

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 99-30600  
Summary Calendar

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DARREN GAUBERT,

Plaintiff-Appellant,

versus

FRANK DENTON, in his official capacity as Secretary of the Louisiana Department of Transportation and Development; RICHARD STALDER, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections; RODNEY SLATER, in his official capacity as Secretary of the U.S. Department of Transportation,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(98-CV-2947-N)

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February 17, 2000

Before POLITZ, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Darren Gaubert appeals the dismissal of his declaratory judgment action against Frank Denton, Secretary of the Louisiana Department of Transportation and Development; Richard Stalder, Secretary of the Louisiana Department of Public Safety and Corrections; and Rodney Slater, Secretary of the United States

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Department of Transportation. Gaubert's petition stems from a suit previously filed in Louisiana state court. Invoking the Declaratory Judgment Act, 28 U.S.C. § 2201, Gaubert seeks a pronouncement that the provisions of 28 U.S.C. §§ 402 and 409 are unconstitutional under the first, fifth, tenth, and fourteenth amendments. As noted, the district court dismissed the action.

We review the district court's dismissal for lack of standing and failure to state a claim *de novo*.<sup>2</sup>

The district court concluded that it had jurisdiction to hear Gaubert's claims under 28 U.S.C. § 1331, because he alleges a controversy arising under the Constitution, laws, or treaties of the United States. We concur in that determination. Our review of the parties' briefs, the record on appeal, and the relevant law persuades that Gaubert lacked standing to pursue a claim under the tenth amendment, and that §§ 402 and 409 do not violate his first, fifth, and fourteenth amendment rights. Dismissal of his claims and the rendering of a judgment in favor of the defendants was therefore appropriate.

The judgment appealed is **AFFIRMED**.

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<sup>2</sup>**Lowrey v. Texas A & M University System**, 117 F.3d 242 (5<sup>th</sup> Cir. 1997); **Ass'n of Community Organizations for Reform Now v. Fowler**, 178 F.3d 350 (5<sup>th</sup> Cir. 1999).