

19th JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 592208

DIVISION: 24

LOUISIANA FEDERATION OF TEACHERS, EAST BATON ROUGE FEDERATION OF
TEACHERS, JEFFERSON FEDERATION OF TEACHERS, VERNON L. BOLDEN, VENICE
GUNNER-HOLIDAY, TERI ANN JOHNSON AND RACHEL RASBERY

VERSUS

STATE OF LOUISIANA
AND
THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION

**STATE DEFENDANTS' DILATORY EXCEPTION OF
IMPROPER CUMULATION OF ACTIONS,
DILATORY EXCEPTION OF UNAUTHORIZED USE OF SUMMARY
PROCEEDINGS, DILATORY EXCEPTION OF VAGUENESS AND AMBIGUITY,
PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION, AND
PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION**

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel, come the State of Louisiana and the Board of Elementary and Secondary Education ("BESE"), (collectively the "State Defendants"), who respectfully submit the following exceptions to the Plaintiffs' Petition:

1. DILATORY EXCEPTION OF IMPROPER CUMULATION OF ACTIONS

1.

The State Defendants raise the dilatory exception of improper cumulation of actions pursuant to La.Code Civ.P. art. 926(A)(7).

2.

Under the provisions of La.Code Civ.P. art. 462(2), when a plaintiff cumulates two or more actions against the same defendant, all of the actions cumulated must be mutually consistent and employ the same form of procedure.

3.

The Plaintiffs have improperly cumulated their petition for preliminary injunctive relief, which is a summary proceeding, with their petitions for permanent injunction and a declaratory judgment, which are ordinary proceedings.

4.

The Plaintiffs' request for relief made in their petition are triable through ordinary proceedings.

5.

Consequently, the actions sought in this suit are improperly cumulated, and the Plaintiff's claims should be dismissed.

2. **DILATORY EXCEPTION OF UNAUTHORIZED USE OF A SUMMARY PROCEEDING**

6.

The State Defendants raise the dilatory exception of unauthorized use of summary proceeding pursuant to La.Code Civ.P. art. 926(A)(3).

7.

The use of the dilatory exception is asserted on the ground of the Plaintiffs' unauthorized use of a summary proceeding, i.e. a preliminary injunction.

8.

A preliminary injunction is designed to preserve the existing status pending a trial of the issues on the merits of the case. *HCNO Services, Inc. et al. v. Secure Computing Systems, Inc. et al.*, 96-1753 (La.App. 4 Cir. 04/23/97), 693 So.2d 835, 841.

9.

The allegations in the Plaintiffs' Petition are insufficient to show that if proved the Plaintiffs would be entitled to a preliminary injunction.

10.

There is no threat of irreparable harm or an impending waiver request, which would require a speedy resolution.

11.

Therefore, there is an unauthorized use of summary proceeding, and the Plaintiffs' claims should be dismissed.

3. **DILATORY EXCEPTION OF PREMATUREITY**

12.

The State Defendants raise the dilatory exception of prematurity pursuant to La.Code Civ.P. art. 926(A)(1).

13.

Cases submitted for adjudication must be justiciable, ripe for decision, and not brought prematurely. *American Waste & Pollution Control Co., v. St. Martin Parish Police Jury*, 627 So.2d 158 (La.1993).

14.

BESE has not implemented rules and regulations, which are required for implementation of the challenged laws. Pursuant to La. R.S. 17:4038, BESE must adopt and promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of law, which the Plaintiffs are challenging.

15.

The Plaintiffs raise an “as applied” constitutional challenge, and these statutes have never been applied; therefore, this action does not present a justiciable controversy.

16.

There may be a future indispensable party, i.e. the governing authority requesting the waiver. At this juncture it is too premature to even tell who that party will be, as no waivers have been requested.

17.

Consequently, the action is premature, and the petition should be dismissed.

4. DILATORY EXCEPTION OF VAGUENESS OR AMBIGUITY

18.

