UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

Ronald Chisom, *et al.*, Plaintiffs, v. Bobby Jindal, *et al*. Defendants.	Civil Action: 86-cv-4075-SM/SS

COMBINED MEMORANDUM IN REPLY TO OPPOSITION TO DISSOLVE DEFENDANTS' MOTION BY PLAINTIFFS AND THE UNITED STATES

MAY IT PLEASE THE COURT:

The State of Louisiana moves to terminate the Consent Judgment entered in this case as fully satisfied because the terms of the Consent Judgment confected to remediate the Section 2 complaint have been implemented by the State. The plaintiffs and the U.S. Department of Justice in opposition argue the merits of either a 40 year old Section 2 claim or a Section 2 claim that has not yet been brought and urge the Court to deny the State's motion because neither claim has been disproved by the State. The arguments advanced by the plaintiffs and the Department of Justice miss the mark, and neither the parties nor the Court can now believe that fulfilling the terms of the Consent Judgment failed to meet the suit's objective.

The remedy for the claimed constitutional and Section 2 violation has been confected by the Consent Judgment and satisfied by the actions taken by the State pursuant thereto. The Fifth Circuit is right that the State should have brought a motion to end the Consent Judgment long ago, but the State is no less entitled to terminate the decree for having waited so long. See, *Allen v. Louisiana*, 14 F.4th 366, 374 (5th Cir. 2021), chastising the State for failing to ask the Eastern District to vacate the decree as having been implemented.

This suit was filed on September 19, 1986 challenging Louisiana's apportionment of districts for the election of Supreme Court Justices alleging violations of the U.S. Constitution and Section 2 of the Voting Rights Act of 1965. The parties litigated the challenge extensively in both the district and appellate courts until August 1992 when the case was remanded from the Fifth Circuit Court of Appeal, where it was then pending, to the Eastern District Court to effectuate a settlement of the case. (Rec. Doc. 118). The Consent Judgment under review was entered on August 21, 1992 and was designed to resolve the dispute relating to the election of Louisiana's Supreme Court Justices in order to "ensure that the system for electing the Louisiana Supreme Court is in compliance with Section 2 of the Voting Rights Act." (Consent Judgment, ¶ C(1)), (Rec. Doc. 137-4). The Consent Judgment was subsequently amended to accept and incorporate the provisions of Acts 997, No. 776, § 1 amending La. R.S. 101, 101.1, which established districts for the election of members of the Louisiana Supreme Court. (Rec. Doc. 135).

The Consent Judgment set the terms as to precisely how the State would accomplish the suit's objective of bringing Louisiana's method of electing Supreme Court Justices into compliance with Section 2. The parties agreed, a consent judgment was reduced to writing, and the Eastern District entered the Consent Judgment on August 21, 1992. (Rec. Doc. 137-4).

Relying on the Consent Decree, the Fifth Circuit dismissed the pending appeal on October 7, 1992, (Rec. Doc. 121) and the Consent Judgment, itself, dismissed the plaintiffs' claims with prejudice. "The plaintiffs constitutional claims under the Fourteenth and Fifteenth Amendments, as well as their statutory claim alleging that the present electoral system violates Section 2 because it was intentionally enacted or maintained for discriminatory reasons, are hereby dismissed with prejudice." (Consent Judgment, ¶ G), (Rec. Doc. 137-4). "This consent judgment constitutes a

final judgment of all claims raised in this action by the Chisom plaintiffs and the United States, and is binding on all parties and their successors in office." (Consent Judgment, ¶ H), (Rec. Doc. 137-4). The parties thus agreed and the Court entered judgment dismissing all claims in consideration of the State's agreement to perform the obligations undertaken in the Consent Judgment. Such a consent decrees is more than contract; it also an enforceable judicial order. *U.S. v. Alcoa, Inc.*, 533 F. 3d 278, 286 (5th Cir. 2008).

The mechanics for performing the State's obligations contained in the Consent Judgment required several steps commencing with the designation of a judge elected to the Fourth Circuit Court of Appeal to be assigned to the Louisiana Supreme Court. This provision was met with the passage of Act 1992, No. 512 and the assignment of Justice Revius Ortique, Jr. to the Supreme Court. Secondly, the decree called for a district comprised solely of Orleans Parish for the purpose of electing a Supreme Court Justice from that district when and if a vacancy occurs in the First Supreme Court District prior to January 1, 2000. (Consent Judgment ¶ C(1)), (Rec. Doc. 137-4). The election occurred as provided with the election of Justice Ortique and Justice Bernice Johnson thereafter and Justice Piper Griffin after that. The Consent Judgment then called for the reapportionment of the seven Supreme Court election districts with a single member district that is majority black in voting age population that includes Orleans Parish in its entirety. This provision was substantially satisfied by the enactment of Acts 1997, No. 776, § 1, amending La. R.S. 101, 101.1, which statutorily defined the election districts for the Supreme Court to include a predominately Orleans Parish district. The U.S. Department of Justice precleared the districts without objection, and Act 776 was incorporated into the Consent Judgment by amendment on January 3, 2000. (Rec. Doc. 137-4).

