

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

RONALD CHISOM, *et al.*,

Plaintiffs,

BERNETTE J. JOHNSON,

Plaintiff-Intervenor,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STATE OF LOUISIANA, ex rel. Jeff
Landry, *et al.*,

Defendants.

Civil Action No. 86-cv-4075 (SM)(SS)

**RULE 60(B)(5) MOTION TO DISSOLVE CONSENT DECREE AND
REQUEST FOR INDICATIVE RULING UNDER RULE 62.1**

Pursuant to Federal Rules of Civil Procedure 60(b)(5) and 62.1, Plaintiffs Ronald Chisom, Marie Bookman, and the Urban League of Louisiana (“Chisom Plaintiffs”), and Plaintiff-Intervenor Justice Johnson (collectively “Movants”) respectfully move this Court to (i) dissolve the Consent Decree under Fed. R. Civ. P. 60(b)(5), and (ii) issue an indicative ruling stating that it would grant Movants’ Rule 60(b)(5) Motion if the Fifth Circuit Court of Appeals were to remand this matter now pending before it. Fed. R. Civ. P. 60(b)(5), 62.1. The United States supports the present motion to dissolve the Consent Decree given the facts stated herein. The Defendant Attorney General takes no position on this motion.

On December 2, 2021, Defendant Attorney General filed a Motion to Dissolve Consent Decree entered by U.S. District Judge for the Eastern District of Louisiana Charles Schwartz on August 21, 1992—and which, in 1997—the parties jointly moved to modify to incorporate implementing legislation (“Consent Decree”). ECF. No. 257. This Court denied the Attorney General’s motion on May 24, 2022, and the case is now pending on appeal before the Fifth Circuit Court of Appeals (“Fifth Circuit”). *Chisom v. Louisiana ex rel. Landry*, No. 22-30320, 2024 WL 323496 (Jan. 29, 2024). Oral argument is scheduled for May 16, 2024.

On May 1, 2024, Louisiana enacted Act 7 into law, which redraws the Supreme Court districts and preserves an Orleans Parish-based district that is majority-Black in voting-age population and that Movants agree provides Black voters in Orleans Parish an equal opportunity to elect candidates of choice to the Louisiana Supreme Court. S.B. 255, 2024 Leg., Reg. Sess. (La. 2024) (“Act 7”). In view of this significant change in the factual circumstances, Movants request dissolution of the Consent Decree under Rule 60(b)(5). Movants also respectfully request that this Court issue an indicative ruling stating that it would grant Movants’ Rule 60(b) Motion to Dissolve the Consent Decree if the Fifth Circuit remanded the case for this purpose. *See Fed. R. Civ. P. 60(b)(5), 62.1*. In support of this Motion, Movants have contemporaneously filed a Memorandum of Law and copies of Act 7 attached thereto.

Date: May 10, 2024

Respectfully submitted,

William P. Quigley, #07769
LOYOLA UNIVERSITY
SCHOOL OF LAW
7214 St. Charles Avenue
New Orleans, Louisiana 70118
Tel. (504) 710-3074
quigley77@gmail.com

s/ Leah C. Aden

Leah C. Aden*
Alaizah Koorji*
NAACP LEGAL DEFENSE & EDUCATIONAL
FUND, INC.
40 Rector Street, 5th Floor
New York, New York 10006
Tel. (212) 965-7715
laden@naacpldf.org

Ronald L. Wilson, #13575
701 Poydras Street, Suite 4100
New Orleans, Louisiana 70139
Tel. (504) 525-4361
cabral2@aol.com

Andrew D. Linz*
COZEN O'CONNOR
Liberty Place, 1650 Market Street
Suite 2800
Philadelphia, Pennsylvania 19103

Michael de Leeuw*
Amanda Giglio*
COZEN O'CONNOR
3 WTC, 175 Greenwich Street
55th Floor
New York, New York 10007
Tel. (212) 908-1131
mdeleeuw@cozen.com

*Admitted *pro hac vice*

Counsel for Plaintiffs Ronald Chisom, Marie Bookman, and Urban League of Louisiana

Tracie L. Washington, #25925
LOUISIANA JUSTICE INSTITUTE
3157 Gentilly Blvd., Suite 132
New Orleans LA, 70122
tracie.washington.esq@gmail.com

James M. Williams, #26141
CHEHARDY SHERMAN WILLIAMS
RECILE & HAYES, LLP
1 Galleria Blvd, Suite 1100
Metairie, LA 70001
(504) 962-4287
james@thetrialteam.com

