

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

ROSA SEGUE, JOHN DOE/JANE DOE

Plaintiffs,

v.

STATE OF Louisiana; KATHLEEN BLANCO, the GOVERNOR of the STATE OF Louisiana in her official capacity; CHARLES FOTI, the ATTORNEY GENERAL in his official capacity; JAY DARDENNE the SECRETARY OF STATE in his official capacity; ANGIE LAPLACE, the COMMISSIONER OF ELECTIONS in her official capacity.

Defendants.

CIVIL ACTION NO.: 07-5221

JUDGE: ENGELHARDT

MAGISTRATE: SHUSHAN

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**THREE-JUDGE DISTRICT COURT  
PANEL REQUESTED**

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO  
DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's September 28, 2007, Order, Plaintiffs Rosa Segue and John Doe/Jane Doe hereby submit the following Response in Opposition to Defendants' Motion to Dismiss and/or Motion for Summary Judgment for Lack of Standing and Failure to State a Claim Upon Which Relief Can be Granted.

**I. Introduction**

This action is brought pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, to enjoin Defendants from further implementation of all unprecleared components of its voter registration cancellation program. Plaintiffs also

seek, among other things, an order declaring the Defendants' program legally unenforceable and compelling Defendants to reverse all actions taken pursuant to that program to date, unless and until Defendants obtain a final preclearance determination that such voter registration cancellation program (and each relevant component) does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

In their September 28, 2007 Motion, Defendants allege that Plaintiffs fail to state a claim upon which relief can be granted because all aspects of the voter registration cancellation program are permissible under precleared provisions of the state's election code and because the 30-Day Notice, which the state contends is the only change subject to Section 5 review, constitutes only an "extra step" or "extra protection" for voters. Finally, Defendants argue that Plaintiff Segue lacks standing because she neither received the 21-Day Notice nor was removed from the voter registration rolls. These arguments are without merit.

In their initial June 8, 2007 submission to DOJ, the Defendants made no reference to several of the state election code provisions that they now declare provide the basis for Registrars to remove alleged dual-registrants from the registration rolls. Indeed, the Attorney General issued an August 7, 2007 letter rejecting that submission as deficient for failing to "clearly set forth the proposed changes and the benchmark practice or procedure." *See* Comp. Exh. C. In their August 8, 2007 resubmission, the Defendants allege that several provisions of the state's election code, not mentioned in the initial submission, represent the benchmark practice to which the proposed 30-Day Notice should be compared. The Defendants' representations regarding the cancellation

program have clearly evolved since the time of the initial submission.<sup>1</sup> Nevertheless, Defendants admit that the 30-Day Notice has been submitted for review, has not yet been precleared, and that the program has been implemented. Plaintiffs also contend, contrary to Defendants' representations, that other aspects of the cancellation program constitute voting changes that should be submitted for preclearance.

Defendants' efforts to characterize the 30-Day Notice as an "extra step" or "extra protection" does not eliminate the Defendants' obligations to obtain a preclearance determination before implementing it as part of their cancellation program. Even adopting Defendants' narrow view that the 30-Day Notice is the only change subject to preclearance, here, Defendants clearly evade their obligations under Section 5 where they 1) obtained data from a particular set of states and jurisdictions in order to identify potential dual-registrants; 2) relied upon this data to target over 50,000 persons who are alleged dual-registrants; and 3) mailed a Notice to targeted individuals, including Plaintiff Segue, subjecting them to certain requirements that need to be satisfied within a set time period of 30 days. Although the dimensions of the burden imposed on recipients by the 30-Day Notice is a matter beyond the scope of the limited jurisdiction of a three-judge court, clearly Plaintiffs' contentions are substantial and satisfy the minimal showing required by the Court in *Goosby v. Osser*, 409 U.S. 512, 518 (1973). *See infra* Section III(i).

