No. 26-

In the United States Court of Appeals for the Fifth Circuit

IN RE JEFFREY LANDRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF LOUISIANA, NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, AND ELIZABETH MURRILL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF LOUISIANA,

Petitioners.

On Petition for Writ of Mandamus from the
United States District Court for the Middle District of Louisiana,
No. 3:26-cv-00460-JWD-SDJ

EMERGENCY PETITION FOR WRIT OF MANDAMUS AND MOTION FOR IMMEDIATE ADMINISTRATIVE STAY AND FULL STAY PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required here because, under the fourth sentence of Fifth Circuit Rule 28.2.1, Petitioners—as "governmental" parties—need not furnish a certificate of interested persons.

/s/ J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA

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STATEMENT REGARDING ORAL ARGUMENT

Because the issues presented in this petition are straightforward, Petitioners believe that the Court can resolve the petition without argument. If argument would help the Court, Petitioners respectfully request time to present their position.

STATEMENT OF RELIEF SOUGHT

Petitioners Governor Jeffrey Landry, Attorney General Liz Murrill, and Secretary of State Nancy Landry, all sued in their official capacities, respectfully seek emergency mandamus relief directing the Middle District to vacate a temporary restraining order, Dist.Ct.ECF 13 (attached as Exhibit A), entered by the district court at 8:16pm on Sunday, May 3. The district court's order violates basic jurisdictional principles, while flagrantly usurping Louisiana's sovereignty by purporting to strike an enacted law from existence in service of an office that the Legislature abolished. This Court has jurisdiction under the All Writs Act, which authorizes it to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

Because of the immediate disarray that the order threatens on the ground in Orleans Parish courts, Petitioners also move for a stay of the order, *see* Fed. R. App. P. 8, 27,[1] as well as an immediate administrative

[1] Although Rule 8 "ordinarily" requires a party to first request such relief from the district court, that requirement does not apply where "moving first in the district court would be impracticable." Fed. R. App. P. 8(a)(1), (2)(A)(i). That is the case here, as the district court issued its order in the middle of the night and Orleans Parish courts will open in a matter of hours. In accordance with Local Rule 27.4, Petitioners also have attempted to contact opposing counsel for their position but have not

stay while the Court resolves the petition and stay motion, *e.g.*, *In re Abbott*, 800 F. App'x 296, 298 (5th Cir. 2020) (per curiam).

INTRODUCTION

Signed into law last week, Act 15 consolidated the functions of two clerk of court positions (one civil and one criminal) in Orleans Parish in one office: the clerk of court for Orleans Parish. The person responsible for those functions is the current civil clerk, now known as the clerk of court for Orleans Parish. Respondent Calvin Duncan won an election for the clerk of criminal district court, an office which no longer exists.

Respondent filed a TRO motion on April 29 making only one request of the district court: "issue a TRO providing for his assumption of the Office of Orleans Parish Criminal District Court Clerk on May 4, 2026 at 12:00 a.m."—*i.e.*, two hours from now. Dist.Ct.ECF 2-1 at 21 (attached as Exhibit D).

As Petitioners (the Governor, Attorney General, and Secretary of State) told the district court, that request was unquestionably impermissible for numerous reasons including three jurisdictional reasons highlighted in this petition. *First*, the TRO and the suit are

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received a response as of this filing.

barred by sovereign immunity because Petitioners undisputedly have no power to enforce Act 15. Lacking such authority in the first place, they cannot be enjoined from enforcing Act 15. *Second*, and as a corollary, Respondent failed to show the causation and redressability elements necessary for Article III standing. No federal court order as to Petitioners would redress any alleged harm suffered by Respondent, for the simple reason that they are not engaged (and could not be engaged) in any enforcement efforts against Respondent. *Third*, the requested TRO is foreclosed by basic *Pennhurst* principles because it would effectively be an injunction against Louisiana officials ordering them to comply with Louisiana law.

Remarkably, in its middle-of-the night order, the district court appeared to agree. It refused to grant Respondent's request that the court "provid[e] for his assumption of the Office of Orleans Parish Criminal District Court Clerk." Dist.Ct.ECF 2-1 at 21. Instead, the district court granted relief requested nowhere in Respondent's Complaint or his TRO memorandum's prayer for relief: "Defendants Governor Jeff Landry and Secretary of State Nancy Landry are ENJOINED from (1) enforcing SB 256; (2) certifying the appointment of the Clerk of Civil District Court

for the Parish of Orleans as the Clerk of Court for the Parish of Orleans; and (3) issuing the Clerk of Civil District Court a commission for the position of Clerk of Court for the Parish of Orleans." Dist.Ct.ECF 13 at 48.

That Order is plainly unlawful. Courts cannot "erase" or repeal laws. *Pool v. City of Houston*, 978 F.3d 307, 309 (5th Cir. 2020). Nor can a court "dictate to legislative bodies or executives what laws and regulations they must promulgate." *Mi Familia Vota v. Abbott*, 977 F.3d 461, 469 (5th Cir. 2020). And as the Supreme Court instructed, "under traditional equitable principles, no court may … purport to enjoin challenged 'laws themselves.'" *Whole Women's Health v. Jackson*, 595 U.S. 30, 44 (2021) (citation omitted). The TRO drives a truck through these basic principles.

The Order also is plainly nonsensical—because it accomplishes nothing other than threaten chaos on the ground in Orleans Parish. The Order rests on the incorrect assumption that the civil district clerk who now serves as the clerk of court for Orleans Parish needs to be "certified" for that seat and receive a new "commission." But nothing prevents the clerk, Chelsey Richard Napoleon—who has already received her

commission by virtue of her election as civil district clerk—from assuming her consolidated duties on Monday by virtue of Act 15's operation of law. (Indeed, as the district court appeared to recognize, it cannot enjoin Ms. Napoleon as a non-party.) Nor does the Order permit Respondent to take any office, much less the now-abolished office of criminal district clerk. Accordingly, the Order does exactly nothing of substance except create massive confusion on the ground about how Orleans Parish court processes should be unfolding.

In fact, news outlets already are erroneously reporting that Respondent is "cleared to assume New Orleans court clerk role." Alex Lubben, *Calvin Duncan cleared to assume New Orleans court clerk role in federal ruling*, NOLA.com (May 3, 2026), tinyurl.com/madfzbsw. And by the district court's telling, the potential chaos appears to be magnitudes worse because the district court (incorrectly) believes it has stopped Ms. Napoleon from carrying out her commission.

This Court's immediate intervention is thus plainly warranted. To begin, the Court should immediately stay the TRO to avoid the chaos that would ensue if judges, attorneys, litigants, and court personnel were forced—*beginning in a few hours*—to determine proper court processes.

The Court should also enter a full stay and grant emergency mandamus relief for the reasons stated above. Despite the district court's clear errors, Petitioners have no other adequate remedy because they cannot immediately appeal the TRO. And given the extraordinary (perhaps unprecedented) intrusion upon Louisiana's sovereignty and the threatened disarray on the ground, emergency relief is warranted. This Court should enter an immediate administrative stay followed by a full stay, and then grant the petition for writ of mandamus and direct the district court to vacate its order.

ISSUES PRESENTED

(1) Whether the Middle District clearly and indisputably erred in entering a temporary restraining order that purports to stall Act 15.

(2) Whether Petitioners are entitled to a stay of the Order pending the Court's resolution of their mandamus petition.

STATEMENT OF FACTS

This session, the Louisiana Legislature has prioritized efforts to restructure Orleans Parish courts. *See* Matt Bruce, *Debate Intensifies as bills to consolidate New Orleans' courts prep for House, Senate Floors*, NOLA.com (Apr. 7, 2026), t.ly/SW4Uo (discussing five different bills to revamp Orleans Parish courts); Rob Masson, *Louisiana lawmakers*

advance sweeping plan to remake New Orleans courts, https://perma.cc/K8LS-5328 (Mar. 26, 2026) (similar). Orleans Parish has a bifurcated civil and criminal court structure—the only one of its kind in the State. *See* La. Legislative Auditor, *Clerks of Court*, t.ly/6wv3r. That unusual structure is a vestige of an earlier era when New Orleans was the State's dominant population center; today, Orleans is no longer even Louisiana's largest parish. *See* Informed Sources April 10th, 2026, WYES New Orleans, t.ly/1z40P, at 19:35–24:00.

Cognizant of these changes, for two decades, the Legislature has sought to streamline Orleans Parish's unusually fragmented court system. *See, e.g.*, Act 621 of the 2006 Regular Session, La. State Legislature, t.ly/44M8b (consolidating Orleans civil and criminal sheriffs); HB607 of the 2013 Regular Session by Representative Helena Moreno, La. State Legislature, t.ly/IU7DI (providing for the elimination of two Orleans juvenile court judgeships); Act 631 of the 2016 Regular Session, La. State Legislature, t.ly/lznrE (combining Orleans traffic and municipal courts and eliminating a judgeship).

As the latest chapter in this effort, the Legislature exercised its authority under La. Const. art. V, § 32 and enacted Act 15 to consolidate

Orleans Parish's separate civil and criminal district court clerk offices into one clerk-of-court office. *See* Act 15 of the 2026 Regular Session, La. State Legislature, t.ly/rV82O. The Act "abolish[es]" the "office of clerk of criminal district court for the parish of Orleans … at the end of May 3, 2026, and before the term of any other criminal clerk of court begins." Act 15, § 4. At that point, the abolished office of the criminal clerk's "authority, functions, duties, and responsibilities," along with its records, money, actions, and property, transfer to the Orleans Parish civil-district-court clerk, "who shall thereafter be referred to as the clerk of court for the parish of Orleans." *Id.* The Governor signed Act 15 into law on Thursday, April 30.

Unhappy with the Legislature's decision, Respondent Calvin Duncan (who recently won an election for the office of clerk of the criminal district court) sued Respondents (the Governor, Attorney General, and Secretary of State), asking the district court to "[e]njoin SB 256"—now Act 15—and requesting a temporary restraining order allowing him to "assume[] the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026." Dist.Ct.ECF 1 at 50 (attached as Exhibit B); Dist.Ct.ECF 2 at 1 (attached as Exhibit C). Respondent

asserted that the Legislature's decision to restructure the Orleans Parish's clerk office is actually a supposed scheme by Petitioners to prevent him from becoming the clerk of the criminal district court, and sought a temporary restraining order based on two of his seven claims: (1) a First and Fourteenth Amendment claim against the Governor and Secretary of State for purported denial of a right to vote; and (2) a First Amendment retaliation claim against the Governor and Attorney General based on amendments introduced by nonparties Senator Jay Morris and Representative Dixon McMakin to SB 256 before the Legislature adopted the bill. Dist.Ct.ECF 2-1 at 3; *see* Dist.Ct.ECF 1 at 17, 20, 39–41, 46–47. Duncan admitted the Legislature could restructure the Orleans Parish clerk's office, as it did to eliminate the criminal district court clerk role he seeks, but nevertheless contended the Act must be unwound (or restored to a version prior to the aforementioned amendments) in order to place him in the abolished office anyway. Dist.Ct.ECF 2-1 at 1, 10, 14.

On Sunday evening, May 3, the district court issued the TRO described above. Petitioners immediately filed this emergency petition for writ of mandamus and request for stay.

REASONS THE WRIT SHOULD ISSUE

As explained below, Petitioners are plainly entitled to mandamus relief because (A) the right to the writ is clear and indisputable, (B) Petitioners have no other adequate means to obtain relief, and (C) the writ is appropriate under the circumstances. *In re A&D Interests, Inc.*, 33 F.4th 254, 256 (5th Cir. 2022).

I. THE WRIT SHOULD ISSUE DIRECTING VACATUR OF THE DISTRICT COURT'S TEMPORARY RESTRAINING ORDER.

The Louisiana Legislature—not federal courts—has the power to enact laws establishing and abolishing governmental offices, including the clerk's office in Orleans Parish. La. Const. art. V, § 32. Through Act 15, the Legislature did just that amid broader reformation efforts: It abolished the office of clerk of criminal district court in Orleans Parish and transferred its responsibilities to the clerk of the civil district court, who is now known simply as the Orleans Parish clerk of court. This brings Orleans Parish in line with every other parish in the State and continues two decades of reform efforts.

The Middle District's order usurps that power by purporting to stall Act 15's operation of law. This federal commandeering is an egregious

violation of Louisiana's sovereignty and violates basic principles of federal jurisdiction. Mandamus is warranted.

A. The Middle District Clearly and Indisputably Erred.

The Middle District's TRO ignores three obvious jurisdictional problems with this suit: (1) sovereign immunity bars Duncan's claims against Petitioners; (2) Duncan lacks standing; and (3) the Order violates *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).

1. a. Sovereign immunity should have been the beginning and end of the district court's analysis. That is because Petitioners—each sued in their official capacities—have no enforcement role under Act 15, so the *Ex parte Young* exception does not apply and the Eleventh Amendment bars Duncan's claims. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024).

"To be a proper defendant under *Ex parte Young*, a state official 'must have some connection with the enforcement of' the law being challenged." *Id.* (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). That means the official must (1) have "a particular duty to enforce the statute in question"; (2) have "demonstrated willingness to exercise that duty"; and (3) "compel or constrain persons to obey the challenged law." *Id.*

(cleaned up). Without this compulsion or coercion, "enjoining that official could not stop any ongoing constitutional violation," *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022) (citation omitted), and of course, the court's equitable powers only allow "enjoin[ing] named defendants from taking specified unlawful actions," not "enjoin[ing] challenged 'laws themselves,'" *Whole Woman's Health*, 595 U.S. at 44 (citation omitted). A court must conduct this enforcement analysis "provision-by-provision." *Tex. All.*, 28 F.4th at 672 (citation omitted).

Petitioners do not compel or constrain anyone with respect to Act 15's abolition of the Orleans Parish criminal clerk's office—after all, that abolition already has occurred. *Cf. Bogan v. Scott-Harris*, 523 U.S. 44, 47, 54–55 (1998) (abolishing city office entitled to absolute legislative immunity). The Act does not mention the Attorney General at all. And its limited references to the Governor and Secretary of State concern recall elections, La. R.S. 18:1300.7(B), where Act 15 makes no substantive change to any official's role. Act 15 does not allow Petitioners to enforce the Act, bring prosecutions, adopt rules or regulations, or direct other officials to carry out its provisions. *See generally* Act 15.

Nowhere is this sovereign-immunity defect more evident than in Duncan's own prayer for relief. Neither his Complaint nor his TRO motion requests any relief directed at any Petitioner. *See* ECF 1 at 50 ("A. Assume jurisdiction over the claims in this matter. B. Issue an Order authorizing Plaintiff Calvin Duncan to assume the Office of Orleans Criminal District Court Clerk at 12:00 a.m. on May 4, 2026. C. Enjoin SB 256, or in the alternative enjoin the First and Second Landry Amendments. D. Declare that the Landry Bill, including the Landry Amendments, violate[s] federal law; E. Award such further relief as the Court deems just and proper."); ECF 2-1 at 21 (seeking only the relief requested in B). That is because no Petitioner has any enforcement authority regarding Act 15's abolition of the criminal clerk-of-court office, nor can any Petitioner stop Act 15's operation of law.

Below, Duncan relied on alleged, *completed* actions by Petitioners, ECF 12 at 2–4 (reproduced as Exhibit F), which only confirms that *Ex parte Young* does not apply here. The supposed "enforcement" he cited is: (1) the Governor and Secretary of State *signed* the commission for the clerk of court who now has the responsibilities previously given to the criminal court clerk; (2) the Governor *signed* Act 15 into law; and (3) the

Governor and Attorney General supposedly *threatened* him and *supported* Act 15's passage. *Id.* It is an elementary principle that "*Ex parte Young* only affords prospective relief to stop future harms" so it "cannot be used to attack the [Petitioners'] *past* actions." *United States v. Abbott*, 85 F.4th 328, 336 (5th Cir. 2023). "Relief against the Governor's [and Secretary of State's] issuance of the [commission, the Governor's signing of Act 15, and any earlier support for Act 15] is purely retrospective, plainly falls outside the bounds of *Ex parte Young*, and hence is barred by the State's sovereign immunity." *Id.*

Because no Petitioner enforces Act 15 (or could be enjoined from not enforcing Act 15), sovereign immunity plainly bars this suit. *Mi Familia Vota*, 977 F.3d at 467–69.

b. Remarkably, the district court appeared to concede these fundamental defects. In particular, the district court refused to base its sovereign-immunity analysis on these past actions. *See* Dist.Ct.ECF 13 at 15. Instead, the district court shifted the goalposts, asking whether the Governor and the Secretary of State might enforce Act 15 *as to Ms. Napoleon, the clerk of court for Orleans Parish*—by certifying her appointment and delivering a commission to her. *Id.* Respectfully, this

makes zero sense. As the district court is no doubt aware, Ms. Napoleon already holds her commission by virtue of her election as civil district clerk; all that has changed under Act 15 is she has additional duties and she is now "referred to as the clerk of court for the parish of Orleans." Act 15, § 4. As the district court also is aware, Act 15 does not require any new election, certification, or commission—and as the district court knows from the briefing, no Petitioner intends to carry out any such unnecessary step.

This bizarre bank-shot argument based off Ms. Napoleon thus goes nowhere. That is underscored by the fact that enjoining a hypothetical new certification or commission to Ms. Napoleon "could not stop any ongoing constitutional violation." *Scott*, 28 F.4th at 672 (citation omitted). Ms. Napoleon—who is not a party in this lawsuit—remains just as free tomorrow to assume her consolidation of duties as Orleans Parish clerk of court. That is a dead giveaway that this attempt to avoid Petitioners' sovereign immunity is baseless.

2. a. Petitioners' lack of enforcement power also means Duncan lacks Article III standing. To satisfy Article III, a plaintiff must show (1) "an injury that is 'concrete, particularized, and actual or imminent'";

(2) that is "fairly traceable to the challenged action"; and (3) that is "redressable by a favorable ruling." *Attala Cnty., Miss. Branch of NAACP v. Evans*, 37 F.4th 1038, 1042 (5th Cir. 2022) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)). Standing "is not dispensed in gross," which means that "'plaintiffs must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)). Whatever Duncan's injury, it is neither traceable to these Petitioners nor redressable by the relief he actually sought.

"The second and third standing requirements—causation and redressability—are often 'flip sides of the same coin.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (citation omitted). That is because, "[i]f a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *Id.* at 381. If instead a defendant lacks "authority to enforce those statutes," any injunction "would not afford the Plaintiff[] the relief that [he] seek[s]." *Mi Familia Vota*, 977 F.3d at 468.

That is Duncan's problem here: Petitioners have nothing to do with the "enforcement" of Act 15, which is currently in effect and consolidated the clerks' offices by operation of law. Duncan's supposed injury from the restructuring flows from the Act itself, enacted by the Legislature under its exclusive lawmaking authority and signed by the Governor. *See Krielow v. La. Dep't of Agric. & Forestry*, 2013-1106 (La. 10/15/13), 125 So. 3d 384, 388. He admitted as much below: "His injury stems directly from the Amendments" to SB 256 before it became Act 15 because those provisions—not prospective actions by Petitioners—are what abolished the criminal clerk's office. ECF 12 at 5. Duncan rightly does not seek some sort of injunction purporting to require the Legislature or the Governor to take back Act 15. *Cf. California v. Texas*, 593 U.S. 659, 673 (2021) ("And they do not claim that they might enjoin Congress."). Nor did he seek some sort of injunction against any Petitioner, precisely because no Petitioner has any role in Act 15's operation of law. That is a textbook traceability and redressability problem, as no order from a federal court as to these Petitioners could redress any purported injury.[2]

[2] Furthermore, the Attorney General and the Secretary of State plainly have no constitutional role in the bicameralism-and-presentment process that produced Act 15, which independently defeats any traceability argument as to those Petitioners. And the Governor already signed Act 15 into law and therefore cannot be

Worse still, the district court could not order Duncan's requested relief: an order "providing for his assumption of the Office of Orleans Parish Criminal District Court Clerk on May 4, 2026 at 12:00 a.m." ECF 2-1 at 21; *see* ECF 1 at 50 (asking the Court to issue "an Order authorizing Plaintiff Calvin Duncan to assume the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026" and to "[e]njoin SB 256"). Pursuant to Act 15, the office of "Orleans Parish Criminal District Court Clerk" no longer exists. Neither Petitioners nor the district court can unwind Act 15 to re-establish that office.

An order providing for Duncan to assume a non-existent office, therefore, would accomplish nothing unless treated as a judicial veto of Act 15. Of course, a federal court has no such veto: "[N]o court may 'lawfully enjoin the world at large,' or purport to enjoin challenged 'laws themselves.'" *Whole Woman's Health*, 595 U.S. at 44. The district court could only "exercis[e] its equitable authority" to "enjoin named defendants from taking specified unlawful actions." *Id.* It could not do so because Petitioners have no actions under Act 15 to enjoin. Instead, the district court had to "void[]" a state law—a "quintessentially

enjoined from doing so.

retrospective" order "out of bounds under *Young*." *Green Valley Special Utility Dist. v. City of Schertz*, 969 F.3d 460, 473 (5th Cir. 2020) (citation omitted). The district court therefore clearly and indisputably erred by issuing the Order despite Duncan's lack of standing.

b. Again, remarkably, the district court appeared to concede all this—focusing instead on how it could use non-party Ms. Napoleon in service of Respondent. By the court's lights, "[a] favorable ruling would prevent the Governor and Secretary of State from issuing a commission to Ms. Napoleon." Dist.Ct.ECF 13 at 22. And "[t]his in turn would prevent her from assuming office[.]" *Id.*

Again, this reasoning makes zero sense. Nothing prevents Ms. Napoleon from exercising her duties on Monday pursuant to her existing commission. Accordingly, the district court's TRO accomplishes precisely nothing—which has been Petitioners' point all along on the lack of causation and redressability.

3. The Order also runs afoul of *Pennhurst*. The Order is premised on Duncan's assertions that Act 15 disenfranchised Duncan in violation of Louisiana law. *E.g.*, ECF 2-1 at 10, 13; *see generally* Dist.Ct.ECF 13. Petitioners emphatically disagree with Duncan's understanding of

Louisiana law. But right or wrong as a matter of State law, federal courts "may not grant injunctive relief against [State] defendants on the basis of state law." *Daves v. Dallas County*, 64 F.4th 616, 635 n.40 (5th Cir. 2023). Yet that is what the Middle District proposed to do—throw Act 15 off the books in order to comply with an alleged violation of State law. And that, *Pennhurst* forbids. *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020). The district court tried to distinguish *Valentine* on the ground that "[t]he *Valentine* court found no likelihood of success because the claims arose from the state law," while here Respondent's "claims aris[e] from *federal* law." Dist.Ct.ECF 13 at 25. But in *Valentine*, the underlying order was clothed in Eighth Amendment garb, just like Respondent's case here is clothed in First and Fourteenth Amendment garb—in both circumstances, the underlying law doing all the work is State law, and that is impermissible under *Pennhurst*.

In sum, it is beyond dispute that the district court lacked jurisdiction to enter the Order due to Petitioner's sovereign immunity, Duncan's lack of standing, and *Pennhurst*'s bar on ordering compliance with State law. It therefore "clearly exceed[ed] the bounds of judicial

discretion," and mandamus is warranted. *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 290 (5th Cir. 2015) (citation omitted).

B. Petitioners Have No Other Avenue for Relief.

Faced with this flagrant usurpation of Louisiana's sovereignty and improper rejection of their immunity from suit, Petitioners have no alternative adequate means for relief. They already raised these exact arguments to the district court in opposition to the TRO motion. ECF 10 (attached at Exhibit E). The court nevertheless granted a TRO. And since the district court entered a TRO rather than an injunction, Petitioners cannot immediately appeal under 28 U.S.C. § 1292. *Matter of Lieb*, 915 F.2d 180, 183 (5th Cir. 1990). For that reason, courts commonly recognize that mandamus is the appropriate means to challenge the plainly unlawful entry of a TRO. *E.g.*, *In re Rutledge*, 956 F.3d 1018, 1026 (8th Cir. 2020); *In re King World Prods., Inc.*, 898 F.2d 56, 59 (6th Cir. 1990); *In re Dist. No. 1–Pac. Coast Dist., Marine Eng'rs Beneficial Ass'n (AFL-CIO)*, 723 F.2d 70, 77 n.8 (D.C. Cir. 1983). The Court should do the same here.

Absent a stay of the Order and mandamus relief, Petitioners and the State of Louisiana suffer immediate and irreparable harm that no

later appeal can cure. As explained above, Petitioners are entitled to sovereign immunity and should not suffer "the indignity of [being subjected] to the coercive process of judicial tribunals," much less having to comply with the TRO. *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (quoting *In re Ayers*, 123 U.S. 443, 505 (1887)). The denial of their "fundamental constitutional protection" under the Eleventh Amendment cannot be remedied. *Id.* at 145.

Furthermore, Louisiana itself faces the immediate injury of a federal judicial veto of Act 15. This effective attempt "to change state law constitutes an injury"—an assault against Louisiana's "sovereign interest in the power to create and enforce a legal code." *Texas v. EEOC*, 933 F.3d 433, 446–47 (5th Cir. 2019) (citation omitted). Every minute that Louisiana is hampered in its ability to eliminate a government position it wishes to eliminate is an affront to Louisiana. By the time Petitioners could appeal a subsequent preliminary injunction or final judgment, this harm "will already have been done" and "cannot be put back in the bottle." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008).

C. A Writ Is Appropriate Under the Circumstances.

Mandamus relief is "especially appropriate" here. *In re Lloyd's Register N. Am., Inc.*, 780 F.3d at 294. That is because the Middle District's veto of Act 15 "result[s] in the 'intrusion by the federal judiciary on a delicate area of federal-state relations.'" *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 381 (2004) (citation omitted); *see Rizzo v. Goode*, 423 U.S. 362, 380 (1976) (noting "where injunctive relief is sought" against state executive officials, "delicate issues of federal-state relationships underl[ie] th[e] case" (citations omitted)). It is difficult to imagine a more obvious intrusion into the careful balance of federal and State relations than a federal court purporting to override a State law structuring local government offices.

Beyond the aforementioned limits on a federal court's equitable power, federalism stands as an independent check against "awarding 'affirmative injunctive and declaratory relief' that would require state officials to repeal an existing law and enact a new law proposed by plaintiffs." *Mi Familia Vota*, 977 F.3d at 470 (quoting *M.S. v. Brown*, 902 F.3d 1076, 1089 (9th Cir. 2018)). A court may not "dictate to legislative bodies or executives what laws and regulations they must promulgate."

Id. at 469. After all, it is Louisiana and its Legislature who have the authority to enact and amend State law. No State should suffer the indignity of having that power filched by a federal court, especially in an area as essential to a State's sovereignty as its decision on how to structure its courts and clerk's offices.

No matter what spin Respondent and the district court attempt, this Court should recognize the Order for what it is—a veto of a duly enacted law. Respondent cannot take the office of criminal district court clerk because it does not exist. All authority and property previously under that office has been "transferred and owned, possessed, controlled, and used by the clerk of the civil district court for the parish of Orleans, who shall [now] be referred to as the clerk of court for the parish of Orleans."[3] Act 15, § 4. Furthermore, Act 15 eliminates each reference to the criminal district court clerk in the Louisiana Revised Statutes. *Id.* §§ 1–3, 5. No Petitioner effectuates that transfer of power and erasure of

[3] Notably, the Orleans Parish clerk of court is not a party to this lawsuit. Thus, the district court could not exercise any authority to deprive her of the responsibilities entrusted to her through Act 15. *Trump v. CASA, Inc.*, 606 U.S. 831, 844 (2025) ("It is an elementary principle that a court cannot adjudicate directly upon a person's right without having him either actually or constructively before it. This principle is fundamental." (quoting *Gregory v. Stetson*, 133 U.S. 579, 586 (1890)).

the criminal district court clerk; it has simply occurred by operation of Act 15's now-complete passage by the Legislature.

II. THE COURT SHOULD STAY THE ORDER PENDING RESOLUTION OF THE PETITION FOR WRIT AND IMMEDIATELY ENTER AN ADMINISTRATIVE STAY PENDING RESOLUTION OF THE MOTION FOR STAY.

Petitioners also request a stay of the Order pending resolution of the petition and an immediate administrative stay pending resolution of the request for a stay. *See In re Abbott*, 800 F. App'x at 298 (explaining administrative stays).

A. Because of the emergent nature of this request, an immediate administrative stay is warranted to preserve the status quo while the Court considers the stay motion and mandamus petition. Most significantly, although the district court and Respondent speak vaguely about clerks of court, it is critical to remember that the sweeping Orleans Parish court system is directly effected by Act 15. Beginning Monday, the clerk responsibilities will be consolidated while court filings and proceedings are ongoing. The district court's TRO threatens to throw the entire Parish's court system into disarray. Judges, litigants, and attorneys need clear rules of the road—and a federal court order attempting to veto a change in Louisiana law that has already occurred

would invite chaos. An immediate administrative stay is thus warranted to prevent these harms and give this Court sufficient time to assess the stay motion and mandamus petition.

And to be very clear: That disarray is already happening. Even though the Order does not permit Respondent to assume any office (much less the now-abolished office of criminal district clerk), news outlets are proclaiming the exact opposite. *See, e.g.*, Alex Lubben, *Calvin Duncan cleared to assume New Orleans court clerk role in federal ruling*, NOLA.com (May 3, 2026), tinyurl.com/madfzbsw. Not only that, but the district court also appears to believe that it has successfully enjoined Ms. Napoleon from serving as Orleans Parish clerk of court. That is incorrect legally because that would amount to an unlawful (under *CASA*) injunction against a non-party. But it is also factually incorrect, as nothing prevents Ms. Napoleon from serving under her duly issued commission. Nonetheless: The district court's very belief otherwise would suggest that Orleans Parish has *no clerk of court right now* which, if true, would cause chaos of the highest magnitude. The need for an administrative stay is thus readily apparent.

B. Petitioners also are entitled to a full stay because (1) they are likely to succeed on the merits of their mandamus petition; (2) they "will be irreparably injured absent a stay"; (3) a "stay will not substantially injure" other interested parties; and (4) the public interest favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

Start with likelihood of success. As Petitioners explained in Section I, each requirement for mandamus is satisfied here: (1) The district court clearly and indisputably erred by entering the Order because it lacked jurisdiction multiple times over; (2) Petitioners have no other avenue for relief because they cannot directly appeal the Order's issuance; and (3) a writ is appropriate given the remarkable violation of Louisiana's sovereignty and federalism resulting from the effective veto of Act 15. *In re A&D Interests, Inc.*, 33 F.4th at 256.

Next, irreparable injury absent a stay. So long as the Order is in effect, Petitioners' sovereign immunity is violated. That "indignity of subjecting [Petitioners] to the coercive process" of the Order cannot be erased by a later favorable order. *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145–46 (1993). Nor is there an adequate remedy at law for the injury

from the State of Louisiana's lost sovereign authority "to create and enforce a legal code." *See EEOC*, 933 F.3d at 446–47.

Having satisfied the first two "most critical" factors, Louisiana equally prevails on the equities and public interest inquiries, which merge here. *Nken*, 556 U.S. at 434; *Valentine v. Collier*, 978 F.3d 154, 166 (5th Cir. 2020). For one thing, "the public interest favors having politically accountable [state] officials—not federal judges—determine how to" organize Louisiana's clerks' offices. *Valentine*, 978 F.3d at 166. For another thing, as explained above, chaos would ensue in Orleans Parish court processes if the Order stands. For yet another, Respondent and the district court would substantially injure the nonparty Orleans Parish clerk of court by purporting to strip her of her rightful authority as the new Orleans Parish clerk of court handling both civil and criminal matters. *See generally* Act 15. And against all that, Respondent has nothing on his side of the ledger: Because this suit does not get off the ground given the fatal jurisdictional defects, he will suffer no cognizable harm from the entry of a stay of the Order.

Every factor favors Petitioners. A stay is therefore warranted. *Valentine*, 978 F.3d at 166.

CONCLUSION

The Court should (a) grant this Petition and direct the Middle District to vacate its Order and (b) enter an immediate administrative stay of the Order, followed by a full stay.

Dated: May 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 3, 2026, I filed the foregoing brief with the Court's CM/ECF system, with courtesy copies by email to opposing counsel and the clerk's office. Pursuant to Fifth Circuit Rule 27.3, this petition was preceded by a telephone call to the clerk's office and to Respondent's counsel. Pursuant to Federal Rule of Appellate Procedure 21, I also emailed a courtesy copy to the chambers of the Honorable John W. deGravelles.

/s/ J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA

CERTIFICATE OF COMPLIANCE

Pursuant to Fifth Circuit Rule 32.3, the undersigned certifies that this petition complies with:

(1) the type-volume limitations of Federal Rules of Appellate Procedure 21(d) and 27(d)(2) because it contains 5,828 words;

(2) the typeface requirements of Rule 21(d)(1) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word 2016 (the same program used to calculate the word count); and

(3) the requirements of Fifth Circuit Rule 27.3 because the facts supporting emergency consideration of this petition are true and complete.

/s/ J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA

Dated: May 3, 2026

No. 26-

In the United States Court of Appeals for the Fifth Circuit

IN RE JEFFREY LANDRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF LOUISIANA, NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, AND ELIZABETH MURRILL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF LOUISIANA,

Petitioners.

On Petition for Writ of Mandamus from the
United States District Court for the Middle District of Louisiana,
No. 3:26-cv-00460-JWD-SDJ

APPENDIX TO EMERGENCY PETITION FOR WRIT OF MANDAMUS AND MOTION FOR IMMEDIATE ADMINISTRATIVE STAY

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Exhibit A

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter

VERSUS

JEFFREY LANDRY, in his official capacity as Governor of the State of Louisiana, ET AL.

CIVIL ACTION

NO. 26-460-JWD-SDJ

RULING AND ORDER

This matter comes before the Court on the *Emergency Motion for Temporary Restraining Order* ("*Motion for TRO*") (Doc. 2) filed by Plaintiff, Calvin Duncan, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter ("Plaintiff" or "Duncan"). Defendants Governor Jeffrey Landry ("Governor" or "Jeff Landry"), Secretary of State Nancy Landry ("Secretary of State" or "Nancy Landry"), and Attorney General Elizabeth Murrill ("Murrill" or "AG") (collectively, "Defendants"), all in their official capacities, oppose the motion. (Doc. 10.) Plaintiff has filed a reply. (Doc. 12.) The Court held a status conference on April 30, 2026, and heard brief argument on the motion. (Doc. 9.) Further argument is not necessary. The Court has considered the law, the facts in the record (including those contained in the *Verified Complaint for Declaratory and Injunctive Relief* ("*Complaint*") (Doc. 1)), and the arguments and submissions of the parties and is prepared to rule. For the following reasons, Plaintiff's *Motion for TRO* is granted.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

1. Plaintiff's Exoneration

Plaintiff was convicted in 1985 of first-degree murder. (*Compl.* ¶¶ 25–26, Doc.1; *see also* Doc. 1 at 52 (Plaintiff's *Verification Statement*).) He remained in Louisiana State Penitentiary for more than 28 years. (*Id.* ¶ 27.)

Plaintiff asserts that, while in prison, he "became a self-taught jailhouse lawyer" to prove his innocence. (*Id.* ¶¶ 28–31.) Part of these efforts involved a number of attempts to access his case files in the Orleans Parish Criminal Court Clerk's Office from that clerk. (*Id.* ¶¶ 30–31.) Plaintiff avers that he was thwarted by that office's mismanagement of records. (*Id.*) Plaintiff states that he was ultimately proven innocent, freed in 2011, and exonerated in 2021. (*Id.* ¶¶ 32–33, 43.)

Plaintiff filed suit in 2023 against the state seeking $330,000 for his wrongful conviction. (*Id.* ¶ 46.) According to Plaintiff, the AG threatened to challenge Plaintiff's ability to practice law if he didn't dismiss his suit. (*Id.*) This led Duncan to withdraw his claim. (*Id.*)

2. The Election

In 2025, Duncan decided to run for Orleans Parish Criminal District Court Clerk. (*Id.* ¶¶ 48–49.) During a debate on September 23, 2025, Plaintiff made statements critical about the office's management of records. (*Id.* ¶ 51.)

