

own behalf and on behalf of unidentified others, unknown to Segue but alleged to be Louisiana voters displaced by the hurricane who intend to return to Louisiana, who have not voted elsewhere, and whose names appear on a list of possible out of state registrants (Doc. 1, para. 8). These plaintiffs, identified and unidentified, the identified plaintiff allegedly cancelled from the Louisiana voting rolls, and the unidentified plaintiffs allegedly named on a list, seek the empaneling of a three judge court, 42 USC 1973g and 22 USC 2284: (1) to declare that what plaintiffs term a “cancellation program” requires preclearance under Section 5 of the Voting Rights Act and is unenforceable until precleared, (2) to enjoin defendants from the “cancellation program” until precleared, (3) to order defendants to reinstate all voters removed pursuant to the “cancellation program” and to send notice to those voters, and (4) to order defendants to send notice to registrars to cease implementation of the unprecleared program and to reinstate all removed voters. (Doc. 1, Prayer) Named as defendants in their official capacities are the Louisiana Governor, Attorney General, Secretary of State and Commissioner of Elections.

Plaintiff contends that Louisiana has implemented a change in “voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting” for which preclearance is required before the change can be legally enforceable. Plaintiff alleges the change to be a 30 day pre-notice letter, “Letter of Intent to Challenge” (Doc. 1, Exhibit A), and other unspecified “key aspects of the State’s voter registration cancellation program” (Doc. 1, para 27), unspecified “new rules and procedures concerning the removal of certain voters who are presumed to be registered in another state” (Doc. 1, para. 32), (which “rules and procedures” are admittedly described in the State’s pending Section 5 submission (Doc. 1, para. 33)), agreements which “may” have been entered with other jurisdictions to obtain lists of out of state registrants, methodology used

to compare Louisiana registrants with out of state registrants, and fail safe measures used to ensure accuracy of “its registration cancellation program.” (Doc. 1, para. 32-34)

Plaintiff is aware that there is a pending Section 5 submission awaiting action by the United States Department of Justice. Plaintiff contends that mailing of a 30 day notice prior to the issuance of preclearance is a practice or procedure legally unenforceable. (Doc. 1, para. 53) Plaintiff then concludes that the “voter registration cancellation program” is also legally unenforceable. (Doc. 1, para. 54)

With respect to plaintiff Rosa Segue, it is alleged she received the 30 day pre-notice letter from the Orleans Parish Registrar of Voters on or around June 15, 2007. (Doc. para. 47) It is alleged that Segue received a second notice on or around July 15, 2007, which second notice allegedly required Segue to appear at the Registrar’s office and show cause why her Louisiana registration should not be cancelled. (Doc. 1, para 48) It is alleged that “Rosa Segue was removed from the state’s voter rolls and is no longer deemed an eligible voter in the State of Louisiana.” (Doc. 1, para. 51)

II. FACTS

Plaintiff’s characterization of the events set out in the Complaint as a “cancellation program” which has not received preclearance is incorrect. What cancellations have occurred were performed by registrars of voters throughout the state pursuant to the authority of the Louisiana Election Code, La. R.S. 193(G), a statute precleared as last amended on October 20, 2004, Submission No. 2004-3159. Also precleared on December 8, 1998, was the Letter of Irregularity attached to the Complaint (Doc. 1, Exhibit B), which is sent to voters pursuant to La. R.S. 18:193(G), giving the voter 21 days to appear and show cause why his registration should not be cancelled. That preclearance procedure,

set forth in La. R.S. 18: 193(G), provides:

G.(1) If the registrar has reason to believe that the name of a person has been illegally or fraudulently placed upon the registration records or that a registrant no longer is qualified to be registered for a reason other than a change of residence or address, or that the registrant has deliberately given an incorrect address, he shall immediately notify the person. The notice shall be mailed first class, postage prepaid, to the address on file at the registrar's office.

(2) The notice shall state the alleged irregularity in the registration and shall inform the person that he must appear in person at the office of the registrar of voters within twenty-one days after the date on which the notice was mailed to show cause why his name should not be removed.

(3) If the registrant fails to appear within the required twenty-one days, the registrar shall cancel his name from the list of eligible voters. If the registrant appears and shows cause within the twenty-one days, the registrar shall not cancel the registration.

