

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

LOUISIANA STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE, *et al.*,

Plaintiffs,

v.

STATE OF LOUISIANA, *et al.*,

Defendants.

Case No. 3:19-cv-00479-JWD-SDJ

**MEMORANDUM IN SUPPORT OF CONSENT MOTION TO STAY
ALL LOUISIANA SUPREME COURT ELECTIONS**

The parties jointly ask the Court to stay all Louisiana Supreme Court elections until the State's Supreme Court voting districts have been reapportioned. The malapportionment present in the State's seven voting districts raises unanswered legal questions that are better resolved through a negotiated settlement. By temporarily pausing elections, the Court avoids elections clouded by legal questions and gives the parties time to create a system that resolves those questions.

INTRODUCTION

From 1986 through the present day, federal courts have continuously umpired hard-fought litigation over the correct boundaries for Louisiana's Supreme Court seven voting districts. Those boundaries have not been redrawn since 1999. Since then, the population and demographic distribution among those seven districts have changed dramatically, so much so that they are now severely malapportioned.

Given the relatively recent availability of the 2020 decennial census figures, which were delayed by the COVID-19 pandemic, the Parties believe that it is in the best interest of all Louisianans that all Louisiana Supreme Court elections be stayed pending a negotiated settlement between Plaintiffs and Defendants that would then be implemented by the Legislature and, to the extent necessary, the people of Louisiana. Given sufficient time, the Parties believe they could agree on new districts that would not only solve the malapportionment issues among these voting districts, but also may resolve Plaintiffs' claims. Therefore, the Parties agree that any election for the Louisiana Supreme Court should occur only after the Supreme Court voting districts have been redrawn.

For that reason, the Parties request that the Court stay all Supreme Court elections until the State's Supreme Court voting districts have been reapportioned, subject to the ability of either Party to seek to terminate the stay if the parties are unable to reach agreement, the Legislature does not approve districts agreed upon by the Parties, or the voters refuse to approve any proposed constitutional amendments. A stay is an appropriate exercise of the Court's discretion¹ because (1) by temporarily pausing elections, the Court prevents elections clouded by the unresolved legal questions present under the seven malapportioned voting districts to give the parties time to establish reapportioned districts free of similar questions²; (2) the Parties will

¹ See, e.g., *Qureshi v. United States*, 600 F.3d 523, 524 (5th Cir. 2010) (reviewing grants of injunctive relief for abuse of discretion).

² At this juncture, Defendants do not admit that a second majority-minority district that comports with the U.S. Constitution can be drawn or that the Voting Rights Act requires the creation of such a district. However, in the interest of a timely resolution of this matter, Defendants are pursuing other

suffer irreparable injury if they are forced to elect their Supreme Court Justices by way of malapportioned districts; and (3) the public interest is far better served by ensuring that Louisiana voters cast their ballots in districts that are appropriately drawn, population balanced, and Voting Rights Act compliant rather than by allowing the current, malapportioned districts to determine who will sit on the State's high court.

BACKGROUND & PROCEDURAL HISTORY

I. The *Chisom* Consent Decree.

More than thirty years ago, a group of Plaintiffs filed a class-action lawsuit against several Louisiana State officials. *See Chisom v. Edwards*, 659 F. Supp. 183, 183 (E.D. La. 1987). In the *Chisom* Plaintiffs' view, "the system of electing two at-large Supreme Court Justices from" certain Louisiana Parishes "violate[d] the 1965 Voting Rights Act, as amended, 42 U.S.C. § 1973, the fourteenth and fifteenth amendments to the United States Federal Constitution and, finally, 42 U.S.C. § 1983." *Id.* The case proceeded back and forth between the district court and the Fifth Circuit, eventually culminating in the 1992 Consent Judgment that, among other things, contemplated that the State would "reapportion[]" its Supreme Court districts to "provide for a single-member district that is majority black in voting age population that includes Orleans Parish in its entirety." Ex. A and B. The Consent Judgment also obligated the State to conduct "future Supreme Court elections . . . in the newly

avenues with Plaintiffs that may be as or more beneficial to the Parties and all Louisianans. For their part, Plaintiffs do not concede that two majority-minority districts would be sufficient in the event the Supreme Court is increased to nine members.

reapportioned districts” beginning “on January 1, 2000.” *Id.*; see also *Chisom v. Jindal*, 890 F. Supp. 2d 696, 703–05 (E.D. La. 2012) (quoting *Perschall v. State*, 697 So. 2d 240, 245-47 (La. 1997)).