Plaintiff claims that "[i]n the lead up to the October 2025 primary," the AG "publicly attack[ed] and threaten[ed] retaliation against [Plaintiff] if he continued to promote his exonerated status during the course of his campaign, in an attempt to prevent him from taking office." (*Id.* ¶ 58.) Murrill's efforts included sending Plaintiff a letter demanding Plaintiff cease representing himself to the public as "exonerated." (*Id.* ¶ 59.) She did so despite "acknowledg[ing] that

"criminal court records confirmed that Mr. Duncan's conviction was vacated in 2021." (*Id.* ¶ 61.) Plaintiff alleges that Murrill's conduct led his opponent to seek a temporary restraining order against him barring his using the word "exonerated," but Plaintiff's opponent later withdrew the petition. (*Id.* ¶¶ 63–64.) Days after the first letter, on October 1, 2025, Murrill purportedly again threatened "further action" against Plaintiff if he did not comply, but he was undeterred. (*Id.* ¶¶ 65–66.)

On November 15, 2025, Plaintiff was elected Clerk of Court of Orleans Parish Criminal District Court earning 68% of the vote. (*Id.* ¶¶ 1, 21, 54.) Equally important for purposes of this motion, Plaintiff is an Orleans Parish Voter. (*Id.* ¶¶ 1, 21.)

On April 20, 2026, Plaintiff received his Commission Certificate, which was signed by the Governor and Secretary of State. (*Id.* ¶ 1.) He also received his Criminal District Clerk of Court identification badge and Oath of Office forms. (*Id.*) He was sworn into office on April 21, 2026. (*Id.* ¶ 2.) He is scheduled to assume office and his duties on May 4, 2026. (*Id.*) *See also* La. R.S. 13:1371.2(A) (stating that one elected to this position "shall take office and begin his term on the first Monday in May following election.").

3. Senate Bill 256

a. The Bill Generally

The *Complaint* alleges that the Governor "gave clear direction to legislators that they should act swiftly to implement his agenda," including "trying to unseat [Plaintiff] after he was duly elected." (*Compl.* ¶ 68, Doc. 1.) Accordingly, on March 31, 2026, Senator Morris of Monroe introduced Senate Bill 256 ("SB 256") "at the Governor's behest." (*Id.* ¶ 69.) Plaintiff states that Monroe "is 200 miles away from New Orleans" and that Morris's constituents have "no . . . interest

in the administration of Orleans Parish criminal courts." (*Id.*) Morris "admitted that [SB 256] lacked any supportive studies or data to back it, but [Morris] introduced it nonetheless." (*Id.*)

According to the *Complaint*, "SB 256 stands to merge the Orleans Parish Clerk of Criminal District Court with the Orleans Parish Clerk of Civil District Court, eliminating those positions entirely and creating one new position: Orleans Clerk of Court." (*Id.* ¶ 70.) "The position of Civil District Court Clerk is currently held by Ms. Chelsey Richard Napoleon, who ran unopposed and in the absence of any election. Ms. Napoleon never appeared on the October or November ballots." (*Id.* ¶ 71.)

Throughout his *Complaint*, Plaintiff primarily objects to two main parts of SB 256. (*See*, *e.g.*, *id.* ¶ 7.) According to Plaintiff, both of these amendments violate La. Const. Art. V. § 28, which provides in relevant part: "In each parish a clerk of the district court *shall be elected* for a term of four years." La. Const. Art. V, § 28 (emphasis added). (*See also Compl.* ¶¶ 81, 130–131, Doc. 1.) The Court will take up the text and legislative history of each of these amendments in turn.

b. SB Amendment 1's Text and History

Amendment No. 4 of the Senate Floor Amendments ("SB Amendment 1") provides:

> Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

(Doc. 2-4.)

Plaintiff alleges that this provision "seek[s] for the Bill to go into effect upon gubernatorial signature" and "aims to ensure immediate success of Defendants' conspiratorial plan." (*Compl.*

¶ 74, Doc. 1.) That is, according to Plaintiff, the "specific intent of [SB Amendment 1] was to ensure [SB 256] would become law before [Plaintiff] takes office on May 4, 2026." (*Id.* ¶ 75.) Indeed, Morris said on the Senate Floor that this amendment "was brought at the behest of the Governor who sought '[t]o go ahead and get [the Bill passed into law] before Mr. Duncan takes office." (*Id.* ¶ 76.)

According to the *Complaint*, Morris was questioned on why this amendment was sought, and Morris emphasized, "[O]therwise, we'd probably have to pay him for the next four years in a job that is gonna be eliminated. So, it would make him an immediate lame duck." (*Id.* ¶ 77.) Morris was also asked whether he had consulted with the AG about potential litigation arising from SB Amendment 1, and Morris "acknowledged that he understood the state constitution prevented shortening an official's term once he took office and thereby confirmed that [this amendment] was designed to ensure Mr. Duncan never took office as Clerk of the Criminal District Court." (*Id.* ¶ 78.)

Another senator "pressed" Morris "as to the suspicious timing, given the already widespread and publicly voiced fears of retaliation by the Governor against Mr. Duncan: 'If we needed to consolidate the offices so badly, why wasn't this Bill brought last year?'" (*Id.* ¶ 79.) "Senator Morris stated candidly that he was following the Governor's directives: 'Well. I don't know. I didn't think about bringing it last year. And this is in *the Governor's package*. So maybe it's something *got his attention as well*.'" (*Id.* ¶ 80 (emphasis in original).)

Again, Plaintiff claims this amendment violates the Louisiana Constitution's requirement that Clerks of Court be elected. (*Id.* ¶ 81.) "The constitutional requirements are clear: voters deserve the opportunity to exercise their rights in electing their candidate of choice to the new Office of Orleans Parish Clerk of Court." (*Id.* ¶ 82.) "That Office cannot be filled by the current

Clerk of Civil District Court because that position did not even appear on the ballot in 2025—indeed, Ms. Napoleon was seated because she was unopposed." (*Id.* ¶ 83.)

Plaintiff alleges that Ms. Napoleon joined in the conspiracy and "appeared before the legislature to testify." (*Id.* ¶ 84.) Moreover, even before SB 256 was passed, and even before the second amendment at issue "was introduced, Ms. Napoleon began touring the Office of the Criminal District Court Clerk in preparation for taking that newly created role on May 4, 2026." (*Id.* ¶ 85.)

On April 16, 2026, "when pressed about how the Bill would operate in practice, Senator Morris did not provide answers. Instead, he noted that he anticipated litigation over [SB 256]." (*Id.* ¶ 90.)

c. SB Amendment 2's Text and History

On April 23, 2026, the House passed SB 256. (*Id.* ¶ 94.) This occurred after Duncan received his Commission Certificate, identification badge, and Oath of Office forms, and after he was sworn into office. (*Id.* ¶¶ 92–93.)

However, before that, on the same day SB 256 made it through the House, House Representative Dixon McMakin added a "late-breaking amendment," which the House passed "at the Governor's behest[.]" (*Id.* ¶ 94.) Amendment No. 23 of the House Floor Amendments ("SB Amendment 2") provides:

> Section 4. The provisions of this Act shall not reduce the current term of office of the clerk of criminal district court for the Parish of Orleans on the effective date of this Act. The office of clerk of criminal district court for the Parish of Orleans shall be abolished at the end of May 3, 2026 and before the term of any other criminal clerk of court begins. Immediately thereafter, the authority, functions, duties, and responsibilities of the office of clerk of criminal district court for the Parish of Orleans, and all of the books, papers, records, monies, actions, and other property of every kind and description, movable and immovable, real and personal,

> possessed, controlled, or used by the office of the clerk of criminal district court for the Parish of Orleans shall be transferred and owned, possessed, controlled, and used by the clerk of the civil district court for the Parish of Orleans, who shall thereafter be referred to as the clerk of court for the Parish of Orleans.
>
> Section 5. Whenever the clerk of the criminal district court for the Parish of Orleans is referred to or designated by law, rule, or regulation on and after the date that office is abolished, such reference or designation shall be deemed to apply to the clerk of civil district court for the Parish of Orleans or hereafter "clerk of court for the Parish of Orleans".

(Doc. 2-5 at 4–5.) Thus, according to the *Complaint*, this "amendment . . . explicitly acknowledges that the sitting Civil District Court Clerk will assume by legislative appointment the new position of Orleans Clerk of Court for the upcoming term[.]" (*Compl.* ¶ 94, Doc. 1.) This is "despite the position being one that requires an election[.]" (*Id.* ¶ 72) *See also* La. Const. Art. V. § 28.

B. Procedural Background

On April 29, 2026, Plaintiff filed suit against Defendants. (*Compl.*, Doc. 1.) In sum, Plaintiff claims that Defendants are conspiring to enact SB 256 "to illegally obstruct" him from assuming office "by retroactively redefining the meaning of 'clerk of court' that existed on November 15, 2025—the date of Mr. Duncan's election." (*Compl.* ¶ 3, Doc. 1.) Plaintiff also claims Defendants retaliated against him for a number of reasons, including (1) his "outspoken claims that the criminal legal system in Orleans is unjust and frequently discriminatory against Black people;" and (2) his statements on the campaign trail that he was "a nationally recognized exoneree," a fact which, Plaintiff says, prompted a threat by Murrill to take legal action against him. (*Id.* ¶¶ 3–4; *see id.* ¶¶ 3–7.)

"Against this backdrop, [Plaintiff] asks this Court to maintain the status quo by allowing him to take his seat as Criminal District Court Clerk on May 4, 2026." (*Id.* ¶ 15.) Plaintiff states that:

> Ruling [against Plaintiff] would deny [him], in his personal capacity, his right to vote for the newly-created Orleans Clerk of Court position and unlawfully nullify his vote for the Orleans Parish Criminal District Court position. It would further bless Defendants' violation of the Bill of Attainder Clause, their retaliatory attack on Mr. Duncan for his speech, and the conspiracy intended to deprive him of his civil rights.

(*Id*. ¶ 16.)

Also on April 29, 2026, Plaintiff filed the instant *Motion for TRO*. (Doc. 2.) He concisely summarizes his position as follows:

> In a nutshell, state law requires the holding of an election to fill the new and now-vacant Orlans Parish Clerk of Court seat created by [SB 256]. Until then, the elected Clerk of the Criminal Court and the unopposed Clerk of the Civil Court should take the positions to which they were elected (Duncan) and ran unopposed ([Napoleon]).

(*Id.* at 2.) Plaintiff argues that the goal of SB 256 Amendments 1 and 2 is to prevent him from assuming office at the designated time. (*Id.*)

> Duncan asks this Court to issue an order duly authorizing him to assume the Office of Orleans Parish Criminal District Court, at 12:00 a.m. on May 4, 2026, thereby staying the effects of [SB 256 Amendments 1 and 2] (at least until this Court has had time to consider the serious allegations in Mr. Duncan's complaint).

(*Id.*)

On Thursday, April 30, 2026, the Governor signed SB 256 into law. *See* 2026 La. Sess. Law Serv. Act 15 (S.B. 256). For the sake of simplicity, the Court will continue to refer to Act 15 as "SB 256," as SB Amendments 1 and 2 are contained in Act 15 with only minor and inconsequential typographical changes. *Compare* SB Amendments 1 and 2, (Doc. 2-4, Doc. 2-5 at 4–5), *with* Act 15, §§ 4, 5, 7.

Also on April 30, 2026, the Court held a status conference. (Doc. 9.) The Court noted that, because Plaintiff is due to assume the office and duties of Clerk of Court of Orleans Parish Criminal District Court on Monday May 4, 2026, at 12:00 a.m., the Court's deadline to rule on the

pending *Motion for TRO* is before 11:59 p.m. on Sunday, May 3, 2026—about three (3) days from the conference. (*Id.* at 2.) The Court asked both parties whether they would be amenable to delaying action for thirty (30) days to give the parties adequate time to brief the issues and to give the Court sufficient time to consider them. (*Id.*) Specifically, the Court asked if Plaintiff would delay assuming office and if Defendants would delay implementation of SB 256. (*Id.*)

Neither side agreed to the delay. (*Id.*) The Court gave Defendants until noon the next day (Friday, May 1, 2026) to file a response, and the Court allowed Plaintiff until 8:00 a.m. the following day (Saturday) to reply. (*Id.*) The Court said it would issue a ruling before the end of the day on Sunday, May 3, 2026. (*Id.*) And so the Court issues this decision in accordance with that extraordinarily truncated and expedited timeline.

II. DEFENDANTS' JURISDICTIONAL CHALLENGE

A. Rule 12(b)(1) Standard

Defendants raise in their opposition certain jurisdictional challenges. (Doc. 10 at 5.) Specifically, Defendants argue: "(1) sovereign immunity bars the claims against these State Defendants; (2) Plaintiff lacks standing; and (3) the requested TRO would violate *Pennhurst* by compelling compliance with Plaintiff's view of state law." (Doc. 10 at 5.) The Court will address each of these in turn below.

The Court construes these parts of Defendants' brief as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). For such motions, a party may raise the defense of lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "Under Rule 12(b)(1), a claim is 'properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate' the claim." *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 668 F.3d

281, 286 (5th Cir. 2012) (quoting *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998)).

"The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (citing *McDaniel v. United States*, 899 F. Supp. 305, 307 (E.D. Tex. 1995)). "Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Id.* (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). But, "[a] motion under 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief." *Home Builders Ass'n of Miss.*, 143 F.3d at 1010; *see also Ramming*, 281 F.3d at 161 (citing *Home Builders Ass'n of Miss.* with approval).

There are two forms of Rule 12(b)(1) challenges to subject matter jurisdiction: "facial attacks" and "factual attacks." *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). "A facial attack consists of a Rule 12(b)(1) motion unaccompanied by supporting evidence that challenges the court's jurisdiction based solely on the pleadings." *Harmouche v. Consulate Gen. of the State of Qatar*, 313 F. Supp. 3d 815, 819 (S.D. Tex. 2018) (citing *Paterson*, 644 F.2d at 523). In considering a "facial attack," the court "is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true. If those jurisdictional allegations are sufficient the complaint stands." *Paterson*, 644 F.2d at 523.

Conversely, "[a] factual attack challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings—such as testimony and affidavits—may be considered." *Harmouche*, 313 F. Supp. 3d at 819 (citing *Paterson*, 644 F.2d at 523). The "court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981) (citation omitted). "[N]o

presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.* When a factual attack is made, the plaintiff, as the party seeking to invoke jurisdiction, must "submit facts through some evidentiary method and . . . prov[e] by a preponderance of the evidence that the trial court does have subject matter jurisdiction." *Paterson*, 644 F.2d at 523.

B. Sovereign immunity

1. Parties' Arguments

Defendants argue that, to satisfy *Ex parte Young*, the state official "must have some connection with the enforcement of the law being challenged." (Doc. 10 at 5 (citation omitted).) That official's authority must go "beyond the general duty to see that the laws of the state are implemented[;] . . . instead, [they] must have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty." (*Id.* (cleaned up).)

Defendants contend that they cannot "compel or constrain anyone with respect to [SB 256]." (*Id.* at 6.) "The Act does not mention the Attorney General at all. And its limited references to the Governor and Secretary of State concern recall elections." (*Id.* (citation omitted).) Defendants cannot "cause the prosecution" of a violator or "apply for an injunction." (*Id.* (citations omitted).) They are also not responsible for adopting or implementing rules and regulations, and they cannot direct other officials to carry out SB 256's transition provisions. (*Id.* (citations omitted).) Indeed, Plaintiff's prayer shows how lacking the Defendants' enforcement authority is. (*Id.* at 6–7 (citation omitted).) "[N]o Defendant has any enforcement authority regarding [SB 256]'s abolition of the criminal clerk-of-court office, nor can any Defendant stop [SB 256's] operation of law. Because no Defendant enforces [the act] (or could be enjoined from not enforcing [the act]), sovereign immunity plainly bars this suit." (*Id.* at 7.)

Plaintiff replies that *Ex parte Young* is no bar to this action because these state officials have "a direct connection with the enforcement of an unconstitutional law or portion thereof[.]" (Doc. 12 at 2.) As to the right to vote claim, Plaintiff highlights that the Governor and Secretary of State are responsible for providing newly elected officials with a commission. (*Id.* (citing La. R.S. 18:513(A)(5)).) "Thus, Ms. Napoleon's Civil District Court commission, signed by Defendants [Jeff] Landry and [Nancy] Landry, is either the operative document that permits her to take over the new seat, or Defendants will provide her with a new commission by virtue of that new title." (*Id.*) "Either way, Defendants have some connection with the enforcement of the act in question." (*Id.* (cleaned up).)

Plaintiff also contends that the Governor has enforcement power from his signing SB 256 and from his efforts to ensure the act's passage. (*Id.* at 3.) All of this qualifies as the "scintilla of enforcement" required to overcome sovereign immunity. (*Id.*) Moreover, the Governor has demonstrated a willingness to exercise his duty "when he signed it and made it law." (*Id.*)

Plaintiff next asserts:

> [T]he Secretary is implicated in the unlawful enforcement of [SB 256] because her role is tied to ensuring (1) elections are not wrongly nullified, and (2) elections required by the Louisiana Constitution are held. *See* . . . La. R.S. 18:18 (she is departmental head responsible for conduct of Louisiana elections, and is responsible for public officials' oaths of office in accordance with La. R.S. 42:162). She may not fail to uphold her duties in administering and issuing commissions for newly elected offices. *See* La. R.S. 18:602 (duties of secretary in event of vacancy). Hence, sovereign immunity does not bar a claim against her.

(*Id.* at 4.)

Plaintiff then turns to the First Amendment retaliation claim (*Id.* at 4.) Here, Plaintiff focuses on the Governor and AG. (*Id.*) Because the Court is deciding this motion on the basis of the right to vote claim only, *see infra*, the Court defers this discussion until a later time.

2. Applicable Law: Sovereign Immunity and Ex parte Young

"Generally, 'sovereign immunity bars private suits against nonconsenting states in federal court.'" *Book People, Inc. v. Wong*, 91 F.4th 318, 334 (5th Cir. 2024) (quoting *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019)). "This bar also applies to suits . . . 'against state officials or agencies that are effectively suits against a state.'" *Id.* (quoting *Paxton*, 943 F.3d at 997). "Under the *Ex parte Young* exception to sovereign immunity, however, a plaintiff can seek prospective injunctive relief 'against individual state officials acting in violation of federal law.'" *Id.* (quoting *Paxton*, 943 F.3d at 997 (citation omitted)). "These state officials must 'have some connection with the enforcement of the allegedly unconstitutional law.'" *Id.* (quoting *United States v. Abbott*, 85 F.4th 328, 337 (5th Cir. 2023) (internal quotation marks and citation omitted)).

"To satisfy the required enforcement connection, the state official must have a duty beyond 'the general duty to see that the laws of the state are implemented.'" *Id.* at 335 (quoting *Paxton*, 943 F.3d at 999–1000 (quoting *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014))). "Rather, the official must have 'the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.'" *Id.* (quoting *Paxton*, 943 F.3d at 1000 (quoting *Morris*, 739 F.3d at 746)). "This analysis is 'provision-by-provision': The officer must enforce 'the particular statutory provision that is the subject of the litigation.'" *Id.* (quoting *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022) (quoting *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020))). "We have defined 'enforcement' as 'compulsion or constraint,' so if the official does not compel or constrain anyone to obey the challenged law, enjoining that official could not stop any ongoing constitutional violation." *Id.* (cleaned up).

However, "Plaintiffs need only show a 'scintilla of enforcement by the relevant state official.'" *Id.* (quoting *Tex. Democratic Party,* 978 F.3d at 179 (internal quotation marks and

citation omitted)). The Fifth Circuit has "noted that the Article III standing analysis and *Ex parte Young* analysis significantly overlap, such that a finding of standing tends toward a finding that a plaintiff may sue the official under the *Ex parte Young* exception." *Id.* (cleaned up).

Additionally, "the inquiry into whether a suit is subject to the *Young* exception does not require an analysis of the merits of the claim." *Paxton*, 943 F.3d at 998 (citing *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 646 (2002)). "Rather, 'a court need only conduct a "straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective."'" *Id.* (quoting *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (alteration in original) (quoting *Verizon*, 535 U.S. at 645)).

For instance, in *Book People*, the Commissioner of the state agency that administered the book-rating system argued that he was entitled to sovereign immunity. *Book People*, 91 F.4th at 334–35. The state argued that the commissioner's "only enforcement authority is over school districts and, if Plaintiffs are compelled to or constrained from doing anything, it is by school districts, not the State." *Id.* at 335. The Fifth Circuit rejected this argument:

> True, the enforcement here "is not the same type of direct enforcement found in *Ex Parte Young*, for instance, where the attorney general threatened civil and criminal prosecution." [*Air Evac EMS, Inc. v. Tex., Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 519 (5th Cir. 2017)]. But "such enforcement is not required." [*Id.*; *see also City of Austin*, 943 F.3d at 1001.] Plaintiffs have identified specific actions that this court can enjoin: Commissioner Morath is ultimately responsible for collecting and posting the vendors' lists of ratings, reviewing those ratings to determine whether a corrected rating is required, notifying vendors when their ratings are overridden, and posting lists of noncompliant vendors on TEA's website. And he is responsible for ensuring that school districts comply with READER's prohibition on buying material from vendors that violate this statute. [*See also supra* Part III.A.2; *Air Evac EMS*, 851 F.3d at 513–14 ("[T]here is significant overlap between standing and Ex Parte Young's applicability.").]

> We agree with Plaintiffs that these acts "compel[ ] them to submit ratings with which they disagree," and "constrain[ ] them from continuing to do business with school districts if they fail to submit the required ratings or decline to acquiesce in the State's revised ratings." That Commissioner Morath enforces the law through the school districts doesn't change our analysis.

Id. at 335–36.

3. Analysis

Preliminarily, the Court notes that Plaintiff makes no argument that the AG has any enforcement power with respect to Plaintiff's right to vote claim. (*See* Doc. 12 at 2–4.) As a result, Murrill is entitled to sovereign immunity with respect to this claim. However, she will not be dismissed from this action because of the limited scope of this ruling.

Turning to the heart of the matter, the key question is whether Plaintiff has demonstrated a "scintilla of enforcement by the relevant state official[s,]" namely, the Governor and Secretary of State. In short, the Court finds that he has.

Most relevant, Plaintiff points to the duty of these Defendants to certify an election and issue a commission. Specifically, La. R.S. 18:513 provides, in relevant part:

> **A. Certification of candidates elected for a full term.** Within thirty days after the date on which a general election is scheduled to be held, *the secretary of state shall certify the name of each candidate elected for a full term to the appropriate official in the following manner: . . .*
>
> (5) The name of a candidate elected to any other office . . . *shall be certified to the governor, who shall issue a commission to the elected official on the date the term begins as provided by law or the home rule charter or plan of government*. If the date the term begins for an official of a municipality elected in accordance with R.S. 18:402 is not provided for, the term shall begin July first following the election. If the date the term begins for any other elected official is not provided by law or home rule charter or plan of government, the governor shall issue a commission: [within certain dates]

La. R.S. 18:513(A)(5) (emphasis added).

Thus, as in *Book People*, while this is not the kind of "direct enforcement found in *Ex Parte Young*, . . . such enforcement is not required." 91 F.4th at 335 (cleaned up). "Plaintiff[ ] [has] identified specific actions that this court can enjoin:" namely, Nancy Landry's certification of Ms. Napoleon's appointment as the newly-created Clerk of Orleans Parish and Jeff Landry's issuance of a commission to her. *See id.* Without Court intervention, Defendants would "constrain" Plaintiff from exercising his right to vote and would otherwise violate his constitutional rights. *See id. and infra*.

Moreover, the Governor and Secretary of State have demonstrated a willingness to enforce these laws. These Defendants already exercised their duties by signing Plaintiff's Commission Certificate and by the Secretary of State's office sending it to Plaintiff, (*see Compl.* ¶¶ 1, 91–92, Doc. 1), and there is no reason to doubt that they will not continue to fulfill these duties with the newly-created Clerk of Orleans Parish position, particularly in light of the Governor's extensive efforts to ensure SB 256's passage, (*see id.* ¶¶ 73, 76, 80, 93–94).

Again, "Plaintiff[ ] need only show a scintilla of enforcement by the relevant state official," and "the Article III standing analysis and *Ex parte Young* analysis significantly overlap, such that a finding of standing tends toward a finding that a plaintiff may sue the official under the *Ex parte Young* exception." *Book People*, 91 F.4th at 335 (cleaned up). For all the above reasons, and for those described below in the standing section, the Court finds that Plaintiff has satisfied the requirements of the *Ex parte Young* exception and therefore the Governor and Secretary of State's motions are denied.

C. Standing

1. Parties' Arguments

Defendants assert, "[w]hatever Plaintiff's generalized voter injury, it is neither traceable to these State Defendants nor redressable by the relief he seeks." (Doc. 10 at 7.) "The State Defendants have nothing to do with the 'enforcement' of [SB 256], which is currently in effect and will consolidate the clerks' offices by operation of law come Monday." (*Id.* at 8.) "[N]o Defendant has any role in [SB 256]'s operation of law. That is a textbook traceability and redressability problem, as no order by this Court as to these [ ] Defendants could redress any purported injury to Plaintiff." (*Id.*) Further, Defendants maintain that the Court cannot order Plaintiff's desired relief of authorizing him to assume the office he seeks, as (a) that office will be nonexistent, and (b) Plaintiff cannot "enjoin challenged laws themselves." (*Id.* at 9 (cleaned up).)

Plaintiff replies that he has standing. (Doc. 12 at 5.) As to traceability, "[h]ere, Plaintiff's injury . . . is premised on how the criminal court clerk's office is being abolished (Count I) and why (Count IV)." (*Id.* (citation omitted).) "His injury stems directly from the Amendments, which unlawfully nullify a prior election and avoid a legally required future one, all in an attempt to unlawfully appoint Ms. Napoleon to an elected office that she did not run for." (*Id.* (citing *Compl.* ¶ 138, Doc. 1).) The SB Amendments fail to comply with the law, which mandates, *inter alia*, "a new and vacant seat to be filled by election." (*Id.*) Plaintiff's "requested relief would bar the unconstitutional and immediate abolition of his office, demonstrating that the injury of which he complains is traceable to Defendants, who by virtue of their role in issuing commissions validate and seat elected officials." (*Id.*)

As to redressability, Plaintiff asserts that the relief he seeks would prevent Defendants from issuing a commission to Ms. Napoleon for the newly-made Orleans Parish clerk position. (*Id.* at

6.) This would "prevent Defendants from somersaulting over the 1st and 14th Amendments by avoiding a legally required election." (*Id.*) Caselaw supports the position that Plaintiff has standing to challenge unconstitutional laws. (*Id.*)

2. Applicable Law on Standing Generally

"A proper case or controversy exists only when at least one plaintiff 'establish[es] that [she] ha[s] standing to sue.'" *Murthy v. Missouri*, 144 S. Ct. 1972, 1985–86 (2024) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997); *Dep't of Com. v. New York*, 588 U.S. 752, 766 (2019)). A plaintiff "must show that [he or] she has suffered, or will suffer, an injury that is concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Id.* at 1986 (cleaned up). "These requirements help ensure that the plaintiff has 'such a personal stake in the outcome of the controversy as to warrant [his or her] invocation of federal-court jurisdiction.'" *Id.* (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)).

"The plaintiff 'bears the burden of establishing standing as of the time [he or she] brought th[e] lawsuit and maintaining it thereafter.'" *Murthy*, 144 S. Ct. at 1986 (first alterations by this Court; second by *Murthy*) (quoting *Carney v. Adams*, 592 U.S. 53, 59 (2020)). The Plaintiff "must support each element of standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Id.* (quoting *Lujan*, 504 U.S. 555, 561). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Hancock Cnty. Bd. of Supervisors v. Ruhr*, 487 F. App'x 189, 195 (5th Cir. 2012) (quoting *Lujan*, 504 U.S. at 561 (internal quotation marks and alterations omitted)). "At the preliminary injunction stage, then, the plaintiff must make a 'clear showing' that [he or]

she is 'likely' to establish each element of standing." *Murthy*, 144 S. Ct. at 1986 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis deleted)). "Where . . . the parties have taken discovery, the plaintiff cannot rest on 'mere allegations,' but must instead point to factual evidence." *Id.* (quoting *Lujan*, 504 U.S. at 561 (internal quotation marks omitted)).

Additionally, "standing is not dispensed in gross." *Id.* at 1988 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)). "That is, 'plaintiffs must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Id.* (quoting *TransUnion*, 594 U.S. at 431). Thus, "for every defendant, there must be at least one plaintiff with standing to seek an injunction." *Id.*

3. Traceability

To establish traceability, a plaintiff must show "that there is 'a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court[.]'" *Reule v. Jackson*, 114 F.4th 360, 367 (5th Cir. 2024) (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)). "Standing exists where the purported injury is connected to allegedly unlawful government conduct." *Id.* (citing *Duarte ex rel. Duarte v. City of Lewisville*, 759 F.3d 514, 520 (5th Cir. 2014)). Further, "[c]ausation . . . isn't precluded where the defendant's actions produce a 'determinative or coercive effect upon the action of someone else,' resulting in injury." *Inclusive Cmtys. Project, Inc. v. Dep't of Treas.*, 946 F.3d 649, 655 (5th Cir. 2019) (quoting *Bennett*, 520 U.S. at 169). "Even though Article III requires a causal connection between the plaintiff's injury and the defendant's challenged conduct, it doesn't require a showing of proximate cause or that 'the defendant's actions are the very last step in the chain of causation.'" *Id.* (quoting *Bennett*, 520 U.S. at 169).

Having carefully considered the matter, the Court finds that Plaintiff has established that his injuries are traceable to the Governor and Secretary of State. Specifically, his injuries are traceable to the Governor's efforts to enact SB 256 and, most importantly, the appointment of Ms. Napoleon to the newly-created office without a constitutionally-mandated election. As stated above, the Governor's and Secretary of State's certification of Ms. Napoleon's appointment and issuance of a commission to her will directly cause the loss of his rights. Thus, Plaintiff has satisfied the traceability requirement at this time.

Book People supports Plaintiff's position. There, the law in question ("READER") "require[d] school book vendors who want to do business with Texas public schools to issue sexual-content ratings for all library materials they have ever sold (or will sell), flagging any materials deemed to be 'sexually explicit' or 'sexually relevant' based on the materials' depictions of or references to sex." *Book People*, 91 F.4th at 324. "The State admit[ted] that the Agency Commissioner [in question] [was] empowered to enforce the Act against school districts, which mean[t] the school districts' purchasing decisions are determined or coerced by the State through READER." *Id.* at 331. The Fifth Circuit concluded that the First Amendment violations were fairly traceable to the Commissioner. *Id.* at 332–33. The Fifth Circuit cited as reasons:

> To enforce READER, Commissioner Morath is required to collect ratings from vendors and post them on the Agency's website. He has discretion to review vendors' ratings, and if he does, he must notify vendors of the updated ratings and their duty to conform their rating to the Agency's. He must then post the names of the vendors that don't accept the Agency's updated ratings on the Agency's website.

Id. Further, the Commissioner had "the authority to enforce § 35.003(d), which prohibit[ed] school districts from purchasing books from vendors who are on the noncompliance list, through a special investigation and sanctions." *Id.* at 333. The appellate court concluded,

> Because Commissioner Morath oversees the challenged process and because his actions are among those that would contribute to Plaintiffs' harm, Plaintiffs' injuries can be traced to the Commissioner's enforcement of READER. If Commissioner Morath is enjoined, he cannot prohibit school districts from purchasing books from any vendors, either because the vendors did not initially provide ratings or because they refused to accept the Agency's updated ratings. . . . [E]njoining the Commissioner from enforcing READER would free Plaintiffs from the injurious dilemma that READER creates: either submit unconstitutionally compelled ratings to the Agency at great expense or refuse to comply and lose customers and revenue.

Id. (cleaned up). The Fifth Circuit ultimately affirmed the district court's preliminary injunction prohibiting the Commissioner from enforcing specific sections of READER. *Id.* at 328, 341.

The same reasoning applies here. Plaintiff has shown, through his extensive allegations and reference to statutory duties (including the certification of the appointment and issuance of the commission), how the Governor and Secretary of State will have a role to play in enforcing SB 256, which will directly lead to constitutional violations. *See Book People*, 91 F.4th at 332–33. He has thus satisfied this element of standing, particularly given the fact that "the injury must be *fairly* traceable to the challenged action of the defendant[s]," *Reule*, 114 F.4th at 367 (emphasis added), but it need not rise to the level of "proximate cause" or be the "very last step in the chain of causation," *Inclusive Cmtys.*, 946 F.3d at 655 (citation omitted).

4. Redressability

"To satisfy redressability, a plaintiff must show that 'it is *likely*, as opposed to merely *speculative*, that the injury will be redressed by a favorable decision.' " *Reule*, 114 F.4th at 368 (quoting *Inclusive Cmtys.*, 946 F.3d at 655 (emphasis in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000))). But, plaintiffs are "not required to show that their requested relief would *certainly* redress their injuries; rather, they are required to show that their requested relief would *likely* (or substantially likely) redress their

injuries." *Hancock Cnty.*, 487 F. App'x at 197 (citing *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000); *Lujan*, 504 U.S. at 561). "Moreover, the proper focus of the redressability inquiry is not whether the relief is likely to be granted; rather, the focus is whether, assuming that the requested relief is granted, that relief will likely redress the plaintiffs' injuries." *Id.* (citing *Adar v. Smith*, 639 F.3d 146, 150 (5th Cir. 2011) (en banc); *Rogers v. Brockette*, 588 F.2d 1057, 1063 (5th Cir. 1979) ("There must be a substantial probability that, if the court affords the relief requested, the plaintiffs' legal injuries will be remedied.") (internal quotation marks and ellipses omitted)). Moreover, "[t]he relief sought needn't completely cure the injury, however; it's enough if the desired relief would lessen it." *Inclusive Cmtys.*, 946 F.3d at 655 (citing *Sanchez v. R.G.L.*, 761 F.3d 495, 506 (5th Cir. 2014)). But, "[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court." *Id.* (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998)).

Having considered the matter, the Court finds that the redressability requirement is easily satisfied, for the reasons largely given by Plaintiff. A favorable ruling would prevent the Governor and Secretary of State from issuing a commission to Ms. Napoleon. This in turn would prevent her from assuming office without a constitutionally required election. And this in turn would prevent Defendants from violating Plaintiff's constitutional rights, as demonstrated below.

For these reasons, the Court finds that the "requested relief would *likely* (or substantially likely) redress [Plaintiff's] injuries." *Hancock Cnty.*, 487 F. App'x at 197. As a result, Plaintiff has standing for his right to vote claim against the Governor and Secretary of State.

D. *Pennhurst*

1. Parties' Arguments

Defendant contends that "[t]he requested TRO independently runs headlong into the Supreme Court's command in *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124–25 (1984)." (Doc. 10 at 9.) "On Plaintiff's own telling, he demands relief that would bring [SB 256] into compliance with state law. . . . So even if Plaintiff were right about state law (he is not [ ]), the requested injunction thus necessarily 'largely overlap[s]' with what state law requires." (*Id.* at 10 (quoting *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020)).)

Plaintiff replies that Defendants "misread and misapply *Pennhurst*." (Doc. 12 at 6 (cleaned up).) "*Ex Parte Young* directly provides a carve out for suits like Plaintiff's that challenge the constitutionality of state law, which *Pennhurst* explicitly recognizes." (*Id.* (citing *Pennhurst*, 465 U.S. at 102).) "Here, Plaintiff seeks only to preserve his rights under the 1st and 14th Amendments with a narrow stay of the Landry Bill's violative effects—without which he will suffer irreparable harm." (*Id.* at 6–7.) In sum, "*Pennhurst* is inapplicable because Plaintiff's claim arises under the U.S. Constitution, not state law." (*Id.* at 7.)

