alleged violations of the 14th and 15th Amendment of the U.S. Constitution and 18 U.S.C §96, 42 U.S.C. §207(a), 42 U.S.C. §407(a), 42 U.S.C. §1915, 42 U.S.C. §1981, 42 U.S.C. §1986, 42 U.S.C. §1986, 42 U.S.C. §1988, the Civil Rights act of 1866 and 1964 and claims for violation of the Voting Rights Act of 1965, as plaintiff's complaint fails to state a claim upon which relief can be granted against the Tangipahoa Clerk of Court and Dufreche. There are multiple reasons why plaintiff's complaint should be dismissed.

First, neither the Tangipahoa Clerk of Court, nor Julian Dufreche, are vicariously liable for alleged violations of Mr. Duncan's civil rights by an unidentified polling commissioner in Tangipahoa Parish. Second, there are no allegations that what happened allegedly happened to Mr. Duncan resulted from a custom or policy of the Tangipahoa Clerk of Court. Third, there are no allegations that Dufreche was involved individually in what transpired at the polling location in Tangipahoa Parish on October 25, 2015 or that Dufreche acted with deliberate indifference to violations of Mr. Duncan's constitutional rights by one of Dufreche's subordinates. Fifth, Mr. Duncan has asserted claims under various federal statutes which have no application to the matter at hand and which do not entitle him to relief in this case. Sixth, there are insufficient factual allegations to support Mr. Duncan's 42 U.S.C. § 1983 claims.

Dufreche also moves the court pursuant to F.R.C.P. 12(f) to strike allegations against Dufreche in his official capacity, as those claims are immaterial, impertinent, redundant and duplicative of the claims against the Tangipahoa Clerk of Court.

Further, the allegations regarding punitive damages against the Tangipahoa Clerk of Court and Dufreche, in his official capacity, are impertinent since punitive damages are not allowed against such parties. Those claims should, thus, also be struck pursuant to F.R.C.P. 12(f).

Finally, since the plaintiff's complaint fails to state claims upon which relief can be granted under any federal laws or constitutional provisions, the state law claims under La. R.S. 18:562, La. Civ. Code Art 2315 and La. Civ. Code Article 2317 should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

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**Attorneys for Tangipahoa Parish Clerk of the
Court Office and Tangipahoa Parish Clerk of
Court, Julian Dufreche**

CERTIFICATE OF SERVICE CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed with the Clerk of Court by using the CM/ECF system. A Notice of this electronic filing will be sent by the Court to all counsel of record who have consented to email notification and electronic service and will be sent to Johnny Duncan, *pro se*, via United States mail, properly addressed and stamped. This document is available for viewing and downloading from the Court's ECF system.

Covington, Louisiana this 29th day of December, 2015.

/S/ Thomas H. Huval

THOMAS H. HUVAL