(4) Records of such activity shall be maintained in accordance with the provisions provided in Subsection F of this Section

Pursuant to Louisiana law,

... A citizen of this state shall not be or remain registered to vote in more than one place of residence at any one time. (La. R.S. 18:101(B))

Louisiana law enacted in the aftermath of hurricanes Katrina and Rita recognized that many Louisiana voters would be temporarily displaced and provided:

F. A person who has been involuntarily displaced from his place of residence by the effects of a gubernatorily declared state of emergency shall not be considered to have vacated his residence and shall be considered to be an actual bona fide resident of the state and parish in which he is registered to vote unless he has either established a new domicile or has changed his registration to an address outside the voting district. (La. R.S. 18:101(F))

Voters believed to have been displaced by the hurricanes of 2005 were advised that voter

registration in another state would destroy eligibility to remain registered to vote and to vote in Louisiana. A yellow mailer (precleared under Section 5 of the Voting Right Act) was mailed in early March, 2006, first to approximately 181,000 voters with change of address registered with the U.S. Postal Service, and second to approximately 530,000 individuals on the FEMA list, advising those individuals:

If you are a registered voter of Louisiana who has been displaced as a result of Hurricane Katrina or Rita, you are still eligible to vote in your home parish if you have not registered to vote in another parish or state.

* * *

If you register to vote in another parish or state, your voting rights will be affected in your home parish.

The cancellations alleged to have occurred in the Complaint are cancellations of registrations of voters whom a registrar had reason to believe had registered to vote in another state (subsequent to the Louisiana registration), which subsequent registration has the effect of invalidating the Louisiana registration. This cancellation was conducted as authorized by a precleared Louisiana statute, La. R.S. 18:193(G), using precleared forms.

Mindful that a citizen of Louisiana may not remain registered to vote in more than one place of residence, La. R.S. 18:101(B), and considering that those displaced by hurricanes may have registered to vote elsewhere and are thus no longer eligible to vote in Louisiana, La. R.S. 18:101(F), legislation adopted after the hurricanes provided that registration to vote in another state would be a cause for cancellation. See, for example, La. R.S. 18:1308.3(C), "Special provision for temporarily displaced person":

C. When a person has submitted an application to vote absentee by mail pursuant to this Section, the registrar shall, prior to sending the absentee by mail ballot, contact the appropriate election official in the

jurisdiction where the applicant has requested for his absentee by mail ballot to be sent and attempt to verify that the person has not registered to vote in that jurisdiction, or if such jurisdiction has a statewide voter registration database, in that state. If the registrar finds that the person has registered in that jurisdiction or state, the person shall not be permitted to vote absentee by mail and the registrar shall proceed in accordance with the applicable provisions of Part V of Chapter 4 of this Code.

Part V (Canvass, Cancellation) of Chapter 4 (Registration of Voters) of the Louisiana Election Code contains La. R.S. 18:193(G), the precleared procedure quoted above, to be applied when the registrar “has reason to believe...that a registrant no longer is qualified to be registered for a reason other than a change of residence or address,” such as for registration of the voter in another state. Under this precleared statute, the registrar is required to mail a notice of the alleged irregularity to the voter at the address on file at the registrar’s office, informing the voter to appear at the registrar’s office within 21 days to show cause why his name should not be removed, in default of which the “registrar shall cancel his name from the list of eligible voters.”

Registrars of voters generally needed assistance to access out of state registration records. While conducting the absentee by mail process for temporarily displaced voters, staff from the Secretary of State office phoned other states in an effort to facilitate compliance with La. R.S. 18:1308.3(C), acting pursuant to authority vested under La. R.S. 18:18(D)(...to share voter registration information for the purpose of determining whether a voter is registered in more than one state). Once registration information became available from some states and areas, the Secretary of State was able to match or compare that information to the statewide Louisiana registration system and obtain possible matches of persons with the same date of birth, same first and last name, and a subsequent registration in the non-Louisiana jurisdiction.

Before providing this information to registrars of voters to utilize under La. R.S. 18:193(G), the Secretary of State chose to provide an extra step, extra protection or extra notice to those voters who might ultimately receive the precleared La. R.S. 18:193(G) Letter Of Irregularity, the 21 day letter. This “extra” is the 30 day notice letter, Letter of Intent To Challenge (Doc. 1, Exhibit A), the subject of a pending preclearance request. The preclearance request was first submitted to the Department of Justice on June 8, 2007, by email submission, supplemented on August 8, 2007, and clarified on September 20, 2007. In addition to the 30 day letter (Doc. 1, Exhibit A), the submissions contained information about procedures inherent therein, such as how the names were obtained from other states, how compared with Louisiana registrations, etc. This 30 day letter (Doc. 1, Exhibit A) did not cancel any registrations. It merely advised that the 21 day letter (Doc. 1, Exhibit B), a precleared document and precleared statutory authority, might be forthcoming and afforded a voter more than the 21 days allowed by law (La. R.S. 18:193(G)) to correct any problem occasioned by registering to vote in another state. Even though contact had been made to displaced voters individually beginning with the March, 2006 contact advising that registering to vote in another state would result in cancellation of their Louisiana registration, nonetheless, before utilizing the precleared 21 day notice and precleared cancellation method authorized by the precleared Louisiana law (La. R.S. 18:193 (G)), the 30 day letter (Doc. 1, Exhibit A) was an attempt to again advise Louisiana registrants who had possibly registered in other states of the potential problem. The 30 day letter provided notice beyond what Louisiana law required, and attempted to avoid the need for cancellation. The 30 day notice did, in fact, result in numerous contacts between registrars and registrants, with the registrars cooperating with voters to often time assist the voter to cancel the other state registration and allow the Louisiana registration to stand.