2. Law and Analysis

In short, the Court rejects Defendant's argument. Granted, "[u]nder the Eleventh Amendment, federal courts cannot tell state officials 'how to conform their conduct to state law'—for one can hardly imagine 'a greater intrusion on state sovereignty.'" *Planned Parenthood Gulf Coast, Inc. v. Phillips*, 24 F.4th 442, 450 (5th Cir. 2022) (quoting *Pennhurst*, 465 U.S. at 106). "Letting a federal court tell state officials how to act under state law would conflict directly with the principles of federalism that underlie the Eleventh Amendment." *Id.* (cleaned up).

However, "*Ex parte Young* is a necessary exception to sovereign immunity, preventing state officials from using their state's sovereignty as a shield to avoid compliance with federal law." *Id.* at 451 (cleaned up). So, for instance, "[a]n injunction ordering [a department] to provide the protections guaranteed by the federal Due Process Clause and heed the requirements of the Equal Protection Clause does not order the [d]epartment to conform to state law in violation of *Pennhurst*." *Id.* at 453 (citing *Brown v. Ga. Dep't of Revenue*, 881 F.2d 1018, 1023 (11th Cir. 1989) ("Under *Pennhurst*, however, the determinative question is not the relief ordered, but whether the relief was ordered pursuant to state or federal law."). *See also id.* at 452–53 (finding that "plaintiffs have established federal jurisdiction for purposes of a Rule 12(b)(1) motion" because, *inter alia*, the "complaint allege[d] that Planned Parenthood [was] entitled to a license under Louisiana law and that the Department's 'constructive denial' of their license application occurred 'without sufficient procedural protections.'"). As the Fifth Circuit stated:

> "[T]he constitutional procedural standards of the due process clause are . . . wholly and exclusively federal in nature." *Stern v. Tarrant Cnty. Hosp. Dist.*, 778 F.2d 1052, 1059 (5th Cir. 1985) (*en banc*). "[A] violation of state law is neither a necessary nor a sufficient condition for a finding of a due process violation." *Id.; see also Snowden v. Hughes*, 321 U.S. 1, 11 [ ] (1944) ("Mere violation of a state statute does not infringe the federal Constitution.").

Id. at 453.

The same reasoning applies here. As will be amply demonstrated *infra*, Plaintiff's relief will be ordered based on the United States Constitution's guarantee of his right to vote and denial of Constitutional right of due process. The Court will order relief pursuant to *federal* law, not state law. Accordingly, the Court denies Defendants' motion to dismiss on this issue.

Valentine, relied upon by Defendants, does not change the Court's analysis. *Valentine* was about Texas' "response to COVID-19." 956 F.3d at 799. The district court had issued a preliminary

injunction against the executive director of the prison system and one of its wardens regulating "in minute detail" a number of protections that went beyond CDC protection. *Id.*

Defendants sought a stay of the injunction pending appeal, and the Fifth Circuit agreed. *Id.* at 801, 806. The appellate court analyzed the state's "likelihood of success on appeal" and whether Plaintiff had shown a substantial risk of serious harm in violation of the Eighth Amendment. *Id.* at 801–02. The Fifth Circuit found that the district court erred and provided the following limited discussion of *Pennhurst*:

> TDCJ also is likely to succeed on appeal insofar as the district court enjoined the State to follow its own laws and procedures. In *Pennhurst*[, 465 U.S. 89,] . . . , a plaintiff class brought suit under *inter alia* the Eighth Amendment and state law to challenge the conditions at a state facility for people with mental disabilities. *See id.* at 92 [ ]. The Supreme Court held that the Eleventh Amendment prohibits federal courts from enjoining state facilities to follow state law. *See id.* at 103–23 [ ]. Here, however, the district court acknowledged that its injunction "largely overlap[ped] with TDCJ's COVID-19 policy requirements and recommendations." D. Ct. Op. at 23. In the district court's view, this was a virtue not a vice because its injunction would "promote compliance" with TDCJ's own policies. *Id.* at 24. *Pennhurst* plainly prohibits such an injunction.

Id. at 802.

Valentine is wholly consistent with *Phillips*. The *Valentine* court found no likelihood of success because the claims arose from state law; conversely, *Phillips* properly recognized that claims arising from *federal* law are not barred by *Pennhurst*.

For these additional reasons, the Court rejects Defendants' position and finds jurisdiction. The Court will now turn to the merits of the *Motion for TRO*.

III. RULE 65 STANDARD

Federal Rule of Civil Procedure 65 provides:

> The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific

> facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

The four requirements for a temporary restraining order are the same for a preliminary injunction: "the plaintiff must show 1) that there is a substantial likelihood that it will succeed on the merits, 2) that there is a substantial threat that it will suffer irreparable injury if the district court does not grant the injunction, 3) that the threatened injury to the plaintiff outweighs the threatened injury to the defendant, and 4) that granting the preliminary injunction will not disserve the public interest." *W. Sur. Co. v. PASI of LA, Inc.*, 334 F. Supp. 3d 764, 789 (M.D. La. 2018) (deGravelles, J.) (citing *Sierra Club, Lone Star Chapter v. F.D.I.C.*, 992 F.2d 545, 551 (5th Cir. 1993)); *see also June Med. Servs., LLC v. Caldwell*, No. 14-525, 2014 WL 4296679, at *5 (M.D. La. Aug. 31, 2014) (deGravelles, J.) (describing four requirements for temporary restraining order (citations omitted)), *abrogated on other grounds Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), *as recognized by June Med. Servs. LLC v. Phillips*, 640 F. Supp. 3d 523 (M.D. La. 2022) (deGravelles, J.).

"Injunctive relief is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries the burden of persuasion." *PASI*, 334 F. Supp. 3d at 789–90 n.201 (citing *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). "Otherwise stated, if a party fails to meet *any* of the four requirements, the court cannot grant the temporary restraining order or preliminary injunction." *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 607 (N.D. Tex. 2006) (emphasis in original) (quoted with approval by *PASI*, 334 F. Supp. 3d at 790).

IV. DISCUSSION ON *MOTION FOR TRO*

A. Likelihood of Success on the Merits

1. Parties' Arguments

a. Plaintiff's Original Memorandum (Doc. 2-1)

Plaintiff asserts seven separate counts in his *Complaint*. (*See Compl.* ¶¶ 178–251, Doc. 1.) However, the *Motion for TRO* focuses only on two specific challenges:

(a) Defendants' attempt to "unlawfully nullify [his] vote as an Orleans Parish voter for the Clerk of Criminal District Court seat by attempting to retroactively invalidate a completed election;" and

(b) Defendants' efforts to "illegally abolish the Criminal District Court Clerk seat in retaliation for [Plaintiff's] political speech on the campaign trail."

(Doc. 2-1 at 5.) The Court finds the first issue dispositive, so it will focus its attention there and pass on any discussion of retaliation.[1]

Plaintiff argues that the right to vote is fundamental and a key way citizens express their political preferences. (*Id*. at 12 (citations omitted).) That is, the right to vote is a matter of accessing the political process, and that right can be denied by debasing or diluting the weight of a vote and not simply by denying it outright. (*Id.* (citations omitted).)

Plaintiff's right to vote is protected by the Fourteenth Amendment and First Amendment. (*Id.* at 12–13.) Plaintiff asserts:

> Regulations that "burden a relevant constitutional right, such as the [Fourteenth Amendment] right to vote or the First Amendment rights of *free expression* and association," yet "primarily regulate the mechanics of the electoral process, as opposed to core political speech," trigger an analysis under *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). *See Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 138 (3d Cir. 2022) (emphasis added).

[1] The Court will take this issue up (and possibly others) at a hearing on a motion for preliminary injunction.

(*Id.* at 13.) Plaintiff maintains that SB Amendments 1 and 2 trigger and fail the *Anderson/Burdick* framework. (*Id.*)

As to the first prong—the magnitude of the injury—these amendments deny Plaintiff's "freedom of speech as it pertains to his right to vote—a dire unconstitutional injury." (*Id.* (citing *Duncan v. Poythress*, 657 F.2d 691, 703–05 (5th Cir. 1981).) Plaintiff maintains that SB 256 "creates a new office by extinguishing the prior clerk of court offices, thereby altering the character and core duties of the new clerk of court position." (*Id.* at 14 (citing, *inter alia*, La. Const. Art. V § 32; and then citing *State ex rel. Garland v. Guillory*, 166 So. 94, 103–04 (La. 1935)).) Since a new office was created, "Louisiana law requires that it be filled by election, not appointment." *Id.* (citing, *inter alia*, *Russell v. McKeithen*, 257 La. 225, 244, 242 So. 2d 229, 236 (1970) ("[w]here the Constitution has provided the method of filling offices, the Legislature may not provide for filling them in any other manner" (citations omitted)).)

Thus, says Plaintiff, the SB Amendments 1 and 2 "together operate to completely unseat [Plaintiff] post-election. That maneuvering is unconstitutional because it disenfranchises him as a voter and overrides the outcome of a completed election by bypassing electoral processes for the upcoming term completely." (*Id.* at 15 (citing, *inter alia*, *Duncan*, 657 F.2d at 704).) The "timing and structure" of these amendments demonstrate that they were intended to ensure Plaintiff "never assumes office." (*Id.*) These amendments cannot "bypass[ ] a legally-required election for a new office in favor of a legislative appointment (couched as a simple transfer of files that just happen to occur on the day that [Plaintiff] was elected to be seated in office)." (*Id*. (collecting cases).)

As to the second part of the *Anderson/Burdick* analysis, Defendants have no legitimate purpose. (*Id.* at 16.) Rather, the SB Amendments seek to nullify the election by abolishing the office of Criminal District Court Clerk before Plaintiff can take it. (*Id.*) "The Amendments cannot

lawfully do this because Louisiana law does not allow for this type of legislative maneuvering where (a) the state constitution calls for an election; and (b) the definition of clerk of court was fixed as of the date of the election at issue." (*Id.* at 17.)

As to the first, Plaintiff again points to La. Const. Art. V § 28(A) and reiterates that the office of clerk of court must be filled with an election. (*Id.* (citing, *inter alia*, *Russell*, 225 La. at 244; and then citing La. R.S. § 18:402(E)(1)).) The SB Amendments "fundamentally undermine the fairness and integrity of the electoral process," and that makes them unlawful under the Fourteenth Amendment and *Duncan*. (*Id.*)

As to the second, "Louisiana courts recognize that constitutional protections attach to an elected official at the time of election, not on the designated date one is scheduled to assume office." (*Id.* at 18 (citing, *inter alia*, *Calogero v. State ex rel. Treen*, 445 So. 2d 736, 739 (La. 1984); and then citing *Hoag v. Kennedy ex rel. State*, 836 So. 2d 207, 231 (La. Ct. App. 2002)).) "Accordingly, on November 15, 2025, [Plaintiff] was elected to the position of 'clerk of court,' which included the duty of chief elections officer, La. R.S. 18:422, per the definition in effect at the time. La. R.S. 18:2(3). He should accordingly, on May 4, 2026, take the office to which he was elected." (*Id.*) Conversely, Ms. Napoleon was never on the ballot, did not receive a single vote, and did not run for the office associated with any of the duties of Clerk of Criminal District Court. (*Id.* at 19.)

For all these reasons, Duncan claims he is "likely to succeed on his effective right to vote claim." (*Id.* at 19.) Plaintiff prays either that (a) he and Ms. Napoleon are allowed to take their respective seats, or (b) Duncan himself becomes the sole Orleans Clerk of Court. (*Id.*) "Either way, Mr. Duncan should be seated in office with his attendant commission on May 4, 2026." (*Id.*)

b. Defendants' Opposition (Doc. 10)

Defendants maintain that "Plaintiff's *Anderson-Burdick* theory will fail on its own terms." (Doc. 10 at 10.) According to Defendants, Plaintiff advances two arguments about SB 256: (1) it "overrid[es] the outcome of a completed election," and (2) "den[ies] him a vote in a supposed vacancy election for the consolidated clerk office." (*Id.*) But Defendants say that *Anderson/Burdick* applies only to "a state election rule [that] directly restricts or otherwise burdens an individual's First Amendment rights." (*Id.*) Defendants say SB 256 "does not control the mechanics of the electoral process" and "does not regulate ballot access, candidate qualifications, vote counting, election timing, or voter eligibility." (*Id.* at 10–11 (citations omitted).)

Defendants say that Plaintiff's reliance on the Fifth Circuit's decision in *Duncan* "fares no better." (*Id.* at 11.) *Duncan* "cabined itself to 'rare, but serious, violations of state election laws that undermine the basic fairness and integrity of the democratic system.'" (*Id.* at 11 (quoting *Duncan*, 657 F.2d at 699).)

> This case is nowhere near a cataclysmic breakdown of democracy. Abolishing a state office is a quintessential sovereign power of the State. *Newton v. Mahoning Cnty. Comm'rs,* 100 U.S. 548, 559 (1879) ("The legislative power of a State, except so far as restrained by its own constitution, is at all times absolute with respect to all offices within its reach."). That is why "public officers do not have a property interest in the positions they occupy." *Houchens v. Beshear*, 441 F. Supp. 3d 508, 517 (E.D. Ky. 2020) (citing *Taylor v. Beckham*, 178 U.S. 548 (1900)); *accord Hoag v. State ex rel. Kennedy*, 2001-1076 (La. App. 1 Cir. 11/20/02), 836 So. 2d 207, 220–21 (same under state law), *writ denied*, 2002-3199 (La. 3/28/03), 840 So. 2d 570. The Louisiana Constitution, moreover, even expressly vests in the Legislature the power to abolish "clerks of the civil and criminal district courts" in Orleans Parish with a "change by law." *See* La. Const. art. V, § 32. Plaintiff's demand via Duncan to be seated in an office the Legislature has abolished is therefore a nonstarter.

(*Id.* at 11–12.)

Defendants argue that the "alternative theory" that he was denied his right to vote also fails. (*Id.* at 12.) Defendants assert:

> (1) SB 256 "does not call a vacancy into being" but rather "consolidates the authority, functions, duties, responsibilities, records, funds, and property of the criminal clerk's office into the civil clerk's office, whose holder is then referred to as the clerk of court for Orleans Parish[,]" and
>
> (2) Article V, § 32 provides that the Clerk of Criminal Court continues to operate but is "subject to change by law, . . . notwithstanding any other contrary provision of this Constitution."

(*Id.*.) Thus, Defendants say, "Plaintiff is just wrong that the Louisiana Constitution requires a new election every time the Legislature exercises its express authority to change Orleans Parish's clerk offices by law." (*Id.*)

c. Plaintiff's Reply (Doc. 12)

Plaintiff replies that the *Anderson/Burdick* analysis is appropriate because, here, the issue is the "failure to follow a state election rule[.]" (Doc. 12 at 7.) Specifically, the SB Amendments "aim[ ] to control the 'mechanics of the electoral process.'" (*Id.*) Plaintiff then lists all the ways the SB Amendments do so. (*Id.*)

Further, Defendants argue that the Constitution does not require that states organize governments in a particular way and does not prohibit states from abolishing offices. (*Id.* at 7–8.) But Plaintiff responds that this rule is not absolute, particularly when, as here, the Louisiana Constitution expressly requires an election for the Clerk of Court seat. (*Id.*)

Moreover, *Duncan* prohibits Defendants from appointing a clerk when the state constitution requires an election. (*Id.* at 8.) "In sum, because Defendants fail to offer any legitimate state interest that would justify nullifying a completed election and bypassing constitutionally required electoral processes, Plaintiff is likely to succeed on his voting rights claim." (*Id.* at 9.)

2. Anderson/Burdick Framework Generally

"'Where a state election rule directly restricts or otherwise burdens an individual's First Amendment rights, courts apply a balancing test derived from two Supreme Court decisions' amalgamated as the '*Anderson/Burdick* balancing test.'" *La Union del Pueblo Entero v. Abbott,* 167 F.4th 743, 760 (5th Cir. 2026) (quoting *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 387 (5th Cir. 2013); then citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); and then citing *Burdick v. Takushi*, 504 U.S. 428 (1992)).

"Under the test, 'the court "must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate."'" *La Union*, 167 F.4th at 760 (quoting *Voting for Am.*, 732 F.3d at 387 (quoting *Anderson*, 460 U.S. at 789)). Next, "the court 'must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule.'" *Id.* (quoting *Voting for Am.*, 732 F.3d at 387 (quoting *Anderson*, 460 U.S. at 789)). "The court must then weigh these factors." *Id.* (citing *Voting for Am.*, 732 F.3d at 387).[2]

"If a statute imposes 'a severe burden on First Amendment rights' it 'must be "narrowly drawn to advance a state interest of compelling importance."'" *Id.* at 761 (quoting *Voting for Am.*, 732 F.3d at 388 (quoting *Burdick*, 504 U.S. at 434)). However, "when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth

[2] As *Anderson* stated:

> In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. . . . The results of this evaluation will not be automatic; as we have recognized, there is no substitute for the hard judgments that must be made.

Anderson, 460 U.S. at 789–90 (cleaned up).

Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788)).

3. Application of the Anderson/Burdick Analysis

a. Character and Magnitude of Injury

Again, under the *Anderson/Burdick* balancing test, "the court 'must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.'" *Id.* at 760. Having carefully considered the matter, the Court finds that SB Amendments 1 and 2 impose "severe" and discriminatory restrictions under this test.

Anderson itself supports this conclusion. In *Anderson*, the Supreme Court looked at the impact of a state's "early filing deadline . . . for having [a candidate's] name placed on the ballot for the general election. . . ." *Anderson*, 460 U.S. at 782. In examining the nature of the injury, the Court found that the restriction "may have a substantial impact on independent-minded voters." *Id.* at 790. The challenged statute not only "totally exclude[d] any candidate who ma[de] the decision to run for President as an independent after the March deadline" but "[i]t also burden[ed] the signature-gathering efforts of independents who decide to run in time to meet the deadline[,]" making it "more difficult . . . to recruit and retain . . . volunteers" and "to secure . . . media publicity and campaign contributions. . . ." *Id.* at 792.

The High Court also found that "the March filing deadline places a particular burden on an identifiable segment of Ohio's independent-minded voters." *Id.* The Supreme Court noted that it has "upheld generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself." *Anderson*, 46- U.S. at 788 n.9 (citations omitted).

Likewise, the High Court has "upheld restrictions on candidate eligibility that serve legitimate state goals which are unrelated to First Amendment values." *Id.* (citations omitted).

However, *Anderson* also recognized that "it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Id.* at 793. For instance, in ballot access cases, "[t]he inquiry is whether the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity." *Id.* (cleaned up). *Anderson* then found:

> A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties. By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas.

Id. at 793–94 (cleaned up).

The same reasoning applies here. The *Complaint* demonstrates that Plaintiff had and campaigned on a set of specific political opinions, and he received 68% of the vote advancing those positions. (*See, e.g.*, *Compl*. ¶¶ 3–7, 50–54, 58–66, Doc. 1) However, Defendants here attempt to keep Plaintiff from taking office by appointing Ms. Napoleon without affording 68% of Orleans Parish voters the opportunity to vote to fill that newly-created office with the candidate of their choice. This is not the kind of "generally-applicable and evenhanded restriction[ ] that protect[s] the integrity and reliability of the electoral process itself" that the Supreme Court has upheld. *Anderson*, 460 U.S. at 788 n.9 (citations omitted) This is not the kind of "restriction[ ] on candidate eligibility that serve[s] legitimate state goals which are unrelated to First Amendment values" which the Supreme Court has upheld. *Id.* (citations omitted). Rather, the law discriminates

against an "identifiable political group whose members share a particular viewpoint," and therefore Defendants have "unfairly or unnecessarily burden[ed] the availability of [their] political opportunity[.]" *Id.* at 793. Thus, under *Anderson*, SB Amendments 1 and 2 carry a severe and discriminatory burden.

Duncan also reflects by implication the magnitude and character of Plaintiff's injuries. While *Duncan* predated *Anderson*, the Court finds it highly relevant to the instant analysis.

In *Duncan*, "[s]everal registered voters of Georgia" filed suit "claiming that the refusal of state officials to call a special election to fill a position on the Georgia Supreme Court violated their constitutionally protected right to vote." 657 F.2d at 693. A state justice had resigned, the Governor had accepted his resignation, and the Governor had appointed a replacement. *Id*. at 693. He did so even though (a) the Georgia Constitution provided for "the popular election of justices on the state's highest Court," *id.* (citing Ga. Const. art. 6, s 2, P3); and (b) state law provided, "whenever any person elected to public office shall . . . withdraw prior to taking office . . . then (state officials) shall thereupon call a special . . . election to fill such position[,]" *id.* (quoting Ga. Code s 34-1514).

The district court "held that the due process clause of the fourteenth amendment offers protection against the disenfranchisement of an entire state electorate through the refusal of public officials to call a special election as required by law." *Id.* at 695. "The [district] court therefore declared that the Georgia electorate had been deprived of a constitutionally protected right to vote." *Id.* "The district court ordered the calling of a special election to choose [the justice's] successor, and it enjoined [the appointed justice] from running in this election as an incumbent." *Id.*

The Fifth Circuit explained that a key question before it was "whether the due process clause of the fourteenth amendment offers protection against those rare, but serious, violations of

state election laws that undermine the basic fairness and integrity of the democratic system." *Id.* at 699. The Fifth Circuit held that "the due process clause of the fourteenth amendment prohibits action by state officials which seriously undermine the fundamental fairness of the electoral process." *Id.* at 700.

However, while precedent "confirm[ed] that voting rights are, at bottom, federally protected, it [was] a closer question whether the actions of Georgia officials amounted to a constitutional violation entitled to a section 1983 remedy in a federal court." *Id.* at 700–01. The Court reviewed a number of out-of-circuit cases that reflect this, including one that recognized that "states enjoy broad authority to dispense with the elective process and provide by law that judicial vacancies shall be filled by gubernatorial appointment rather than popular election." *Id.* at 701–02 (citations omitted). "Despite this broad authority enjoyed by the states over the scope and conduct of elections, the federal courts have not hesitated to interfere when state actions have jeopardized the integrity of the electoral process." *Id.* at 702 The Court again looked at other authority and explained:

> The challenge brought in this case resembles that in [*Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978),] since it implicates the very integrity of the electoral process. If the Georgia officials denied the Georgia electorate the right granted by state statute to choose a replacement for Justice Bowles, then we are faced with "patent and fundamental unfairness" in the electoral process. Griffin, 570 F.2d at 1077. The Georgia voters are not asking the federal courts to count ballots or otherwise "enter into the details of the administration of (an) election." 570 F.2d at 1078. Their request is far simpler and more basic: they ask for the election itself, as required by state law.
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> * * *
>
> The Georgia voters may complain of a far more serious legal wrong than that established in Griffin . . . because the entire state electorate has been deprived of the right to participate in an election. The district court stated that it "can conceive of no more fundamental flaw in the electoral process than the deprivation of the right to vote

> altogether." We likewise can imagine no claim more deserving of constitutional protection than the allegation that state officials have purposely abrogated the right to vote, a right that is fundamental to our society and preservative of all individual rights. Just as the equal protection clause of the fourteenth amendment prohibits state officials from improperly diluting the right to vote, the due process clause of the fourteenth amendment forbids state officials from unlawfully eliminating that fundamental right. The United States Constitution protects against complete deprivation as well as invidious discrimination. It is fundamentally unfair and constitutionally impermissible for public officials to disenfranchise voters in violation of state law so that they may fill the seats of government through the power of appointment. We therefore hold that such action violates the due process guarantees of the fourteenth amendment.

Id. at 703–04. The appellate court also found that defendants' authority was not controlling, explaining:

> Neither [of Defendants'] case[s] involved fundamentally unfair election practices or purposeful conduct which threatened the democratic system. [Defendants' cases] thus fall in the line of cases holding that the constitution offers no guarantee against insubstantial election irregularities. Reading the language of these cases in the context of their facts, we conclude that neither case precludes our granting of federal relief when public officials disenfranchise an entire electorate in violation of state law. * * * [A different one of Defendant's cases gave the appellate court] no hesitation in holding that one of those guarantees is the right to be free from the purposeful decision of state officials to deny the citizens of a state the right to vote in an election mandated by law.

Id. at 704–05. *Duncan* concluded:

> We reject each of the three arguments advanced in this appeal. First, we find no abuse of discretion in the refusal of the district court to abstain from hearing this section 1983 claim. Second, we hold that the due process clause of the fourteenth amendment affords protection against the disenfranchisement of a state electorate in violation of state election law. Third, we agree with the district court that the plain meaning of Georgia's special election statute, Ga. Code s 34-1514, requires the calling of a special election under the circumstances of this case. The decision of the district court is affirmed.

Id. at 708.

The Court finds *Duncan* directly controlling. Indeed, it is completely in line with Louisiana law. *See Russell v. McKeithen*, 257 La. 225, 244, 242 So. 2d 229, 236 (1970) ("Where the Constitution has provided the method of filling offices, the Legislature may not provide for filling them in any other manner." (quoting *Bloomfield v. Thompson*, 136 La. 519, 67 So. 352 (1915); and then comparing *Higginbotham v. City of Baton Rouge*, 190 La. 821, 183 So. 168 (1938)).

Here, Louisiana law specifically requires that, "In each parish a clerk of the district court *shall be elected* for a term of four years." La. Const. art. V, § 28 (emphasis added). Likewise, "*Special elections to fill newly created offices* or vacancies in office *shall be held* on dates fixed by the appropriate authority in the proclamation issued in accordance with law." La. R.S. 18:402(E)(1). Thus, as in *Duncan*, Louisiana law requires that (a) clerks "shall be elected" and (b) "[s]pecial elections to fill newly created offices . . . shall be held."

Moreover, *Duncan* recognized that this injury is substantial. "It is fundamentally unfair and constitutionally impermissible for public officials to disenfranchise voters in violation of state law so that they may fill the seats of government through the power of appointment." *Duncan*, 657 F.2d at 704. That is why *Duncan* held "that such action violates the due process guarantees of the fourteenth amendment." *Id.*

At the status conference, Defendants asserted two related arguments for disregarding *Duncan*'s clear holding. First, Defendants say that SB Amendments 1 and 2 did not "create" a new office, and second, that Ms. Napoloean was "elected" by the voters by winning unopposed in the race for Clerk of Civil District Court. In briefing, Defendants offer these arguments and add that their conduct is authorized by La. Const. art. V, § 32. (Doc. 10 at 12.)

The Court disagrees. Again, SB Amendment 2 provides:

> Section 4. The provisions of this Act shall not reduce the current term of office of the clerk of criminal district court for the Parish of Orleans on the effective date of this Act. *The office of clerk of criminal district court for the Parish of Orleans shall be abolished at the end of May 3, 2026 and before the term of any other criminal clerk of court begins.* Immediately thereafter, the authority, functions, duties, and responsibilities of the office of clerk of criminal district court for the Parish of Orleans, and all of the books, papers, records, monies, actions, and other property of every kind and description, movable and immovable, real and personal, possessed, controlled, or used by the office of the clerk of criminal district court for the Parish of Orleans *shall be transferred and owned, possessed, controlled, and used by the clerk of the civil district court* for the Parish of Orleans, *who shall thereafter be referred to as the clerk of court for the Parish of Orleans.*
>
> Section 5. Whenever the clerk of the criminal district court for the Parish of Orleans is referred to or designated by law, rule, or regulation on and after the date that office is abolished, such reference or designation shall be deemed to apply to the clerk of civil district court for the Parish of Orleans or *hereafter "clerk of court for the Parish of Orleans".*

(Doc. 2-5 at 4–5 (emphasis added).)

Defendants are correct that SB Amendment 2 does involve a transfer of power, but they miss that the amendment specifically calls for the creation of a new position, with a new title, with new custody and ownership, with new employees, and with new duties. Under the circumstances, the Court finds that, even if the Court assumes that Ms. Napoleon was elected as Clerk of Civil Court, she is to be appointed to a new office which did not previously exist—the "clerk of court for the Parish of Orleans." (*See id.*)

Likewise, Article V, § 32 provides Defendants with no relief. This section states:

> Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law; . . . the clerks of the civil and criminal district courts . . . .

La. Const. art. V, § 32. On the one hand, the Court agrees with Defendants that this section allows Defendants to abolish the Clerk of Orleans Criminal Court by legislative act.

However, this misses the point. As Plaintiff says:

> This [*Motion for TRO*] is not about whether the legislature can create the Orleans Clerk of Court seat. Arguably, if the legislature follows the law, they can create a new seat. But what Defendants cannot do through the legislature is fill that newly-created clerk of court seat, which requires an election, themselves. That is the problem at issue—the targeted and concerted attempt to [ ] unlawfully nullify Plaintiff Calvin Duncan's vote as an Orleans Parish voter for the Clerk of Criminal District Court seat by attempting to retroactively invalidate a completed election . . . .

(Doc. 2-1 at 5.)

The Court agrees and finds that, for all the above reasons, this part of the *Anderson/Burdick* analysis weighs strongly in favor of Plaintiff. The Court now turns to the next part of the analysis.

b. State's Interest and Burden Imposed by Rule

Under the next step of the *Anderson/Burdick* framework, "the court 'must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule.'" *La Union*, 167 F.4th at 760–61 (quoting *Voting for Am.*, 732 F.3d at 387 (quoting *Anderson*, 460 U.S. at 789)). "The court must then weigh these factors." *Id.* at 761 (citing *Voting for Am.*, 732 F.3d at 387). Again, if, as here, "a statute imposes 'a severe burden on First Amendment rights' it 'must be "narrowly drawn to advance a state interest of compelling importance."'" *Id.* (quoting *Voting for Am.*, 732 F.3d at 388 (quoting *Burdick*, 504 U.S. at 434)).

Defendants do briefly articulate certain interests which SB 256 purportedly advances. (*See Def. Opp.*, Doc. 10 at 4 (discussing how SB 256 "reflects a broader court-reform effort by the Legislature" and "fits a long-running legislative pattern of streamlining Orleans Parish's unusually fragmented court system," but largely citing legislative efforts from 2006 to 2016).

However, the Court finds that the current record before the Court shows that the state has a minimal interest in passing SB 256, and that the stated interests are, likely, pretextual. To recap:

- Morris "admitted that [SB 256] lacked any supportive studies or data to back it, but [Morris] introduced it nonetheless." (*Compl.* ¶ 69, Doc. 1.)

- Morris said on the Senate Floor that SB Amendment 1 "was brought at the behest of the Governor who sought '[t]o go ahead and get [the Bill passed into law] before Mr. Duncan takes office." (*Id.* ¶ 76.)

- Morris' answer for why the amendment was sought was, "[O]therwise, we'd probably have to pay him [Duncan] for the next four years in a job that is gonna be eliminated. So, it would make him an immediate lame duck." (*Id.* ¶ 77.)

- "Morris acknowledged that he understood the state constitution prevented shortening an official's term once he took office and thereby confirmed that [this amendment] was designed to ensure Mr. Duncan never took office as Clerk of the Criminal District Court." (*Id.* ¶ 78.)

- When pressed about "the suspicious timing," (*id.* ¶ 79), "Senator Morris stated candidly that he was following the Governor's directives: 'Well. I don't know. I didn't think about bringing it last year. And this is in *the Governor's package*. So maybe it's something *got his attention as well*.'" (*id.* ¶ 80)

- On April 16, 2026, "when pressed about how the Bill would operate in practice, Senator Morris did not provide answers. Instead, he noted that he anticipated litigation over [SB 256]." (*Id.* ¶ 90.)

- On April 23, 2026, SB 256 was passed, yet on that day the "late-breaking amendment" was "brought at the Governor's behest" to "explicitly acknowledge[ ] that the sitting Civil District Court Clerk will assume by legislative appointment the new position of Orleans Clerk of Court for the upcoming term," . . . "despite the position being one that requires an election[.]" (*Id.* ¶¶ 72, 93–94.) *See also* La. Const. Art. V. § 28.

- SB Amendment 2 specifically provides, "The office of clerk of criminal district court for the Parish of Orleans shall be abolished *at the end of May 3, 2026 and before the term of any other criminal clerk of court begins*," (Doc. 2-5 at 4), and, as stated above, this was done so that it could take effect "before Mr. Duncan takes office[.]" (*Compl.* ¶ 159, Doc. 1).

Thus, the Court finds that, at the very least, the state interests involved here are not "of compelling importance." *La Union*, 167 F.4th at 761. Moreover, those interests certainly do not outweigh the

extraordinary burden placed on the rights of Orleans Parish voters like Plaintiff, whose federal constitutional rights are being violated. *See Anderson*, 460 U.S. at 806 ("We began our inquiry by noting that our primary concern is not the interest of candidate Anderson, but rather, the interests of the voters who chose to associate together to express their support for Anderson's candidacy and the views he espoused. Under any realistic appraisal, the 'extent and nature' of the burdens Ohio has placed on the voters' freedom of choice and freedom of association . . . unquestionably outweigh the State's minimal interest in imposing a March deadline."); *Duncan*, 657 F.2d at 700 ("the due process clause of the fourteenth amendment prohibits action by state officials which seriously undermine the fundamental fairness of the electoral process.").

Nevertheless, even assuming Defendants were advancing their purported interests, SB 256 is certainly not "narrowly drawn to advance [that] state interest of compelling importance."' *La Union*, 167 F.4th at 761. Defendants could have taken any number of more narrow options which would not have disenfranchised Plaintiff and other Orleans Parish voters, including most significantly, holding a special election, which would comply with the law and not violate the above constitutional provision requiring the election of Clerks of Court. For this additional reason, the injury to Plaintiff's rights outweighs the interests advanced by the State.

For all these reasons, the Court finds that Plaintiff has shown a substantial likelihood of success on his *Anderson/Burdick* claim.

c. Defendants' Overall Objection to *Anderson/Burdick*

Defendants argue that *Anderson/Burdick* analysis has no place here. (Doc. 10 at 10–11.) Defendants say SB 256 "does not regulate ballot access, candidate qualifications, vote counting, election timing, or voter eligibility." (*Id.* at 10.)

The Court disagrees. As the Fifth Circuit explained:

> *Anderson/Burdick* review applies to "all First and Fourteenth Amendment challenges to state election regulations." *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 949 (7th Cir. 2019) (Barrett, J.). While *Anderson/Burdick* does not apply to "pure speech," it applies whenever the regulation in question "control[s] the mechanics of the electoral process." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 [ ] (1995).

La Union, 167 F.4th at 761. *See also Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 138 (3d Cir. 2022) (explaining that *Anderson/Burdick* applies (1) when "the law must burden a relevant constitutional right, such as the [Fourteenth Amendment] right to vote or the First Amendment rights of free expression and association[,]" and (2) when "the law must primarily regulate the mechanics of the electoral process, as opposed to core political speech."). And as the Third Circuit explained:

> The Supreme Court's case law . . . [has] appl[ied] *Anderson-Burdick* to a wide range of electoral-process regulations. These include the time, place, and manner of elections, such as notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns. * * *
>
> The Courts of Appeals have followed suit, scrutinizing under *Anderson-Burdick* laws regulating, *e.g.*, . . . *the counting of ballots* . . . *Even beyond laws governing the voting process itself*, the appellate courts regularly apply *Anderson-Burdick* to regulations affecting candidates, including the qualifications of elected and appointed officers, *the filling of vacancies and special elections*, term limits, and even the expulsion of elected officials. Though each of these regulations necessarily implicated speech and association to some degree, each was nonetheless primarily directed at regulating specific mechanics of the electoral process.

Mazo, 54 F.4th at 140–42 (emphasis added) (cleaned up).

Here, the Court finds that SB 256 regulates the electoral-process and not "pure speech." As shown above, the core issue here is whether Plaintiff's due process rights were violated in the electoral process of how the office of "clerk of court for the Parish of Orleans" is to be appointed

under SB Amendment 2 on the effective date of SB 256. This case has far more in common with those decisions applying *Anderson/Burdick* than those declining to apply it. *See Mazo*, 54 F.4th at 140–42. *See also La Union*, 167 F.4th at 761. As Plaintiff argues:

> Nullifying an election, while also failing to call another as required by law, is quintessential regulation of "ballot access" because access to the ballot is being denied outright, both by virtue of nullification and in failing to call a required election. Moreover, "candidate qualifications" are being erased due to the complete lack of a qualification round for a required upcoming election. As for "vote counting," it is being wholly abandoned through the nullification of nearly 40,000 votes and the failure to count votes concerning the required new election. Regarding "election timing," that too is being eroded because no election is being called for the new seat. Finally, as for voter eligibility, that has been wholesale thrown out because voters are being cheated out of the new election with no recourse as to the nullification of their votes in the prior election.