In 1997, the Louisiana Legislature enacted Act 776, which mandated the seven single-member Supreme Court districts that exist today. In 1999, the boundaries for the seven districts were reapportioned. Since that time—*twenty-three years ago*—the boundaries for Louisiana’s Supreme Court districts have not changed.

II. The Status of Louisiana’s Seven State Supreme Court Voting Districts.

Over the last two decades, Louisiana’s Supreme Court districts have devolved into ever-worsening malapportionment. Despite the constitutional requirement that voting districts include roughly the same number of voters, see *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964); *Reynolds v. Sims*, 377 U.S. 533, 563 (1964), three of Louisiana’s seven Supreme Court voting districts—according to the 2020 decennial census counts—dramatically exceed 1/7 of Louisiana’s population, while the other four districts experience severe underpopulation, including the extraordinarily malapportioned District 7 (the current majority-minority district).

*Table 1: Plan: Supreme Court Plan Statistics (Act 776 of 1997 R.S. to nearest 2020).*³

District:	Actual Population	Ideal Population	Absolute Deviation	Relative Deviation
1	752,775	665,393	87,382	13.132%
2	638,062	665,393	-27,331	-4.107%

³ Louisiana Legislature, Louisiana Redistricting, https://redist.legis.la.gov/2020_Files/Reports/Supreme%20Court/Report%20-%20Supreme%20Court%20-%20Malapportionment%20-%20Plan%20Statistics.pdf (retrieved April 21, 2022) (attached hereto as Exhibit C).

3	733,573	665,393	68,180	10.247%
4	586,849	665,393	-78,544	-11.804%
5	838,610	665,393	173,217	26.032%
6	631,334	665,393	-34,059	-5.119%
7	476,554	665,393	-188,839	-28.380%

III. This Case.

In July 2019, Plaintiffs sued the State of Louisiana and the Secretary of State of Louisiana, alleging that the State’s failure to have “two properly[] apportioned, majority-black, constitutional single-member Louisiana Supreme Court districts in a seven-district plan” violated Section 2 of the Voting Rights Act of 1965. Complaint, ECF No. 1 ¶ 67. In their view, the current Louisiana Supreme Court boundaries “deny[] African-American voters an equal opportunity to participate in the political process and to elect candidates of their choice. *Id.* ¶ 69. For this reason, they asked that this Court (1) “[e]njoin [the] Defendants . . . from administering, implementing, or conducting any future elections for the Louisiana Supreme Court under the current method of election, and (2) “[o]rder the implementation of a new method for the Louisiana Supreme Court that complies with the Constitution of the United States and Section 2 of the Voting Rights Act, 52 U.S.C. § 10310(e).” *Id.* at 15.

After the Defendants moved to dismiss, the Court denied the motion, and an interlocutory appeal to the Fifth Circuit affirmed this Court’s denial, this Court set a status conference and scheduling order setting forth timelines for the ultimate

resolution of this litigation. The Parties then entered into good faith negotiations to remedy Plaintiffs' alleged harms through the passage of a new reapportionment plan and/or a constitutional amendment setting forth new districts for the Louisiana Supreme Court. Given that any agreement of the parties would require the Louisiana Legislature and the Eastern District of Louisiana⁴ to act, the Parties agreed that a stay of any upcoming Supreme Court elections was necessary and in the public interest.

At the April 19, 2022 Status Conference, the Parties informed the Court of their mutual intent to resolve this case through a negotiated settlement to be ratified by the State Legislature and, to the extent necessary, the people of Louisiana. To that end, this Court administratively closed the case and “reserve[d] entering the stay order . . . to allow the parties to file a Motion to Stay the upcoming Louisiana Supreme Court elections.” Minutes, ECF No. 97 at 1. The Court noted that the “motion should provide authority in law and fact to justify the granting of such a stay.” *Id.* As requested by the Court, the Parties now move for a stay of the upcoming Louisiana Supreme Court election.