Finally, Defendants attack Plaintiff Rosa Segue's standing because Plaintiffs' Complaint inaccurately represents that Rosa Segue received the 21-Day Notice and was

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<sup>1</sup> In enacting Section 5 of the Act and suspending new voting regulations by covered jurisdictions pending federal review, "Congress knew that some of the States covered by \* \* \* the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination ..." *South Carolina v. Katzenbach*, 383 U.S. 301 at 335 (1966).

removed from the registration rolls.<sup>2</sup> Although these statements are plainly incorrect, they do not eliminate her standing to challenge the cancellation program in this action. Defendants admit that Plaintiff Segue received the 30-Day Notice. That Notice imposed requirements on Plaintiff Segue that conditioned her voting eligibility on her obtaining a certified statement cancelling an out-of-state registration that she was unaware existed. In addition, that Notice informed recipients that “[i]f you would like to remain registered to vote in Louisiana, you may only do so by presenting us with proof of cancellation of your out-of-state voter registration within 30 days of this notice.” That Notice also stated “[i]f you do not provide such proof of cancellation within 30 days of this Notice, you will receive a second notification requiring you to appear in person at your Louisiana parish’s registrar of voter’s office ...” (emphasis added) *See* Comp. Exh. A. Given the absolute conditions imposed by and firm statements contained within the 30-Day Notice, and given that Plaintiff Segue did not receive any subsequent notice, Plaintiff Segue reasonably believed that her registration in Orleans Parish was cancelled. For these reasons, as a recipient of the 30-Day Notice, Plaintiff Segue, and other similarly situated persons, is aggrieved within the meaning of Section 5 and has standing to challenge the unprecleared Notice and all other voting changes that a three-judge Court may determine underlie that Notice and are thus, subject to Section 5.

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<sup>2</sup> Counsel for Plaintiffs also submit the attached Declaration of Kristen Clarke clarifying two statements made in the August 29, 2007, Complaint. Attachment A. Paragraph 48 of the Complaint states that “on or around, July 15, 2007, Plaintiff Segue received a second notice requiring that she appear in person at the Orleans Parish Registrar’s Office.” We now understand that Segue did not receive a second notice. This error resulted from a misunderstanding between Plaintiff Segue and her Counsel, Kristen Clarke. Indeed, Plaintiff Segue only received the 30-Day Notice which represents one aspect of the state’s voter registration cancellation program. Further the August 29, 2007, Complaint indicates that Plaintiff Segue was removed from the registration rolls on or around August 15, 2007. This statement, as described more fully in the attached Declaration, reflected Plaintiff Segue’s understanding that the failure to respond in any manner to the 30-day Notice resulted in removal her from the voter registration rolls. Moreover, Plaintiff Segue has not received any subsequent notice from the State indicating that she remains an eligible voter in Louisiana and is no longer subject to the requirements imposed on her by that 30-Day Notice.

At the heart of Plaintiffs' claims in this case is the well-established principle that "[a] voting change in a covered jurisdiction will not be effective as law until and unless [pre]cleared. *Clark v. Roemer*, 500 U.S. at 652 (internal quotations and citations omitted); *Allen v. State Bd. of Elections*, 393 U.S. 544, 549 (1969). Here, Defendants' "[f]ailure to obtain either judicial or administrative preclearance renders the change unenforceable." *Id.*

## **II. Plaintiffs Satisfy Standing Requirements to Challenge Implementation of Defendants' Unprecleared Voting Changes**

### **1. Statement of Relevant Facts**

Plaintiff Rosa Segue is an African-American citizen and life-long resident of Orleans Parish, Louisiana. As alleged in the Complaint, on or around June 15, 2007, Plaintiff Segue received a notice from the Orleans Parish Registrar's Office indicating that there was reason to believe that she was registered to vote in Texas and requiring that she provide proof of cancellation of her out-of-state voter registration to the Orleans Parish Registrar's Office within 30 days of the notice, or face cancellation of her registration<sup>3</sup>. Plaintiff has never voted in Texas and was unaware that her name appeared on any list of registered voters in the State of Texas. Despite her efforts, Plaintiff Segue was unable to obtain and send to the Orleans Parish Registrar of Voters such a certified cancellation notice.