(Doc. 12 at 7 (citation omitted).) The Court agrees. As a result, the Court rejects Defendants' argument and finds that the *Anderson/Burdick* framework applies.

In addition, it is absolutely clear to the Court that Plaintiff is entitled to relief under *Duncan*, which predated *Anderson/Burdick*. *Duncan* is binding authority that also directly controls this case. As a result, even if *Anderson/Burdick* did not apply, Plaintiff would still prevail under *Duncan*

For all these reasons, the Court finds that Plaintiff has established a substantial likelihood of success on the merits. As a result, the Court turns to the other requirements for injunctive relief.

B. Other Requirements for Injunctive Relief

1. Parties' Arguments

Plaintiff contends that he satisfies the other requirements for a temporary restraining order. (Doc. 2-1 at 22–25.) As to irreparable harm, Plaintiff says these constitutional damages cannot be undone through monetary damages, and, in any event, a constitutional injury itself usually suffices to show irreparable harm. (*Id.* at 22–23.) Plaintiff asserts that a "short-term injunction simply

ensures that Mr. Duncan takes his rightful seat on May 4, 2026, the date his term commences by law and to which his commission and oath attach." (*Id.* at 24.) As to the other two requirements, the State and Public have no "interest in enforcing a regulation that violates federal law," but, rather, the public is served by preventing such a law and "preserving the democratic electoral process for voters in Orleans Parish, like [Plaintiff]." (*Id.* (citations omitted).) "Allowing Mr. Duncan to take the office to which he was elected in a landslide runoff, and to which he was commissioned and sworn in, is not controversial. All the TRO does is maintain the status quo, thereby preserving the will of the voters, which is in the public interest." (*Id.* at 25.)

Defendants respond that "the equities favor the state." (Doc. 10 at 14 (cleaned up).) First, Plaintiff has no viable claim, so he suffered no irreparable harm. (*Id.*) Second, the State has an interest in enforcing its laws. (*Id.*) And third, Plaintiff seeks mandatory injunctive relief which goes beyond maintaining the status quo. (*Id.*)

Plaintiff replies: "Defendants miss the mark in failing to acknowledge that an Act (or portion thereof) that violates the Constitution does not favor enforcement. The transition plan outlined in Act 15 is unconstitutional because legislative appointment to an elected office violates the 1st and 14th Amendment." (Doc. 12 at 10.) "So while Plaintiff is not arguing here that Act 15 may not create a new position, he is arguing that, in doing so, it cannot bypass an election." (*Id.*) Moreover, Plaintiff seeks to preserve the status quo, not disrupt it. (*Id.*) Thus, says Plaintiff, the equities favor granting his motion. (*Id.*)

2. Law and Analysis

In sum, the Court finds that the other requirements for an injunction have been satisfied. As to the second requirement, "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Book People*, 91 F.4th

at 340–41 (quoting *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)); *see also* 11A WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 2948.1 (3d ed. 2026) (same). Here, Plaintiff has shown a clear constitutional violation, so no further showing is needed.

As to the third and fourth requirements, "Plaintiff['s] risk of irreparable harm must be weighed against any injury the State would sustain. Where the State is appealing an injunction, its interest and harm merge with the public interest." *Book People*, 91 F.4th at 341 (citations omitted). On the one hand, "[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Id.* (citations omitted). But "neither [the State] nor the public has any interest in enforcing a regulation that violates federal law." *Id.* (citation omitted).

Here, the Court agrees with Plaintiff—the State has no interest in enforcing its unconstitutional conduct. Moreover, the public (particularly Orleans Parish) has a significant interest in ensuring that their votes are not nullified and that they have an opportunity to vote for a newly created clerk of court office. As a result, the Court finds these requirements satisfied as well.

C. Security

Plaintiff argues that the Court should not require security before issuing injunctive relief. (Doc. 2-1 at 25.) Defendants do not address this in their opposition. (*See* Doc. 10.)

"[T]he amount of security required pursuant to Rule 65(c) 'is a matter for the discretion of the trial court . . . .'" *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (quoting *Corrigan Dispatch Co. v. Casa Guzman*, 569 F.2d 300, 303 (5th Cir. 1978)).

> Accordingly, the judge usually will fix security in an amount that covers the potential incidental and consequential costs as well as

> either the losses the unjustly enjoined or restrained party will suffer during the period the party is prohibited from engaging in certain activities or the complainant's unjust enrichment caused by his adversary being improperly enjoined or restrained.

WRIGHT & MILLER, *supra*, at § 2954.

"Indeed, it has been held that the court may dispense with security altogether if the grant of an injunction carries no risk of monetary loss to the defendant." *Id.* Likewise, the Fifth Circuit has ruled that "the court 'may elect to require no security at all.'" *Kaepa*, 76 F.3d at 628 (quoting *Corrigan Dispatch*, 569 F.2d at 303).

Considering the important constitutional issues involved, the Court will require nominal security in the amount of $100.

D. Closing Note

The Court emphasizes in closing the limited nature of its holding. The Court is not ruling that the state lacks the authority to abolish an agency or office writ large. Rather, the Court is simply holding that, in doing so in the manner in which Louisiana did here with SB 256—that is, abolishing this particular office, creating a new office to replace it, and then appointing someone for that office, all when the Louisiana Constitution requires an election—Defendants have violated the Plaintiff's federally protected constitutional rights to due process and to vote. As a result, the Court holds that SB 256 is unconstitutional. *See Anderson*, 460 U.S. at 806 ("our primary concern is not the interest of [this particular] candidate . . . , but rather, the interests of the voters who chose to associate together to express their support for [his] candidacy and the views he espoused. Under any realistic appraisal, the 'extent and nature' of the burdens [the State] has placed on the voters' freedom of choice and freedom of association . . . unquestionably outweigh the State's minimal interest in imposing" the restriction at issue); *Duncan*, 657 F.2d at 700 ("the due process clause of

the fourteenth amendment prohibits action by state officials which seriously undermine the fundamental fairness of the electoral process.").

V. CONCLUSION

Accordingly,

IT IS ORDERED that the *Emergency Motion for Temporary Restraining Order* (Doc. 2) filed by Plaintiff Calvin Duncan, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter is **GRANTED IN PART AND DENIED IN PART.** The motion is **GRANTED** in that the Court finds that Senate Bill 256, Act No. 15, is **UNCONSTITUTIONAL.** As a result, Defendants Governor Jeff Landry and Secretary of State Nancy Landry are **ENJOINED** from (1) enforcing SB 256; (2) certifying the appointment of the Clerk of Civil District Court for the Parish of Orleans as the Clerk of Court for the Parish of Orleans; and (3) issuing the Clerk of Civil District Court a commission for the position of Clerk of Court for the Parish of Orleans.

[*continued on next page*]

IT IS FURTHER ORDERED that the *Motion for TRO* is **DENIED** in that Plaintiff's Count I (Effective Right to Vote Violation) against Defendant Attorney General Liz Murrill is **DISMISSED WITHOUT PREJUDICE**, due to sovereign immunity.

IT IS FURTHER ORDERED that Plaintiff shall post nominal security in the amount of $100.

IT IS FURTHER ORDERED that this order shall remain effective for fourteen (14) days from the day and time it was issued.

IT IS FURTHER ORDERED that a status conference is hereby set on **Monday, May 4, 2026, at 2:00 p.m., by Zoom video conference,** to discuss issues associated with a preliminary injunction.

Signed in Baton Rouge, Louisiana, on May 3, 2026.

JUDGE JOHN W. deGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Exhibit B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter, *Plaintiff*, v. JEFFREY LANDRY, in his official capacity as Governor of the State of Louisiana, NANCY LANDRY, in her official capacity as Louisiana Secretary of State, and ELIZABETH MURRILL, in her official capacity as Attorney General for the State of Louisiana, *Defendants*.	Case No. 3:26-cv-00460 *Jury Trial Demanded*

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. High-powered officials in Louisiana state government are engaged in an unconstitutional campaign to prevent Plaintiff Calvin Duncan, Clerk-Elect of Orleans Parish Criminal District Court and an Orleans Parish voter, from taking the office to which he was duly elected by a landslide on November 15, 2025. He received his Commission Certificate (signed by Defendants Jeffrey and Nancy Landry) for this office on April 20, 2026, alongside his Criminal District Clerk of Court identification badge, and Oath of Office forms. *See* Exh. A.

2. Mr. Duncan was sworn into office on April 21, 2026, as permitted by La. R.S. 42:141(B), and is currently scheduled, in accordance with La. R.S. 13§1371.2.A, to assume office and his duties on May 4, 2026.

3. Defendants, however, have a different plan. They aim to illegally obstruct Mr. Duncan's assumption of office by retroactively redefining the meaning of "clerk of court" that existed on November 15, 2025—the date of Mr. Duncan's election. So too are they working in coordination to retaliate against Mr. Duncan—an exoneree who was wrongfully imprisoned for 28 years—for his outspoken claims that the criminal legal system in Orleans is unjust and frequently discriminatory against Black people. They are targeting Mr. Duncan in order to prevent him from undertaking reforms he believes are necessary to protect criminal defendants, particularly those who are Black.

4. In fact, Defendant Attorney General Liz Murrill, Defendant Jeff Landry's legal emissary, threatened Mr. Duncan's protected speech during his campaign—vowing to take concrete retaliatory action against him if he refused to chill his own speech concerning his status as a nationally recognized exoneree.

5. But Mr. Duncan, in line with his constitutionally protected right under the First Amendment, refused to honor Defendants' threat and self-censor his political speech on the campaign trail—speech that ultimately garnered him an electoral triumph. In doing so, Mr. Duncan not only had the audacity to flout the Governor's and Attorney General's wills, both he and his message of reform won the election.

6. In response, the Governor (as the Attorney General had forewarned) retaliated against Mr. Duncan for the protected speech that had secured him the election. The Governor also entered into a conspiracy with other named Defendants to deprive Mr. Duncan of his free speech rights and assumption of the position to which he was elected.

7. In his pursuit to punish Mr. Duncan for his racial-justice advocacy on behalf of criminal defendants and to silence that constitutionally protected advocacy, the Governor

pressured members of the legislature to pass Senate Bill 256 ("SB 256" or the "Landry Bill") and to include two amendments together (the "Landry Amendments") that he claims bar Mr. Duncan outright from assuming the office to which he was duly elected. The first amendment ("the First Landry Amendment"),[1] added on April 8, 2026, would make the Bill effective upon gubernatorial signature, and was passed with the explicit intent of barring Mr. Duncan from taking office by ensuring the Landry Bill passes prior to Mr. Duncan's first day in office as Clerk of Orleans Parish Criminal Court. The second amendment ("the Second Landry Amendment"),[2] added on April 23, 2026, eliminates the position of Clerk of Orleans Parish Criminal Court the day before Mr. Duncan is scheduled to assume the role, and redefines the meaning of "clerk of court" for Orleans Parish to purportedly install the Clerk of Orleans Parish *Civil* Court into the new office of Clerk of Court for the Parish of Orleans.

8. Together, the two Landry Amendments, introduced at the Governor's behest by Senator John C. "Jay" Morris III (the Bill's author) and House Representative Dixon McMakin, run headlong into the law. Absent a legally-required election, Defendants seek to appoint the sitting Civil District Court Clerk into the new "Orleans Clerk of Court" position on May 4, 2026.

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1 The text of the First Landry Amendment reads: "Section 3. This Act shall become effective upon signature by the governor or, if not 27 signed by the governor, upon expiration of the time for bills to become law without signature 28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 29 vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval."

2 The text of the Second Landry Amendment reads: "Section 4. The provisions of this Act shall not reduce the current term of office of 34 the clerk of criminal district court for the Parish of Orleans on the effective date of this Act. 35 The office of clerk of criminal district court for the Parish of Orleans shall be abolished at 36 the end of May 3, 2026 and before the term of any other criminal clerk of court begins. 37 Immediately thereafter, the authority, functions, duties, and responsibilities of the office of 38 clerk of criminal district court for the Parish of Orleans, and all of the books, papers, records, 39 monies, actions, and other property of every kind and description, movable and immovable, 40 real and personal, possessed, controlled, or used by the office of the clerk of criminal district 41 court for the Parish of Orleans shall be transferred and owned, possessed, controlled, and 42 used by the clerk of the civil district court for the Parish of Orleans, who shall thereafter be 43 referred to as the clerk of court for the Parish of Orleans."

9. This legislative action targets Mr. Duncan specifically for punishment, violating the constitutional prohibition on enacting bills of attainder.

10. To date, Mr. Duncan has been barred by his predecessor from touring the Criminal District Court Clerk's Office. Meanwhile, the Civil District Court Clerk was invited to and did tour the Office, prior to the introduction of the Second Landry Amendment, which explicitly appoints her to this new position, foretelling Defendants' plan laid bare by the Second Landry Amendment.

11. But the current Clerk of *Civil* District Court, who the Governor instructed the legislature to install, envisions stepping into this newly-created office, cannot do so without an election—in part because the duties of the new Clerk of Court are significantly different from the Civil District Court Clerk's prior duties. By way of example, the Civil District Court Clerk has never served as the Chief Elections Officer for Orleans Parish. That duty has previously strictly fallen within the purview of the Criminal District Court Clerk—the office to which Mr. Duncan was elected.

12. Most importantly, the legislature does not have the power to create new offices and appoint their preferred candidate to bypass elections required by state law.

13. The undemocratic Landry Amendments will certainly chill Mr. Duncan from using his voice as a citizen, candidate for office, or elected official, not to mention the voice of any future candidate running for office who seeks to engage in protected speech with which the Governor disagrees. The messaging surrounding SB 256 is clear: if the wrong candidate with the wrong platform wins the election, expect that office to be abolished, and for the Governor's preferred candidate to be appointed.

14. The Landry Bill cannot operate to sanction illegal bypass of an election. This is particularly so where, as here, such a maneuver is designed to punish Mr. Duncan's speech and voting rights, and if left to stand, would carry out an unlawful conspiracy to single him out and deprive him of the seat to which he was duly elected.

15. Against this backdrop, Mr. Duncan asks this Court to maintain the status quo by allowing him to take his seat as Criminal District Court Clerk on May 4, 2026.

16. Ruling to the contrary would deny Mr. Duncan, in his personal capacity, his right to vote for the newly-created Orleans Clerk of Court position and unlawfully nullify his vote for the Orleans Parish Criminal District Court position. It would further bless Defendants' violation of the Bill of Attainder Clause, their retaliatory attack on Mr. Duncan for his speech, and the conspiracy intended to deprive him of his civil rights.

JURISDICTION

17. Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983, 52 U.S.C. § 10101(a)(2)(A), Art. 1, § 10 of the U.S. Constitution, 42 U.S.C. § 1985, and La. Civ. Code Ann. Art. 2324.

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1343 (civil rights cases), and 28 U.S.C. § 1367 (supplemental jurisdiction).

19. Declaratory and injunctive relief are authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

VENUE

20. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this district, specifically East Baton Rouge Parish, and Defendants conduct business in this district. 28 U.S.C. § 98.

PARTIES

21. Plaintiff Calvin Duncan is a Black 63-year-old lawyer, prisoners' rights activist, racial justice advocate, author, researcher, and exoneree. He is domiciled in the State of Louisiana, is a resident of New Orleans, Louisiana, and is a registered and eligible voter in Orleans Parish. He was elected to the position of Clerk of Criminal District Court in Orleans Parish on November 15, 2025. As such, he is currently the Clerk-Elect of Criminal District Court in Orleans Parish. He brings this action in both his personal capacity as an Orleans parish voter, as well as his official capacity as Clerk-Elect of Orleans Parish Criminal District Court.

22. Defendant Jeffrey Landry is the Governor of the State of Louisiana. As Governor, Defendant Landry is the State's chief executive. He is legally responsible for submitting the state's operating and capital budgets, signing or vetoing legislation, and executing all state laws in accordance with the Constitution of the United States and the Louisiana Constitution. He is sued in his official capacity.

23. Defendant Nancy Landry is the Secretary of State for the State of Louisiana. As Secretary of State, Defendant Landry oversees the state's election process, including qualifying candidates, issuing commissions, and overseeing the administration of elections, including tabulating, verifying, and certifying election results. She is legally responsible for administering all elections in Orleans Parish involving Plaintiff in his personal capacity as a registered voter and in his official capacity as Clerk-Elect of Criminal District Court in Orleans Parish. She is sued in her official capacity.

24. Liz Murrill is the Attorney General of the State of Louisiana. As Attorney General, she is the Chief Legal Officer for the State of Louisiana and represents the legal interests of the Governor of Louisiana. She is legally responsible for protecting and upholding the Constitutional rights of every Louisianian, enforcing the laws of Louisiana as they are written, and ensuring compliance with the Constitution of the United States and the Louisiana Constitution.

STATEMENT OF FACTS

Mr. Duncan Spent 28 Years in Prison for a Crime He Did Not Commit.

25. In 1982, Mr. Duncan was wrongly accused of first-degree murder.[3]

26. In 1985, an Orleans Parish jury issued a unanimous jury verdict wrongly convicting him of that crime.[4]

27. He was sentenced to life in prison at the Louisiana State Penitentiary, where he remained for more than 28 years.[5]

28. Innocent of the crime for which he was convicted, Mr. Duncan fought to prove his innocence throughout his time in prison.[6]

29. Albeit confined behind the iron bars of the largest maximum-security prison in the country, Mr. Duncan's quest to prove his innocence never wavered.

30. Undeterred by the weight of his sentence, he became a self-taught jailhouse lawyer and spent years writing letters to the Orleans Parish Clerk of Criminal District Court, desperate to secure access to his own case files—the very files he knew contained evidence of his innocence.[7]

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3 The National Registry of Exonerations, *Calvin Duncan* (Jan. 31, 2023), https://exonerationregistry.org/cases/13478; Innocence & Justice Louisiana, *Calvin Duncan: Profile*, https://justicelouisiana.org/clients/calvin-duncan/ (last visited Apr. 13, 2026).

4 *Id*.

5 *Id*.; Exh. B, Exoneration Documents for Calvin Duncan.

6 SB 256 Senate Hearing: Judiciary A, 52nd Reg. Sess. (March 31, 2026) (Testimony of Calvin Duncan), at 5:04:01-5:06:48, https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2026/03/0331_26_juda2.

7 *Id*. at 5:04:01-5:06:48, 5:15:05-5:16:20.

31. Unfortunately for Mr. Duncan, his decades-long attempts to secure access to his own case files fell flat due to the mismanagement of files at the Criminal Court Clerk's Office.[8]

32. In 2004, the Innocence Project of New Orleans ("IPNO") (now known as Innocence and Justice Louisiana) agreed to take on Mr. Duncan's case.[9]

33. IPNO's nearly seven years of tireless work not only called Mr. Duncan's conviction into question, it unequivocally proved his innocence.[10]

34. Consequently, in 2011, confronted with evidence they could not overcome, prosecutors presented Mr. Duncan with a coercive, Hobson's Choice—either plead guilty to murder and accept a time-served sentence, by which he could secure his immediate freedom, or decline the offer and remain behind bars during the course of all future attempts to prove his innocence.[11]

35. Unsurprisingly, faced with the option of obtaining his immediate freedom or a continued, uncertain fight for his innocence from behind bars, Mr. Duncan accepted the deal.[12]

Once Free, Mr. Duncan Became a Vocal Advocate and an Outspoken Critic of Louisiana's Deeply Flawed Criminal Legal System, and Eventually Secured His Status as an Exoneree.

36. Having secured his liberty, Mr. Duncan did not fade into the background quietly.

37. Instead, Mr. Duncan spoke out repeatedly against Louisiana's deeply flawed criminal legal system that repeatedly and disproportionately placed innocent people and Black people behind bars at the behest of non-unanimous juries.[13]

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8 *Id.*; The National Registry of Exonerations, *supra* note 3.

9 Innocence & Justice Louisiana, *supra* note 3.

10 *Id.*

11 *Id.*

12 *Id.*

13 SB 256 Senate Hearing: Judiciary A, *supra* note 6, at 5:04:01-5:16:20.

38. In 2013, following Mr. Duncan's release from prison, he founded a nonprofit, The Light of Justice Program (now affiliated with Loyola University New Orleans School of Law), that provides legal assistance to incarcerated people.[14]

39. Mr. Duncan was also the driving force behind *Ramos v. Louisiana*, 590 U.S. 83 (2020), the United States Supreme Court decision that struck down non-unanimous jury convictions, a practice widely understood as a legacy of slavery and Jim Crow segregation.[15]

40. Mr. Duncan's advocacy played a significant part in ending the illegal and racist practice of using non-unanimous juries to secure criminal convictions in Louisiana and across the country.[16]

41. Mr. Duncan nonetheless knew that, without access to their criminal records, incarcerated people would not be able to benefit from the *Ramos* decision, make their appeals, and meet other legal deadlines. Because New Orleans only recently began digitizing records, Mr. Duncan started bringing his scanner to the District Attorney's office to scan records for people who were incarcerated, in order for them to meet their filing deadlines.[17]

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14 *Light of Justice*, Loyola University New Orleans Jesuit Research Institute, https://jsri.loyno.edu/programs/light-justice (last visited Apr. 14, 2026); Lily Bordelon, *The Light of Justice Program Shines Bright with New JSRI Grant*, Loyola New Orleans The Maroon (Sep. 5, 2025), https://loyolamaroon.com/10045309/news/campus/the-light-of-justice-program-shines-bright-with-new-jsri-grant/; Open Society Foundations, *Foundations Announce 2013 Soros Justice Fellow* (May 14, 2013), https://www.opensocietyfoundations.org/newsroom/foundations-announce-2013-soros-justice-fellows.

15 Adam Liptak, *A Relentless Jailhouse Lawyer Propels a Case to the Supreme Court*, NY Times (Aug. 5, 2019), https://www.nytimes.com/2019/08/05/us/politics/supreme-court-nonunanimous-juries.html.

16 *Id.*; Nick Chrastil, *DA's office agrees to vacate 22 non-unanimous jury convictions*, The Lens Nola (Feb. 26, 2021), https://thelensnola.org/2021/02/26/das-office-agrees-to-vacate-22-non-unanimous-jury-conviction; Mark Sherman, *Supreme Court: Criminal juries must be unanimous to convict*, Associated Press (Apr. 20, 2020), https://apnews.com/article/a4f065037299491913827b7d8eda9023.

17 Eve Abrams, *He spent decades in prison for a crime he didn't commit. Now he's an elected official* (Nov. 19, 2025), https://www.npr.org/2025/11/19/nx-s1-5611459/he-spent-decades-in-prison-for-a-crime-he-didnt-commit-now-hes-an-elected-official.

42. In 2019, Mr. Duncan enrolled at Tulane University, earning a bachelor's degree in paralegal studies.[18]

43. Separately, Mr. Duncan continued to fight for his formal exoneration, which he secured in 2021,[19] when an Orleans Parish criminal court judge ruled that Mr. Duncan had been unjustly convicted.[20] The judge's ruling was clear: Calvin presented evidence of his innocence, pursuant to La. C. Cr. P. art. 926.2, and his conviction was vacated.[21]

44. Then, in 2023, he earned his law degree from Lewis and Clark Law School.[22]

45. As an exoneree whose name now appeared in the National Registry of Exonerations, Mr. Duncan never ceased speaking out about his years in prison when the Criminal District Court Clerk's office in Orleans Parish failed him.[23] He repeatedly underscored that improper recordkeeping at the Criminal District Court Clerk's office leads to wrongful convictions, and wrongful convictions disproportionately impact Black people.[24]

46. In 2023, Mr. Duncan sought to obtain $330,000 in state compensation for his wrongful conviction.[25] Defendant Murrill, who took over the Attorney General's office from

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18 Tulane University School of Professional Advancement, *Calvin Duncan: Adjunct Lecturer*, https://sopa.tulane.edu/about-sopa/advisors-faculty-staff/calvin-duncan (last visited Apr. 13, 2026); Alicia Jasmin, *Tulane SoPA plays vital role in alum's journey from prison to JD*, Tulane University (June 1, 2023), https://sopa.tulane.edu/news/tulane_sopa_alum_calvin_duncan_earns_jd.

19 The National Registry of Exonerations, *supra* note 3. In 2021, the Louisiana Legislature passed a law allowing defendants (who had previously pled guilty to crimes they did not commit) to challenge their convictions in circumstances where evidence of their innocence was wrongfully withheld by the prosecution.

20 *Id.*

21 Exh. B, Exoneration Documents for Calvin Duncan.

22 Lewis & Clark Law School, *Incoming Student Profile: Jailhouse Lawyer Who Brought Case to Supreme Court* (May 12, 2020), https://law.lclark.edu/live/news/43521-incoming-student-profile-jailhouse-lawyer-who.

23 Abrams, *supra* note 17; *Man who had murder conviction tossed wins election as New Orleans chief criminal court record keeper*, CBS News (Nov. 17, 2025), https://www.cbsnews.com/news/calvin-duncan-murder-conviction-tossed-wins-new-orleans-chief-record-keeper.

24 *Id*.

25 Jack Brook, *A New Orleans candidate's murder conviction was tossed but the state still challenges his past*, Associated Press (Oct. 8, 2025), https://apnews.com/article/new-orleans-election-calvin-duncan-exonerated-murder-73d617069d9d66daffc7576bdb2b6350.

Governor Landry, threatened to contest Mr. Duncan's ability to practice law if he did not drop his claim for damages.[26] Weighing the significance of the threat, and fearful of its very likely ability to prevent him from practicing law, Mr. Duncan reluctantly withdrew his damages claim so that his ability to practice law would not be imperiled.[27]

47. In 2025, Loyola University School of Law awarded Mr. Duncan an honorary degree and invited him to deliver the commencement address to its law school class.[28]

In 2025, Mr. Duncan Ran for and, in a Landslide Victory, Won the Very Office That Failed Him More Than a Decade Prior.

48. On October 11, 2025, the Orleans Parish Clerk of Criminal District Court appeared on the ballot.[29]

49. Mr. Duncan decided he was the best positioned candidate to run for that office.

50. Indeed, there was no question that he knew better than any other potential candidate what was at stake when criminal court records are mismanaged.[30]

51. On September 23, 2025, during a debate against then-incumbent Darren Lombard, Mr. Duncan told voters directly: "I stayed in prison 28 and a half years trying to get my records. I've never wanted that to happen to nobody else."[31] He continued: "I know the consequences of

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26 *Id.*

27 *Id.*

28 Loyola University New Orleans, *Tech Entrepreneur Tom Gruber, Major General Angela Salinas, and Justice Advocate Calvin Duncan to Speak, Receive Honorary Degrees at 2025 Loyola University Commencement Ceremonies* (Apr. 9, 2025), https://www.loyno.edu/news/apr-09-2025_tech-entrepreneur-tom-gruber-major-general-angela-salinas-justice-advocate-calvin.

29 Erin Lowrey, *Orleans Parish Oct. 11 Open Primary Election results*, WDSU (Oct. 11, 2025), https://www.wdsu.com/article/new-orleans-oct-11-election-results/67963033; SB 256 Senate Hearing: Judiciary A, *supra* note 6, at 5:06:51-5:07:10.

30 Calvin for Clerk, https://calvinforclerk.com/ (last visited Apr. 14, 2026); SB 256 Senate Hearing: Judiciary A, *supra* note 6, at 5:04:01-5:06:48, 5:15:05-5:16:20.

31 Sula Kim, *Orleans Parish clerk of criminal court race heats up ahead of runoff* (Video), at 0:36-0:46, WDSU (Nov. 11, 2025), https://www.wdsu.com/article/orleans-parish-clerk-of-criminal-court-race-heats-up-runoff/69384944#:~:text=%2C%22%20said%20Lombard.-,Duncan%20highlighted%20the%20importance%20of%20proper%20record%20storage%2C%20stating%2C%20%22,get%20the%20justice%20they%20deserve.

getting it wrong. I know the consequences of why when records are not properly stored, and evidence are not properly stored and secured, victims cannot get the justice they deserve."[32]

52. New Orleans voters responded to Mr. Duncan's message, earning him 47 percent of the votes across all precincts in Orleans Parish during the October election.[33]

53. Because no candidate earned over 50% of the October vote, a November run-off was scheduled.

54. In the November 2025 runoff election, Mr. Duncan triumphed with 68 percent of the vote—approximately 38,681 New Orleans residents decided they wanted Mr. Duncan to represent them as their Clerk of Criminal District Court.[34]

55. Mr. Duncan's defeat of an incumbent has since been hailed as one of the most decisive electoral victories in recent Orleans Parish history.[35]

56. On April 20, 2026, Mr. Duncan received his Commission Certificate, Criminal District Clerk of Court identification badge, and Oath of Office forms. He was sworn into office the following day, and is currently scheduled to take office on May 4, 2026.[36]

%22; WDSU, *Hot Seat: Orleans Clerk of Criminal Court*, at 1:02–2:05 (September 23, 2025), https://www.youtube.com/watch?v=JWcZL7o42rg.

32 Kim, *supra* note 31.

33 Robert Stewart, *'Jailhouse lawyer' Calvin Duncan leads clerk vote as 'Fair Chance' amendment passes*, WWNO (Oct. 11, 2025), https://www.wwno.org/politics/2025-10-11/jailhouse-lawyer-calvin-duncan-leads-clerk-vote-as-fair-chance-amendment-passes.

34 Greg LaRose, *Former 'prison lawyer' wins Orleans clerk of court election*, La. Illuminator (Nov. 15, 2025), https://lailluminator.com/2025/11/15/duncan-clerk.

35 *Id.*

36 Alyssa Curtiz, '*A slap in the face': Proposed New Orleans court overhaul could eliminate incoming Clerk Calvin Duncan*, WWL (Mar. 30, 2026), https://www.wwltv.com/article/news/local/local-politics/a-slap-in-the-face-proposed-court-overhaul-in-new-orleans-could-eliminate-incoming-clerk-calvin-duncan/289-431070fb-36e0-49ee-8883-09e70eb50ea7.

Mr. Duncan's Success Was Thwarted at Nearly Every Turn by the State's Highest-Ranking Attorney Who Threatened to Retaliate Against Mr. Duncan on Behalf of Her Clients for Using His Protected Speech to Emphasize His Exoneree Status.

57. Defendants have engaged in a coordinated conspiracy to prevent Mr. Duncan from taking office as the Criminal District Clerk of Court of Orleans Parish.

58. In the lead up to the October 2025 primary, Defendant Murrill, the highest-ranking attorney in the State who represents all state actors in their line of duty, including Defendants Landry and Landry, took the extraordinary and unprecedented step of using her official office to publicly attack and threaten retaliation against Mr. Duncan if he continued to promote his exonerated status during the course of his campaign, in an attempt to prevent him from taking office.

59. On September 30, 2025, Defendant Murrill sent Mr. Duncan a letter demanding that he "cease representing to the public that you were 'exonerated' to avoid further action from this office." *See* Exh. C.

60. The Attorney General shockingly claimed that Mr. Duncan's exoneration—already documented in court records, the National Register, recognized by a sitting judge of the state, and acknowledged by the Orleans District Attorney's Office—was improper.[37]

61. She wrote that the circumstances surrounding the vacatur of his conviction caused her "grave concern about abuse and manipulation of the justice system," even though she acknowledged that "criminal court records confirmed that Mr. Duncan's conviction was vacated in 2021."[38]

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[37] Travers Mackel, *AG Liz Murrill questions the past of New Orleans political candidate*, WDSU (Oct. 2, 2025), https://www.wdsu.com/article/calvin-duncan-murrill-williams-letter/68162121.

[38] *Id*.; Sophie Kasakove & James Finn, *Liz Murrill accuses New Orleans criminal clerk candidate of misrepresenting his case*, Times Picayune (Oct. 2, 2025), https://www.nola.com/news/politics/liz-murrill-calvin-duncan/article_3025f33e-fd02-4a2d-b287-7f35f5b9fcbd.html; John Simerman, *AG Murrill stands by criticism of criminal clerk candidate, who fires back*, Times Picayune (Oct. 2, 2025), https://www.nola.com/news/new-

62. There is no question that, in an attempt to discourage voters from electing Mr. Duncan into office, her letter sought to interfere with an election, not only by publicly casting doubt on the legitimacy of Mr. Duncan's innocence during the course of his campaign, but by also threatening retaliation by the arm of the State if he managed to secure the office for which he was running.[39]

63. Days later, then-incumbent Lombard's campaign took on the mantle by pursuing a temporary restraining order against Mr. Duncan seeking to prevent him from using the word "exonerated."[40] The request for a temporary restraining order was built on the Attorney General's public statements and directly challenged Mr. Duncan's innocence.[41]

64. Mr. Lombard later withdrew the petition, having secured the media attention he had hoped for with his filing.

65. On Wednesday, October 1, 2025, mere days after she sent her initial letter, Defendant Murrill doubled down on the State's quest to retaliate against Mr. Duncan if he continued to tout his status as an exonerated person: "Lombard can do whatever he wants with my letter because it's a public record. I sent the letter to Duncan because Duncan is improperly representing that he was 'exonerated,' when he was not."[42] Defendant Murrill vowed to take "further action" against Mr. Duncan if he did not stop calling himself exonerated.[43]

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orleans-criminal-clerk-candidate-defends-exoneration-claim/article_65f7f444-9405-49cc-b0d9-42faf1867169.html; James Finn, *New Orleans criminal clerk race gets heated as incumbent attacks challenger's record*, Times Picayune (Sep. 26, 2025), https://www.nola.com/news/politics/clerk-calvin-duncan-darren-lombard/article_3fea6199-7ea9-4e53-a85e-45791a16592e.html.

39 *Id.*

40 Katy Reckdahl, *'I'll fight for your rights like I fought for my own freedom'*, The Lens Nola (Oct. 10, 2025), https://thelensnola.org/2025/10/10/ill-fight-for-your-rights-like-i-fought-for-my-own-freedom.

41 *Id.*

42 Mackel, *supra* note 37.

43 *Id.*; Simerman, *supra* note 38.

66. In response to Defendant Murrill's threats, more than 100 attorneys issued a widely disseminated statement defending Mr. Duncan, writing that the facts, the law, and the procedural history were clear: "Calvin Duncan was wrongly convicted, he proved his innocence, and he is fully exonerated."[44]

67. Despite Defendant Murrill's attempt to implement the first step of the conspiracy to prevent Mr. Duncan from taking office, Mr. Duncan won the election.

After Mr. Duncan's Election, the Governor Followed Through With His Retaliatory Agenda Against Mr. Duncan, by Directing Introduction of the Landry Bill and the First and Second Landry Amendments.

68. As the 2026 Spring legislative session opened, Governor Landry, who sets the priorities for the legislature, gave clear direction to legislators that they should act swiftly to implement his agenda.[45] Attempting to do what Defendant Murrill could not, he took up the cause of trying to unseat Mr. Duncan after he was duly elected.

69. Senator Morris, a Republican who represents Monroe, over 200 miles away from New Orleans in the northeast corner of Louisiana, has no constituent interest in the administration of Orleans Parish criminal courts.[46] And yet, during a committee hearing on March 31, 2026, Representative Morris introduced SB 256 at the Governor's behest.[47] He admitted that the Landry Bill lacked any supportive studies or data to back it, but introduced it nonetheless.[48]

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[44] Legal Professionals' Statement on Calvin Duncan's Innocence and Exoneration, https://docs.google.com/document/d/1wJive9dA-PRgRXDERE4PvrOfBz3zN9yC59hHP_0v9j4 (last visited Apr. 15, 2026); Reckdahl, *supra* note 40; Jack Brook & Sarah Cline, *Louisiana GOP races to eliminate an elected office won by an exonerated man*, Associated Press (Apr. 9, 2026), https://apnews.com/article/new-orleans-election-calvin-duncan-exonerated-murder-73d617069d9d66daffc7576bdb2b6350.

