

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

**AUDREY DOE, ET AL**

**VERSUS**

**BOBBY JINDAL, ET AL**

\*      **CIVIL ACTION**  
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\*      **No. 11-388 “F” (5)**  
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\*      **JUDGE FELDMAN**  
\*  
\*      **MAG. JUDGE CHASEZ**

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**MOTION TO DISMISS CASE PURSUANT TO RULES 12(b)(1) AND 12(b)(6) OR,  
ALTERNATIVELY, FOR IDENTIFICATION OF THE PLAINTIFFS**

**NOW INTO COURT**, through undersigned counsel, come defendants Bobby Jindal, in his official capacity as Governor of the State of Louisiana, James D. “Buddy” Caldwell, in his official capacity as Attorney General of the State of Louisiana, James M. LeBlanc, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections (DPSC), Colonel Michael D. Edmonson, in his official capacity as Superintendent of the DPSC, Office of State Police, Charles Dupuy, in his official capacity as Deputy Superintendent of the DPSC, Office of State Police,<sup>1</sup> Eugenie C. Powers, in her official capacity as Director of the DPSC, Division of Probation and Parole, Barry Matheny, in his official capacity as Assistant Director of the DPSC, Division of Probation and Parole, and Nick Gautreaux, in his official capacity as Commissioner of the DPSC, Office of Motor Vehicles,<sup>2</sup> respectfully moving this Honorable Court for relief under Rules 12(b)(1), 12(b)(6) and 17 of the Federal Rules of Civil Procedure for the following reasons which are more fully developed in the attached memorandum in support of the instant motion.

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<sup>1</sup> Plaintiffs originally named Jim Mitchell as deputy superintendent. Charles Dupuy replaced Jim Mitchell following his retirement.

<sup>2</sup> Kay Hodges retired. Nick Gautreaux is now the Commissioner of the DPSC, Office of Motor Vehicles.

1.

The plaintiffs sue Bobby Jindal, in his official capacity as Governor of the State of Louisiana, because, he is the head of the Executive Branch of state government. However, merely alleging that the official has a general duty under law to faithfully execute the laws of the state is insufficient to show that the *Ex Parte Young* exception to sovereign immunity applies to allow suit against the official. Pursuant to the law of this circuit, the plaintiffs' burden to establish that *Ex Parte Young* applies includes a requisite showing that the official has a direct connection with enforcement of the challenged act. The plaintiffs fail to satisfy this burden as to Governor Jindal. Therefore, the Governor is entitled to sovereign immunity and this Honorable Court lacks jurisdiction to subject him to proceedings in federal court.

2.

Furthermore, the plaintiffs fail to state a violation of the U.S. Constitution. In the absence of a well-pleaded violation of the Constitution, no relief can be granted under 42 U.S.C. §1983. Therefore, pursuant to Fed. R. Civ. P. 12(b)(6), the instant suit should be dismissed.

3.

In the alternative, if this Honorable Court finds the instant suit or any part thereof should proceed beyond the instant Rule 12(b) stage, the defendants respectfully request the plaintiffs identify themselves to the defendants.<sup>3</sup> This identification is required under the rules of procedure, plaintiffs have not proven their entitlement to such extraordinary relief, plaintiffs' real identities are necessary elements of their claims, the defendants cannot challenge any factual assertion in the anonymous complaint and, the defendants cannot grant to fictitious plaintiffs the

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<sup>3</sup> The state defendants do not object to plaintiffs proceeding anonymously in the pleadings.

most fundamental relief they request – that their names be removed from the sex offender registry.

**WHEREFORE**, defendants Bobby Jindal, in his official capacity as Governor of the State of Louisiana, James D. “Buddy” Caldwell, in his official capacity as Attorney General of the State of Louisiana, James M. LeBlanc, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections (DPSC), Colonel Michael D. Edmonson, in his official capacity as Superintendent of the DPSC, Office of State Police, Charles Dupuy, in his official capacity as Deputy Superintendent of the DPSC, Office of State Police, Eugenie C. Powers, in her official capacity as Director of the DPSC, Division of Probation and Parole, Barry Matheny, in his official capacity as Assistant Director of the DPSC, Division of Probation and Parole, and Nick Gautreaux, in his official capacity as Commissioner of the DPSC, Office of Motor Vehicles, pray that all claims against them be dismissed for the reasons noted above which are more fully described in the accompanying memorandum.

**ALTERNATIVELY**, should this case or any part thereof proceed beyond the instant Rule 12(b) stage, the moving defendants respectfully request this Honorable Court require the plaintiffs to identify themselves to the defendants.

Respectfully submitted,

**JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL**

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2011, I electronically filed the foregoing using the court's CM/ECF system which will provide a notice of electronic filing to All Counsel of Record. I further certify that all parties are represented by CM/ECF participants.

s/Phyllis E. Glazer  
**PHYLLIS E. GLAZER**