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<sup>3</sup> Indeed, the 30-Day Notice informs recipients that "[i]f you would like to remain registered to vote in Louisiana, you may only do so by presenting us with proof of cancellation of your out-of-state voter registration within 30 days of this notice." The Notice also states that "[i]f you fail to appear in person and you have not provided the proof referred to in the first paragraph of this notice, you will be cancelled from Louisiana's voter registration rolls." There is no statement in the Notice that informs recipients that failure to respond to the Notice and comply with its requirements may, nevertheless, have no consequences on the voter's registration status.

The 30-day Notice, entitled a “Letter of Intent to Challenge,” was mailed to individuals identified as possible dual-registrants in more than one state. This notice instructs individuals that they have 30 days to provide proof of the cancellation of their out-of-state voter registration. (The notice also indicates that a certified copy of the cancellation statement can be sent to the Registrar’s Office by fax or mail.) Plaintiff Segue desires to remain an eligible registered voter in Orleans Parish. Plaintiff Segue took several steps in her efforts to comply with the requirements imposed upon her by the 30-Day Notice but was unsuccessful. Despite her inability to satisfy the requirements imposed by the 30-Day Notice, she has not received any subsequent statement from the Orleans Parish Registrar or other entity stating that she is no longer subject to the requirements outlined in that notice. Plaintiff Segue also has not received any statement indicating that she remains an eligible registered voter in Orleans Parish.

2. Plaintiff Rosa Segue and Plaintiff John Doe/Jane Doe are “Aggrieved Person[s]” Within the Meaning of Section 5 of the Voting Rights Act

As Defendants observe, Plaintiffs must demonstrate that they are “aggrieved” within the meaning of the statute. *See Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir.1989) (standing under the Voting Rights Act for private litigants — those other than the United States Attorney General — is limited to “aggrieved persons” seeking to enforce their rights). Here, Plaintiffs are “aggrieved persons” within the meaning of the statute, as they have a direct and substantial stake in the outcome of this action as recipients of the 30-day Notice issued by the Defendant officials of the State of Louisiana, which is a covered jurisdiction that is subject to the preclearance requirements of the Act. Plaintiffs have a “significantly protectable interest” in the outcome of this

matter given their status as minority voters who reside in the covered jurisdiction at issue in this case. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). As Plaintiffs could suffer impairment of rights that clearly fall within the zone of rights protected under Section 5 of the Act, their status as “aggrieved parties” is evident.

In *Allen v. State Board of Elections*, the Supreme found an implied cause of action for private citizens to bring suits to enforce provisions of the Voting Rights Act that “might [otherwise] prove an empty promise.” 393 U.S. 544, 557 (1969). In *Allen*, the Court reasoned that private litigants attempting to protect their voting rights were also proper parties to fulfill the goals of the Act, and recognized the need for aggrieved voters to “seek[] judicial enforcement of the prohibition” against infringements upon the right to vote based on race. *Id.* at 557. Congress responded to the Court's holding in *Allen v. State Board of Elections* by amending the Act to expressly confer standing upon “aggrieved persons” to enforce their rights. 42 U.S.C. 1973a.<sup>4</sup>

In the context of a Section 5 enforcement action, determining whether one is “aggrieved” within the meaning of the statute entails a limited inquiry that focuses on the interests at stake and the potential for impairment of those interests. Here, Plaintiffs have a legally protectable interest that would be protected by injunctive or declaratory relief obtained from a three-judge court convened in this action. In particular, Plaintiffs have an interest in ensuring that the State complies with its preclearance obligations under Section 5 prior to implementing any new voting change, in order to protect their substantive rights to be free from racial discrimination affecting their right to vote

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<sup>4</sup> See P.L. 94-73 (94<sup>th</sup> Cong., 1<sup>st</sup> Sess.), 89 Stat. 404, § 401 substituting “Attorney General or an aggrieved person” for “Attorney General” in several subsections of § 3 of the statute).