[45] La. Office of the Governor, *Governor Jeff Landry Opens Third Regular Session* (Mar. 9, 2026), https://gov.louisiana.gov/news/governor-jeff-landry-opens-third-regular-session; Daniel Miller, *Louisiana Republicans push to eliminate an elected office won by exonerated man*, Live Now Fox (Apr. 10, 2026), https://www.livenowfox.com/news/louisiana-gop-eliminate-elected-office-exonerated-man.

[46] La. Senate, *Senator John C. "Jay" Morris III, District 35*, https://senate.la.gov/smembers?ID=35 (last visited Apr. 19, 2026).

[47] S.B. 256, 52d Reg. Sess. (La. 2026), https://legis.la.gov/legis/BillInfo.aspx?i=250431 (last visited Apr. 19, 2026).

[48] *Id.*

70. SB 256 stands to merge the Orleans Parish Clerk of Criminal District Court with the Orleans Parish Clerk of Civil District Court, eliminating those positions entirely and creating a new position: Orleans Clerk of Court.[49]

71. The position of Civil District Court Clerk is currently held by Ms. Chelsey Richard Napoleon, who ran unopposed and in the absence of any election.[50] Ms. Napoleon never appeared on the October or November ballots.

72. After an amendment brought by House Representative McMakin on April 23, 2026, SB 256 now shockingly indicates that, despite the position being one that requires an election, the sitting Civil District Court Clerk will assume by legislative appointment control of the authority and resources of the Criminal District Court Clerk.[51] In fact, as described *infra* at ¶¶ 121–131, in the absence of an election to fill the vacancy created by SB 256, it should be Mr. Duncan, not Ms. Napoleon, who assumes the role.

73. The expressed intent of the Bill's proponents, in line with Governor Landry's direction, is unmistakably to prevent Mr. Duncan specifically from taking office on May 4, 2026.

74. Senator Morris has stated publicly that, when the Bill passes, Ms. Napoleon will become the new Clerk of Court—the ultimate desired outcome of Defendants' conspiratorial plan.[52] The McMakin amendment (the "Second Landry Amendment")—which followed Morris' amendment (the "First Landry Amendment") on April 8, 2026, seeking for the Bill to go into effect

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49 *Id.*; Robert Stewart, *Under bill passed by state Senate, New Orleans' elected court clerk might not be able to take office*, Verite News (Apr. 9, 2026), https://veritenews.org/2026/04/09/senate-bill-256-calvin-duncan-clerk/.

50 Clerk of Civil District Court for the Parish of Orleans, https://www.orleanscivilclerk.com/ (last visited Apr. 13, 2026).

51 S.B. 256, *supra* note 47.

52 Kaylee Poche, *Louisiana GOP Races to Keep an Exonerated Black Man from Taking Office in New Orleans*, The Gambit (Apr. 16, 2026), https://www.nola.com/gambit/news/politics_elections/louisiana-house-panel-passes-new-orleans-clerk-of-court-bill/article_638bacdd-b7c7-45b4-a530-75896f2435a5.html.

upon gubernatorial signature—aims to ensure immediate success of Defendants' conspiratorial plan.

75. Once the Landry Bill passed through the Senate Judiciary A Committee, on April 8, 2026, Senator Morris introduced the first of two amendments, referred to herein as the First Landry Amendment. That Amendment, which aims to ensure the Bill goes into effect immediately upon Governor Landry's signature—passed through the Senate Floor.[53] The specific intent of the First Landry Amendment was to ensure the Landry Bill would become law before Mr. Duncan takes office on May 4, 2026. [54]

76. On the Senate Floor, Senator Morris made plain that the First Landry Amendment was brought at the behest of the Governor who sought "[t]o go ahead and get [the Bill passed into law] before Mr. Duncan takes office."[55]

77. When New Orleans Senator Royce Duplessis questioned Morris as to why the First Amendment was sought, Morris underscored: "[O]therwise, we'd probably have to pay him for the next four years in a job that is gonna be eliminated. So, it would make him an immediate lame duck."[56]

78. When asked whether he had consulted with the Attorney General about the potential for legal claims being raised as a result of the First Landry Amendment, Senator Morris acknowledged that he understood the state constitution prevented shortening an official's term once he took office and thereby confirmed that the First Landry Amendment was designed to ensure Mr. Duncan never took office as Clerk of the Criminal District Court.[57]

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53 S.B. 256, *supra* note 47.

54 Exh. D-1, Unofficial Transcript of April 8, 2026 Senate Floor Debate on SB 256, at 1:46:05-1:48:00.

55 *Id*.

56 *Id*.

57 *Id*. at 1:46:56–1:48:47; 1:56:31.

79. Senator Duplessis pressed Senator Morris as to the suspicious timing, given the already widespread and publicly voiced fears of retaliation by the Governor against Mr. Duncan: "If we needed to consolidate the offices so badly, why wasn't this Bill brought last year?"[58]

80. Senator Morris stated candidly that he was following the Governor's directives: "Well. I don't know. I didn't think about bringing it last year. And this is in *the Governor's package*. So maybe it's something *got his attention as well*."[59]

81. But the First Landry Amendment failed to contend with the constitutional requirement that the state fill the redesigned office of Clerk of Court via an election. *See* La. Const. Art. V. § 28(A).

82. The constitutional requirements are clear: voters deserve the opportunity to exercise their rights in electing their candidate of choice to the new Office of Orleans Parish Clerk of Court.

83. That Office cannot be filled by the current Clerk of Civil District Court because that position did not even appear on the ballot in 2025—indeed, Ms. Napoleon was seated because she was unopposed.

84. Nevertheless, in or around the first weeks of April, Ms. Napoleon revealed that she had adopted the discriminatory purpose of the Bill and the conspiracy's efforts to enact it. At the time, despite the absence of any mention in the text of the Bill that she would assume the new role of Clerk of Court, she shared conspirators' understanding of the Bill's intended effect and appeared before the legislature to testify.

85. Even before the Second Landry Amendment was introduced, Ms. Napoleon began touring the Office of the Criminal District Court Clerk in preparation for taking that newly created role on May 4, 2026.

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[58] *Id.* at 1:46:12:19.
[59] *Id.* at 1:46:19:00.

86. As Mr. Duncan told the Senate Judiciary A Committee, which first heard the Bill, the passage of the Bill is "a sad statement for this committee to send to New Orleans that your vote did not count."[60]

87. On April 8, following Senator Morris's testimony, the Louisiana Senate voted 25 to 11 to pass SB 256 with the First Landry Amendment.[61] Not a single Orleans-based senator voted in favor of the Bill.[62]

88. SB 256 was set for a vote before the House Judiciary Committee on April 16, 2026.[63] It passed with 8 yeas, 5 nays, and 1 abstention.[64]

89. That day, in committee, prior to the vote, Mr. Duncan and others continued to express concerns. Mr. Duncan stated: "I sincerely and honestly believe I'm being targeted." Republican Representative Kathy Edmonston expressed her concerns about the impact of the Bill on voters: "I'm just really concerned with the people's right to vote for who or what they want to vote for. I mean, this doesn't have anything to do with anything else to me but integrity."[65]

90. That same day, when pressed about how the Bill would operate in practice, Senator Morris did not provide answers. Instead, he noted that he anticipated litigation over the Landry Bill.

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60 SB 256 Senate Hearing: Judiciary A, *supra* note 6, at 5:11:27-5:11:36.

61 Daily Proof of the Official Journal of the Senate of the State of La., Fourteenth Day's Proceedings, 52d Reg. Sess. 27 (Apr. 8, 2026), https://senate.la.gov/Journals/2026/RS/26RS%20-%20SJ%200408%2014.PDF (last visited Apr. 15, 2026); Bernard Smith, *Louisiana Senate Rejects Amendment to Let Newly Elected Clerk Calvin Duncan Serve His Term*, WWNO (Apr. 9, 2026), https://www.wwno.org/law/2026-04-09/louisiana-senate-rejects-amendment-to-let-newly-elected-clerk-calvin-duncan-serve-his-term.

62 Smith, *supra* note 61.

63 Matt Bruce, *Senate bill to merge Orleans Parish clerks of court clears Louisiana House committee*, Times Picayune (Apr. 16, 2026), https://www.nola.com/news/courts/louisiana-senate-approves-bill-merge-orleans-court-clerks-local-opposition/article_cd064ac9-fb18-41cd-bffa-28c3aec19f40.html.

64 *Id.*

65 Poche, *supra* note 52.

91. Determined to do all he could to preserve his ability to take office, on April 17, 2026, Mr. Duncan called the Secretary of State's Office and asked for his Commission Certificate and Oath of Office forms. He was told they would be ready on April 20, 2026.

92. On April 20, 2026, Mr. Duncan retrieved his Commission Certificate, Criminal District Clerk of Court identification badge, and Oath of Office forms from the Secretary of State's Office. *See* Exh. A.

93. On April 21, 2026, he was sworn into Office, as permitted by La. R.S. 42:141(B). An article published that same day quoted Governor Landry, who the Friday prior—when asked about the Landry Bill—had said: "Not only am I going to sign it, I'm going to absolutely support it and *make sure it's passed*" (emphasis added).[66]

94. The House passed the Landry Bill on April 23, 2026, but not without a late-breaking amendment by House Representative Dixon McMakin. The new amendment, also brought at the Governor's behest, explicitly acknowledges that the sitting Civil District Court Clerk will assume by legislative appointment the new position of Orleans Clerk of Court for the upcoming term (the "Second Landry Amendment"). This last-minute amendment to satisfy the Governor's agenda to unseat Mr. Duncan made the First Landry Amendment's intention explicit. The Second Landry Amendment passed the House that same day on April 23, 2026. On April 29, 2026, the Senate concurred with the addition of the Second Landry Amendment. The Bill now heads to the Governor's desk for signature. By virtue of the two Landry Amendments, the Governor's signature stands to immediately appoint Ms. Napoleon to a vacant office for which no election has been held.

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[66] Matt Bruce, *New Orleans criminal clerk-elect Calvin Duncan takes oath of office as legislature weighs axing seat*, NOLA.com (Apr. 21, 2026), https://www.nola.com/news/courts/new-orleans-criminal-court-clerk-calvin-duncan-swearing-in/article_be71c24a-bb9b-4c7d-a9c6-effc04a73965.amp.html.

Orleans Parish and Louisiana Have a Long History of Racial Disenfranchisement.

95. If sworn into the office for which he was elected, Mr. Duncan will serve the predominantly African American residents of Orleans Parish.[67]

96. Mr. Duncan's voters overwhelmingly understood that Mr. Duncan is uniquely equipped with the expertise and experience to improve record keeping in criminal court, particularly considering that 80% of people subjected to arrest in New Orleans are Black, despite only representing 54% of the overall population.[68]

97. These racial disparities are historic and lasting. Orleans Parish is a majority-minority jurisdiction, and federal courts have recognized it as such, acknowledging its history of racial segregation, voting discrimination, and racially discriminatory gerrymandering.[69]

98. The legislature that voted to undo the choice of these voters is overwhelmingly white and Republican.[70]

99. Senator Duplessis, speaking on the floor of the Louisiana Senate in opposition to SB 256, invoked the racist history of voter disenfranchisement in Louisiana directly.[71] He drew a parallel between Calvin Duncan and John Willis Menard, a Black man elected in 1868 to represent

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67 U.S. Census Bur., *Quick Facts: New Orleans, Louisiana*, https://www.census.gov/quickfacts/fact/table/neworleanscitylouisiana/PST045225 (last visited Apr. 13, 2026).

68 Michelle Liu, *New Orleans police say their use of force data shows no racial disparities. We checked the numbers,* Verite News (Oct. 31, 2024), https://veritenews.org/2024/10/31/nopd-consent-decree-force-racial-disparity/.

69 *See Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 336 (E.D. La. 1956) (striking down legally mandated racial segregation in New Orleans public schools), *aff'd*, 242 F.2d 156 (5th Cir. 1957); *Chisom v. Roemer*, 501 U.S. 380 (1991) (recognizing Orleans Parish as a majority-Black jurisdiction and holding that at-large judicial elections diluted minority voting strength under Section 2 of the VRA).

70 La. House of Representatives, *Member Demographics*, https://house.louisiana.gov/H_Reps/H_Reps_ByDemographicProfile (last visited Apr. 15, 2026).

71 Exh. D-1 at 1:51:00:01-1:56:24:18.

Louisiana's 2nd Congressional District following the Civil War, who was also prevented from assuming the office to which he had been duly elected.[72]

100. Moments before the Senate passed the First Landry Amendment, Senator Duplessis represented how many New Orleans voters felt witnessing their votes cast aside: "I'm not making this up. I'm just repeating what happened. In the same era. PBS Pinchback. We all know him. For the few days he served as the first Black governor of Louisiana. But we often don't hear the story about when he ran and was elected to serve in the U.S. Senate and was not allowed to serve for whatever reasons were given, just like whatever reasons were given today, why Calvin Duncan will not be allowed to serve."[73]

101. On April 16, 2026, the NAACP Legal Defense Fund ("LDF") sent a letter to the Louisiana House Committee on Judiciary underscoring the Governor's retaliatory motive behind the Landry Bill: "This bill amounts to retaliation against Clerk-Elect Duncan, a formerly incarcerated person whose conviction was vacated, and who has been critical of the current administration's handling of court records, one of many issues he campaigned to change through serving in the position for which he was elected, as the Criminal Court Clerk." *See* Exh. E.

102. LDF also underscored how the Landry Bill "is an attack on the rights of voters in Orleans Parish—a racially-diverse electorate comprised of a significant number of Black voters" because it "threatens to defy the will of Orleans Parish voters and deny them their right to have their recently elected candidate of choice, Calvin Duncan, serve them as Clerk of Orleans Parish Criminal Court." *Id.*

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72 *Id*. at 1:51:00:01-1:56:24:18; Tammy C. Barney, *First Black person elected to Congress not allowed to take seat*, Verite News (Nov. 14, 2025), https://veritenews.org/2025/11/14/bitd-john-menard-first-black-person-elected-congress/.

73 Exh. D-1 at 1:51:00:01-1:56:24:18.

Mr. Duncan Ran and Won on a Platform Championing Racial Justice, For Which He Has Now Been Targeted and Punished.

103. Given the disproportionate impact of mass incarceration on Black people in this country, advocates for criminal justice reform are, by their very nature, advocates for racial justice. As an outspoken critic of the criminal legal system, Mr. Duncan is well known as a champion of racial justice.[74]

104. In Louisiana, 66% of people incarcerated in prison are Black, despite Black people making up only 32% of the general population. By contrast, 34% of Louisiana's prison population is white (non-Hispanic), despite making up 58% of the general population.[75] The Louisiana State Penitentiary (colloquially referred to as "Angola" based on its racist plantation history), where Mr. Duncan was incarcerated for over two decades, is 74% Black.[76]

105. In addition, 84% of the overall wrongful convictions in Louisiana concern Black people, and 96% of wrongful imprisonments lasting over 25 years concern Black people. One-hundred (100) percent of wrongfully convicted children in Louisiana were Black.[77] Nationally, 61% of all exonerations in 2024 involved Black people, according to the National Registry of Exonerations' 2025 Report.[78]

106. Mr. Duncan's advocacy, as a Black exoneree, seeks to address these racial disparities. As a jailhouse lawyer at Angola, Mr. Duncan helped hundreds of incarcerated people

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74 Liptak, *supra* note 15.

75 Prison Policy Initiative, *Comparing Louisiana's Resident and Incarcerated Populations*, https://www.prisonpolicy.org/profiles/LA.html (last visited Apr. 18, 2026).

76 Am. Civil Liberties Union & Univ. of Chi. Law Sch. Global Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers* 34 (Research Report, 2022), https://www.aclu.org/publications/captive-labor-exploitation-incarcerated-workers.

77 Innocence & Justice La., *Wrongful Convictions in Louisiana*, https://justicelouisiana.org/criminal-justice-issues/wrongful-convictions/ (last visited Apr. 19, 2026).

78 Nat'l Registry of Exonerations, *2025 Annual Report* 2 (2025), https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2025Exonerations.pdf (last visited Apr. 19, 2026).

access their records and file motions in court for post-conviction relief and to overturn wrongful convictions.[79] Given that Angola's population is majority Black, these efforts overwhelmingly benefitted Black people in prison. Mr. Duncan, for his part, has regularly emphasized the racialized nature of Louisiana's criminal legal system.

107. Mr. Duncan co-founded the Visiting Room Project, which interviews men serving life without parole at Angola, the majority of whom are Black.[80]

108. As described *supra* ¶¶ 39–40, Mr. Duncan played a pivotal role in ending Louisiana's non-unanimous juries, which are often referred to by advocates for criminal justice reform as "Jim Crow Juries."[81] The practice of non-unanimous juries became law in 1898 when it was enshrined in the Louisiana Constitution with the explicit purpose of "establish[ing] the supremacy of the white race in the state."[82]

109. As a candidate for Clerk of the Criminal District Court, Mr. Duncan pledged that he would properly preserve case records and evidence, understanding that failing to do so can lead to wrongful convictions, which disproportionately impact Black Orleanians.[83] He pledged to make it easier for incarcerated people, the majority of whom are Black, to exercise their rights by giving them easier access to their court records.[84]

110. Mr. Duncan brings this suit because there is no doubt in his mind (particularly now with the passage of the Second Landry Amendment) that he was targeted as a Black exoneree who champions racial justice. This view is shared by thousands of other Orleans Parish voters who

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79 Liptak, *supra* note 15.

80 *About Angola*, The Visiting Room Project, https://www.visitingroomproject.org/about/?about=2 (last visited Apr. 19, 2026).

81 *Id.*

82 Jessica Rosgaard & Wallis Watkins, *The History of Louisiana's Non-Unanimous Jury Rule*, WWNO (Oct. 22, 2018), https://www.wwno.org/politics/2018-10-22/the-history-of-louisianas-non-unanimous-jury-rule.

83 Calvin Duncan, Clerk-Elect, *Platform*, https://calvinforclerk.com/platform (last visited Apr. 19, 2026).

84 *Id.*

stand to have their vote erased if Mr. Duncan does not take his rightful place as Criminal District Court Clerk on May 4, 2026.[85]

DEFENDANTS' VIOLATIONS OF LAW

A. Issuance of a Commission Certificate (with Defendant Jeff Landry's Signature) and Oath of Office Forms to Ms. Napoleon by Defendant Nancy Landry—Prior to the Necessary Calling of an Election for the Vacant and New Clerk of Court Seat—Denies Mr. Duncan, in His Personal Capacity, the Effective Right to Vote for that Office.

111. The Fourteenth Amendment right to vote is a fundamental right safeguarded by the Constitution.[86] The vote is the quintessential mechanism "to *express* [one's] political preferences."[87]

112. The right to an effective vote is broadly interpreted "as a right of meaningful access to the political process rather than narrowly as a mere right of registration and access to the ballot box."[88]

113. Regulations that "burden a relevant constitutional right, such as the [Fourteenth Amendment] right to vote or the First Amendment rights of *free expression* and association," yet "primarily regulate the mechanics of the electoral process, as opposed to core political speech," trigger an analysis under *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).[89]

114. Under the Fifth Circuit's two-part test applying *Anderson* and *Burdick*, "the court 'must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.'"[90] Then "the court

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85 LaRose, *supra* note 34.

86 *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

87 *Cf. Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, (1979) (emphasis added).

88 *Smith v. Winter*, 717 F.2d 191, 198 (5th Cir. 1983), c*iting Kirksey v. Board of Supervisors*, 554 F.2d 139, 142 (5th Cir. 1977).

89 *See Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 138 (3d Cir. 2022) (emphasis added).

90 *La Union del Pueblo Entero v. Abbott,* 167 F.4th 743, 760 (5th Cir. 2026) (citation omitted).

'must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule."[91]

115. Here, the "character and magnitude" of the injury is of the utmost import—the right to have one's vote mean something. "In pursuing [a substantial state interest], the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity [because] [s]tatutes affecting constitutional rights must be drawn with 'precision,' and must be tailored to serve their legitimate objections."[92]

116. It is a "substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population."[93] There is a "concomitant right to have [one's] vote[] counted[.]"[94]

117. The citizens of Louisiana's 64 parishes, by its very Constitution, elect their clerks of court in each parish.[95]

118. The voters of Orleans Parish resoundingly elected Mr. Duncan to his office on November 15, 2025.

119. In flagrant violation of that right, the First and Second Landry Amendments serves to bar Mr. Duncan from taking the office to which he was duly elected.

120. Erasing the will of a voter—without providing for an election for the newly-created Orleans Clerk of Court seat—demonstrates that Mr. Duncan, as an Orleans Parish voter, is being

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91 *Id.*
92 *Dunn,* 405 U.S. at 343 (citation omitted).
93 *Lubin v. Panish*, 415 U.S. 709, 713 (1974).
94 *Gamza v. Aguirre*, 619 F.2d 449, 452 (5th Cir. 1980) (collecting cases outlining the right to vote and government prohibitions on diluting or discarding those votes).
95 La. Const. Art. V § 28(A).

discriminated against in a way that no other Parish voters have been discriminated against as to their respective Clerk of Court seats.

121. There can be no state interest that outweighs this injury when the solution to the problem is simple—seat Mr. Duncan in the seat to which he was duly elected: Clerk of the Criminal District Court.

122. At issue here is an "ipso facto" vacancy.[96] This means that the new Orleans Clerk of Court office at issue only comes into existence after a general election, such that the First and Second Landry Amendments have no force of law.[97]

123. Alternatively, for the sake of argument, assuming Defendants claim this is not a "vacancy" and that no new election is required, the understanding of the term "clerk of court" in SB 256 is necessarily anchored to the term's usage at the time of Mr. Duncan and Defendant Ms. Napoleon's respective elections. This means the revised definition for "clerk of court" in SB 256 cannot operate to alter the term's meaning that it had on the date of the election at issue (November 15, 2025), which the Second Landry Amendment purports to do.[98] At the time of Mr. Duncan's election, up and through today, the term "'Clerk of court' or 'clerk' means the clerk of the district court, except that in any parish having a civil district court and a criminal district court, these terms mean the clerk of the criminal district court."[99] Accordingly, on November 15, 2025, Mr. Duncan

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96 *See State ex rel. Sanchez v. Dixon*, 4 So. 2d 591, 595 (La. Ct. App. 1941) (holding that "a newly created office becomes ipso facto vacant when it is created and remains vacant until it is filled by an incumbent"); *id.* ("Since the act specifically requires an election to fill the office of additional police juror and makes no provision for an appointment to fill the office until the general election is held, we conclude that no such office can come into existence until an election is held to fill it, and there can be no vacancy in an office that has not come into existence."); *see also* La. R.S. 18:402(E)(1) ("Special elections to fill newly created offices or vacancies in office shall be held on dates fixed by the appropriate authority in the proclamation issued in accordance with law."); *cf.* La. R.S. 18:581(a)-(g).

97 *See also* R.S. 18:402(E)(1) (detailing the dates for elections, with special elections correcting for newly-created offices and vacancies).

98 *See Avoyelles Par. Justice of the Peace v. Avoyelles Par. Police Jury*, 758 So. 2d 161, 166–69 (La. 3rd Cir. 1999) (holding that scope and term of office defined on election date and not on date of assumption of office).

99 *Id.*

was elected to take on the duties of "clerk of court," which included the duty of chief elections officer, per the definition in effect at the time.[100]

124. Defendants cannot simply bypass the need for an election (be it a general election or a special election) with the quick-to-pass Second Landry Amendment.

125. Lest the State intend to run afoul of the First and Fourteenth Amendments, the Landry Bill, the First Landry Amendment, and the Second Landry Amendment cannot go into effect.

B. Discarding Mr. Duncan's Vote for Orleans Parish Criminal Court Clerk Unconstitutionally Disenfranchises Him as a Voter in Violation of His Substantive Due Process Rights.

126. Although the Louisiana Legislature may possess general authority to abolish non-judicial elected offices, post-election legislative action that nullifies a completed election and attempts to install an unelected official implicates federal constitutional protections governing the fairness of the electoral process.

127. State action that fundamentally undermines the fairness and integrity of the electoral process is unconstitutional.[101]

128. While not every election irregularity rises to the level of a constitutional violation, federal courts may intervene where state officials deliberately nullify a completed election in violation of governing law, resulting in "patent and fundamental unfairness."[102] Some election

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[100] La. R.S. 18:2(3).

[101] *Duncan v. Poythress*, 657 F.2d 691, 703–05 (5th Cir. 1981) (holding Due Process Clause of the Fourteenth Amendment protects against the disenfranchisement of a state electorate in violation of state election law); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (recognizing that the right to vote may be denied through "debasement or dilution of the weight of a citizen's vote" as effectively as through outright denial of the franchise); *Smith v. Winter*, 717 F.2d 191, 198 (5th Cir. 1983) (emphasizing that voting rights encompass "meaningful access to the political process," not merely the act of casting a ballot) (citing *Kirksey v. Bd. of Supervisors*, 554 F.2d 139, 142 (5th Cir. 1977)).

[102] *Duncan,* 657 F.2d at 703.

interference is so extreme that, even absent classic vote dilution, it violates substantive due process.[103]

129. Under Fifth Circuit precedent, retrospective interference with a completed election may give rise to constitutional injury under the Fourteenth Amendment.[104]

130. The dispute at issue here does not arise from a generalized challenge to legislative authority, but from the use of that authority (through the Second Landry Amendment) to override the outcome of a completed election.

131. Louisiana law and the Louisiana Constitution require that clerks of court be elected by the voters of the parish they serve.[105] Here, Mr. Duncan was duly elected to the office of Clerk of Criminal District Court by a decisive majority of Orleans Parish voters in a completed, certified election.

132. Through the Second Landry Amendment, Defendants seek to install by legislative appointment an incumbent official holding a different office into a newly created position without any intervening vote, thereby nullifying the election that thrust Mr. Duncan into the Office of Orleans Parish Criminal District Court Clerk. *See supra* ¶¶ 95-102.

133. This conduct represents a calculated effort to disenfranchise voters and override the outcome of a completed election through legislative maneuvering, rather than through lawful electoral processes.[106]

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[103] *Id.* at 705.
[104] *Id.* at 704–05.
[105] La. Const. art. V, § 28(A).
[106] *Duncan*, 657 F.2d at 704; *see also Phillips v. Snyder*, No. 2:13–CV–11370, 2014 WL 6474344, at *8 (E.D. Mich. Nov. 19, 2014) ("[I]f the right to vote is to mean anything, certainly it must provide that the elected official wields the powers attendant to their office").

134. Unlike recall or removal procedures initiated through established electoral mechanisms, the injury here arises from legislative action (the Second Landry Amendment) eliminating an office after a completed, certified election, without any intervening vote.

135. The timing and structure of the Second Landry Amendment demonstrate that it was designed not to address administrative necessity, but to ensure that Mr. Duncan never assumes office. Such conduct shocks the conscience and constitutes "patent and fundamental unfairness" in the administration of an election.[107] *See supra* ¶¶ 79-81.

136. Whether this legislative maneuvering is characterized as an abolition or a reorganization does not alter the constitutional analysis. Under Louisiana law, a legislative act creates a "new office," rather than merely reorganizing an existing one, where it extinguishes the prior office and alters the character or core duties of the position. Louisiana courts have long distinguished between statutes that merely reorganize an existing office and those that abolish one office and substitute a materially different role.[108]

137. Where an act rearranges jurisdiction, duties, or constituency such that the prior office no longer exists, the resulting position is treated as a new office.[109] When a new elected office is created, Louisiana law requires that it accordingly be filled by election, not appointment.[110]

138. Accordingly, even if the legislature possesses authority to abolish a statutory office, it may not evade constitutional election requirements by consolidating that office into a materially

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107 *Duncan*, 657 F.2d at 704–05.

108 *State ex rel. Holmes v. Wiltz*, 11 La. Ann. 439, 441 (La. 1856).

109 *State ex rel. Garland v. Guillory*, 166 So. 94, 103–04 (La. 1935).

110 *State ex rel. Sanchez v. Dixon*, 4 So. 2d 591, 597 (La. 1941) ("[T]he Legislature intended that any office created by it, or which might come into existence by reason of the Act of 1940, should be filled by an election of the voters of the ward as the act specifies, and that only vacancies arising in an office already filled by election should be filled by the Governor for the remainder of the unexpired term."); *Russell v. McKeithen*, 239 So.2d 656, 658 (1st. Cir. 1970).

different one and then filling it without an election. By nullifying a completed election, Defendants aim to deprive both Mr. Duncan and Orleans Parish voters of the office and representation they lawfully secured. In doing so, Defendants violate the substantive due process clause of the Fourteenth Amendment.

139. Louisiana courts recognize that constitutional protections attach to an elected term and vest at the time of election.[111]

140. Defendants cannot legally reduce the term fixed at Mr. Duncan's election to zero by creating a vacant office that aims to discard the results of a completed and certified election.

C. The Landry Bill and Landry Amendments Operate as a Targeted Legislative Punishment Against Mr. Duncan as a Single, Identifiable Individual.

141. Article I, §10 of the U.S. Constitution prohibits state Bills of Attainder—legislative acts (SB 256 and the Landry Amendment) that inflict punishment (disqualification from office) on a specifically identifiable individual (Mr. Duncan) without the protections of a judicial trial.[112]

142. In the Fifth Circuit, a statute constitutes a Bill of Attainder where it (1) applies with specificity to an identifiable individual or group, and (2) inflicts punishment (3) without a judicial trial.[113]

143. The Landry Bill and Amendments satisfy each of these elements.

144. Although framed as a generally applicable legislative measure, the record and context make clear that the purpose of SB 256 is to prevent Mr. Duncan alone from taking office as retaliation and punishment for his protected speech and for no other reason.

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[111] *Hoag v. Kennedy ex rel. State*, 836 So. 2d 207, 231 (La. Ct. App. 2002); *Avoyelles Par. Justice of the Peace*, 758 So. 2d at 166–69 (explaining that constitutional protections tied to the "term for which elected" attach on election day, not the date of assumption of office); *Calogero v. State ex rel. Treen*, 445 So. 2d 736, 739 (La. 1984) (similar).

[112] *See United States v. Brown*, 381 U.S. 437, 447 (1965) (holding statute at issue unconstitutional as a Bill of Attainder).

[113] *See SBC Communications, Inc. v. F.C.C*, 154 F.3d 226, 233 (5th Cir. 1998).

145. The First Landry Amendment was passed to prevent Mr. Duncan from taking office, and the Second Landry Amendment attempts to perfect that effort. Taken together, the Amendments further clarify that the Landry Bill is aimed at punishing Mr. Duncan by targeting his successful election to the Office Criminal District Court Clerk.[114]

146. The Landry Bill and Amendments inflict punishment by permanently disqualifying Mr. Duncan from assuming the office to which he was duly elected, for no reason other than retaliation for his protected speech, thereby stripping him of a position of public trust secured through a completed election.[115]

147. The Landry Bill and Amendments were enacted without any judicial process, factual findings, or opportunity for Mr. Duncan to be meaningfully heard, and thus operate as a legislative adjudication of guilt and punishment.[116]

148. Neither the Landry Bill nor the Landry Amendments can be justified as a neutral regulatory measure. Their timing, structure, and legislative history demonstrate that they were enacted for the specific and impermissible purpose of punishing Mr. Duncan for his protected speech and electoral success, rather than to serve a legitimate, non-punitive governmental objective.[117] The record and context of SB 256 and the Second Landry Amendment evince an intent to punish Mr. Duncan.

149. By singling out Mr. Duncan for punishment without a judicial trial, the Landry Bill, the First Landry Amendment, and the Second Landry Amendment violate the Bill of Attainder

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114 *See cf. Selective Serv. Sys. v. Minn. Pub. Int. Rsch. Grp.*, 468 U.S. 841, 847 (1984) (a law may be a Bill of Attainder where "past activity serves as a point of reference for the ascertainment of particular persons ineluctably designated by the legislature") (citations omitted); *see also United States v. Lovett*, 328 U.S. 303, 315 (1946) (holding law at issue constituted Bill of Attainder and that Bills of Attainder need not name specific individuals if the target is "easily ascertainable").

115 *See Brown*, 381 U.S. at 447–48 (stating that disqualification from office may constitute punishment for purposes of the Bill of Attainder Clause).

116 *Cf. Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468–69 (1977).

117 *Cf. id.* at 475–76; *SBC Communications, Inc. v. F.C.C*, 154 F.3d at 241.

Clause. Indeed, Louisiana courts recognize that constitutional protections attach to an elected term vest at the time of election.[118] Thus, post-election legislative action eliminating an office constitutes a cognizable injury where it operates to effectively reduce the term fixed at election to zero.

150. Defendant Jeff Landry, by advocating for, advancing, and intending to give effect to the Landry Bill, the First Landry Amendment, and the Second Landry Amendment, has violated Article I, §10 of the U.S. Constitution.

D. In Retaliation for Mr. Duncan's Protected Speech, Defendants Sought to Push Through an Amendment to SB 256 That Provided for the Bill to Take Effect Upon the Governor's Signature.

151. Defendants' efforts, led by Governor Landry, to strip Mr. Duncan of his duly elected position violates the First Amendment, which prohibits the abridgement of the freedom of speech. "A plaintiff pursuing a First Amendment retaliation claim must show, among other things, that the government took an 'adverse action' in response to his speech that 'would not have been taken absent the retaliatory motive.'"[119] In reviewing whether an adverse action is sufficiently material to give rise to a legal claim, courts have looked to, among other factors, the relationship between the speaker and the retaliator to determine the materiality of the violation.[120]

152. Courts routinely apply First Amendment retaliation "principle[s] to denials of public employment."[121] This is because regardless of whether there is a "right" to a governmental position, "there are some reasons upon which the government may not rely [to, *e.g.*, block a person

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118 *Hoag v. Kennedy ex rel. State*, 836 So. 2d at 231; *Avoyelles Par. Justice of the Peace*, 758 So. 2d at 166–69 (explaining that constitutional protections tied to the "term for which elected" attach on election day, not the date of assumption of office); *Calogero*, 445 So. 2d at 739 (similar).

119 *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022) (denying relief but holding that the First Amendment limits government reactions to protected speech).

120 *Id*.

121 *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (affirming Fifth Circuit judgment reversing lower court decision denying First Amendment relief to plaintiff).

from a governmental position]. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech."[122]

153. For public elected officials like Mr. Duncan, these First Amendment protections are essential to democracy, so "that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them."[123]

154. Retaliation against elected officials for speech "implicate[s] not only the speech of an elected official, it also implicate[s] the franchise of his constituents. And [refusing to seat an elected official] involve[s] not just counter speech from colleagues but exclusion from office."[124]

155. The Fifth Circuit has knitted this jurisprudence into a three-part test to determine whether a claim for First Amendment Retaliation lies. In order to succeed on a First Amendment Retaliation Claim, a plaintiff must show that (1) he "engaged in constitutionally protected activity"; (2) the retaliator's action caused the plaintiff "to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity"; and (3) those "adverse actions were substantially motivated against [a plaintiff's] exercise of constitutionally protected conduct."[125]

156. Mr. Duncan satisfies each prong of the First Amendment Retaliation test.

157. *First*, as made clear *supra*, Mr. Duncan consistently engaged in constitutionally protected speech activity concerning Louisiana's deeply flawed criminal legal system. His conviction, his exoneration, his successful advocacy against non-unanimous jury convictions, and

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122 *Id.* at 597.

123 *Bond v. Floyd,* 385 U.S. 116, 136–37 (1966) (holding exclusion of state representative from membership in state house of representatives violated the right of free expression under the First Amendment).

124 *Houston Cmty. Coll. Sys.*, 595 U.S. at 481 (denying plaintiff relief but explaining the import of the rule in *Bond*, 385 U.S. 116).

