

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF LOUISIANA**

JAMILA JOHNSON, *et al.*

Plaintiffs,

v.

KYLE ARDOIN, IN HIS OFFICIAL
CAPACITY AS LOUISIANA SECRETARY
OF STATE,

Defendant.

Case No.: 3:18-cv-00625-SDD-EWD

THIRD PARTY COMPLAINT

Defendant, Kyle Ardoin, in his official capacity as Secretary of State of the State of Louisiana (“Secretary of State”), brings this third party action on the following grounds:

I. The Parties to This Complaint

A. The Plaintiffs

Plaintiff No. 1 is Jamila Johnson, alleged in the Amended Complaint to be a resident of Orleans Parish, Louisiana;

Plaintiff No. 2 is Norris Henderson, alleged in the Amended Complaint to be a resident of Orleans Parish, Louisiana;

Plaintiff No. 3 is Renard Thomas, alleged in the Amended Complaint to be a resident of Orleans Parish, Louisiana;

Plaintiff No. 4 is Tramelle Howard, alleged in the Amended Complaint to be a resident of East Baton Rouge Parish, Louisiana;

Plaintiff No. 5 is Allan Rogers, alleged in the Amended Complaint to be a resident of East Feliciana Parish, Louisiana;

Plaintiff No. 6 is Mildred Armstrong, alleged in the Amended Complaint to be a resident of West Feliciana Parish, Louisiana;

Plaintiff No. 7 is Kristen Smith, alleged in the Amended Complaint to be a resident of East Baton Rouge Parish, Louisiana;

Plaintiff No. 8 is Ciara Hart, alleged in the Amended Complaint to be a resident of East Baton Rouge Parish, Louisiana;

Plaintiff No. 9 is Dadrius Lanus, alleged in the Amended Complaint to be a resident of East Baton Rouge Parish, Louisiana;

Plaintiff No. 10 is Patricia Chaney, alleged in the Amended Complaint to be a resident of St. Helena Parish, Louisiana; and

Plaintiff No. 11 is Edward Galmon, Sr., alleged in the Amended Complaint to be a resident of St. Helena Parish, Louisiana.

B. The Defendant/Third Party Plaintiff

Defendant/Third Party Plaintiff is Kyle Ardoin, in his official capacity as Louisiana Secretary of State, an executive officer of the State charged with the responsibility for conducting elections in accordance with the mandates of other agencies and branches of the State and federal government.

C. The Third Party Defendants

Third Party Defendant No. 1 is William P. Barr (“Attorney General”), serving as the Attorney General of the United States and head of the Department of Justice, 28 USC 501, with his principal office in the District of Columbia. He is sued only in his official capacity; and

Third Party Defendant No. 2 is United States Department of Justice (at times, “DOJ), an executive department of the United States government, 5 USC § 101, and an agency

of the United States, 5 USC § 701, with its principal office in the District of Columbia, which during the applicable time period herein was charged, together with the Attorney General, with the responsibility for ensuring that changes in voting qualifications, prerequisites, standards, practices or procedures in certain states, including Louisiana, complied with the Voting Rights Act of 1965 and the United States Constitution under a review process commonly known as “preclearance,” 52 USC § 10304.

II. The Complaint and Amended Complaint

A. Plaintiffs filed a Complaint against the Secretary of State on June 13, 2018 generally alleging violations of Section 2 of the Voting Rights Act of 1965, as amended, as well as violations of the U.S. Constitution in connection with the 2010 decennial reapportionment of U.S. congressional districts in Louisiana generally alleging the “cracking and packing” of the districts that adversely impacted African American voting rights. (Doc 1, attached as Exhibit A).

B. On August 21, 2018, plaintiffs filed an Amended Complaint as an amending and superceding complaint generally containing the same factual allegations and claims as set out in the original Complaint stripped of references to the Constitution but asserting a claim under Section 2 of the Voting Rights Act of 1965 (and, the Secretary of State submits, constitutional claims under the Fourteenth and Fifteenth Amendments) again alleging an adverse impact on African American voting rights in U.S. congressional elections in Louisiana. (Doc 19, attached as Exhibit B).

C. On September 23, 2019, the Secretary of State answered the Amended Complaint admitting the Secretary of State’s status and the fact of the 2011 congressional reapportionment but denying the principal allegations of the Amended Complaint and further raising waiver and laches as affirmative defenses. (Doc 106, attached as Exhibit C).

III. Third Party Complaint

A. Grounds for the Third Party Complaint

1. Prior to the Supreme Court's 2013 decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), Section 5 of the Voting Rights Act required "covered" jurisdictions to submit changes in voting qualifications, prerequisites, standards, practices or procedures to the Attorney General and DOJ for review to ensure that the changes complied with the Voting Rights Act and the United States Constitution under a review process commonly known as "preclearance," pursuant to Section 5 of the Act, 52 USC § 10304.