Plaintiffs risk injury to their federally protected voting rights and potential harm to their status as minority voters if the State were permitted to evade their obligations under Section 5 by prematurely carrying out any aspect of its program before the Attorney General or District Court for the District of Columbia has determined that the State has met its burden to show that no aspect of the program was motivated by a discriminatory purpose or will have a retrogressive effect on minority voters. The potential retrogressive effect or discriminatory purpose that may underlie the voter registration cancellation program, however, are matters that cannot be analyzed or determined by either a single judge or the three-judge court that may be convened in this proceeding. Rather, those questions can only be decided by the Attorney General or a three-judge court convened in the District Court of the District of Columbia. *See Perkins v. Matthews*, 400 U.S. 379., 385 (1971) (“What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect ‘of denying or abridging the right to vote on account of race or color’”).

Finally, determining whether Plaintiffs are aggrieved does not require this court to make any substantive determinations or assessments about the voting change (as this would go beyond the limited jurisdictional scope of a three-judge court in a Section 5 enforcement action) but rather merely to assess whether Plaintiffs’ rights are at all impacted by Defendants’ premature implementation of an unprecleared voting change. *Cf. U.S. v. Louisiana*, 952 F.Supp. 1151 (5th Cir. 1997)(holding that limited jurisdictional scope of three-judge court precludes application of the traditional four-part test generally

employed when determining whether a preliminary injunction should issue); *Campos v. City of Houston*, 968 F.2d 446, 451 (5th Cir.1992) (per curiam) (recognizing that three-judge panels like this one are courts “of limited jurisdiction and limited authority”), *cert. denied*, 506 U.S. 1050, 113 (1993). Indeed, Section 5 requires that covered jurisdictions obtain a preclearance determination before implementing new voting changes whether they are retrogressive, close calls, or ameliorative. The State cannot elect to exempt any changes in the latter categories by requiring plaintiffs in enforcement proceedings to establish their aggrieved status, as a threshold matter, by proving that the change will draw an objection as such a showing goes beyond the limited jurisdictional scope of the three-judge court.

### 3. Plaintiffs Satisfy Article III Standing Requirements

Plaintiffs indeed have a concrete and cognizable interest in this litigation that satisfies Article III’s demands. Plaintiffs clearly suffer from an imminent threat to their federally protected voting rights that is the direct and proximate result of Defendants’ implementation of their voter registration cancellation program prior to obtaining a final Section 5 preclearance determination.<sup>5</sup> Even adopting Defendants’ narrow view regarding the proper scope of the voting change, specifically the 30-day Notice, clear and

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<sup>5</sup> Defendants argue that Ms. Segue no longer has standing because the Registrar has not, to date, removed her from the registration rolls pursuant to the voter registration cancellation program at issue in this case. However, Section 5 of the Voting Rights Act protects Plaintiffs’ constitutional right to vote without discrimination. When a constitutional right is at issue, a plaintiff need not demonstrate irreparable injury to receive a declaratory judgment. *See MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764 (2007). In *MedImmune*, the Supreme Court affirmed the principle that as far as Article III was concerned, failure to actually face an imminent threat does not eliminate Article III standing in a declaratory judgment action. In fact, the Court explained that “where threatened action of the government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis of the threat—for example, the constitutionality of a law threatened to be enforced.” *Id.* at 772. The Court reasoned that the threat of penalty by the government is sufficient to survive the case and controversy requirements of Article III. *Id.* citing *Steffel v. Thompson*, 415 U.S. 452 (1974) (In *Steffel*, the Supreme Court found that a Fifth Circuit court erred in holding that a failure to demonstrate irreparable injury precluded the granting of declaratory relief.”)

traceable injury to Plaintiffs is evident. That 30-Day Notice required that Segue and other similarly situated voters obtain a certified Notice cancelling their out-of-state registration; required that Segue and others submit this Notice to their respective Registrar; and required that these actions be completed in a set period of 30 days, or face loss of their right to vote. The requirements imposed on Segue and others clearly burden and impinge upon the right to vote. A favorable ruling from this court declaring that program legally unenforceable and enjoining Defendants from implementation of this program, among other things, would remedy the injury that results from being subject to these requirements before a preclearance determination is rendered. Thus, Plaintiffs have standing to bring this suit.