125 *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002) (explaining test and holding that plaintiffs provided evidence of First Amendment retaliation).

his critiques of the deeply flawed administration of the Criminal District Court Clerk's Office, are clearly constitutionally protected speech.[126]

158. *Second*, Mr. Duncan's speech was deeply concerning to the now Governor and other Defendants who sought to punish him for it. As Attorney General, Defendant Murrill threatened to challenge Mr. Duncan's ability to practice law if he did not drop his claim for damages to compensate him for his wrongful conviction (the basis for his exoneration). Due to Mr. Duncan's well-founded fear that he would not be able to practice law, he dropped his claims, evidence of the chilling effect of Defendants' efforts to target him. *See supra* ¶ 52.

159. Moreover, when Mr. Duncan continued to refer to himself as an exoneree on the campaign trail, the Governor, through his lead attorney, threatened Mr. Duncan with further action if he did not cease to do so. *See supra* ¶ 6. And when Mr. Duncan refused to bow to the Governor's and Attorney General's wills, as he had been forewarned, the Governor took action against him. He did so by successfully moving up the effective date of the Landry Bill through the First Landry Amendment. *See supra* ¶¶ 54, 56. And, through the Second Landry Amendment, the Governor aims to avoid an election for the newly-created Orleans Clerk of Court position. The Governor's signature, which he will put on the Landry Bill mere days before Mr. Duncan takes office, will prevent Mr. Duncan from assuming the office to which he was duly elected. This action necessarily serves to chill a person of ordinary firmness from running for office in the State of Louisiana in any manner, or premised on any platform, that conflicts with the Governor's agenda.[127]

160. *Third,* Defendants' actions—which amount to (a) threatening Mr. Duncan during the course of his campaign through his top attorney (Defendant Murrill) and (b) following through

[126] *See Bond*, 385 U.S. at 136 (holding that speech "criticizing public policy and the implementation of it *must*" be protected) (emphasis added).

[127] *Houston Cmty. Coll. Sys.*, 595 U.S. at 481 (explaining that the United States Supreme Court made clear that the refusal to seat an elected official due to protected speech violates the First Amendment).

on that threat by pushing through legislative actions (the First and Second Landry Amendments) that effectively bar Mr. Duncan from ever taking the office to which he was elected—were substantially motivated by Mr. Duncan's protected speech criticizing the State's deeply flawed criminal legal system.[128] *See supra* at ¶ 40.

161. There is little, if any, question that the Governor, through Defendant Murrill publicly attacked and threatened to retaliate against Mr. Duncan if he did not chill his own speech. *See supra* ¶ 40. Nor is there any question that the Governor followed through on that threat when he pushed the Landry Amendments through, with the understood purpose of preventing an exoneree, Mr. Duncan, from being seated into the office to which he was elected. *See supra* ¶ 54.

162. The Governor's retaliatory motive is laid bare by the fact that the Landry Amendments seek to circumvent the legal requirement that an election must be held for the Orleans Parish Clerk of Court position and to retroactively change the definition of "clerk of court" applicable at the time of the 2025 elections, when Ms. Napoleon and Mr. Duncan ran for two separate offices and, when it was clear, that those offices carried very different duties, with the "clerk of court" by default carrying the duties of the Clerk of the Criminal District Court.

163. The effort to punish Mr. Duncan for his speech "impinges on the liberal discourse essential to democratic processes."[129]

164. The Second Landry Amendment runs headlong into the 1974 Louisiana Constitution, which requires an election to be held for Clerks of Court.[130]

165. But no such election has been held for this new office.

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[128] *Keenan*, 290 F.3d at 261 (holding in a First Amendment Retaliation case that the chronology and nature of events provided "sufficient evidence that the defendants' actions were substantially motivated as a response to the plaintiffs' exercise of protected conduct").

[129] *Rash-Aldridge v. Ramirez,* 96 F.3d 117, 119 (5th Cir. 1996) (not finding for plaintiff, who was not an elected official, but examining *Bond*'s rule prohibiting First Amendment retaliation against *elected* officials charged with representing themselves and their constituents).

[130] La. Const. Art. 5 § 28(A) ("In each parish a clerk of the district court shall be elected for a term of four years.").

166. As such, the Governor's attempt to use the Second Landry Amendment as a circumvention technique to avoid state constitutional requirements runs roughshod over Mr. Duncan's constitutional rights.

167. The Governor, as powerful as he may be, cannot by the stroke of his pen violate the First Amendment and the Louisiana Constitution.

E. Defendants Jeff Landry and Liz Murrill Engaged in a Conspiracy to Violate Mr. Duncan's Civil Rights.

168. Title 42 of the U.S. Code, specifically § 1985(3), provides for a private right of action for conspiracies that violate civil rights. The statute prohibits "two or more persons in any State or Territory" from conspiring "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws."[131]

169. To prevail on a § 1985(3) claim, a plaintiff must show the following four elements: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States."[132]

170. The conspiracy must have as its intent not only the deprivation of equal protection of the laws, but also "some racial, or perhaps otherwise class-based, invidiously discriminatory animus."[133] As the Supreme Court has explained, "[t]he predominate purpose of § 1985(3) was to combat the prevalent animus against Negroes *and their supporters*."[134]

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131 42 U.S.C. § 1985(3).

132 *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott,* 463 U.S. 825, 828–29 (1983).

133 *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971).

134 *Carpenters v. Scott,* 463 U.S. at 836 (emphasis added).

171. The Fifth Circuit has repeatedly upheld the requirement that the conspiracy be motivated by class or race-based animus.[135]

172. Similarly, La. Civ. Code Ann. art. 2324 prohibits civil conspiracies. The Fifth Circuit has held that to make out a claim for a civil-conspiracy under Louisiana law, "a plaintiff must prove the following elements: '(1) an agreement existed with one or more persons to commit an illegal or tortious act; (2) the act was actually committed; (3) the act resulted in plaintiff's injury; and (4) there was an agreement as to the intended outcome or result.'"[136]

173. Unlike a claim under 42 U.S.C. § 1985(3), civil-conspiracy claims under Louisiana law do not require a showing of racial animus.

174. Defendants have conspired to punish and deprive Mr. Duncan of his constitutionally protected speech under the First Amendment and Fourteenth Amendment because of their animus toward Mr. Duncan as a Black man advocating for racial justice.

175. As discussed above, when Defendant Murrill's letter threatening "further action" if Mr. Duncan did not stop referring to himself as an exoneree (a term that conjures up the racial injustices of our criminal legal system) failed to silence Mr. Duncan, Governor Landry introduced the Landry Bill and thereafter the Landry Amendments, in a further attempt to punish Mr. Duncan for championing a message of support for racial justice.

176. As made clear by the Second Landry Amendment, Defendants are all operating with a shared understanding that it will be Ms. Napoleon (not Mr. Duncan) who will assume the new Clerk of Court role. Governor Landry's intent is evinced by Senator Morris' and

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[135] *See Lockett v. New Orleans City,* 607 F.3d 992, 1002 (5th Cir. 2010) ("Additionally, the conspiracy must also have a racially based animus."); *see also Bryan v. City of Madison, Miss.,* 213 F.3d 267, 276 (5th Cir. 2000) ("In this circuit, we require an allegation of a race-based conspiracy.")

[136] *Doe v. Mckesson*, 71 F.4th 278, 287 (5th Cir. 2023) (first citing *Crutcher-Tufts Resources, Inc. v. Tufts*, 2007-1556 (La. App. 4 Cir. 9/17/08), and then La. Civ. Code Ann. art. 2324).

Representative McMakin's statements. Ms. Napoleon has toured the criminal courthouse in anticipation of her assuming that Office, presumably at the behest of the Governor.

177. The racial animus underlying the conspiracy to deprive Mr. Duncan of his First and Fourteenth Amendment rights is unmistakable. Mr. Duncan is a Black exoneree who campaigned on promises that would make the criminal legal system more just for the disproportionate number of Black people who are subject to it. Although Ms. Napoleon, the Civil District Court Clerk is also Black, she did not run on a platform championing racial justice as Mr. Duncan did. Indeed, with no opposition in the 2025 election, she did not appear on the ballot.

CLAIMS FOR RELIEF

COUNT I

(42 U.S.C. § 1983)

Denial of Effective Right to Vote Violation (U.S. Const. amend. I and XIV)

By Calvin Duncan in his personal capacity as an Orleans Parish against Defendants Jeff and Nancy Landry regarding the Seat to which he was elected

178. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

179. The Louisiana Constitution establishes that the clerks of court are to be elected by the people of Louisiana.[137]

180. Voters, including Mr. Duncan, elected Mr. Duncan to be the Clerk of Criminal District Court, a position defined in the Louisiana Constitution and its Revised Statutes and subject to changes in law.[138]

181. The removal of the Clerk of Criminal District Court position prior to an election being held for the newly-constituted Orleans Clerk of Court position runs headlong into Mr. Duncan's First and Fourteenth Amendment protections. He has the right not only to have the

[137] La. Const. Art. 5 § 28(A).
[138] La. Const. Art. V § 32; La. R.S. 13:1371.2.

Criminal District Court position for which he voted to remain steadfast, but to also (in the event of any legislative changes that reconstitute how the current civil and criminal district courts operate) express his opinion and vote for whoever will fill that position, which by law is necessarily vacant and cannot be filled by legislative appointment.

182. The harm to Mr. Duncan of both being unseated and having no say in who will hold the position of Orleans Clerk of Court vastly outweighs any possible interest proclaimed by the State, wherein it seeks to construct a new position (the Orleans Parish Clerk of Court) and to discard two elected positions (the Civil and Criminal District Court Clerks) in one fell swoop.

183. The solution is simple: allow Mr. Duncan, in his official capacity, to take his duly-elected office on May 4, 2026.

184. At bottom, state action that fundamentally undermines the fairness and integrity of the electoral process is unconstitutional.[139]

185. The deliberate nullification of a completed election results in "patent and fundamental unfairness," making federal court intervention appropriate.[140]

186. In Louisiana, constitutional protections attached to an elected term vest at the time of the election.

187. Retrospective interference with a completed election gives rise to constitutional injury under the Fourteenth Amendment.[141]

188. Defendants here seek to nullify a completed election.

189. Unlike recall or removal, established electoral mechanisms, the actions here eliminate an office after a completed, certified election, without any intervening vote.

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139 *Duncan v. Poythress*, 657 F.2d at 703–05.
140 *Id*. at 704–05.
141 *Id.*

190. The Louisiana Constitution mandates that clerks of court be elected and not appointed by the Governor, thereby prohibiting Defendant Nancy Landry from issuing a commission for this new office to anyone so appointed.

191. Eliminating the Office of the Criminal Court Clerk reduces the term to which Mr. Duncan was elected to zero.

192. Such an act shocks the conscience and constitutes patent and fundamental unfairness.

193. Nullifying a completed election and depriving Mr. Duncan (an Orleans Parish voter in his personal capacity) of the office and representation lawfully secured by Mr. Duncan (Clerk-Elect of the Criminal District Court) violates the substantive due process clause of the Fourteenth Amendment.

194. The solution is simple: enjoin Defendants from barring Mr. Duncan from assuming office on May 4, 2026.

COUNT II
(42 U.S.C. § 1983)
Bill of Attainder Violation (U.S. Const. Art. I, § 10) as to the First and Second Landry Amendments
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendant Jeff Landry

195. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

196. Defendant Jeff Landry directed the Louisiana legislature to pass a Bill of Attainder that he intends to sign as punishment for Mr. Duncan's refusal to stop talking about Louisiana's deeply flawed criminal legal system. *See supra* ¶¶ 68–94 (Landry's legislative agenda, ¶¶ 57–67 (reasons for wanting to punish Mr. Duncan).

197. This action is intended to, and has the effect of, punishing Mr. Duncan by preventing him from being employed as the Clerk of Criminal Court in Orleans Parish, a position to which he was duly elected.

198. When the Landry Bill was introduced, it was made clear that no supportive studies, data, or conversations with Orleans Parish representatives took place before the Bill was drafted. Instead, the Landry Bill was a directive from the Governor. *See supra* ¶¶68–94.

199. The First Landry Amendment was added to the Landry Bill in the final hours before the Senate Vote for the punitive purpose of ensuring Mr. Duncan never takes the office to which he was elected because he refused to stop talking about his exoneration and desire for criminal legal reform during the campaign. *See supra* ¶¶57–67.

200. The Second Landry Amendment was added to the Landry Bill in the House to finish the job left undone by the First Landry Amendment. That job was to ensure beyond a shadow of any doubt that Mr. Duncan never take the office to which he was elected, because he refused to stop talking about his exoneration and desire for criminal legal reform during the campaign. *See supra* ¶¶ 57–67.

201. In the Fifth Circuit, state legislative action violates Article 1, §10 of the U.S. Constitution if it (1) applies with specificity, and (2) imposes punishment (3) without trial.[142]

202. First, the Landry Amendments are specific because, even though it does not name Mr. Duncan, it is "easily ascertainable" from the text and the legislative history that he is the target of the Landy Amendments. No other employee of the Criminal Court of Orleans Parish is immediately impacted by the Amendments—not the incumbent Clerk of Criminal Court, not the Criminal Court's employees, and not Ms. Napoleon in her capacity as the Clerk of Civil District

[142] *See SBC Communications, Inc. v. F.C.C*, 154 F.3d at 233.

Court.[143] The fact is, the Landry Bill goes to great lengths to protect every employee of the Criminal Court of Orleans Parish *except* Mr. Duncan. SB 256 §1211.1(A) (as proposed). The Landry Amendment thus clearly singles out and condemns Mr. Duncan and only Mr. Duncan.

203. Second, the Landry Amendments are punitive and impose punishment as a "bill of pains and penalties." *Cummings v. Missouri*, 71 U.S. 277, 323 (1867). The Landry Amendment "viewed in terms of the type and severity of burden[] imposed" cannot "be said to further non-punitive legislative purposes." *Nixon.*, 433 U.S. at 475.

204. *Third*, the Landry Amendments constitute impermissible legislative action that violates the Bill of Attainder Clause because the Amendments single out Mr. Duncan for punishment without trial.

205. Therefore, Mr. Duncan states a colorable claim against the Landry Amendments.

206. Accordingly, he respectfully asks the Court to enjoin the First and Second Landry Amendments.

COUNT III
(42 U.S.C. § 1983)
Bill of Attainder Violation (U.S. Const. Art. I, § 10) as to SB 256
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendant Jeff Landry

207. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

208. Defendant Jeff Landry directed the Louisiana legislature to pass a bill of attainder that he intends to sign against Calvin Duncan as punishment for Mr. Duncan's refusal to stop talking about his experience of wrongful conviction, 28 years of imprisonment, and long withheld

[143] *See U.S. v. Lovett*, 328 U.S. at 315; *see also Selective Service*, 468 U.S. at 847 (finding that specificity should be interpreted broadly).

exoneration. *See supra* ¶¶68-94 (Landry's legislative agenda, 59-65 (reasons for wanting to punish Mr. Duncan).

209. This action is intended to, and has the effect of, punishing Mr. Duncan by preventing him from being sworn in and employed as the Clerk of Criminal Court in Orleans Parish, a position to which he was duly elected.

210. The Landry Bill is part of Defendant Landry's 2026 legislative agenda in his official capacity as governor for the 2026 legislative session. *See supra* ¶ 68.

211. During the introduction of the bill during a Senate committee hearing, it was made clear that no supportive studies, data, or conversations with New Orleans representatives took place before the bill was drafted. Instead, the Landry Bill was a directive from the governor. *See supra* ¶¶ 69-80.

212. After the Landry Bill passed in the Senate with the First Landry Amendment, the House rushed to hold a special meeting solely for the purpose of considering SB 256.

213. On April 23, 2026, the House passed the Landry Bill with the Second Landry Amendment.

214. In the Fifth Circuit, state legislative action violates Article 1, section 10 of the U.S. Constitution if it (1) applies with specificity, and (2) imposes punishment without trial.[144]

215. First, SB265 is specific because, even though it does not name Mr. Duncan, it is "easily ascertainable" from the text and the legislative history that he is the target of the bill. No other employee of the Criminal Court of Orleans Parish is impacted by the bill.[145] In fact, the bill

[144] *SBC Communications, Inc. v. F.C.C*, 154 F.3d at 233.

[145] *U.S. v. Lovett*, 328 U.S. at 315; *see also Selective Service*, 468 U.S. at 847 (finding that specificity should be interpreted broadly).

goes to great lengths to protect every employee of the Criminal Court of Orleans Parish *except* Calvin Duncan.[146]

216. SB265 condemns Mr. Duncan and only Mr. Duncan.

217. Second, SB 256 is punitive and imposes punishment as a "bill of pains of penalties."[147]

218. The U.S. Supreme Court has adopted a three-part analysis of whether legislative action is punishment: (1) whether it imposes a sanction historically associated with bills of attainder, (2) whether "viewed in the terms of the type and severity of burdens imposed" the legislative action "can be said to further nonpunitive purposes," and (3) whether the legislative record evinces a punitive purpose.[148]

219. SB 256 "viewed in terms of the type and severity of burden[] imposed" cannot "be said to further non-punitive legislative purposes."[149]

220. Further, the record demonstrates a punitive purpose.

221. If SB 256 is allowed to have its intended effect, the consequences are clear: any duly elected candidate-elect who has not submitted to threats from the executive branch can be prevented from taking office as punishment.

222. For these and the reasons discussed above in Count III, passage of SB 256 at Defendant Jeff Landry's direction violates the Bill of Attainder Clause.

223. Therefore, Mr. Duncan states a colorable claim for bill of attainder against the Landry Bill.

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146 SB265 §1211.1(A).
147 *Cummings v. Missouri*, 71 U.S. 277, 323 (1866).
148 *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 474-478 (1977).
149 *Id.* at 475.

224. If SB 256 is allowed to have its intended effect, the consequences are clear: any duly elected official who does not submit to threats from the executive branch can not only be prevented from taking their office, their whole office stands to be abolished.

225. Accordingly, Mr. Duncan respectfully asks the Court to enjoin the Bill.

COUNT IV
(42 U.S.C. § 1983)
First Amendment Retaliation as to the First and Second Landry Amendments
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendants Jeff Landry and Murrill

226. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

227. Defendant Jeff Landry retaliated against Mr. Duncan as Clerk-Elect of the Criminal District Court for his protected speech (speech consistently critical of Louisiana's criminal legal system) through the First and Second Landry Amendments. This action is intended to have the effect of barring Mr. Duncan from taking office outright.

228. Additionally, Defendant Murrill retaliated against Mr. Duncan as a candidate for Clerk of Criminal District Court for his protected speech (truthfully and factually referring to himself as an exonerated man) through issuances of public statements threatening legal action. *See supra* ¶¶ 57–67.

229. Mr. Duncan has shown that he engaged in protected speech that displeased the Governor. *See supra* ¶ 67. That speech garnered threats from Defendant Murrill, who vowed to have the State take further action against Mr. Duncan if he failed to stop referring to himself as an exoneree during his campaign. *See supra* ¶ 59.

230. Because Mr. Duncan spoke out about the criminal legal system and won the election, all while refusing to bow to the Governor's and Attorney General's threats, the Governor

now plans to sign a Bill into law that has the effect of retaliating against Mr. Duncan for his speech by barring him from taking the office to which he was duly elected. *See supra* ¶¶ 68–94.

231. If Defendant Jeff Landry's signature is to have its intended effect, Mr. Duncan's core political speech will be chilled, as will the political speech of future candidates who seek to run for office on a platform contrary to Defendants' agenda.

232. Defendant Jeff Landry's and Murrill's actions are and were substantially motivated by Mr. Duncan's protected speech and status as an exoneree, as evidenced by the sequence of events that bring us here today.

233. The Governor's attacks on Mr. Duncan go well beyond mere censure or criticism, and instead constitutes an "expulsion" that is impermissible under the First Amendment.[150]

234. Therefore, Mr. Duncan states a colorable claim.

235. Accordingly, he respectfully asks the Court to enjoin the First and Second Landry Amendments so that he can take his duly-elected office on May 4, 2026.

COUNT V
(42 U.S.C. § 1983)
First Amendment Retaliation as to the Landry Bill
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendants Jeff Landry and Murrill

236. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

237. For the same reasons as discussed in Count IV, Defendants engaged in First Amendment Retaliation as to their actions that preceded and culminated in the introduction of, and support for, the Landry Bill more generally.

[150] *Cf. Houston Cmty. Coll. Sys.*, 595 U.S. at 482.

238. Accordingly, he respectfully asks the Court to stay the effect of the Bill so that he can take his duly-elected office on May 4, 2026.

COUNT VI
(42 U.S.C. § 1985)
Conspiracy
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendants Jeff Landry, and Liz Murrill

239. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

240. Defendants plotted, planned, coordinated, and conspired collectively to target Mr. Duncan as a Black exoneree and supporter of racial justice, to prevent him from taking office as Clerk-Elect of the Criminal District Court and to deprive him of his First and Fourteenth Amendment Rights.

241. To prevail on a § 1985(3) claim, a plaintiff must show the following four elements: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States."[151]

242. Each of the four elements required to establish a conspiracy are satisfied.

243. First, Defendants formed an agreement to prevent Mr. Duncan from taking office as Clerk of the Criminal District Court.

244. Second, the agreement was aimed at preventing Mr. Duncan from taking office, thereby depriving Mr. Duncan of his First and Fourteenth Amendment rights.

[151] *Carpenters v. Scott,* 463 U.S. at 828–29.

245. Third, each Defendant took an act in furtherance of the conspiracy: Defendant Murrill sent a letter to Mr. Duncan, and Defendant Landry arranged for SB 256 and the Landry Amendments to be introduced.

246. Fourth, Mr. Duncan was injured when SB 256 was passed with the Landry Amendments, with the intent of preventing him from assuming the office to which he was duly elected.

247. Accordingly, he respectfully asks the Court to enjoin the Landry Bill from going into effect so that he can take his proper office on May 4, 2026.

COUNT VII
La. Civ. Code Ann. Art. 2324
Conspiracy
By Plaintiff Calvin Duncan in his official capacity as Clerk-Elect of the Criminal District Court against Defendants Jeff Landry, and Liz Murrill

248. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

249. La. Civ. Code Ann. art. 2324 prohibits civil conspiracies. The Fifth Circuit has held that to make out a claim for a civil-conspiracy under Louisiana law, "a plaintiff must prove the following elements: '(1) an agreement existed with one or more persons to commit an illegal or tortious act; (2) the act was actually committed; (3) the act resulted in plaintiff's injury; and (4) there was an agreement as to the intended outcome or result.'"[152]

250. Defendants here formed an agreement to prevent Mr. Duncan from assuming the Office of Criminal District Court Clerk, to which he was duly elected on November 15, 2025; for which he received his Commission Certificate on April 20, 2026; and to which he was sworn in

[152] *Mckesson*, 71 F.4th at 287 (first citing *Tufts*, 2007-1556 (La. App. 4 Cir. 9/17/08), and then La. Civ. Code Ann. art. 2324).

on April 21, 2026. That agreement has now manifested in passage of SB 256. Plaintiff stands to be imminently injured if the Bill is to take effect as intended by Defendants.

251. Accordingly, he respectfully asks the Court to stay the effect of the Bill in order for him to take office on May 4, 2026.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks the Court to:

A. Assume jurisdiction over the claims in this matter;

B. Issue an Order authorizing Plaintiff Calvin Duncan to assume the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026.

C. Enjoin SB 256, or in the alternative enjoin the First and Second Landry Amendments

D. Declare that the Landry Bill, including the Landry Amendments, violate federal and state law;

E. Award such further relief as the Court deems just and proper.

Dated: April 29, 2026

Respectfully submitted,

/s/ Sarah Whittington

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**Pro hac vice application forthcoming*

VERIFICATION STATEMENT

I, Calvin Duncan, declare as follows:

1. I am the Plaintiff in the present case, a citizen of the United States of America, and a resident and registered voter of Orleans Parish and the State of Louisiana.
2. I have personal knowledge of myself, my activities, my intentions, and the actions undertaken by myself and Defendants, as set out in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*.
3. If called to testify, I would competently testify as to the matters discussed in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*.
4. Under the laws of the United States of America, I verify under penalty of perjury that the factual statements in this *Verified Complaint for Declaratory and Injunctive Relief* are, to the best of my knowledge, true and correct. 28 U.S.C. § 1746.

Executed on April 28, 2026

Calvin Duncan

Calvin Duncan

Exhibit C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter, *Plaintiff*, v. JEFFREY LANDRY, in his official capacity as Governor of the State of Louisiana, NANCY LANDRY, in her official capacity as Louisiana Secretary of State, and ELIZABETH MURRILL, in her official capacity as Attorney General for the State of Louisiana, *Defendants*.	Case No. 3:26-cv-00460 Judge John W. deGravelles Magistrate Judge Scott Johnson *Jury Trial Demanded*

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

In accordance with Federal Rule of Civil Procedure 65 and Local Rule 65, Plaintiff Calvin Duncan respectfully asks this Honorable Court to grant a temporary restraining order providing that he duly assumes the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026.

The status quo at the time of this filing (as it has been for the past 165 days) is that Mr. Duncan will assume his duly-elected office. But, today, with no more than two business days left on the calendar, Defendants aim to upend that reality in the hopes that their timeline will thwart this Court from duly considering the constitutionality of their actions. The attached memorandum of law explains the unconstitutional premises that animate Mr. Duncan's Complaint, ECF No. 1, where he explains Defendants' intentional targeting of, and retaliation against, him through Senate

Bill 256 (the "Landry Bill"); the First Landry Amendment, which provides for the Bill to go into effect upon the Governor's signature; and the Second Landry Amendment, which provides for the abolition of the Office of the Criminal District Court Clerk. In a nutshell, state law requires the holding of an election to fill the new and now-vacant Orleans Parish Clerk of Court seat created by the Landry Bill. Until then, the elected Clerk of the Criminal Court and the unopposed Clerk of the Civil Court should take the positions to which they were elected (Duncan) and ran unopposed (Napoleon).

Because Defendants do not want Mr. Duncan to be seated, Defendants first directed the Louisiana Senate to pass the First Landry Amendment. Then, to make their implicit intention explicit, they directed the Louisiana House to pass the Second Landry Amendment on April 23, 2026, calling for the abolition of the position to which Mr. Duncan was elected, effective "at the end of the day May 3, 2026." The goal is clear: to prevent Mr. Duncan from immediately assuming the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026—an office for which he received his Commission Certificate on April 20, 2026, ECF No. 1 ¶1, Exh. A. Against this backdrop and in accordance with his Commission Certificate, *id.*, Mr. Duncan asks this Court to issue an order duly authorizing him to assume the Office of Orleans Parish Criminal District Court Clerk, at 12:00 a.m. on May 4, 2026, thereby staying the effects of the First and Second Landry Amendments (at least until this Court has had time to consider the serious allegations in Mr. Duncan's complaint).

WHEREFORE, for the reasons described in the attached memorandum of law and any other reasons apparent to this Honorable Court, Mr. Duncan respectfully asks the Court to grant his Motion for a Temporary Restraining Order.

Counsel for Mr. Duncan shared the underlying Complaint, ECF No. 1, and its

accompanying documents with the Louisiana Attorney General's Office. In that email, Counsel indicated that Mr. Duncan would also be seeking a Temporary Restraining Order. Counsel for Mr. Duncan will email this Motion and its accompanying documents forthwith to the same parties via the following email address identified for current correspondence relating to this matter: Louisiana Attorney General's Office: aguinagaj@ag.louisiana.gov.

Dated: April 29, 2026

Respectfully submitted,

/s/ Sarah Whittington

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Exhibit D

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, in his official capacity as Clerk-Elect of Orleans Parish Criminal District Court, and in his personal capacity as an Orleans Parish voter,

Plaintiff,

v.

JEFFREY LANDRY, in his official capacity as Governor of the State of Louisiana, NANCY LANDRY, in her official capacity as Louisiana Secretary of State, and ELIZABETH MURILL, in her official capacity as Attorney General for the State of Louisiana,

Defendants.

Case No. 3:26-cv-00460

Judge John W. deGravelles

Magistrate Judge Scott Johnson

Jury Trial Demanded

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

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INTRODUCTION

For the avoidance of any doubt, this temporary restraining order ("TRO") is strictly about deciding what happens on Monday, May 4, 2026, at 12:00 a.m. This TRO is not about whether the legislature can create the Orleans Clerk of Court seat. Arguably, if the legislature follows the law, they can create a new seat. But what Defendants cannot do through the legislature is fill that newly-created clerk of court seat, which requires an election, themselves. That is the problem at issue—the targeted and concerted attempt to (a) unlawfully nullify Plaintiff Calvin Duncan's vote as an Orleans Parish voter for the Clerk of Criminal District Court seat by attempting to retroactively invalidate a completed election; and (b) illegally abolish the Criminal District Court Clerk seat in retaliation for Mr. Duncan's political speech on the campaign trail. *See* Exh. A, Pl. Demonstratives. The injury to Mr. Duncan, both as Clerk-Elect and as a voter, is accordingly immense and stands to be irreparable absent court intervention. For this reason, Mr. Duncan respectfully asks this Court to order that he take the office to which he was elected on November 15, 2025; for which he received his commission on April 20, 2026; and to which he was sworn into on April 21, 2026. Such a temporary order would have the effect of preventing any immediate, premature violations of Mr. Duncan's First and Fourteenth Amendment rights.

Most relevant to this TRO are two amendments to the bill at issue—Senate Bill 256 ("SB 256" or the "Landry Bill")—that occurred on April 8 and 23, 2026. On April 8, Senator John C. "Jay" Morris III introduced an amendment to the Landry Bill at the Governor's behest, which provided for the Act to go into effect immediately upon the Governor's signature (the "First Landry Amendment").[1] Exh. B, "First Landry Amendment," S. Floor Amends. to Engrossed S.B. 256,

[1] The text of the First Landry Amendment reads: "**Section 3**. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without

Amend. No. 4, 2026 Reg. Sess. (La. 2026). The First Landry Amendment had the goal of barring Mr. Duncan from rightfully taking the Office of Orleans Parish Criminal District Court Clerk (to which Orleans Parish voters elected him by a landslide) by giving effect to the Landry Bill immediately upon the Governor's signature. Lawmakers were nonetheless concerned that this amendment alone was not sufficient to outright bar Mr. Duncan from taking the Criminal District Court Clerk seat to which he was elected. Accordingly, a late-breaking amendment to satisfy the Governor's agenda to unseat Mr. Duncan was passed on April 23. This second amendment (the "Second Landry Amendment"),[2] introduced by House Representative Dixon McMakin, made the previous amendment's implicit intention explicit—it purports to unequivocally install Chelsey Napoleon to the new Clerk of Court seat created by the Landry Bill absent an election, even though the Bill itself requires the new seat to be filled by "the qualified electors of Orleans." Exh. C, "Second Landry Amendment," H. Floor Amends. to Reengrossed S.B. 256, 2026 Reg. Sess. (La. 2026); La. R.S. 13:1211.1(A) (as amended in SB 256); *accord* La. Const. Art. 5, §28(A) ("In each parish a clerk of the district court shall be elected for a term of four years.").

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signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval." (emphasis added).

[2] The Second Landry Amendment includes "**Section 4**. The provisions of this Act shall not reduce the current term of office of the clerk of criminal district court for the Parish of Orleans on the effective date of this Act. The office of clerk of criminal district court for the Parish of Orleans shall be abolished at the end of May 3, 2026 and before the term of any other criminal clerk of court begins. Immediately thereafter, the authority, functions, duties, and responsibilities of the office of clerk of criminal district court for the Parish of Orleans, and all of the books, papers, records, monies, actions, and other property of every kind and description, movable and immovable, real and personal, possessed, controlled, or used by the office of the clerk of criminal district court for the Parish of Orleans shall be transferred and owned, possessed, controlled, and used by the clerk of the civil district court for the Parish of Orleans, who shall thereafter be referred to as the clerk of court for the Parish of Orleans." (emphasis added). The Second Landry Amendment also includes, among a separate section repealing various criminal district court clerk provisions, "**Section 5.** Whenever the clerk of the criminal district court for the Parish of Orleans is referred to or designated by law, rule, or regulation on and after the date that office is abolished, such reference or designation shall be deemed to apply to the clerk of civil district court for the Parish of Orleans or hereafter "clerk of court for the Parish of Orleans." (emphasis added).

Simply put, the Landry Amendments are at odds with the United States Constitution. Unfortunately for Defendants, the remedy for a lost election is political: run a better candidate or message in the *next election*. Our Constitution does not allow high-level officials to subvert the electoral process and deny someone their rightful office out of punishment, political retribution, or personal animus. At bottom, no matter what the legislative instrument says, Ms. Napoleon is no heir to the proverbial Orleans Clerk of Court throne. That newly created office is necessarily "ipso facto" vacant and requires an election before it can be filled by anyone on a permanent basis. *See State ex rel. Sanchez v. Dixon*, 4 So. 2d 591, 595 (La. Ct. App. 1941) (holding that "a newly created office becomes ipso facto vacant when it is created and remains vacant until it is filled by an incumbent" because "no such office can come into existence until an election is held to fill it, and there can be no vacancy in an office [that can be filled via appointment] that has not come into existence).

There is no valid, legal justification for Defendants to nullify the will of Orleans Parish voters, like Mr. Duncan, who voted in the November 2025 election for Orleans Parish Criminal District Court Clerk (Count I), and to violate the First Amendment through unlawful retaliation against Mr. Duncan for his political speech and status as an exoneree (Count IV). *See* Exh. A, Pl. Demonstratives. Defendants cannot deny Mr. Duncan the ability to assume the office for which he was duly elected, commissioned, and sworn in, Compl. at ¶¶ 92–94—least of all in retaliation for his speech and advocacy critical of Louisiana's criminal legal system, or to prevent him from carrying out the policy reforms he promised voters.

As discussed further below, Mr. Duncan satisfies the elements for a TRO. He respectfully asks this Court to issue an order allowing him, in accordance with the commission for office he received (dated May 4, 2026), to assume office as Orleans Parish Criminal District Court Clerk on

May 4, 2026, with all the duties and responsibilities of that office determined on the date of his election. Such an order would operate to stay the effects of the First and Second Landry Amendments, and thereby stay the impacts of the Landry Bill for a minimum of 14 days. This narrow TRO request is both what Mr. Duncan, as Clerk-Elect and as a voter, expected to occur on November 15, 2025. He did not expect (because it is unconstitutional) for the results of a free and fair election to be overridden through the legislative appointment of an official (whose election was premised on duties that never included the full scope of those now at issue in the Landry Bill) to a newly-created, vacant office.

STATEMENT OF FACTS

In 1982, Mr. Duncan was charged with first-degree murder. Compl. ¶ 26. He was convicted in 1985. *Id.* at ¶ 27. Thereafter, from his cell block at the largest maximum-security penitentiary in the country, he dedicated himself to learning the law and clearing his name. *Id.* at ¶¶ 28–31. The effort to prove his innocence involved myriad attempts to access his case files from the Orleans Parish Criminal Court Clerk's Office. *Id.* at ¶¶ 30–32. But he was refused at every turn due to the Office's chronic mismanagement of records. *Id.* at ¶¶ 30–32. Eventually, with the tireless assistance of the Innocence Project of New Orleans, he was freed in 2011. *Id.* at ¶¶ 32–33. His name was cleared and he was exonerated in 2021. *Id.* at ¶ 43.

In 2023, the same year that he earned his law degree, Mr. Duncan sought to obtain $330,000 in state compensation for his wrongful conviction. *Id.* at ¶ 46. In response, the Attorney General, Governor Landry's legal counsel, threatened to contest Mr. Duncan's ability to practice law if he did not drop his damages claim. *Id*. Weighing the significance of the threat and the Attorney General's very real ability to carry it out, Mr. Duncan reluctantly withdrew his claim. *Id*. Still,

Mr. Duncan never ceased speaking out about the mismanagement of records by the Criminal District Court Clerk's Office and its role in producing wrongful convictions. *Id.* at ¶ 50.