Nora Ahmed*
AMERICAN CIVIL LIBERTIES UNION OF
LOUISIANA
1340 Poydras Street, Suite 2160
New Orleans, LA 70112
(504) 522-0628
nahmed@laaclu.org

*Admitted *pro hac vice*

Counsel for Plaintiff-Intervenor Justice Bernette J. Johnson

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**MEMORANDUM IN SUPPORT OF RULE 60(B)(5) MOTION TO DISSOLVE
CONSENT DECREE AND REQUEST FOR INDICATIVE RULING UNDER
FED. R. CIV. P. 62.1**

Plaintiffs Ronald Chisom, Marie Bookman, and the Urban League of Louisiana and Plaintiff-Intervenor Justice Johnson (collectively “Movants”) submit the following memorandum of law in support of their Rule 60(b)(5) Motion to Dissolve the Consent Decree and Request for an Indicative Ruling under Federal Rule of Civil Procedure 62.1. Fed. R. Civ. P. 60(b)(5), 62.1. The United States supports the present motion to dissolve the Consent Decree given the facts stated herein. Defendant Attorney General takes no position on this motion.

PROCEDURAL BACKGROUND AND NEW LEGISLATION

This litigation began in 1986, when several plaintiffs sued the State of Louisiana under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, challenging the method of electing justices to the Louisiana Supreme Court. *See generally* Compl., ECF No. 1. The United States intervened as a plaintiff. Order on Mot. to Intervene, ECF No. 58. The parties resolved the litigation in 1992 with a Consent Decree that, among other things, required Louisiana to reapportion the Supreme Court districts to include one district that encompasses Orleans Parish and is majority Black in voting-age population, thereby establishing an electoral method that provides Black voters in Orleans Parish an equal opportunity to elect a candidate of choice. *See generally* Consent Decree, ECF No. 257-4. The Legislature enacted such a reapportionment plan in 1997, and it was incorporated into the Consent Decree upon joint motion of the parties. Jt. Mot. to Am. Consent Judgment ¶ 4, ECF No. 135.

On December 2, 2021, Louisiana's Attorney General moved under Rule 60(b)(5) to Dissolve the Consent Decree. ECF No. 257. This Court denied the Attorney General's Motion, holding that the State had not met its Rule 60(b)(5) burden to show that if the Consent Decree were dissolved, it would maintain a district that provided Black voters in Orleans Parish an equal opportunity to elect candidates of choice to the Supreme Court, or, alternatively, that continued enforcement of the Consent Decree was inequitable. *See generally* Order and Reasons, ECF No. 324. The Attorney General appealed. ECF No. 325. A majority of a three-judge panel affirmed the District Court's denial, *Chisom v. Louisiana ex rel. Landry*, 85 F.4th 288 (5th Cir. 2023), but that decision was later vacated. *Chisom v. Louisiana ex rel. Landry*, No. 22-30320, 2024 WL 323496 (Jan. 29, 2024). The Fifth Circuit Court of Appeals ("Fifth Circuit") granted re-hearing en banc, and argument is scheduled for May 16, 2024. 5th Cir. ECF No. 198.

Under the Consent Decree, the legislature retains the authority to redraw the Supreme Court Districts following a decennial census, including redrawing the *Chisom* district provided such changes are non-dilutive for Black voters in Orleans Parish. *See, e.g.*, ECF No. 257 at 97-113 (Consent Decree, Joint Motion to Amend Consent Decree); ECF No. 135 (Amendment to the Consent Decree reflecting incorporation of Act No. 776, 1997 La. Acts 1265 § 101.1(e)). On May 1, 2024, Louisiana enacted Act 7 into law, which redraws the Supreme Court districts for the first time since 1997. *See* S.B. 255, 2024 Leg., Reg. Sess. (La. 2024) (“Act 7”), attached hereto as **Exhibit A**. Act 7 preserves an Orleans Parish-based district that is majority-Black in voting-age population, and that Movants agree provides Black voters in Orleans Parish an equal opportunity to elect candidates of choice to the Louisiana Supreme Court. *See id.*; Enrolled Senate Bill 255, attached hereto as **Exhibit B**. Further, Act 7 addresses the existing malapportionment in Supreme Court election districts, an issue raised in support of the Attorney General’s Motion to Dissolve the Consent Decree and in briefing before this Court. *See* Attorney General’s Dec. 2021 Motion to Dissolve Consent Decree, ECF No. 257 at 8-9; *See* 4/4/24 Louisiana House and Governmental Affairs Committee Session, https://house.louisiana.gov/H/Video/VideoArchivePlayer?v=house/2024/apr/0404_24_HG. Act 7 represents a significant change in circumstance, warranting dissolution of the Consent Decree under Rule 60(b)(5).