ARGUMENT

I. This Court Has the Authority to Stay the Upcoming Louisiana Supreme Court Election.

⁴ As this Court is well aware, the *Chisom* consent judgment in the Eastern District remains in full force, and any remedy involving at least the seventh Supreme Court district may need to be approved of by that court. *See, e.g.*, *Chisom, et al. v. Edwards, et al.*, U.S.D.C. (Eastern District), Docket No. 2:86-cv-04075.

“Federal courts have recognized that the holding of an upcoming election in a manner that will violate” the law works an irreparable harm to voters. *United States v. Berks County*, 250 F. Supp. 2d 525, 540 (E.D. Pa. 2003). Both consent and opposed requests to stay elections, which are then subsequently granted, are certainly not an unheard-of occurrence. *See United States v. City of Euclid*, 523 F. Supp. 2d 641, 643 (N.D. Ohio 2007) (noting that the court stayed Euclid’s “upcoming councilmanic elections.”); *Alexander v. Texas City ISD*, No. 3:91-cv-226 (S.D. Tex. 1991), ECF Nos. 9 and 10 (joint motion to stay election and order granting stay of school board elections); *Woods v. Dickinson ISD*, No. 3:91-cv-288 (S.D. Tex. 1991), ECF Nos. 5 and 6 (same). To that end, this Court has authority to stay any upcoming Louisiana Supreme Court elections to prevent further harm to Louisiana’s voters caused by malapportionment and/or potential violations of the Voting Rights Act, allow the Parties time to reach an agreement, allow the Legislature to ratify any agreement reached, and finally to allow the Eastern District Court to approve any such agreement with respect to the current seventh district.

II. The Court Should Stay the Upcoming Louisiana Supreme Court Election.

The next Louisiana Supreme Court election is scheduled for November 8, 2022, partisan primary election with a general election, if necessary, scheduled for December 10, 2022. Furthermore, the candidate qualifying period for this election is July 20-22, 2022.⁵ The Supreme Court election should be stayed until the Court has

⁵Election information, <https://www.sos.la.gov/ElectionsAndVoting/GetElectionInformation/Pages/default.aspx> (retrieved April 22, 2022)

established a method of election free from the legal questions raised by the current malapportionment and potential violations of the Voting Rights Act. At present the malapportioned Supreme Court districts either dilute or exaggerate the voting strength of all Louisiana citizens and, Plaintiffs allege, deny Black voters their rights under the Voting Rights Act. The malapportionment is a particular issue in the area around New Orleans Parish, which is where both the sixth (the district where next election is scheduled) and seventh (current majority-minority district) districts reside. What's more is that the malapportionment in this instance is so severe that *no* district will be immune from reapportionment.

“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). It is quite axiomatic that “the right of suffrage is a fundamental matter in a free and democratic society.” *Id.* at 561–62. Ensuring that all Louisiana Supreme Court elections are conducted by virtue of appropriately drawn districts plainly serves this interest. The Parties are deeply committed to ensuring that the ballots cast by every voting-eligible Louisiana citizen has the same weight as that of every other citizen, and that Louisiana has drawn all of its voting districts in a way that eliminates any question about the districts’ legality. For this reason, staying the upcoming Supreme Court election until the districts have been redrawn serves the public interest while avoiding the irreparable injury that occurs when citizens are deprived of a fundamental right. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976).

CONCLUSION

For the foregoing reasons, the Court should stay all Louisiana Supreme Court elections subject to the ability of either Party to seek to terminate the stay if the parties are unable to reach agreement, the Legislature does not approve districts agreed upon by the Parties, or the voters refuse to approve any proposed constitutional amendments.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICE

I CERTIFY I have served the foregoing was filed electronically and served on counsel for the parties by electronic notification by CM/ECF on May 2, 2022

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