In 2025, Mr. Duncan decided to run for the Office of Orleans Parish Criminal District Court Clerk. *Id.* at ¶ 49. During a September 23, 2025 debate against then-incumbent Darren Lombard, Mr. Duncan told voters directly: "I stayed in prison 28 and a half years trying to get my records. I've never wanted that to happen to nobody else." *Id.* at ¶ 51. He continued: "I know the consequences of getting it wrong. I know the consequences of why when records are not properly stored, and evidence are not properly stored and secured, victims cannot get the justice they deserve." *Id.*

On September 30, 2025, Defendant Attorney General Liz Murrill, the highest-ranking attorney in the State—who represents all state actors in their official capacity (including Governor Landry)—took the extraordinary and unprecedented step of publicly attacking and threatening retaliation against Mr. Duncan if he continued to describe himself as an exoneree on the campaign trail. *Id.* at ¶ 59. She demanded that Mr. Duncan "cease representing to the public that you were 'exonerated' to avoid further action from this office," while acknowledging that "criminal court records confirmed that Mr. Duncan's conviction was vacated in 2021." *Id.* at ¶¶ 58–61. Defendant Murrill claimed that the circumstances surrounding the vacatur of Mr. Duncan's conviction caused her "grave concern about abuse and manipulation of the justice system," and threatened further action if he did not comply with her demand. *Id.* Mr. Duncan did not heed her threat and continued to use his protected political speech to speak truth to power. *Id.* at ¶¶ 62–67.

On October 1, 2025, mere days after she sent her initial letter, Defendant Murrill doubled down, vowing to take "further action" against Mr. Duncan if he did not stop calling himself exonerated. *Id.* at ¶ 65. Again, Mr. Duncan did not heed her threat and continued to use his

protected political speech. *Id.* at ¶¶ 66–67. Defendant Murrill's letter nonetheless had its intended effect: shortly afterward, then-incumbent Lombard's campaign filed a TRO against Mr. Duncan seeking to prevent him from using the word "exonerated," a filing built directly on Defendant Murrill's public statements. *Id.* at ¶ 63. Mr. Lombard later withdrew the petition, having secured the media attention he sought. *Id.* at ¶ 64.

On October 11, 2025, Mr. Duncan appeared on the ballot for Orleans Parish Clerk of Criminal District Court. *Id.* at ¶ 48. On November 15, 2025, he was elected to the position with 68 percent of the vote. *Id.* at ¶ 54. On April 20, 2026, Mr. Duncan received his Commission Certificate, Criminal District Clerk of Court identification badge, and Oath of Office forms. *Id.* at ¶ 56. He was sworn into Office the following day. *Id.* In accordance with La. R.S.13:1371.2.(A), he is scheduled to take office on May 4, 2026. *Id.*

But Defendants Jeff and Nancy Landry, and Murrill aim to unconstitutionally obstruct Mr. Duncan's entitlement to that office. *Id.* at ¶ 58. Senator John "Jay" Morris, a Republican representing Monroe, over 200 miles from New Orleans, with no constituent interest in the administration of Orleans Parish criminal courts, introduced the Landry Bill. *Id.* at ¶ 69. He repeatedly claimed, albeit without support at the time, that the then-plain text of the statute made clear that Ms. Napoleon was the heir to the new clerk of court office. *Id.* at ¶¶ 70–74. The Governor too made public statements asserting that the Landry Bill would have this intended effect. *Id.* at ¶¶ 68-80. Initially, to ensure Mr. Duncan would never be seated at all, Senator Morris worked with the Governor's Office to introduce an amendment to the Bill that would make it effective upon the Governor's signature—the First Landry Amendment. *Id.* at ¶¶ 75, 94. When pressed at the time about the reach of the Landry Bill and its ability to, on its face, legally unseat Mr. Duncan before

he takes office, Senator Morris conceded litigation is likely going to be necessary to resolve this question. *Id.* at ¶ 90.

On April 8, 2026, the Louisiana Senate passed the Landry Bill, which included the First Landry Amendment, 25 to 11. *Id.* at ¶ 87. The Bill was voted through the Louisiana House Judiciary Committee on April 16, 2026. *Id.* at ¶ 88. It was voted through the House on April 23, 2026—but not prior to the inclusion of the late-breaking Second Landry Amendment, which unequivocally underscored that Ms. Napoleon would, absent any election, be stepping into the newly-created clerk of court seat on May 4, 2026. *Id.* at ¶ 94. The Senate issued a concurring vote on April 29, 2026. *Id.* The Landry Bill now heads to the Governor's desk for signature (albeit with pro forma signatures from the Senate President and House Speaker occurring in the interim). *Id*.

Mr. Duncan files suit now, before the Landry Bill reaches the Governor's desk, to stay the effect of the Landry Amendments, which would produce an unconstitutional result—preventing Mr. Duncan from taking office at 12:00 a.m. on May 4, 2026, with the duties and responsibilities of that office, which were determined on the date of his election. *Id.* at ¶ 110.

ARGUMENT

TROs are only granted when a plaintiff establishes that (1) he has a substantial likelihood of success on the merits of his claims; (2) he will suffer a substantial threat of irreparable injury if the injunction requested is not issued; (3) the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) the grant of an injunction will not disserve the public interest. *See Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). In applying this four-factor test, courts consider the factors on a "sliding scale," where a greater threat of irreparable injury may justify issuance of preliminary relief in a situation with a less certain likelihood of success, and vice versa. *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F.

Supp. 3d 604, 635 (M.D. La. 2015), *aff'd sub nom. Planned Parenthood of Gulf Coast, Inc. v. Gee*, 837 F.3d 477 (5th Cir. 2016), *opinion withdrawn and superseded*, 862 F.3d 445 (5th Cir. 2017), and *aff'd sub nom. Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017). Mr. Duncan readily satisfies the elements required for issuing an emergency TRO.

I. Mr. Duncan Is Likely to Succeed on the Merits of His Claims.

Mr. Duncan raises two (2) of his seven (7) claims (Counts I and IV) in his request for a TRO. If the Court finds he has the likelihood of prevailing on any one claim against any single defendant, a TRO should issue.

Count I (Effective Right to Vote Violation). The Fourteenth Amendment right to vote is a fundamental right safeguarded by the Constitution. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The vote is the quintessential mechanism "to *express* [one's] political preferences." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). The right to an effective vote is broadly interpreted "as a right of meaningful access to the political process rather than narrowly as a mere right of registration and access to the ballot box." *Smith v. Winter*, 717 F.2d 191, 198 (5th Cir. 1983) (citing *Kirksey v. Board of Supervisors*, 554 F.2d 139, 142 (5th Cir. 1977)). Moreover, "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Reynolds*, 377 U.S. at 555).

The Fourteenth Amendment protects Mr. Duncan's right to vote. That right is a "substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population." *Lubin v. Panish*, 415 U.S. 709, 713 (1974). In elections, there is "a concomitant right

to have [one's] vote[] counted." *Gamza v. Aguirre*, 619 F.2d 449, 452 (5th Cir. 1980) (collecting cases). "[T]he first amendment protects the marketplace of ideas," and "such protection extends not just to the right to speak, but to the right to elect representatives sympathetic to a given group or viewpoint." *Hatten v. Rains*, 854 F.2d 687, 695 (5th Cir. 1988) (citing *Morial v. Judiciary Commission of Louisiana*, 565 F.2d 295, 302 (5th Cir. 1977) (en banc), *cert. denied*, 435 U.S. 1013 (1978)). Where laws operate "to exclude candidates of an identifiable group or viewpoint," those laws "have been invalidated on constitutional grounds." *Morial*, 565 F.2d at 302 (collecting cases).

Regulations that "burden a relevant constitutional right, such as the [Fourteenth Amendment] right to vote or the First Amendment rights of *free expression* and association," yet "primarily regulate the mechanics of the electoral process, as opposed to core political speech," trigger an analysis under *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). *See Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 138 (3d Cir. 2022) (emphasis added). Under *Anderson-Burdick*, "the court 'must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.'" *See La Union del Pueblo Entero v. Abbott,* 167 F.4th 743, 760-62 (5th Cir. 2026) (quoting *Anderson*, 460 U.S. at 789) (denying relief but applying *Anderson-Burdick* as the operative legal test). Then "the court 'must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule." *Id.* Here, the First and Second Landry Amendments trigger an *Anderson-Burdick* analysis.

Anderson-Burdick Prong 1: Magnitude of the Injury

Mr. Duncan avers in his Complaint that the Landry Amendments together operate to deny his freedom of speech as it pertains to his right to vote—a dire unconstitutional injury. *See Duncan v. Poythress*, 657 F.2d 691, 703–05 (5th Cir. 1981) (holding due process clause of the Fourteenth

Amendment protects against the disenfranchisement of a state electorate in violation of state election law).

As an initial matter, the Landry Bill creates a new office by extinguishing the prior clerk of court offices, thereby altering the character and core duties of the new clerk of court position. *See* La. Const. Art. V § 32 (specifically identifying clerks of the civil and criminal district courts as distinct positions that continue in operation under the current constitution unless changed by law, suggesting the change is one of significance that alters the status quo); *see also State ex rel. Holmes v. Wiltz*, 11 La. Ann. 439, 441–46 (La. 1856) (discussing statutory interpretation methods to determine whether a legislative act creates a new office). Louisiana courts have long distinguished between statutes that merely recognize an existing office and those that abolish one office and substitute a materially different one. *See State ex rel. Garland v. Guillory*, 166 So. 94, 103–04 (La. 1935) (where an act rearranges jurisdiction, duties, or constituency such that the prior office no longer exists, the resulting position is treated as a new office).

Where a new, elected office is created, Louisiana law requires that it be filled by election, not appointment. *State ex rel. Sanchez*, 4 So. 2d at 597 (holding that "a newly created office becomes ipso facto vacant when it is created and remains vacant until it is filled by an incumbent" because "no such office can come into existence until an election is held to fill it, and there can be no vacancy in an office [that can be filled via appointment] that has not come into existence); *Russell v. McKeithen*, 257 La. 225, 244 (1970) (holding that part of Act that created a new judgeship was unconstitutional insofar as it provided for interim appointment by Governor prior to special election, and stating that "'[w]here the Constitution has provided the method of filling offices, the Legislature may not provide for filling them in any other manner'" (citation omitted)).

Here, the First and Second Landry Amendments together operate to completely unseat Mr. Duncan post-election. That maneuvering is unconstitutional because it disenfranchises him as a voter and overrides the outcome of a completed election by bypassing electoral processes for the upcoming term completely. *Duncan*, 657 F.2d at 704; *see also Phillips v. Snyder*, No. 2:13–CV–11370, 2014 WL 6474344, at *8 (E.D. Mich. Nov. 19, 2014) ("[I]f the right to vote is to mean anything, certainly it must provide that the elected official wields the powers attendant to their office") (denying violation of fundamental right when, unlike the present case where the intent is to unseat the elected official entirely, emergency managers were taking over duties held by elected officials). Unlike recall or removal procedures initiated through established electoral mechanisms, the injury here arises from legislative action eliminating an office after a completed, certified election. *See* Compl. at ¶ 1 (citing Exh. A).

The timing and structure of the Landry Amendments demonstrate that they were designed not to address administrative necessity, but to ensure, above all else, that Mr. Duncan never assumes office. *See* Compl. at ¶¶ 193–200.[3] These Amendments shock the conscience and constitute "patent and fundamental unfairness" in the administration of an election. *Duncan*, 657 F.2d at 704. The Landry Amendments cannot operate to unseat the operative Criminal District Court Clerk by bypassing a legally-required election for a new office in favor of a legislative appointment (couched as a simple transfer of files that just happen to occur on the day that Mr. Duncan was elected to be seated in office). *See State ex rel. Sanchez*, 4 So. 2d at 597.[4]

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[3] The status quo is otherwise largely being maintained by virtue of the Landry Bill's text, which provides that no Criminal District Court staff "may be discharged from employment by the [new] clerk before January 15, 2027, except for good cause [. . .][.]" La. R.S.13:1211.1(B) (as amended by SB 256).

[4] *See also Smith v. Sells*, 156 Tenn. 539, 541 (Tenn. 1927) (holding it was not permissible for that state to change structure of local offices "for the purpose of putting one set of men out of office and another set in office" (citation omitted)); *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 783 (Minn. 1986) (halting the transfer of powers and authorities from elected State Treasurer office to an appointed Commissioner of Finance office partly on the

***Anderson-Burdick* Prong 2: State's Interest**

"[I]n pursuing [a substantial state interest], the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity [because] [s]tatutes affecting constitutional rights must be drawn with 'precision,' "and must be tailored to serve their legitimate objectives." *Dunn,* 405 U.S. at 343 (citation omitted). While not every election irregularity rises to the level of a constitutional violation, federal courts may intervene where state officials deliberately nullify a completed election in violation of governing law, resulting in "patent and fundamental unfairness." *Duncan*, 657 F.2d at 703–04. Retrospective interference with a completed election may thus give rise to constitutional injury under the Fourteenth Amendment. *Id.* at 704–05.

Here, the First and Second Landry Amendments serve no legitimate purpose and amount to unconstitutional retrospective interference by the state with a completed election. The Amendments together aim to nullify the election for Criminal District Court Clerk by abolishing that office nearly immediately before Mr. Duncan takes it, *see* Compl. at ¶ 1 (citing Exh. A). The Amendments extinguish the vote for Criminal District Court Clerk (but curiously not the vote for the Civil District Court Clerk, who ran unopposed and, as such, did not appear on the ballot) by

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basis that doing so would violate the will of the people, stating "[t]he individual, however, was duly elected by the people of this state in accordance with Article V of our state constitution"); *Powers v. State*, 318 P.3d 300, 323 (Wyo. 2014) (holding bill removing authorities from state's elected Superintendent of Public Instruction and transferring those authorities to a newly formed and appointed office was unconstitutional, stating it "impermissibly transfers the power of general supervision from the elected constitutional office of Superintendent to the statutory office of Director of the Department of Education who is appointed by the Governor"); *Saunders v. Haynes*, 13 Cal. 145, 153–54 (Cal. 1859) ("An election is the deliberate choice of a majority or plurality of the electoral body. This is evidenced by the votes of the electors. But if a majority of those voting, by mistake of law or fact, happen to cast their votes upon an ineligible candidate, it by no means follows that the next to him on the poll should receive the office. If this be so, a candidate might be elected who received only a small portion of the votes and who never could have been elected at all but for this mistake. The votes are not less legal votes because given to a person in whose behalf they cannot be counted; and the person who is the next to him on the list of candidates does not receive a plurality of votes because his competitor was ineligible.").

immediately creating and filling a new office—the Orleans Clerk of Court—with duties materially different from those of the prior Civil and Criminal District Court Clerks. *Id.* at ¶¶ 71–74, 133–136. The Amendments cannot lawfully do this because Louisiana law does not allow for this type of legislative maneuvering where (a) the state constitution calls for an election; and (b) the definition of clerk of court was fixed as of the date of the election at issue.

First, both the Louisiana Constitution and the Bill require that clerks of court be elected by the voters of the parish they serve. La. Const. Art. V § 28(A) (mandating election for Clerk of Court); La. R.S. 13:1211.1(A) (as amended in SB 256) (same, but for the First and Second Landry Amendments, which are in tension with the provision that electors will vote for the new clerk of court). Where, as here, a new office is created, it must be filled through an election, not by legislative appointment. *See State ex rel. Sanchez*, 4 So.2d at 595 (holding that "a newly created office becomes ipso facto vacant when it is created and remains vacant until it is filled by an incumbent" because "no such office can come into existence until an election is held to fill it, and there can be no vacancy in an office [that can be filled via appointment] that has not come into existence); *Russell*, 225 La. at 244 (holding that part of Act that created a new judgeship was unconstitutional insofar as it provided for interim appointment by Governor prior to special election, and stating that "'[w]here the Constitution has provided the method of filling offices, the Legislature may not provide for filling them in any other manner'" (citation omitted)); *see also* La. R.S. 18:402(E)(1) (discussing special elections to fill newly-created offices). Together the Landry Amendments fundamentally undermine the fairness and integrity of the electoral process, rendering them unconstitutional. *Duncan*, 657 F.2d at 703–05 (holding due process clause of the Fourteenth Amendment protects against the disenfranchisement of a state electorate in violation of state election law).

Additionally, the Second Landry Amendment founders because the revised definition for "clerk of court" in the Landry Bill cannot operate to alter the meaning of that term as it was in use during the 2025 elections for Civil and Criminal District Court Clerks. Louisiana courts recognize that constitutional protections attach to an elected official at the time of election, not on the designated date one is scheduled to assume office. *See Calogero v. State ex rel. Treen*, 445 So. 2d 736, 739 (La. 1984) (holding that the term of office for Justices of the Supreme Court provided for in constitution in effect at time of election of the Justice determined the length of term of office for such Justice, notwithstanding fact that new constitution with provision for different term of office took effect on same day such Justice assumed office); *Hoag v. Kennedy ex rel. State*, 836 So. 2d 207, 231 (La. Ct. App. 2002) (holding that because Louisiana Constitution protects salaries and benefits of coroners and other elected public officials, those protections attach at the time of election, not assumption of office) (citing *Avoyelles Parish Justice of the Peace v. Avoyelles Par. Police Jury,* 758 So. 2d 161, 167–69 (La. 3rd Cir. 1999) (holding that police jury's post-election resolution reducing pay of justices of the peace, constables, and district attorneys unconstitutional because such constitutional protections attached on election day, not the date of assumption of office). By extension, at the time of Mr. Duncan's election, up and through today, the term "'Clerk of court' or 'clerk' means the clerk of the district court, except that in any parish having a civil district court and a criminal district court, these terms mean the clerk of the criminal district court." La. R.S. 18:2(3). Accordingly, on November 15, 2025, Mr. Duncan was elected to the position of "clerk of court," which included the duty of chief elections officer, La. R.S. 18:422, per the definition in effect at the time. La. R.S. 18:2(3). He should accordingly, on May 4, 2026, take the office to which he was elected.

Indeed, it was under this definition of "Clerk of court" that Mr. Duncan carried the vote of tens of thousands of Orleans Parish voters. Understandably, because she was never on the ballot, not a single vote was affirmatively cast for Ms. Napoleon who, in any event, was not running for chief elections officer of the parish, or any other duties that at the time fell within the jurisdiction of the criminal court clerk. Mr. Duncan's Commission Certificate (issued to him on April 20, 2026), which identifies him as the "Clerk, Criminal District Court, Parish of Orleans," can thus be read to encompass the definition of "clerk of court," which was in operation on the date of his election. Compl. at ¶ 1 (citing Exh. A); La. R.S. 18:2(3).

For the foregoing reasons, Mr. Duncan is likely to succeed on his effective right to vote claim. In the end, if the Second (but not the First) Landry Amendment is stayed, absent (or until such a time as) a legally-required new election has been completed, it follows that either (a) Mr. Duncan and Ms. Napoleon should take their respective seats; or (b) Mr. Duncan (not Ms. Napoleon), who at the time of the 2025 election was best understood to be the Orleans Clerk of Court, should take the newly-created seat. Either way, Mr. Duncan should be seated in office with his attendant commission on May 4, 2026.

Count IV (First Amendment Retaliation). "A plaintiff pursuing a First Amendment retaliation claim must show, among other things, that the government took an 'adverse action' in response to his speech that 'would not have been taken absent the retaliatory motive.'" *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022) (holding that the First Amendment limits government reactions to protected speech) (quoting *Nieves v. Barlett* 587 U.S. 391, 400 (2019). The Fifth Circuit applies a three-part test when assessing First Amendment retaliation. The plaintiff must show (1) he "engaged in constitutionally protected activity"; (2) the retaliator's action caused the plaintiff "to suffer an injury that would chill a person of ordinary firmness from

continuing to engage in that activity"; and (3) those "adverse actions were substantially motivated against [a plaintiff's] exercise of constitutionally protected conduct." *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002).

Mr. Duncan satisfies the First Amendment Retaliation test. *First*, there is no question that he engaged in constitutionally protected speech—namely, advocacy concerning his wrongful conviction, exoneration, and attendant critiques of Louisiana's non-unanimous jury system and the Criminal District Court Clerk's Office's record-keeping failures. Compl. ¶ 60. This political speech is protected. *Bond v. Floyd*, 385 U.S. 116, 136 (1966) (explaining that speech "criticizing public policy and the implementation of it must" be protected for freedom of expression).

Second, the Landry Amendments aim to injure Mr. Duncan by preventing him from taking the office to which he was duly elected, commissioned, and sworn in. Such action has the intention of "chill[ing] a person of ordinary firmness from continuing to engage in [speech] activity." *Keenan,* 290 F. 3d at 258. It has the direct effect of chilling Mr. Duncan's speech as an elected official because it strips him of his official title, thereby barring him from serving in the very seat that would have provided him with an official platform from which to speak. Compl. ¶¶ 163–164. If Mr. Duncan is not allowed to take office as Clerk of the Criminal District Court, he will necessarily be barred from continuing to engage in protected speech as a duly elected official. Such an effort to punish an elected official for his speech "impinges on the liberal discourse essential to democratic processes." *Rash-Aldridge v. Ramirez*, 96 F.3d 117, 119 (5th Cir. 1996) (denying relief for being too distinguishable from *Bond*). This "implicate[s] not only the speech of an elected official, it also implicate[s] the franchise of his constituents. And [refusing to seat an elected official] involve[s] not just counter speech from colleagues but exclusion from office." *Houston Cmty. Coll. Sys*., 595 U.S. at 481 (explaining *Bond* and its import). Mr. Duncan has explained that

he feels personally "targeted" by the First and Second Landry Amendments, just as he was targeted for his public speech. Compl. at ¶ 90.

Finally, the Landry Amendments were substantially motivated by an intent to ensure Mr. Duncan would not be allowed to speak as a public official. The chronology and nature of the events at issue provide "sufficient evidence that the defendants' actions were substantially motivated as a response to the plaintiffs' exercise of protected conduct." *Keenan*, 290 F.3d at 261. In *Keenan*, the Fifth Circuit reviewed a First Amendment Retaliation claim from two Texans who spoke out concerning wrongdoing by a government official (there, a constable). *Id.* After the citizens reported the wrongdoing to a district attorney and a local television station (which aired a critical television news report), the citizens were subjected to a purportedly unlawful traffic stop. *Id.* In denying summary judgment for the officers, the Fifth Circuit pointed out that, because the injury "followed a few months after the [television] report [of misconduct] was aired," the record showed sufficient evidence that the injury was "substantially motivated as a response" to the plaintiffs' protected conduct. *Id*.

Here, as in *Keenan*, the sequence of events is straightforward:

- While campaigning, Mr. Duncan spoke repeatedly about his exoneration and the failures of the Criminal District Court Clerk's Office, Compl. ¶¶ 46-47;
- In October, Defendant Murrill, who represents the Governor, threatened further state action if Mr. Duncan did not cease speaking in a manner at cross-purposes with elected officials in the State, *id.* at ¶¶ 59-60;
- Mr. Duncan refused and won the election in November, *id.* at ¶ 68; and
- In response, the Governor directed Senator Morris to introduce SB 256 in February with an Amendment added in April, ensuring the Bill takes effect before Mr. Duncan takes office in May, *id.* at ¶¶ 69–78, 94. Morris stated plainly on the floor of the Louisiana Senate that the First Landry Amendment was brought at the behest of the Governor who sought "[t]o go ahead and get [the Bill passed into law] before Mr. Duncan takes office." *id.* at ¶¶ 77–78, 94. On April 23, 2026, to ensure

> the First Landry Amendment took effect without a hitch, the Second Landry Amendment was introduced and passed the House. *Id.* at ¶ 94. It passed the Senate on April 29, 2026. *Id.*

This timeline (outlining events that happened between Mr. Duncan's expressive conduct and the injury effectuated by passage of the Landry Amendments) demonstrates that Defendant Jeff Landry's actions were "substantial[l]y] motivated as a response" to Mr. Duncan's protected speech. *Keenan*, 290 F.3d at 261; *see also Grosjean v. Am. Press Co.*, 297 U.S. 233, 250–51 (1936) (holding that otherwise facially neutral Louisiana tax was an unconstitutional, "deliberate and calculated device" whose "plain purpose" was to punish plaintiff-publishers critical of Huey Long). It is thus likely that Mr. Duncan will succeed on the merits of his First Amendment retaliation claim against Defendant Landry.

II. Mr. Duncan Will Suffer Irreparable Harm Absent a TRO.

Mr. Duncan satisfies the irreparable harm requirement for injunctive relief. Constitutional violations like those threatened here "cannot be undone through monetary remedies," and therefore are necessarily irreparable. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). Furthermore where, as here, "an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 296 (5th Cir. 2012) (citation omitted); *see also Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F.Supp.3d 511, 529 (S.D. Tex. 2020) ("It has repeatedly been recognized by the federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law.") (quoting *Killebrew v. City of Greenwood*, Mississippi, 988 F. Supp. 1014, 1016 (N.D. Miss 1997). In deciding whether a party has shown irreparable harm, courts may consider both the harm to the parties and the harm to the public.

Hornbeck Offshore Servs., L.L.C. v. Salazar, 696 F.Supp. 2d 627, 638–39 (E.D. La. 2010) (*citing In re Nw. Airlines Corp*., 349 B.R. 338, 384 (S.D.N.Y. 2006)).

Here, once the Governor signs the Landry Bill into law, decisive injury to Mr. Duncan—perfected through the Landry Amendments—will be complete. Those Amendments will have the effect of denying Mr. Duncan the seat the law now provides he will take on May 4, 2026. Compl. ¶¶ 77–81; La. R.S. 13:1371.2(A) (setting date for taking office). Once the Landry Amendments go into effect, Mr. Duncan's right to the Criminal District Court Clerk Office and right to vote for the newly-constituted Clerk of Court position will have been lost. That harm is irreparable.

III. The Balance of Equities and the Public Interest Tilt in Mr. Duncan's Favor.

The balance of equities greatly favors Mr. Duncan because a TRO would merely preserve the status quo—protecting Mr. Duncan's constitutional rights while causing Defendants no cognizable injury. *See Deep S. Today v. Murrill,* 779 F.Supp.3d 782, 829 (M.D. La. 2025) (granting injunctive relief where plaintiffs showed imminent "irreparable harm absent" injunctive relief). The effect of the Landry Amendments is to chill Mr. Duncan's speech immediately, erase his vote for Criminal District Court Clerk that he cast in the November 2025 election, and prevent him from voting for the newly-constituted Clerk of Court position. The restraining order sought here prevents these irreparable injuries from taking place, and only minimally affects Defendants (as it calls only the First and Second Landry Amendments into question to allow litigation to proceed on the other counts in the Complaint).[5]

[5] The status quo is largely being maintained in any event by virtue of the Bill's text, which provides that no Criminal District Court staff "may be discharged from employment by the [new] clerk before January 15, 2027, except for good cause [. . .][.]" La. R.S. 13:1211.1 (B) (amended by the Senate Bill).

This short-term injunction simply ensures that Mr. Duncan takes his rightful seat on May 4, 2026, the date his term commences by law and to which his commission and oath attach. *See* La. R.S. 13:1371.2(A) (setting commencement date of his term); Compl. ¶ 1 (citing Exh. A); La. R.S. 42:141(B) (authorizing a public officer to take the oath of office at any time after receiving his commission certificate, with the oath deemed effective as of the term's commencement date). Mr. Duncan received his commission on April 20, 2026 and took his oath on April 21, 2026. A TRO would do nothing more than preserve the status quo by allowing Mr. Duncan, in accordance with his commission and the will of the voters, to take his seat on May 4, 2026.

IV. A TRO Will Serve the Public Interest.

"[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (citation omitted). The public interest is served by "maintaining the status quo pending a full trial on the merits" to make a final determination as to the constitutionality of a law or action. *United States v. State of Tex.*, 508 F.2d 98, 101 (5th Cir. 1975). "[N]either [the State] nor the public has any interest in enforcing a regulation that violates federal law." *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (citation omitted).

Here, the Landry Amendments intend to ignite "unconstitutional" actions, "[and] so the public interest [is] not disserved by an injunction preventing [its] implementation." *Ingebretsen on Behalf of Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996). Protecting the public interest here is critical to preserving the democratic electoral process for voters in Orleans Parish, like Mr. Duncan. *Robinson v. Ardoin*, 37 F.4th 208, 230 (5th Cir. 2022) ("It is axiomatic that injunctions in voting-rights cases burden the defendants. But the question, under *Purcell*, is [. . .] whether that burden is intolerable—that is, whether the defendants cannot bear it 'without

significant cost, confusion, or hardship.'") (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring)). Allowing Mr. Duncan to take the office to which he was elected in a landslide runoff, and to which he was commissioned and sworn in, is not controversial. All the TRO does is maintain the status quo, thereby preserving the will of the voters, which is in the public interest.

V. The Court Should Not Require Security Prior to Issuing Injunctive Relief.

Courts may waive the bond requirement provided for in Federal Rule of Civil Procedure 65(c) when appropriate. *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (not requiring positing of bond where "plaintiffs were engaged in public-interest litigation"); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978) (holding that the requirement of security is a matter of the trial court's discretion). Doing so here would be appropriate because Mr. Duncan's relief is tailored to protecting his constitutional rights as an elected official and voter, which are both in the public interest. *Id.*

CONCLUSION

For the foregoing reasons, Mr. Duncan respectfully asks this Court to issue a TRO providing for his assumption of the Office of Orleans Parish Criminal District Court Clerk on May 4, 2026 at 12:00 a.m. Such an order would operate to temporarily stay the effects of the First and Second Landry Amendments until further order of the Court.

Dated: April 29, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2026, I electronically filed the foregoing Motion for a Temporary Restraining Order with the Clerk of the Court by using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Sarah Whittington
Attorney for Plaintiff

Exhibit E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, et al., PLAINTIFF, v. JEFFREY LANDRY, et al., DEFENDANTS.	Civil Action No. 3:26-cv-460 Judge: JWD - SDJ

STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

INTRODUCTION

Act 15 consolidates Orleans Parish's separate civil and criminal clerk-of-court offices into a single office—an exercise of authority the Louisiana Constitution expressly vests in the Legislature. La. Const. art. V, § 32. Simply by virtue of Act 15, the criminal clerk-of-court office will not exist on Monday. Neither the State Defendants (the Governor, the Attorney General, and the Secretary of State) nor this Court can change that fact. Nonetheless, in a request that appears to be unprecedented in federal caselaw, Plaintiff asks this Court to somehow enjoin the three State Defendants, override that restructuring, and install him on Monday in the office the Legislature has abolished. Respectfully, this is not the appropriate venue for Plaintiff's political disagreement—as the jurisdictional and merits defects confirm.

First, this Court lacks jurisdiction three times over. Sovereign immunity bars the claims against these State Defendants because none enforces Act 15. Plaintiff lacks standing because his alleged injury is neither traceable to these State Defendants nor redressable by an injunction against them. And *Pennhurst* bars the relief he seeks, which depends on this Court enforcing his view of Louisiana law against state officials.

Second, Plaintiff is unlikely to succeed on the merits. His *Anderson-Burdick* theory does not implicate *Anderson-Burdick* at all because he does not challenge election mechanics; he challenges the Legislature's exercise of its express constitutional authority to restructure an Orleans Parish clerk's office. La. Const. art. V, § 32. And his novel First Amendment retaliation theory cannot convert Act

15—passed by the Legislature as part of a broader Orleans Parish court-reform effort—into retaliation by the Governor, Attorney General, or Secretary of State, none of whom took any adverse action against Plaintiff (and the latter two of whom have no constitutional role in bicameralism and presentment).

Third, the equities decisively favor the State. Plaintiff seeks disfavored mandatory preliminary relief that would disrupt Act 15's legislatively prescribed transition plan and cloud the administration of Orleans Parish's courts.

The motion should be denied.

BACKGROUND

With its enactment yesterday, Act 15 consolidates Orleans Parish's separate civil and criminal district court clerk offices into one clerk-of-court office.[1] *See* Act 15 of the 2026 Regular Session, La. State Legislature, t.ly/rV82O. The Act "abolish[es]" the "office of clerk of criminal district court for the parish of Orleans … at the end of May 3, 2026, and before the term of any other criminal clerk of court begins." Act 15, § 4. At that point, the abolished office of the criminal clerk's "authority, functions, duties, and responsibilities," along with its records, money, actions, and property, transfer to the Orleans Parish civil-district-court clerk, "who shall thereafter be referred to as the clerk of court for the parish of Orleans." *Id.*

[1] To that end, the bill amends a host of statutes to eliminate references to a separate "civil" or "criminal" clerk of court in Orleans. *See* La. R.S. 13:761(C) (Supplemental compensation fund); 13:1211 (Qualifications); 13:1211.1 (Election); 13:1212.1 (Expenses); 13:1213.1 (Court costs); 13:1216 (Dockets); 13:1222 (Vehicles); 13:1338 (Transfers); 13:1373, 1373.1 (Minute clerks); 13:1381 (Fees); 13:1381.3 (Expense fund); 13:1381.7 (City appropriations); 13:2515 (Writ applications); 15:85.1 (Bonds); 18:2(3) ("Clerk of court" defined); 18:444 (Parish executive committees); 18:602, 1300.7 (Vacancies); 18:1354 (Custodian of voting machines); 18:1511.2 (Supervisory committee).

Act 15 reflects a broader court-reform effort by the Legislature, not a one-off measure aimed at Plaintiff. *See* Matt Bruce, *Debate intensifies as bills to consolidate New Orleans' courts prep for House, Senate floors*, NOLA.com (Apr. 7, 2026), t.ly/SW4Uo. Orleans Parish's bifurcated court structure is the only one of its kind in the State. *See* La. Legislative Auditor, *Clerks of Court*, t.ly/6wv3r. That unusual structure is a vestige of an earlier era when New Orleans was the State's dominant population center; today, Orleans is no longer even Louisiana's largest parish. *See* Informed Sources April 10th, 2026, WYES New Orleans, t.ly/1z40P, at 19:35–24:00.

Act 15—along with several other reform bills this session—thus fits a long-running legislative pattern of streamlining Orleans Parish's unusually fragmented court system. *See, e.g.*, SB645 of the 2006 Regular Session by Senator Willie Landry Mount, La. State Legislature, t.ly/44M8b (consolidating Orleans civil and criminal sheriffs); HB607 of the 2013 Regular Session by Representative Helena Moreno, La. State Legislature, t.ly/IU7DI (providing for the elimination of two Orleans juvenile court judgeships); HB600 of the 2016 Regular Session by Representative Walt Leger, III, La. State Legislature, t.ly/lznrE (combining Orleans traffic and municipal courts and eliminating a judgeship).

That backdrop notwithstanding, Plaintiff sued the Governor, Attorney General, and Secretary of State, ECF No. 1 (Compl.), and now seeks an emergency, mandatory TRO requiring them to install him in an office that Act 15 abolishes on Monday, ECF No. 2 (TRO.Mem.). The Court should deny that motion.

ARGUMENT

I. Plaintiff Is Unlikely to Succeed.

Plaintiff is unlikely to succeed for two independent reasons. The Court lacks jurisdiction over this dispute, and, even if jurisdiction existed, Plaintiff's federal claims fail on the merits.

A. The Court Lacks Subject Matter Jurisdiction.

The TRO motion fails at the threshold for three independent reasons: (1) sovereign immunity bars the claims against these State Defendants; (2) Plaintiff lacks standing; and (3) the requested TRO would violate *Pennhurst* by compelling compliance with Plaintiff's view of state law.

1. Sovereign immunity bars this suit.

The claims against the Governor, Attorney General, and Secretary of State are all barred by sovereign immunity, and *Ex parte Young* does not apply. "To be a proper defendant under *Ex parte Young*, a state official 'must have some connection with the enforcement of' the law being challenged." *Alleman v. Harness*, 780 F. Supp. 3d 608, 630–31 (M.D. La. 2025) (quoting *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024)). That is, "the state official must have a duty beyond 'the general duty to see that the laws of the state are implemented'" and, instead, "must have 'the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.'" *Id.* (quoting *Book People, Inc. v. Wong*, 91 F.4th 318, 335 (5th Cir. 2024)). Enforcement means "compulsion or constraint" because "if the official does not compel or constrain anyone to obey the challenged law, enjoining that official could not stop

any ongoing constitutional violation." *Id.* (citation omitted). Plaintiff cannot make that showing.