ARGUMENT

In light of the recent passage of Act 7, Movants respectfully request that this Court issue an indicative ruling stating that it would grant Movants’ Rule 60(b)(5) Motion to Dissolve the Consent Decree. *See* Fed. R. Civ. P. 60(b), 62.1. Although this Court may not grant relief pursuant to Rule 60(b) while an appeal is pending, it may nevertheless issue an indicative ruling stating

“either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1(a)(3). This Court may then decide the motion “if the court of appeals remands for that purpose.” Fed. R. Civ. P. 62.1(c); *see Lopez v. Dominguez v. Gulf Coast Marine & Assoc., Inc.* 607 F.3d 1066, 1074 (5th Cir. 2010) (although a district court may not grant a Rule 60(b) motion while an appeal is pending, the district court retains jurisdiction to consider them, “and if it indicates that it will grant the motion, the appellant [may] then make a motion in the Court of Appeals for a remand of the case in order that the district court may grant such motion.”).

Dissolution of the Consent Decree pursuant to Rule 60(b)(5) is now warranted given the enactment of Act 7. Among other things, Act 7 maintains a majority-Black district centered around Orleans Parish. Ex. B, at 9. Based on voting patterns in past elections, Movants believe that this district will provide Black voters in Orleans Parish an equal opportunity to participate in the political process and elect candidates of choice to the Louisiana Supreme Court. *See id.* Thus, Movants and the United States are satisfied that Act 7 both (i) adequately protects the rights of Black voters in an Orleans Parish-based district, and (ii) demonstrates prospective compliance with Section 2 of the Voting Rights Act in that area and with the State’s obligations under the Consent Decree. In short, the State has now “shown there will continue to be a Black opportunity district in Orleans Parish in the future.” Order Denying Mot. to Dissolve, ECF No. 324 at 15. Dissolution of the Consent Decree in lieu of rehearing en banc is thus warranted, balances the interests of the parties, and supports judicial economy.

CONCLUSION

For the foregoing reasons, Movants request that this Court issue an indicative ruling pursuant to Rule 62.1 stating that it would grant Movants' Rule 60(b)(5) Motion to Dissolve the Consent Decree in light of Act 7.

Date: May 10, 2024

Respectfully submitted,

s/ Leah C. Aden

William P. Quigley, #07769
LOYOLA UNIVERSITY
SCHOOL OF LAW
7214 St. Charles Avenue
New Orleans, Louisiana 70118
Tel. (504) 710-3074
quigley77@gmail.com

Leah C. Aden*
Alaizah Koorji*
NAACP LEGAL DEFENSE & EDUCATIONAL
FUND, INC.
40 Rector Street, 5th Floor
New York, New York 10006
Tel. (212) 965-7715
laden@naacpldf.org

Ronald L. Wilson, #13575
701 Poydras Street, Suite 4100
New Orleans, Louisiana 70139
Tel. (504) 525-4361
cabral2@aol.com

Michael de Leeuw*
Amanda Giglio*
COZEN O'CONNOR
3 WTC, 175 Greenwich Street
55th Floor
New York, New York 10007
Tel. (212) 908-1131
mdeleeuw@cozen.com

Andrew D. Linz*
COZEN O'CONNOR
Liberty Place, 1650 Market Street
Suite 2800
Philadelphia, Pennsylvania 19103

*Admitted *pro hac vice*

Counsel for Plaintiffs Ronald Chisom, Marie Bookman, and Urban League of Louisiana

Tracie L. Washington, #25925
LOUISIANA JUSTICE INSTITUTE
3157 Gentilly Blvd., Suite 132
New Orleans LA, 70122
tracie.washington.esq@gmail.com

Nora Ahmed*
AMERICAN CIVIL LIBERTIES UNION OF
LOUISIANA
1340 Poydras Street, Suite 2160
New Orleans, LA 70112
(504) 522-0628
nahmed@laaclu.org

James M. Williams, #26141
CHEHARDY SHERMAN WILLIAMS
RECILE & HAYES, LLP

1 Galleria Blvd, Suite 1100
Metairie, LA 70001
(504) 962-4287
james@thetrialteam.com

*Admitted *pro hac vice*

Counsel for Plaintiff-Intervenor Justice Bernette J. Johnson

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