**III. Defendants' Arguments Regarding Plaintiff's Failure to State a Claim Should be Rejected and a Three-Judge Panel Should be Convened to Resolve Plaintiffs' Claims**

1. Plaintiffs Clearly Present Substantial and Meritorious Claims

As Plaintiffs argue in their September 21, 2007 Memorandum in Support of Plaintiffs' Notice Regarding a Three-Judge Panel, a single judge may adjudicate the underlying issues only where a plaintiff's challenge is "wholly insubstantial," *League of United Latin Am. Citizens v. Texas*, 113 F.3d 53, 55 (5th Cir.1997) (quoting *Goosby v. Osser*, 409 U.S. 512, 518 (1973)). Here, Plaintiffs raise claims that are substantial in nature and clearly exceed the low threshold set forth in *Goosby*.

As recited in Plaintiffs' Complaint, the State of Louisiana, a covered jurisdiction under Section 5, has adopted new procedures affecting voting and, recognizing its statutory obligations, has submitted those changes for preclearance to the Attorney General. As of the date of the filing of this Response, the Attorney General has not yet

rendered a preclearance determination. Indeed, Defendants' September 29, 2007, Motion to Dismiss and/or Motion for Summary Judgment confirms that "[t]he submission is pending." Mot. at 12. Despite this admission, Defendants have implemented their voter registration cancellation program prior to obtaining that preclearance determination required under Section 5. Disturbingly, Defendants offer no explanation for implementing the change while still awaiting a determination from DOJ. Given these facts and the legal background discussed previously, Plaintiffs clearly have made a substantial showing claim that satisfies the standards of *Goosby*. See Mem. Three-Judge Panel at 3, fn. 3, 4-5.

Indeed, the issues raised by Plaintiffs in this case are no less substantial than those addressed by the 5th Circuit Court in *League of United Latin Am. Citizens v. State of Texas*, 113 F.3d 53 (5th Cir. 1997) (*LULAC*). In *LULAC*, the Court reviewed the district court's decision to dismiss a complaint brought under Section 5 which alleged that the State's implementation of a change authorizing the Governor to appoint individuals to replace resigning judges required preclearance before the change is implemented. The district court granted the State's motion to dismiss, finding that the claim was "wholly insubstantial." *Id.* at 54. The 5th Circuit reversed the district court's dismissal order, and held that neither the legal nor factual aspects of the complaint were insubstantial. *Id.* at 55-56. The Court held that the plaintiff's legal basis for its claim that Section 5 covered the new state laws concerning the replacement of elected judges with appointed judges was not "wholly insubstantial" and remanded for the convening of a three-judge court. *Id.* at 55-56. Here, Plaintiffs' claims are clearly substantial and bear merit, thus, Defendants' Motion should be dismissed and a three-judge court should be convened.

2. Plaintiffs' Complaint Presents an Actual Case or Controversy That Can Only Be Resolved by the Convening of a Three-Judge Court

It is the Defendants' position that the 30-Day Notice is the only voting change subject to Section 5 preclearance.<sup>6</sup> However, Plaintiffs allege that the 30-Day Notice represents only one aspect of the State's voter registration cancellation program and that there are more than a half dozen other components or features of that program that constitute changes subject to Section 5 preclearance. These other components, which fluctuate frequently but are described anew in the Defendants' pending Section 5 submission, have neither been identified as voting changes nor submitted for preclearance to the U.S. Department of Justice or the United States District Court for the District of Columbia, despite the fact that these components govern the process by which Defendants identified alleged dual-registrants and determined who would receive the 30-Day Notice. Plaintiffs seek a determination by the three-judge court that these components of the program, including but not limited to those identified in the Complaint and described below, constitute voting changes and order the Defendants to submit them for preclearance.