The Governor, Attorney General, and Secretary of State do not compel or constrain anyone with respect to Act 15's abolition of the Orleans Parish criminal clerk's office. *Cf. Bogan v. Scott-Harris*, 523 U.S. 44, 47, 54–55 (1998) (holding local officials absolutely immune for legislative acts abolishing city office). The Act does not mention the Attorney General at all. And its limited references to the Governor and Secretary of State concern recall elections, La. R.S. 18:1300.7(B), where Act 15 makes no substantive change to any official's role. The Act does not "authoriz[e]" any State Defendant to "cause the prosecution" of a violation or to "apply for an injunction." *Cf. Alleman*, 780 F. Supp. 3d at 632–33. It gives them no "specific authority to enforce the Act" or to "prosecute" violations of it. *Cf. Deep S. Today v. Murrill*, 779 F. Supp. 3d 782, 811 (M.D. La. 2025). It does not make them responsible for "adopt[ing] rules and regulations" or "implementing the rules." *Cf. Roake v. Brumley*, 756 F. Supp. 3d 93, 144 (M.D. La. 2024). And it gives them no particularized statutory authority to "direct[]" other officials in carrying out the Act's transition provisions. *Cf. Voice of the Experienced v. Ardoin*, No. CV 23-331-JWD-SDJ, 2024 WL 2142991, at *18 (M.D. La. May 13, 2024).

Nowhere is this sovereign-immunity defect more evident than in Plaintiff's own prayer for relief. His Complaint and his TRO motion do not request any relief directed at any Defendant. *See* Compl.50 ("A. Assume jurisdiction over the claims in this matter. B. Issue an Order authorizing Plaintiff Calvin Duncan to assume the

Office of Orleans Criminal District Court Clerk at 12:00 a.m. on May 4, 2026. C. Enjoin SB 256, or in the alternative enjoin the First and Second Landry Amendments. D. Declare that the Landry Bill, including the Landry Amendments, violate[s] federal law; E. Award such further relief as the Court deems just and proper."); TRO.Mem.21 (seeking only the relief requested in B). That is because no Defendant has any enforcement authority regarding Act 15's abolition of the criminal clerk-of-court office, nor can any Defendant stop Act 15's operation of law. Because no Defendant enforces Act 15 (or could be enjoined from not enforcing Act 15), sovereign immunity plainly bars this suit.

2. Plaintiff lacks Article III standing.

That *Ex parte Young* defect points up an independent Article III standing problem. To satisfy Article III, a plaintiff must show (1) "an injury that is 'concrete, particularized, and actual or imminent'"; (2) that is "fairly traceable to the challenged action"; and (3) that is "redressable by a favorable ruling." *Attala Cnty., Miss. Branch of NAACP v. Evans*, 37 F.4th 1038, 1042 (5th Cir. 2022) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)). Standing "is not dispensed in gross," which means that "'plaintiffs must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)). Whatever Plaintiff's generalized voter injury, it is neither traceable to these State Defendants nor redressable by the relief he seeks.

"The second and third standing requirements—causation and redressability—are often 'flip sides of the same coin.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367,

380 (2024) (citation omitted). That is because, "[i]f a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *Id.* at 381.

But that is Plaintiff's problem here: The State Defendants have nothing to do with the "enforcement" of Act 15, which is currently in effect and will consolidate the clerks' offices by operation of law come Monday. *Supra* Section I.A.1. The challenged restructuring flows from the Act itself, enacted by the Legislature under its exclusive lawmaking authority and signed by the Governor. *See Krielow v. La. Dep't of Agric. & Forestry*, 2013-1106 (La. 10/15/13), 125 So. 3d 384, 388. Plaintiff rightly does not seek some sort of injunction purporting to require the Legislature or the Governor to take back Act 15. *Cf. California v. Texas*, 593 U.S. 659, 673 (2021) ("And they do not claim that they might enjoin Congress."). Nor does he seek some sort of injunction against any Defendant, precisely because no Defendant has any role in Act 15's operation of law. That is a textbook traceability and redressability problem, as no order by this Court as to these State Defendants could redress any purported injury to Plaintiff.[2]

More, this Court cannot actually order the injunction Plaintiff seeks: an injunction "providing for his assumption of the Office of Orleans Parish Criminal District Court Clerk on May 4, 2026 at 12:00 a.m." TRO.Mem.21; *see* Compl.50 (asking the Court to issue "an Order authorizing Plaintiff Calvin Duncan to assume

[2] It bears noting, in addition, that the Attorney General and the Secretary of State plainly have no constitutional role in the bicameralism-and-presentment process that produced Act 15, which independently defeats any traceability argument as to those State Defendants.

the Office of Orleans Parish Criminal District Court Clerk at 12:00 a.m. on May 4, 2026" and to "[e]njoin SB 256").[3] For one thing, that office quite literally will not exist on Monday—and neither the State Defendants nor this Court can prevent that operation of law. An order providing for Plaintiff to assume a non-existent office, therefore, would accomplish nothing. For another, "a federal court exercising its equitable authority may enjoin named defendants from taking specified unlawful actions"—but "no court may 'lawfully enjoin the world at large,' or purport to enjoin challenged 'laws themselves.'" *Whole Woman's Health v. Jackson*, 595 U.S. 30, 44 (2021) (citations omitted). Yet Plaintiff does not hide that he is trying to enjoin Act 15 itself, which is foreclosed by cases like *Whole Woman's Health*. Both practically and legally, therefore, the Court cannot redress Plaintiff's asserted injury through the injunction he seeks.

3. *Pennhurst* independently forecloses a TRO.

The requested TRO independently runs headlong into the Supreme Court's command in *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124–25 (1984), that "federal courts lack[] jurisdiction to enjoin [] state institutions and state officials on the basis of [] state law." On Plaintiff's own telling, he demands relief that would bring Act 15 into compliance with state law. *E.g.*, TRO.Mem.10 ("Louisiana law requires that it be filled by election, not appointment."); TRO.Mem.13 ("Louisiana

[3] Notably, nothing about this particular remedy would redress Plaintiff's claimed injury to his "right to vote for the newly-constituted Clerk of Court position." TRO.Mem.19. Plaintiff, in fact, would prefer no election or voting at all. *See* TRO.Mem.15 (proposing that "Mr. Duncan (not Ms. Napoleon) … should take the newly-created seat"). Accordingly, Plaintiff also lacks standing to request a remedy so unrelated to his supposed injury.

law does not allow for this type of legislative maneuvering"). So even if Plaintiff were right about state law (he is not, *see infra*), the requested injunction thus necessarily "largely overlap[s]" with what state law requires. *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020). And "*Pennhurst* plainly prohibits such an injunction." *Id.*

B. In All Events, the Claims Are Meritless.

Jurisdictional defects aside, Plaintiff is still unlikely to succeed on the merits. His purported *Anderson-Burdick* claim tries to convert a state-office restructuring into an election-law case, and his retaliation claim tries to attribute the Legislature's enactment of Act 15 to the alleged motives of separate state officials. Neither theory can support emergency relief.

1. Plaintiff's *Anderson-Burdick* claim fails. (Count I)

Plaintiff's *Anderson-Burdick* theory will fail on its own terms. As best the State Defendants can tell, Plaintiff claims that Act 15 violates his right to vote in one of two ways: either by "overrid[ing] the outcome of a completed election," TRO.Mem.11, or by denying him a vote in a supposed vacancy election for the consolidated clerk office, TRO.Mem.13. Neither theory fits *Anderson-Burdick*, which applies to challenges to "a state election rule [that] directly restricts or otherwise burdens an individual's First Amendment rights." *See La Union del Pueblo Entero v. Abbott*, 167 F.4th 743, 760 (5th Cir. 2026). That is principally because Act 15 "does not control the mechanics of the electoral process." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995); *see Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 141–42 (3d Cir. 2022) (collecting examples of "mechanics of the electoral process"). It does not regulate ballot access, candidate qualifications, vote counting, election timing, or voter

eligibility. And nothing about *Anderson-Burdick* "mandate[s] that states organize their governments in a particular manner." *Moncier v. Haslam*, 570 F. App'x 553, 559 (6th Cir. 2014). Plaintiff thus "has no recognized right under the United States Constitution to run for"—or vote for—"an office that, under state law, already has been filled." *Id.*

Plaintiff's fallback reliance on *Duncan v. Poythress*, 657 F.2d 691 (5th Cir. Unit B 1981), fares no better. He invokes *Duncan* for the proposition that "the Fourteenth Amendment to the United States Constitution protects against the disenfranchisement of a state electorate in violation of state election law." *See* TRO.Mem.9–10. But *Duncan* cabined itself to "rare, but serious, violations of state election laws that undermine the basic fairness and integrity of the democratic system." 657 F.2d at 699.[4]

This case is nowhere near a cataclysmic breakdown of democracy. Abolishing a state office is a quintessential sovereign power of the State. *Newton v. Mahoning Cnty. Comm'rs*, 100 U.S. 548, 559 (1879) ("The legislative power of a State, except so far as restrained by its own constitution, is at all times absolute with respect to all offices within its reach."). That is why "public officers do not have a property interest in the positions they occupy." *Houchens v. Beshear*, 441 F. Supp. 3d 508, 517 (E.D. Ky. 2020) (citing *Taylor v. Beckham*, 178 U.S. 548 (1900)); *accord Hoag v. State ex rel. Kennedy*, 2001-1076 (La. App. 1 Cir. 11/20/02), 836 So. 2d 207, 220–21 (same under state law), *writ denied*, 2002-3199 (La. 3/28/03), 840 So. 2d 570. The Louisiana

[4] To the extent it constitutionalized state-law disputes over public office, it was abrogated by *Pennhurst*. *See supra* Section I.A.3.

Constitution, moreover, even expressly vests in the Legislature the power to abolish "clerks of the civil and criminal district courts" in Orleans Parish with a "change by law." *See* La. Const. art. V, § 32. Plaintiff's demand via *Duncan* to be seated in an office the Legislature has abolished is therefore a nonstarter.

Nor does the alternative theory—a claimed right to vote for a supposed new clerk-of-court vacancy—save his claim. *First*, Act 15 does not call a vacancy into being. It consolidates the authority, functions, duties, responsibilities, records, funds, and property of the criminal clerk's office into the civil clerk's office, whose holder is then referred to as the clerk of court for Orleans Parish. *Second*, even if Plaintiff could characterize that consolidation as creating a new office, Article V, § 32 forecloses his premise. Separate from other clerks of court statewide, the Orleans "clerks of the civil and criminal district courts" were "continued" in the 1974 Constitution only "subject to change by law," "notwithstanding any other contrary provision of this constitution," except as to their "terms of office." La. Const. art. V, § 32; *see, e.g.*, *Davenport v. Hardy*, 349 So. 2d 858, 862–63 (La. 1977) (recognizing the Legislature's exclusive power under Article V, § 32). Act 15 honors that narrow limitation by leaving the current criminal clerk's term untouched and abolishing the office only "before the term of any other criminal clerk of court begins." Plaintiff is just wrong that the Louisiana Constitution requires a new election every time the Legislature exercises its express authority to change Orleans Parish's clerk offices by law.

2. Plaintiff's First Amendment retaliation claim fails. (Count IV)

Plaintiff's First Amendment retaliation theory is also deeply flawed. To prevail, he must prove "the government took an 'adverse action' in response to his

speech that 'would not have been taken absent the retaliatory motive.'" *Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022) (citation omitted). But the Attorney General and Secretary of State took no substantive action at all with respect to Act 15, and the Governor merely signed the piece of legislation passed by the Legislature. *See id.* at 479 (holding that a public censure and reprimand was not a sufficiently "adverse action"); *see also Bogan*, 523 U.S. at 55. That is not enough—especially where the law at issue was enacted by a separate branch through bicameral passage.

Even setting aside the adverse-action problem, Plaintiff also cannot show but-for causation. Plaintiff ignores that Act 15 is part of a broader legislative effort to restructure Orleans Parish courts. Bruce, *supra* (discussing five different bills to revamp Orleans Parish courts). He cites zero evidence that the Governor and the Legislature somehow enacted any of Act 15's provisions in retaliation for Plaintiff's supposed protected speech. Indeed, his best innuendo (TRO.Mem.17–18) about the Legislature's effort to ensure that Act 15 took effect before he took office is completely baseless: As explained above, to comply with the constitutional protection for the clerks' terms of office, the Legislature *had* to do so. The Legislature's compliance with the Louisiana Constitution is not a First Amendment violation.

Finally, Plaintiff whiffs on a key part of the retaliation analysis: whether the supposed retaliation would chill a person of ordinary firmness from speaking. TRO.Mem.15–16. Setting aside that Plaintiff continues to engage in his preferred speech, his only argument on this score is that, "[i]f [he] is not allowed to take office as Clerk of the Criminal District Court, he will necessarily be barred from continuing

to engage in protected speech as a duly elected official." TRO.Mem.16. That is not a First Amendment claim; that is just a reprise of his due process claim, which fails for the reasons explained above. He will remain just as free on Monday as he is today to engage in whatever speech he wishes to express.

II. The Equities Favor the State.

The remaining factors add nothing to Plaintiff's motion. His irreparable-harm, equities, and public-interest arguments rise or fall with his merits theory that Act 15 violates the First and Fourteenth Amendments. TRO.Mem.18–21. Because that theory fails, those factors fail too. And the equities independently favor the State: Plaintiff seeks to upend a duly enacted statute. *See E.T. v. Paxton*, 19 F.4th 760, 770 (5th Cir. 2021) ("When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." (cleaned up)). He also seeks mandatory—and indeed, apparently unprecedented—relief that would install him in an office that Act 15 abolishes, disrupt the Legislature's transition plan, and leave Orleans Parish court administration in disarray. But "[m]andatory preliminary relief," like that, "goes well beyond simply maintaining the status quo" and "is particularly disfavored." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976); *accord Roark v. Individuals of Fed. Bureau of Prisons, Former & Current*, 558 F. App'x 471, 472 (5th Cir. 2014) (per curiam); *ExxonMobil Pipeline Co. v. Landry*, No. CV 15-824-JWD-EWD, 2016 WL 320153, at *3 (M.D. La. Jan. 26, 2016) (citation omitted). The equities favor denying emergency relief.

CONCLUSION

The Court should deny the motion.

Dated: May 1, 2026

Respectfully submitted,

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Exhibit F

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CALVIN DUNCAN, *Plaintiff*, v. JEFFREY LANDRY, *et al.*, *Defendants*.	Case No. 3:26-cv-460 Judge John W. deGravelles Magistrate Judge Scott D. Johnson

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Defendants' opposition avoids the key issue—whether filling a newly-created office by unauthorized legislative appointment violates Plaintiff's federal constitutional rights. It does. And their arguments about *Ex parte Young*, standing, and *Pennhurst* flounder because Defendants' actions are directly tethered to (a) the illegal execution of the Second Landry Amendment (the provision of a commission to an elected office absent an election); and (b) improper motives (the silencing of Plaintiff's speech as an elected officer). As to their merits' arguments, they too favor Plaintiff. In fact, Defendants readily admit that the term of the criminal district court clerk cannot be cut short post-election, but conveniently avoid recognizing case law that tethers term limits of electeds to the date of their election, not their assumption of office date. Against this backdrop, granting Plaintiff's TRO request stands to prevent irreparable constitutional harm that further motion practice on a workable timetable can more readily and definitively resolve.

I. Defendants Err in Arguing *Ex parte Young* Applies to Plaintiff's Claims.

Defendants assert that sovereign immunity ("SI") bars Plaintiff's effective right to vote and First Amendment ("1A") retaliation claims. Opp. at 4-6. But the cases on which Defendants rely, including those that concern legislative immunity, are inapt. *See e.g.*, *Bogan v. Scott-Harris,* 523 U.S. 44, 48 (1998) (holding legislators are immune for legislative acts); *Krielow v. Louisiana Dep't*

of Agric. & Forestry, 2013-1106 (La. 10/15/13), 125 So. 3d 384, 388 (same) (cited in Opp. at 5).[1] Where, as here, a plaintiff seeks to bar actions by state officials with a direct connection to the enforcement of an unconstitutional law or portion thereof, *Ex parte Young* applies against the "state officials acting in violation of federal law." *Deep S.,* 779 F. Supp. 3d at 809.[2]

***Right to Vote Claim*.** Here, both the Governor and Secretary of State are required to take actions for Chelsey Napoleon to sit as the new Clerk. Thus, each has a direct connection to enforcing the unconstitutional portion of Act 15 being challenged—here, the Second Landry Amendment (the "SLA"), which installs Ms. Napoleon into the new seat absent a legally-required election. TRO Br. at 11. Defendants Landry and Landry are both together and separately implicated in Act 15's enforcement. *First*, under Louisiana law, elected officials receive a commission issued by the Secretary and signed by the Governor. La R.S. 18:513(A)(5) (providing that secretary "shall" certify an elected's election to the governor, who "shall issue a commission"). Thus, Ms. Napoleon's Civil District Court commission, signed by Defendants Landry and Landry, is either the operative document that permits her to take over the new seat, or Defendants will provide her with a new commission by virtue of that new title. Either way, Defendants have "some connection with the enforcement of the act in question . . . ." *Book People*, 91 F.4th at 335 (finding

[1] *See Alleman v. Harness*, 780 F. Supp. 3d 608, 633 (M.D. La. 2025) (denying sovereign immunity for state board of examiners based on "particular duty to act" and "sufficient connection to enforcement" in 1A challenge to licensure law); *Mi Familia Vota v. Ogg,* 105 F.4th 313, 333 (5th Cir. 2024) (granting SI for AG due to a showing of only "general" authority and lack of specific role); *Book People, Inc. v. Wong,* 91 F.4th 318, 336 (5th Cir. 2024) (denying SI for education commissioner who had "sufficient connection to the statute's enforcement" in 1A challenge to content-warning requirement); *Deep S. Today v. Murrill*, 779 F. Supp. 3d 782, 811 (M.D. La. 2025) (denying SI for AG and Louisiana State Police Superintendent in 1A challenge by journalists to policing buffer zone); *Voice of the Experienced v. Ardoin*, No. CV 23-331-JWD-SDJ, 2024 WL 2142991, at *18 (M.D. La. May 13, 2024) (similar, for secretary of state in challenge to Election Code provisions under Equal Protection clause).

[2] *Texas Democratic Party v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020) (denying SI to Secretary of State in challenge to absentee-voting provisions because of the secretary's responsibility to design, provide, and furnish the required forms); *Okpalobi v. Foster*, 244 F.3d 405, 414–15 (5th Cir. 2001) (holding plaintiff must demonstrate defendant has "some connection with the enforcement of the act in question or [is] specially charged with the duty to enforce the statute and [is] threatening to exercise that duty." (en banc) (plurality op.) (cleaned up); *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019) (explaining "scintilla of 'enforcement' by the relevant state official with respect to the challenged law" will do).

Ex parte Young exception applied where state actor "ultimately responsible" for complained of speech violation even though actual enforcement mechanisms performed by other local officials).

Second, Governor Landry is directly implicated in enforcement of the Act because it was his signature (yesterday) that made SB 256 law (Act 15). It is also not true that the Act only references the Governor in the context of recall elections. Opp. at 5. Indeed, as reported by the media, the Act made the Governor the decisive authority over the date of the Bill's enactment.[3] Act 15, by its terms, placed the authority to nullify the 2025 election in the Governor's hands. Compl. at ¶7 (explaining how amendments added to expedite law's effective date); *id. at* ¶ 3 ("Not only am I going to sign it, I'm going to absolutely support it and make sure it's passed."). Without his signature on a date prior to Plaintiff's elected term, the law would otherwise go into effect *after* the date of Plaintiff's commission (the subject of the TRO at issue). La. Const. Art. III § 18 (explaining that a passed, but unsigned, bill becomes law on August 1).

There is no way to distance the Governor from the exercise of a "scintilla of 'enforcement' with respect to the challenged law," here, specifically, the SLA. *Abbott,* 978 F.3d at 180 (denying sovereign immunity in voting rights challenge to absentee ballot procedures for Secretary of State due to "specific and relevant" responsibilities governing absentee ballot form); *Book People, Inc*. 91 F.4th at 335 (explaining that sovereign immunity turns on ability to compel or constrain a person unlawfully). The Governor clearly "demonstrated a willingness to exercise [his] duty" to enforce the statute when he signed it and made it law. *Alleman*, 780 F. Supp.3d at 630–31. That signature was the nail in the criminal district court clerk's coffin. Staying the Landry Amendments (the "Amendments") would allow Plaintiff to take his elected seat on Monday (the only relief he

[3] *See, e.g.,* Matt Bruce, *Bill to merge New Orleans court clerks clears legislature, awaits Jeff Landry's signature,* Times-Picayune (Apr. 29, 2026), https://www.nola.com/news/politics/bill-to-merge-new-orleans-court-clerks-clears-legislature-awaits-jeff-landrys-signature/article_664afded-1041-4e46-9789-ddd8b8b66bfd.html.

seeks in his TRO). It defies reason to suggest the Governor's signature triggers the law to somehow start, yet simultaneously claim that he had no ability to "stop" it. Opp. at 5. He had the authority to stop it from going into effect and instead chose to sign it forthwith. Exh. A. Sovereign immunity does not shield the Governor from suit.

Third, the Secretary is implicated in the unlawful enforcement of Act 15 because her role is tied to ensuring (1) elections are not wrongly nullified, and (2) elections required by the Louisiana Constitution are held. *See* TRO Br. at 8–15, Ex. A-2 (ECF No. 2-3); La. R.S. 18:18 (she is departmental head responsible for conduct of Louisiana elections, and is responsible for public officials' oaths of office in accordance with La. R.S. 42:162). She may not fail to uphold her duties in administering and issuing commissions for newly elected offices. *See* La. R.S. 18:602 (duties of secretary in event of vacancy). Hence, sovereign immunity does not bar a claim against her.

1A Retaliation Claim. The Governor and Attorney General (the "AG") are not immune from suit because Plaintiff alleges a retaliation campaign by them and against him for his speech. *See Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002) (holding unconstitutional "adverse governmental action against an individual in retaliation for the exercise of protected speech activities"); TRO Br. at 15. The retaliatory chain began with and is directly tied to Defendant Murrill's threats. Compl. ¶¶ 57–65. It continued through the Governor's championing of Act 15 to punish Plaintiff, Compl. at ¶¶ 68–80, including through the SLA, which was designed to abolish his office, Compl. ¶ 94.[4] Because *Ex parte Young* does not bar suits for violations of federal law (and this retaliation violates 1A), Plaintiff's claim is not barred.

[4] Defendants allege a broader legislative effort is the true motivating factor of Act 15. But the differences in these bills belie this narrative. For example, S.B. 217 becomes effective on August 1, 2026, and reduces judgeship in 2027. S.B. 197 reduces state appellate judges, but likewise protects against the remainder of terms. H.B. 911 modifies the organization of the criminal and juvenile courts but likewise prevents against position elimination and/or vacancies. Act 15 has none of these protections.

II. Defendants' Traceability and Redressability Arguments Fail.

Defendants also wrongly assert that Plaintiff lacks standing to bring his claims because his injury is not traceable to Defendants' actions and the redress he seeks does not rectify it. Opp. at 6-8.[5] Because Plaintiff satisfies *Ex parte Young, see supra* Sec. I, he also satisfies Article III standing. *See Book People*, 91 F.4th at 334–36; *Deep S. Today*, 779 F. Supp. 3d at 809.

Traceability requires showing a "causal connection between the injury and the conduct complained of." *Book People, Inc.,* 91 F.4th at 332. Here, Plaintiff's injury (as a voter and as Clerk-Elect) is premised on how the criminal court clerk's office is being abolished (Count I) and why (Count IV). TRO Br. at 8–18. His injury stems directly from the Amendments, which unlawfully nullify a prior election and avoid a legally required future one, all in an attempt to unlawfully appoint Ms. Napoleon to an elected office that she did not run for. Compl. ¶¶ 138. The Amendments do not comport with case law that (a) prevents retroactive alteration of the outcome of a completed election; or (b) requires a new and vacant seat to be filled by election. *See* TRO Br. at 15, Exh. A-2 (ECF No. 2-3) (citing case law). Staying the effects of the Amendments would directly redress the injury that Plaintiff focuses on in his TRO—specifically, his inability to take office on Monday in accordance with the electorate's expectations set on November 15, 2025. *See* TRO Br. at 14 (citing cases). His requested relief would bar the unconstitutional and immediate abolition of his office, demonstrating that the injury of which he complains is traceable to Defendants, who by virtue of their role in issuing commissions validate and seat elected officials.

[5] Defendants cite a litany of cases that do not address the facts at bar and, instead, stand for general standing principles not in dispute. *See, e.g.*, *Attala Cnty., Mississippi Branch of NAACP v. Evans,* 37 F.4th 1038, 1043 (5th Cir. 2022) (finding no standing because plaintiffs did not demonstrate a likelihood of racial discrimination in jury service was likely to happen to them, individually); *California v. Texas*, 593 U.S. 659, 673 (2021) (denying standing where statutory provision had no mechanism of enforcement; that is, where there was no forthcoming injury). Defendants' passing reference to *Whole Woman's Health v. Jackson* is inapt. 595 U.S. 30, 44 (2021) (concerning Texas law creating a private right of action against people who performed or facilitated abortions, and sought injunctive relief against it, where Court held it could not possibly enjoin "any and all" unnamed parties who may bring suit).

Redressability requires a plaintiff to show that a "favorable decision will relieve a discrete injury to [himself]." *Id.* Relief here, under either Counts I or IV, would mean that Defendants would be prevented from issuing a commission to Ms. Napoleon as the de facto, newly-created Orleans Parish clerk. Compl. ¶ 190. It would thereby give meaning to Plaintiff's 2025 vote, remove the chilling effects of the Act, and prevent Defendants from somersaulting over the 1st and 14th Amendments by avoiding a legally required election. TRO Br. at 11. Federal law is clear that plaintiffs have standing to challenge unconstitutional state law provisions against appropriate actors. *See, e.g., Grosjean v. Am. Press Co.*, 297 U.S. 233, 251 (1936) (1A challenge to tax on publishers); *Duncan v. Poythress*, 657 F.2d 691, 703–05 (5th Cir. 1981) (14A challenge to state election law brought against Governor and Secretary of State who sought to appoint justice despite required special election).

III. Defendants Misread and Misapply *Pennhurst*.

Defendants suggest *Pennhurst* alone bars any further consideration of a TRO. Opp. at 9. Not so. *See Am. Bank & Tr. Co. of Opelousas v. Dent*, 982 F.2d 917, 921 (5th Cir. 1993) (noting Defendant cannot "escape the reach of *Young*" where, under the exception, "state law that is *challenged* as unconstitutional . . . does not mean that [Plaintiff's] cause of action arises under state law" or seeks injunctive relief on the basis of state law). *Ex Parte Young* directly provides a carve out for suits like Plaintiff's that challenge the constitutionality of state law, which *Pennhurst* explicitly recognizes. 465 U.S. at 102.[6] Here, Plaintiff seeks only to preserve his rights under the 1st and 14th Amendments with a narrow stay of the Landry Bill's violative effects—without which

[6] That constitutional compliance runs through state action is of no mind where a plaintiff—as here—has "plausibly pled claims rooted in federal law." *Planned Parenthood Gulf Coast, Inc. v. Gee*, 2018 WL 11472388, at *14 (M.D. La. 2018); *see also id.* ("The claims may implicate state law, but the Court cannot conclude at this time that granting relief in this action will run afoul of *Pennhurst* or related cases" because plaintiffs plausibly pled claims rooted in federal law); *cf.* Defendants' citation to *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020) (distinguishable where district court issued an injunction that, *by its own admission*, overlapped with a state department's policy (and ultimately went beyond the scope) to promote compliance, which is not at issue in the present case).

he will suffer irreparable harm. TRO Br. at 4. That Plaintiff's request would allow him to assume the office to which he was elected for the duration of the injunction is a byproduct of what state law *actually* requires: an election for the newly created seat via Act 15. *Pennhurst* is inapplicable because Plaintiff's claim arises under the U.S. Constitution, not state law.

IV. Anderson-Burdick Applies as Landry Amendments Nullify and Avoid an Election.

Defendants argue that *Anderson-Burdick* is inapt. Opp. at 9. They claim the test is limited to "challenges to 'a state election rule that directly restricts or otherwise burdens an individual's [1A] rights." *Id.* (citation omitted). But failure to follow a state election rule is at issue here, where Act 15, through the Amendments, aims to control the "mechanics of the electoral process." Opp. at 9. Nullifying an election, while also failing to call another as required by law, is quintessential regulation of "ballot access" because access to the ballot is being denied outright, both by virtue of nullification and in failing to call a required election. *Id.* Moreover, "candidate qualifications" are being erased due to the complete lack of a qualification round for a required upcoming election. *Id.* As for "vote counting," it is being wholly abandoned through the nullification of nearly 40,000 votes and the failure to count votes concerning the required new election. *Id.* Regarding "election timing," that too is being eroded because no election is being called for the new seat. *Id.* Finally, as for voter eligibility, that has been wholesale thrown out because voters are being cheated out of the new election with no recourse as to the nullification of their votes in the prior election. *Id.*

Separately, Defendants' reliance on *Moncier v. Haslam*, for the rule that the Constitution does not "mandate that states organize their governments in a particular manner," is inapt. 570 F. App'x 553, 559 (6th Cir. 2014). There, the legislature reorganized an office the state constitution did not require be filled by popular election, leaving the appointment mechanism constitutionally

permissible, whereas here Louisiana's Constitution expressly mandates that "[i]n each parish a clerk of the district court shall be elected for a term of four years." *Id*; La. Const. Art. V § 28(A). Similarly, Defendants' reference to *Newton v. Mahoning Cnty. Comm'rs,* 100 U.S. 548, 559 (1879), fails. That case does not stand for the rule that legislative power to abolish state offices "is at all times absolute." *Id.* Rather, *Newton* carves out the constraint at issue here, recognizing that legislative power over offices operates only "except so far as restrained by its own constitution." The power to abolish an office and the power to fill it with a successor are constitutionally separate acts. Here, Louisiana's Constitution restrains the latter by requiring an election. La. Const. Art. V § 28(A). The SLA is unconstitutional because rather than carving out space for a legally-required election to fill the newly seat, it decides who occupies it.[7] Pl. TRO Br. at 2 n.2.

In fact, *Duncan,* 657 F.2d 691, prohibits this outcome. *Id.* at 700, 704 (holding that "it is fundamentally unfair and constitutionally impermissible for public officials to disenfranchise voters in violation of state law so that they may fill the seats of government through the power of appointment," and deliberate, intentional action that erodes democratic process crosses constitutional threshold regardless of whether underlying legislative act was facially authorized). Defendants' argument that the seat is a mere consolidation and not a new office does not save them, because that proposition runs headlong into precedent that suggests the opposite. *See, e.g.*, *Calogero v. State ex rel. Treen*, 445 So. 2d 736, 738 (La. 1984) (elections "must be for a specific office with a specific term and specific powers," as defined at the time of election).[8]

[7] The SLA attempts to "transfer the authority, functions, and duties of the criminal clerk's office to the civil clerk, 'who shall thereafter be referred to as the clerk of court for the parish of Orleans,' without requiring any election." *Id.* That is not restructuring; that is an appointment to a new office by another name. *Id.* at 13 (citing *State ex rel. Sanchez v. Dixon*, 4 So. 2d 591, 595 (La. Ct. App. 1941); *Russell v. McKeithen*, 257 La. 225, 244 (1970).

[8] *Campbell v. Zayo Group, L.L.C.*, 656 Fed. Appx. 711 (5th Cir. 2016) (plaintiff showed age discrimination where terminated after job was consolidated with colleague's, both were considered incumbents, the consolidated job was "new" with new responsibilities, and defendant described elimination of plaintiff's original job "as a done deal," but broader staff consolidation and reorganization were future events).

Finally, Defendants' argument that the term of the criminal district clerk cannot be cut short, Opp. 11, supports Plaintiff's argument, not theirs. Plaintiff's term was set on November 15, 2025, by virtue of a completed election for the office for which he ran. It cannot be retroactively changed because the legislature aims to eliminate the term prior to commencement. *See* TRO Br. at 14 (citing cases). In sum, because Defendants fail to offer any legitimate state interest that would justify nullifying a completed election and bypassing constitutionally required electoral processes, Plaintiff is likely to succeed on his voting rights claim.

V. Defendants Fail to Engage with Plaintiff's 1A Retaliation Allegations.

For starters, Plaintiff's 1A claim is not brought against Defendant Nancy Landry; it is brought solely against the Governor and AG. Compl. ¶¶ 226-235. As to these Defendants, myriad "substantive actions," Opp. at 12, are raised as to their retaliation against Plaintiff for his speech.[9] What Defendants frame as simply "comply[ing] with the constitutional protection for the clerks' terms of office" (Opp. at 12) is belied by the sequence of events alleged in the Complaint and the quashed constitutional rights of voters, including Plaintiff. As to "but-for causation," Opp. at 12, Defendants' actions are allegedly the very reason for passage of the Amendments, Compl. ¶¶ 80, 94, for which no counterparts exist in the other two laws that ostensibly form part of the Governor's package to align Orleans with the other parishes. *See* n.4, *supra.* Defendants also wrongly claim that Plaintiff's speech is unaffected by the Amendments. Indeed, barring an elected from his position by virtue of his messaging in a way that the messages brought on behalf of his constituents are silenced amounts to classic 1A retaliation. *See Bond v. Floyd*, 385 U.S. 116, 136 (1966)

[9] *See, e.g.,* Compl. ¶¶ 59, 65 (AG's threat regarding speech); *Id.* ¶ *58* (relationship between AG and Governor); *Id.* ¶ 68 (Act 15 brought at Governor's behest); *Id.* ¶ 70 (Act 15 tethered directly to Governor's priorities); ¶¶ 75-76 (First Landry Amendment, brought at Governor's behest to ensure Plaintiff never takes office is adverse action tethered to retaliatory motive of silencing Plaintiff for his speech on the campaign trail); *id.* ¶ 94 (SLA brought at Governor's behest so no scintilla of doubt in successor to Orleans Clerk of Court seat and that successor would be placed in permanently without an election); *see also* TRO Br. at 16 (explaining why plaintiff satisfies 1A retaliation standard identified in *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002)).

(finding refusal to seat state legislator for protected speech violated 1A and implicated interests of the legislator's constituents); *Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022) (explaining *Bond* and its import). On May 4, if Defendants have it their way, the clerk of criminal district court will not exist because of his speech on the campaign trail, and Plaintiff's voice as an elected official will have been successfully quashed. TRO Br. at 16 (applying *Bond*).

VI. The Equities Militate in Plaintiff's (not Defendants') Favor.

Defendants claim the equities favor the State because Plaintiff aims "to upend" Act 15. Opp. at 13. But Defendants miss the mark in failing to acknowledge that an Act (or portion thereof) that violates the Constitution does not favor enforcement. TRO Br. at 20 (citing cases). The transition plan outlined in Act 15 is unconstitutional because legislative appointment to an elected office violates the 1st and 14th Amendments. TRO Br. at 8–18. So while Plaintiff is not arguing here that Act 15 may not create a new position, he is arguing that, in doing so, it cannot bypass an election. *Id*. at 1. Saving an act from an internal inconsistency is not unprecedented.[10] Opp. at 13. And, for the same reason, Defendants cannot truncate Mr. Lombard's term, they cannot do so to Plaintiff's. TRO Br. at 11. The status quo, until yesterday, was that Plaintiff would take the office to which he was duly elected by Orleans voters last year. It is thus not he who intends to upset the status quo; it is the Defendants. The equities accordingly favor granting the TRO.

[10] *Barr v. Am. Ass'n of Political Consultants, Inc.*, 591 U.S. 610, 626 (2020) ("The Court's power and preference to partially invalidate a statute in that fashion has been firmly established since *Marbury* v. *Madison*."); *see also Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 332 (2006) (holding either an injunction prohibiting unconstitutional applications or a holding that consistency with legislative intent requires invalidating statute *in toto* was an appropriate remedy where law could be applied in manner that violated constitutional rights).

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2026, I electronically filed the foregoing Reply with the Clerk of the Court by using the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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