There is no unprecleared voter registration “cancellation program” as plaintiff alleges throughout the Complaint. The cancellations that did occur were conducted under a precleared statute using a precleared form. Moreover, the Secretary of State cannot register a voter nor cancel a voter registration. That is a duty of the registrars of voters, La. R.S. 18:58. See also La. R.S. 18:191 et seq. The Secretary of State may assist the registrars of voters with matters pertaining to registration, La. R.S. 18:18(2). In so assisting, the registrars were provided lists of voters with a possible registration in another state. The registrars, pursuant to their duty under La. R.S. 18:193(G), compared the lists to see whether there was “reason to believe” the voter had registered elsewhere. If so determined, the La. R.S. 18:193(G) 21 day Notice Letter of Irregularity (Doc. 1, Exhibit B) was sent by the registrar to those voters. The criteria for sending the 21 day notice letter (Doc. 1, Exhibit B) to the voter was much more stringent than the criteria for sending the 30 day notice letter of intent to challenge (Doc. 1, Exhibit A). The registrars reviewed the lists of those matched for the 30 day notice (same date of birth, same first and last name, subsequent registration in other jurisdiction) and removed many from the list. Only those not removed, and with same date of birth, subsequent registration in the other state, and exact same first, middle and last name (with middle name required) received the 21 day notice (Doc. 1, Exhibit B) permitted by La. R.S. 18:193(G). And even though La. R.S. 193(G) only requires the 21 day notice be sent to the address on file with the registrar, the notice was sent to both the in state and out of state address. Any cancellations which may have resulted were the result of the utilization of a precleared procedure.

Plaintiff, Rosa Segue, was not, contrary to the allegations of the Complaint, mailed the La. R.S. 18:193(G) 21 day letter. Nor has her voter registration been cancelled, also contrary to allegations of the Complaint (Doc. 1, para. 51). See Declaration of Sandra R. Wilson, Ph.D.,

Registrar of Voters, Orleans Parish, Louisiana, attached to the Motion To Dismiss and/or Motion for Summary Judgment for Lack of Standing and For Failure to State a Claim Upon Which Relief Can Be Granted.

III. LEGAL AUTHORITIES AND ARGUMENT

While Section 5 of the Voting Rights Act of 1965 requires the implementation of a three judge panel to determine compliance with the preclearance requirements thereof, “a single judge has the authority to review a complaint seeking the convening of a three judge court in order to determine whether it states a substantial claim and one over which the Court would have jurisdiction.” *Sharrow v. Peysen*, 443 F.Supp. 321, at p. 323 (S.D.N.Y. 1977). A three judge panel is not required if a plaintiff’s Section 5 claim under the Voting Rights Act of 1965 is “wholly unsubstantial or completely without merit.” *U.S. v. St. Landry Parish School Bd.*, 601 F.2d 859, 863 (5th Cir. 1979); *Jefferson Citizens for Better Government v. the Parish of Jefferson*, 203 WL 1595167, *3 (E.D. La. March 26, 2003); *Landry v. City of Kenner*, 2004 WL 97704, *2 (E.D. La. Jan. 20, 2004). This initial review by a single judge includes the issue of whether a party has standing to bring the action. *Moore v. Caledonia Natural Gas District*, 890 F.Supp. 547 (N.D. Miss. 1995). Accordingly, it is within this Court’s authority to dismiss the foregoing litigation if it determines the plaintiff lacks standing or has failed to state cause of action for which relief can be granted.

A. Lack of Standing

Standing is “the threshold issue in every federal case, determining the power of the court to entertain the suit.” *Warth v. Seldin*, 422 U.S. 490, at p. 498, 95 S.Ct. 2197, at p. 2205 (1975). “When a court considers standing on a motion for a Rule 12(b) dismissal, it must accept the allegations in

the pleadings as true.” *Cramer v. Skinner*, 931 F.2d 1020, at p. 1025 (5th Cir. 1991). Within those constraints, and because factual allegations made by the plaintiff in the Complaint necessary to establish standing are untrue, the Court may want to treat this as a motion for summary judgment, Rule 56(b), F.R.C.P., to allow the consideration of Exhibit 1 attached to the motion showing that, contrary to the allegations of the Complaint, the voter registration of plaintiff Segue has not been cancelled in Louisiana and Segue did not receive a La. R.S. 18:193(G) challenge to her registration.