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<sup>6</sup> Indeed, in Defendants Dardenne's and LaPlace's Memorandum in Opposition to the request for a three-judge court (Doc. 14, filed Sept. 27, 2007), they attempt to suggest that what State Defendants have done here has no consequences for voting at all that could be subject to Section 5's preclearance requirements. Thus, they assert that "the Secretary of State cannot register a voter nor cancel a voter registration," *id.* at 8, although "[t]he Secretary of State may assist the registrars of voters with matters pertaining to registration," *id.* Apparently, they would have the Court believe that State officials went to the trouble of negotiating information-sharing arrangements with selected jurisdictions' voting officials, preparing and executing computer runs to generate lists of possible "dual-registrants," sending those lists to voting registrars across Louisiana, and mailing tens of thousands of 30-day Notices to individuals directing them to provide specific information to voting registrars — all for no purpose whatsoever. If that were the case, one can only wonder why anything was submitted to the Attorney General. And these representations border on the incredible in light of these Defendants' recognition that local Registrars had a "duty under La. R.S. 18:193(G) [to] compare[] the lists to see whether there was 'reason to believe' the voter had registered elsewhere," *id.* This chain of events, of which the 30-day Notice letter is a crucial part, *and which did not exist prior to Defendants' recent actions*, clearly is a "practice or procedure affecting voting" and is therefore subject to preclearance.

The requirements of Section 5 apply to procedures and practices of election officials as well as to formal legislative acts. In *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 178 (1985), the Court held that Section 5 “reaches informal as well as formal changes, such as a bulletin issued by a state board of elections,” a determination reaffirmed and applied in *Foreman v. Dallas County*, 521 U.S. 979, 980-81 (1997). In that case, the Court held that the fact that the county was exercising its “discretion” under a state statute when it adjusted the procedure for appointing election judges did not compel a ruling that the county could make such change without obtaining preclearance. Because changes “with respect to voting” not submitted to the Attorney General necessarily “have not been precleared, § 5 plaintiffs [in such circumstances] are entitled to an injunction [by a three-judge panel] prohibiting implementation of the change.” *Lopez v. Monterey County*, 519 U.S. 9, 20 (1996).

First, it appears that the State may have entered into cooperative agreements with other states and jurisdictions to obtain out-of-state registrant data. Plaintiffs contend that the methodology or system used to compare Louisiana registrants with registrants from other states, including any measures utilized to ensure the accuracy of identifying probable dual registrants in its registration cancellation program, represent voting changes that are subject to review under the Section 5 preclearance provision. *See* Comp. ¶ 34.

Second, as Defendants Dardenne and LaPlace indicated in the June 14, 2007 memorandum they sent to local Registrars, they compared voter registration data in the State of Louisiana with that of only a select number of states and cities including Texas; Georgia; Florida; Tennessee; Colorado; New York, New York; Las Vegas, Nevada; and

San Diego, California. Plaintiffs contend that the decision to limit and restrict the State's comparison project in this manner is a change affecting voting subject to preclearance.

Third, in the June 14, 2007 memorandum issued to all Registrars of Voters in the State of Louisiana, Defendants Dardenne and LaPlace provided a list of "possible out of state registrants" and described a methodology to be used to identify these particular individuals. (Defendants Dardenne and LaPlace indicate that they "used name (Last, first) and date of birth for matching purposes.") Plaintiffs contend that the methodology created by the Defendants for the significant purpose of identifying persons who may be deemed ineligible voters represents a voting change that is subject to review under Section 5. *See* Comp. ¶ 35.

Fourth, persons identified as dual-registrants were identified through a database matching system that was put in place after Defendants obtained out-of-state voter registration lists from a select number of states and cities. Plaintiffs contend that the process and methodology used to identify those voters alleged to be registered outside the State of Louisiana represents a change affecting voting that is subject to preclearance under Section 5 of the Voting Rights Act. *See* Comp. ¶¶37-38.