The State Defendants raise the dilatory exception of vagueness or ambiguity pursuant to La.Code Civ.P. art. 926(A)(5).

19.

The Petition is vague and ambiguous on its face and affords State Defendants no notice of the cause of action asserted against them.

20.

The Plaintiffs allege that the entire Red Tape Reduction Act, La. R.S. 17:4031-17:4039, is unconstitutional. But, the Plaintiffs fail to plead with particularity how each of the statutes are unconstitutional.

21.

The longstanding jurisprudential rule of law in Louisiana is that the constitutional challenge must be specifically pleaded and the grounds for the claim particularized. *Vallo v. Gayle Oil Company, Inc.*, 94-1238 (La. 11/30/94), 646 So.2d 859. The Plaintiffs failed to plead with particularity and their claim should be dismissed.

5. **PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION**

22.

The State Defendants raise the peremptory exception of no right of action pursuant to La.Code Civ.P. art. 927(5).

23.

Among the threshold requirements that must be satisfied before reaching a constitutional issue is the requirement that the party seeking a declaration of unconstitutionality have standing to raise a constitutional challenge. *State v. Mercadel*, 03-3015 (La. 5/25/04), 874 So.2d 829, 834 (quoting *Ring v. State, DOTD*, 02-1367 (La. 1/14/03), 855 So.2d 423, 428).

24.

The statute has not been applied, nor has BESE enacted the rules and regulations needed to implement the statute.

25.

Only those employees of local governing authorities that successfully request and are granted a waiver would have standing to challenge the constitutionality of the Red Tape Reduction Act, and no such plaintiff exists in this case.

6. **PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION**

26.

The State Defendants raise the peremptory exception of no cause of action pursuant to La.Code Civ.P. art. 927(4).

27.

The Plaintiffs' Petition does not disclose a cause of action for declaratory relief.

28.

Courts must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical or based on contingency which may or may not arise. *See American Waste & Pollution v. St. Martin Parish Police Jury*, 627 So.2d 158 (La.1993).

29.

The Plaintiffs' Petition fails to disclose a cause of action on any claims that any Louisiana statutes cited in the petition are unconstitutional.

30.

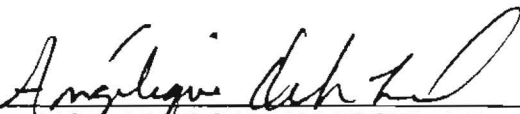
The Plaintiffs' Petition fails to disclose a cause of action on any claims and facts which it asserts.

THEREFORE, the State Defendants pray that:

- I. All of these exceptions be heard prior to any further proceedings in this case.
- II. The exceptions be sustained and that a judgment be rendered, dismissing with prejudice the Plaintiffs' claims against all the State Defendants and taxing all costs against the Plaintiffs.

RESPECTFULLY SUBMITTED:

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Attorney General

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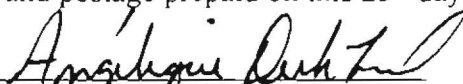
Attorneys for State of Louisiana and BESE

Please Serve

Plaintiffs. Through the Attorney of Record
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon counsel for all represented parties to this proceeding by mailing the same to each by facsimile and by first class United States mail, properly addressed, and postage prepaid on this 25th day of August, 2010.


Angelique Duhon Freel

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ORDER

Considering the foregoing Exceptions filed on behalf of the State Defendants,

IT IS HEREBY ORDERED that Plaintiffs, are to appear on the ____th day of _____, 2010, at ____ o'clock, a.m./p.m., and show cause why the dilatory exception of improper cumulation of action, dilatory exception of unauthorized use of summary proceeding, dilatory exception of prematurity, dilatory exception of vagueness or ambiguity, peremptory exception of no right of action and peremptory exception of no cause of action should not be sustained.

Baton Rouge, Louisiana this ____ day of _____, 2010.

Judge R. Michael Caldwell
19th Judicial District Court