Importantly, and as the U.S. Department of Justice points out in its Memorandum, Act 776 of 1997, as adopted in the amendment to the Consent Judgment, expressly authorizes the legislature to reapportion the Supreme Court districts without limitation. (Act 776, § 1, Part E). Act 776 does not mandate the preservation of any one district in the decennial reapportionment. This Court can no more anticipate that the Louisiana legislature will violate the constitution in drawing Supreme Court districts in a given decennial reapportionment than it can substitute its judgment for that of the state legislature in devising a reapportionment plan. *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 416 (2006) ("if a legislature acts to replace a court-drawn plan with one of its own design, no presumption of impropriety should attach to the legislative decision to act"). The State is undoubtedly required to comply with the U.S. Constitution and Section 2 of the Voting Rights Act of 1965 and other federal and state laws in conducting a reapportionment of Supreme Court elections districts, but nothing in the law guarantees that any district will be a majority-minority district in perpetuity.

The plaintiffs and the Department of Justice in their respective memorandums argue that in order to terminate the Consent Judgment, the State must disprove some abstract Section 2 violation that is neither the subject of the original Chisom suit nor a new suit with specific allegations of a discrete Section 2 violation. The State has no such burden in order to show that the terms of the Consent Judgment have been met nor that the Consent Judgment must be read to establish a perpetual Supreme Court district in Orleans Parish, particularly since Act 776, which is a part of the Consent Judgment, specifically provides for future reapportionment of the districts without limitation. See, *Frew v. Janek*, 780 F.3d 320, 330 (5th Cir. 2015), allowing dissolution of a decree for substantial compliance with its essential provisions.

The State has met and complied with each provision of the Consent Judgment, which was entered as the measure for curing the claims made by the plaintiffs and the Department of Justice in the litigation. The plaintiffs and Department of Justice now want more than compliance with the Consent Judgment even though they asked the Court to enter to enter the Consent Judgment to satisfy their Section 2 claim in the first instance. The obligations of the State under the Consent Judgment cannot be enlarged or expanded now that the judgment has been fully implemented. *Allen v. Louisiana*, at 371, citing, *Trahan v. Coca Cola Bottling Co. United*, 2004-0100 (La. 3/2/05), 894 So. 2d 1096, 1107. The parties, here, intended to settle all claims asserted in the Chisom litigation as evidenced by the dismissal of the suit in its entirety. The Consent Judgment was negotiated, written by the parties and entered by the Court with the clear intent that the implementation of its terms was to put an end to the dispute.

Compliance with the order, the adoption of election districts and 30 years of electing African American justices to the Supreme Court inarguably represent a change in circumstances since suit was filed and the Consent Judgment was entered. So too, does the malapportionment of voting age population and total population in Supreme Court election districts reflected in the 2020 census constitute a change in conditions. Additionally, with the decennial census, the Louisiana has begun the process of reapportioning Supreme Court districts, which is precisely what the Consent Judgment by incorporating Act 776, calls for the legislature to do. (Louisiana Legislature, https://redist.legis.la.gov/2020_Files/Documents/Proclamation%202022%201ES%20Redistricting.pdf).

Reapportionment, of course, is a legislative prerogative, and the Court should not interfere with the process absent a violation of the constitution or federal law. *White v. Weiser*, 412 U.S. 783, 794, 93 S. Ct. 2348, 2354 (1973). The U.S. Supreme Court has been steadfast with respect

to reapportionment in holding "that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites . . ." *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). Whether the Louisiana legislature preserves any particular district in future reapportionment is not the business of the Court at this point provided the legislature reapportions the Supreme Court in a way that satisfies the constitution and Section 2 of the Voting Rights Act. The Consent Judgment can do little more than confuse the legislature with respect to its obligations in reapportioning the Louisiana Supreme Court districts. The Department of Justice is simply wrong to urge that this Consent Judgment must be construed to sanctify an Orleans Parish district for all times.

Plaintiffs and the Department of Justice hinge much of their argument on a remark made by this Court in its 2012 decision relative to Justice Bernette Johnson's seniority on the Court to the effect that the Court has made no affirmative ruling that the Consent Judgment has been completely satisfied and thus has been terminated nor has there been a request that the Court do so. *Chisom v. Jindal*, 890 F. Supp. 2d 696, 711 (E.D. La. 2012). The State does not read the Court's statement to reach as far as the plaintiffs and Department of Justice claim in terms of retaining jurisdiction. This language came in the context of a motion to determine Justice Bernette Johnson's seniority on the Supreme Court and called for an interpretation of the Consent Judgement entered by the Court. (Rec. Doc. 222). As this Court noted, federal courts have the inherent authority to enforce their own orders. Inasmuch as the Consent Judgment provided that the Supreme Court Justice assigned or elected under the Consent Judgment was to stand on equal footing with other judges serving on the Supreme Court, the 2012 ruling did no more than interpret and enforce the Consent Judgment by ordering that Justice Johnson's service on the Court be recognized as years of seniority for purposes of appointment as Chief Justice. The Court's ruling

in that regard did not effectively refresh the Section 2 claim that was put to rest by the implementation of the Consent Judgment.

Otherwise, the plaintiffs and Department of Justice respective oppositions to the State's request to terminate the Consent Judgment do not meaningfully address whether the judgment has been fully implemented probably because it is so obvious that it has been. The case is over, and its objective has been realized. Redistricting the Louisiana Supreme Court is now the work of the legislature, and that work has commenced. It is time for the Court to terminate and dissolve the Consent Judgment that resolved the 1986 plea.

CONCLUSION

For the foregoing reasons, the Court should terminate and dissolve the 1992 Consent Judgment, as amended.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 15th day of February 2022, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record. Counsel not enrolled in the CM/ECF system were served via U.S. mail.

/s/ Jeffrey M. Wale