Fifth, in its August 8, 2007 resubmission to the Attorney General, the State, indicates that the Secretary of State has the authority, pursuant to La. Rev. Stat. 18:18(D), to enter into cooperative agreements with other states to share voter registration information for purposes of determining whether a voter is registered in more than one state. These powers were extended to the Secretary of State through the adoption of Act 403, which was passed by the Louisiana Legislature during its 2006 regular session. On June 15, 2006, Act 403 was signed into law by Defendant Blanco. La. Rev. Stat. 18:18

(D). The U.S. Department of Justice precleared Act 403 on September 28, 2006. However, in its preclearance letter, the U.S. Department of Justice indicated that Act No. 403 included provisions that are “enabling in nature.” The Justice Department cautioned that the State is not relieved of its responsibility to seek preclearance of any “cooperative agreements entered into by the Secretary of State with other states to share registration information for the purpose of determining whether a voter is registered in more than one state.” *See* Comp. ¶ 39-40.

In both their September 29, 2007 Motion to Dismiss and/or Motion for Summary Judgment and their August 8, 2007 resubmission to DOJ, Defendants Dardenne and LaPlace make reference to La. Rev. Stat. 18:18(D) and observe that the Secretary of State has authority to enter into agreements with other states to share voter registration data. However, these agreements, to the extent any exist, are neither included nor described in the State’s pending Section 5 submission. *See* Mot. at 6; Comp. ¶ 41. As the Attorney General recognized, however, such cooperative agreements executed with the five states or three cities, to the extent that any exist, represent changes affecting voting and are subject to Section 5 review. Plaintiffs concur with the Attorney General’s view.

Sixth, in a June 21, 2007 email to Louisiana Voter Registrars, Defendant LaPlace describes several scenarios that Registrars may encounter when dealing with “voters who appear to be matches.” In effect, Defendant LaPlace proposes an approach for dealing with persons who are registered both in Louisiana and out of state but who want to cancel their out-of-state registration; and persons who are registered in Louisiana and indicate that they have never registered out of state; among others. The content of Defendant LaPlace’s June 21, 2007 memorandum represents changes in practices or procedures that

affect voting that are subject to review under the Section 5 preclearance provision. Comp. ¶ 43.

Seventh, in a June 27, 2007 e-mail to Louisiana Voter Registrars, Defendant LaPlace indicates that the State was considering a number of “fail-safe” measures including “extending the date of the first notice, and/or sending ID cards to those voters that we have not yet heard from in order to determine whether or not they have received our first notice” and “closing any event that we have received return mail from and making the voter inactive, instead of sending the 21 day notice.” Information concerning the process leading up to the adoption of, or failure to adopt, these various fail-safe measures is necessary in order to assess the State’s proposed voter cancellation program. Comp. ¶ 44.

Eighth, in a June 28, 2007 e-mail to Louisiana Voter Registrars, Defendant LaPlace indicated, by way of example, that “Lisa A. Anderson” and “Lisa Pruitt Anderson” should be considered a match because with many female voters “one registration may be under their middle name and one may be under their maiden name as their middle name.” A June 21, 2007 e-mail informs Louisiana Voter Registrars that they can “close any event that does not appear to be a match upon visual inspection of the data” but notes that it may be difficult to determine whether there is a match for women “because their names change more frequently.” The methodology for determining whether information for a Louisiana registered voter matches that of an out-of-state registrant is a practice or procedure affecting voting that is subject to review under Section 5. Comp. ¶ 45.

#### **IV. Defendants Misstate the Fundamental Goal of Section 5 and Fail to Recognize Injunctive Powers Vested in the Three-Judge Court**

1. Contrary to Defendants' Position, a Three-Judge Court Has the Authority to Order Relief; the Three-Judge Court May Enjoin Implementation of the State's Unprecleared Voting Change