At its inception, Section 5 of the Voting Rights Act of 1965 expressly granted standing only to the Attorney General to initiate suit for its enforcement, *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989). In *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969), the U.S. Supreme Court addressed and affirmatively answered the question of whether private persons could also maintain actions under Section 5, therein stating “[t]he guarantee of § 5 ... might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition.” *Id.*, 393 U.S. at p. 557, 89 S.Ct. at p. 827. In response to *Allen*, the Voting Rights Act was subsequently amended to provide standing to both the Attorney General and aggrieved persons, *Roberts*, supra, p. 621. 42 U.S.C. §1973a reflects this change by providing standing to both the Attorney General and “aggrieved persons.” Since this litigation was not filed by or on behalf of the Attorney General, the plaintiff in this matter has standing only if she qualifies as an aggrieved person under 42 U.S.C. §1973a. In the Complaint, plaintiff Segue claims to have received the 21 day letter authorized by a precleared law, La. R.S. 18:193(G), and claims that her voter registration has been cancelled. See attempts to assert a cause of action to enforce and protect the rights of “John Doe/Jane Doe” voters whose names are unknown to her and “whose names appear on one or more lists prepared by the Secretary of State’s office as possible out-of-state

registrants.”

The question before this Court is whether the plaintiff is an “aggrieved person” within the meaning of the Voting Rights Act, more particularly 42 U.S.C. §1973a. A party invoking federal jurisdiction must satisfy the Article III case and controversy requirement. To establish Article III standing, plaintiff has the burden of proving (1) that she has suffered an injury in fact, (2) that there is a causal relationship between the injury and the challenged conduct, and (3) that the injury will likely be redressed by a favorable decision. See *Lujan v. Defenders of Wildlife*, 405 U.S. 555, 560 (1992).

Segue lacks Article III standing. She has not suffered an injury in fact. Her registration has not been cancelled (although if it had been, it would have been cancelled under a precleared statute, La. R.S. 18:193(G)). An injury in fact must be a direct injury resulting from the challenged conduct. To establish an injury, the party seeking relief must establish an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,560, 1125 S.Ct. 2130, 119 L. Ed.2d 351 (1992). A general grievance experienced by all when the government acts unlawfully is not injury-in-fact. See *Doe v. Tangipahoa Parish School Board*, 494 F.3d 494 (5th Cir. 2007).

Segue has failed to establish that she (or the unknown individuals) were injured by lack of Section 5 preclearance of the thirty day letter (Doc. 1, Exhibit A). Segue alleges at most that the lack of preclearance violates the Voting Rights Act but has failed to establish how she has personally suffered actual or threatened injury. Her registration is not cancelled. Nor is there established any causal link between the allegedly wrongful activity - failure to preclear the 30 day letter – and any injury in fact. Had her registration been cancelled, it would have been cancelled as a result of the

application of a precleared statute, La. R.S. 18:193(G). Nor is there any alleged injury to be redressed by a favorable decision. There is no cancelled registration of Segue to reinstate. There being no injury in fact, no causal relationship, and no injury to be redressed, Segue lacks Article III standing.

B. Failure To State A Claim

Alternatively, the Defendants show that plaintiff's claim is "wholly unsubstantiated and completely without merit." As recognized by J. Barbier in *Jefferson Citizens for Better Government v. Parish of Jefferson*, 2003 WL 1595167 (E.D. La. 2003), "the goal of convening a three judge panel [is] to ensure an expedited compliance with §5." That goal has been met in this particular matter as the 30 day letter (Doc. 1, Exhibit 1) was submitted for preclearance on June 8, 2007. That and all procedures related thereto have been submitted for preclearance by the Justice Department. See Exhibit 2, Affidavit of Angie R. LaPlace, Commissioner of Elections, attached to the motion detailing those procedures and the submission. That being the case, it appears that plaintiff's Section 5 claim is "wholly insubstantial and completely without merit." See *Jefferson Citizens for Better Government v. Parish of Jefferson*, at p. 3. Thus, the convening of a three judge panel is not required.

CONCLUSION

Plaintiff Segue cannot satisfy the Article III case or controversy requirement necessary to give this Court jurisdiction or to call for the empaneling of a three judge panel to determine the Section 5 claim. Alternatively, the goal of Section 5 is to submit voting changes for preclearance. The submission is pending. No substantial claim remains for presentation to a three judge panel. The request for a three judge panel should be denied and the proceeding dismissed.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of "Memorandum In Opposition To Request For Three Judge Panel and In Support of Motion To Dismiss and/or Motion For Summary Judgment For Lack of Standing And For Failure To State A Claim Upon Which Relief Can Be Granted" was sent electronically or via U. S. First Class Mail, postage paid, to the following on this 21 day of September, 2007:

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