2. Under Section 5, the Attorney General and DOJ had a statutorily imposed obligation to assist covered jurisdictions to achieve compliance with voting rights requirements before implementing any election change.

3. Through the creation of preclearance review, Congress entrusted the Attorney General and DOJ with an affirmative obligation to secure enforcement of the provisions of the Voting Rights Act.

4. By statute, the Attorney General and DOJ bore the responsibility for vindicating the public interest under the Voting Rights Act by achieving full and uniform compliance with its provisions.

5. Section 5 created an affirmative obligation on the part of the Attorney General and DOJ to covered jurisdictions and to the public at large to ensure that voting changes comported with the requirements of the Voting Rights Act and the Constitution, particularly with respect to the impact of such changes on minorities.

6. The Attorney General and DOJ were charged to determine under Section 5 whether voting changes conformed to the Constitution and the Voting Rights Act.

7. In fact, the authority of the Attorney General and DOJ on voting rights was such the plaintiffs in ¶¶ 54, 55, 56, 57, 60, 61, 63, 64, 65, 66 and 69 of their Amended Complaint hold up DOJ as the arbiter of voting rights compliance for the State of Louisiana.

8. In 2011, when Louisiana reapportioned and redistricted its U.S. congressional districts, Louisiana was a “covered” jurisdiction under the Voting Rights Act and was thus required to submit the reapportionment plan to the Attorney General and DOJ for preclearance review.

9. Section 5 preclearance review thus determined whether Louisiana’s reapportionment of U.S. congressional districts could be implemented. Without preclearance, elections could not go forward in the reapportioned districts; with preclearance elections were authorized to proceed.

10. The relevant, information, maps, legislative acts, history, legislative files and other documentation necessary for the Attorney General’s and DOJ’s preclearance review were timely submitted.

11. The Attorney General and DOJ conducted a full preclearance review of the reapportionment and redistricting plan for U.S. Congressional districts adopted by the Louisiana Legislature in 2011 and found the plan to be without constitutional or Voting Rights Act infirmities thus allowing elections under the plan to proceed.

12. Through the preclearance review process, the Attorney General and DOJ contributed to and participated in the formation and implementation of U.S. congressional districts in Louisiana under the plan adopted by the Legislature in 2011.

13. The Attorney General and DOJ played an integral part in Louisiana’s redistricting of U.S. congressional districts in Louisiana in the 2011 reapportionment process.

14. The Secretary of State relied on the Attorney General and DOJ preclearance review before proceeding with U.S. congressional elections in the newly apportioned congressional districts following the 2011 reapportionment and in fact, could not have gone forward with elections absent their determination that the districts did not violate the Constitution or the Voting Rights Act.

15. The Secretary of State continued to rely on the Attorney General and DOJ preclearance review in holding U.S. congressional elections in 2012, 2014, 2016, and 2018, which elections were all held without comment or complaint from the Attorney General DOJ.

B. The Relief and Remedy Requested

1. The Secretary of State believes that the Attorney General and DOJ correctly determined that the U.S. congressional districts adopted by the Louisiana Legislature in 2011 complied with constitutional and statutory requirements; however, in the event the plaintiffs obtain a judgment against the Secretary of State declaring Louisiana's U.S. congressional districts to violate the Constitution and/or the Voting Rights Act, the Secretary of State is entitled to judgment over and against the Attorney General and DOJ for errors in their preclearance determination that led the Secretary of State to hold elections in the districts as adopted by the Legislature.

2. In the event of an adverse judgment, the Secretary of State is further entitled to indemnification from the Attorney General and DOJ for any and all attorney fees, expenses and costs awarded to the plaintiffs.

3. The Secretary of State is further entitled to recover from the Attorney General and DOJ his attorney fees, expenses and costs incurred in defending against the plaintiffs' claims and for the necessity of prosecuting this third party action.

WHEREFORE, defendant/third party complainant, Kyle Ardoin, in his official capacity as Louisiana Secretary of State, respectfully prays:

1. That in accordance with its Answer all claims and demands by the plaintiffs be denied and dismissed;

2. That the Court issue a declaration that the U.S. congressional districts adopted by the Louisiana Legislature in 2011 and precleared by the U.S. Attorney General and DOJ do not violate the requirements of the U.S. Constitution or the Voting Rights Act of 1965.

Alternatively, in the event of an adverse judgment against the Secretary of State:

3. That the Court issue a declaration that the Attorney General and DOJ erred in its preclearance review to the detriment of the Secretary of State;

4. That the Attorney General and DOJ indemnify the Secretary of State for any attorney fees, expenses and costs awarded to the plaintiffs against the Secretary of State; and

5. That the Attorney General and DOJ be ordered to pay attorney fees, expenses and costs to the Secretary of State incurred in defending against the plaintiffs' claim and for prosecuting this third party action.

DATED: May 20, 2019

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 7th day of October 2019, the foregoing Third Party Complaint was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

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