Defendants misstate and mischaracterize the goal and purpose of Section 5. Defendants allege that “the goal of Section 5 is to submit voting changes for preclearance.” Defs.’ Mot. at 12. Because a submission is pending, they conclude that “[n]o substantial claim remains for presentation to a three judge panel. *Id.* This statement is plainly incorrect. The three-judge district court, in its limited jurisdiction, must conduct a three-part inquiry. First, it must determine whether a jurisdiction has made a *change* in practice or procedure affecting voting that is covered by Section 5; and second, it must determine whether Section ’5’s approval requirements were satisfied, *see City of Lockhart v. U.S.*, 460 U.S. 125, 129, n.3 (1983); *U.S. v. Bd. of Supervisors of Warren County*, 429 U.S. 642, 645-647 (1977) (per curiam); *Perkins*, 400 U.S. at 385; and *Allen*, 393 U.S. at 558-59. If those requirements were not satisfied, it must then determine what temporary remedy, if any, is appropriate under the circumstances. Section 5 contemplates injunctive relief, which is by its nature equitable. The Supreme Court has confirmed that the three-judge court has discretion to fashion an “appropriate” remedy. *See, e.g., Perkins v. Matthews*, 400 U.S. at 441. Thus, a three-judge court convened to hear Plaintiffs’ claims in this matter has the authority to enjoin the state from implementation of its unprecleared change and to render that change, and all actions that

have resulted from it prior to preclearance, legally unenforceable. It is undisputed that this Court has the power to issue such an injunction.<sup>7</sup>

1. No Weight Should be Given to Defendants' Characterization of its 30-Day Notice

In its Motion, Defendants state that the 30-day Notice represents an “extra step, extra protection or extra notice to those voters who might ultimately receive the precleared ... 21 day letter.” Defs.’ Mot. at 7. The state also claims that this Notice “provided notice beyond what Louisiana law required.” *Id.* Notwithstanding Defendants’ characterization, as described above, the 30-Day Notice represents a voting change subject to Section 5 preclearance review. Whether or not this 30-Day Notice is an ameliorative and non-retrogressive voting change are determinations that go beyond the scope of the three-judge court that Plaintiffs seek in this action. Thus, Defendants’ characterization should have no bearing on whether Plaintiffs satisfy the minimal showing that their claims are not “wholly insubstantial” within the meaning of *Goosby*.

**Conclusion**

Defendants’ Motion to Dismiss for Lack of Standing and/or Motion for Summary Judgment should be denied, and pursuant to the requirements of both 42 U.S.C. § 1973c

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<sup>7</sup> See, e.g., *Clark v. Roemer*, 500 U.S. 646, 654 (1991)(holding that district court erred in not enjoining elections that were held utilizing an unprecleared plan); *New York v. U.S.*, 869 F. Supp. 10, 13 (D.D.C.1994). Numerous courts have ordered injunctive relief where jurisdictions prematurely implement unprecleared voting changes, as Defendants have done here. See *North Carolina State Bd. of Elections v. U.S.*, 208 F. Supp. 2d 14 (D.D.C. 2002) (three-judge district court enjoined North Carolina Board of Elections from implementing state court’s 2002 legislative redistricting plan before it was precleared by court and Attorney General of United States); *U.S. v. State of Georgia*, 1996 WL 480861 (N. D.Ga. 1996) (three-judge court ordered that State of Georgia and its agents and employees be enjoined from administering or implementing, or attempting to administer or implement redistricting plan until preclearance is obtained pursuant to Section 5); *Kirksey v. Allain*, 635 F. Supp. 347, 349-50 (S.D. Miss. 1986)(three-judge court enjoined the implementation of contested statutes effecting changes in judicial elections in the absence of Section 5 preclearance); *Heggins v. City of Dallas*, 469 F. Supp. 739, 743 (N.D. Tex. 1979) (three-judge court) (*per curiam*) (enjoining city council elections pending preclearance and concluding that Congress and Supreme Court “intended injunctions against elections to be the normal remedy afforded against defendants who attempt to hold elections before obtaining preclearance.”).

and 28 U.S.C. § 2284, a three-judge court should be convened, on an expedited basis, to hear and determine the issues at stake in this action.

Respectfully submitted, this 1<sup>st</sup> day of October, 2007

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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Declaration of Kristen M. Clarke in Support of Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss and/or Motion for Summary Judgment was served by depositing a copy of the same in the United States mail, properly addressed and postage prepaid, or by hand delivery or by facsimile transmission, this 1st day of October, 2007 to the following:

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