No. 20-30734

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

ANTHONY ALLEN; STEPHANIE ANTHONY; LOUISIANA STATE CONFERENCE OF THE NAACP,
Plaintiffs-Appellees,

v.

STATE OF LOUISIANA; R. KYLE ARDOIN, SECRETARY OF STATE OF LOUISIANA IN HIS OFFICIAL CAPACITY,
Defendants-Appellants,

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
CIVIL ACTION NO. 19-479-JWD-SDJ

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Plaintiffs-Appellees,

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Defendants-Appellants,

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

A. Plaintiffs-Appellees

1. Louisiana State Conference of the National Association for the Advancement of Colored People
2. Anthony Allen
3. Stephanie Anthony

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a) and Fifth Circuit Rule 28.2.3, Plaintiffs-Appellees Louisiana State Conference of the National Association for the Advancement of Colored People ("NAACP"), Anthony Allen, and Stephanie Anthony, suggest that oral argument will significantly aid this Court's decision-making process.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does a consent judgment issued in 1992 and last modified in 2000 by the United States District Court for the Eastern District of Louisiana (the "Eastern District") resolving voting rights litigation in a class action brought on behalf of "all blacks registered to vote in Orleans Parish" forever preclude all other federal courts from exercising subject matter jurisdiction over cases alleging violations of Section 2 of the Voting Rights Act—anywhere in the State of Louisiana—in connection with the election of Justices to the Louisiana Supreme Court?

2. Can a court's decree in one case deprive non-parties of their right to vindicate their rights in a separate action, in a different court, involving relief that does not conflict with the first court's order?

STATEMENT OF THE CASE

I. Background

Plaintiffs-Appellees Louisiana State Conference of the NAACP, Anthony Allen, and Stephanie Anthony ("Plaintiffs") filed this action under Section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301. ROA.377. Plaintiffs allege that Defendants-Appellants the State of Louisiana and R. Kyle Ardoin, Secretary of State of Louisiana ("Defendants") are unlawfully diluting the votes of minority voters in and around Baton Rouge Parish—where the two individual Plaintiffs reside—in elections for Louisiana Supreme Court justices. ROA.379. Plaintiffs' Complaint alleges that the Black population in Louisiana is sufficiently numerous and compact to create an additional fairly drawn Black majority Supreme Court district out of the seven Supreme Court districts. ROA.381. The Complaint seeks "the creation of a second majority-black district in the State" as a remedy. ROA.379 (emphasis added).

II. The 1986 *Chisom* Litigation "on Behalf of All Blacks Registered to Vote in Orleans Parish"

In 1986, several plaintiffs brought a class action suit in the Eastern District of Louisiana alleging that the State of Louisiana violated the U.S. Constitution and Section 2 of the Voting Rights Act ("VRA"). ROA.140-141. The case, *Chisom v. Edwards*, 659 F. Supp. 183 (E.D. La. 1987), *rev'd*, 839 F.2d 1056 (5th Cir. 1988), was brought on behalf of "Ronald Chisom and four other black plaintiffs and the

Louisiana Voter Registration Education Crusade . . . *on behalf of all blacks registered to vote in Orleans Parish*." ROA.360 (quoting *Chisom v. Edwards*, 659 F. Supp. at 183 (emphasis added)).

The *Chisom* plaintiffs did not seek to represent Louisiana citizens outside Orleans Parish. ROA.360. At the time of suit, the Louisiana Supreme Court members were elected from six districts. Five of the six districts elected one Justice each. The First District, comprised of four parishes (Orleans, St. Bernard, Plaquemines, and Jefferson Parishes), elected two justices at-large. ROA.384-385. The *Chisom* plaintiffs argued that Louisiana's at-large system for the First District "impermissibly diluted the voting strength of the minority voters *in Orleans Parish*," *Chisom v. Jindal*, 890 F. Supp. 2d 696, 702 (E.D. La. 2012) (emphasis added), because no Black justice had ever been elected to either of the two at-large seats from the First District. *See Chisom v. Edwards*, 659 F. Supp. at 189.

Following *Chisom*, the Louisiana legislature enacted Act 512 in 1992, which created a temporary, eighth Supreme Court seat for the sub-district of Orleans. ROA.380. *See* 1992 La. Acts No. 512, § 1. This temporary arrangement permitted a sitting justice to serve out his term while allowing Black voters to elect a candidate of choice in the interim. An August 21, 1992 federal consent decree memorializing Act 512 stipulated that (a) the State would split the multi-member district into two single-member districts upon expiration of the temporary seat, and

(b) one of those districts would consist of most of Orleans Parish and a portion of neighboring Jefferson Parish, making it a majority Black district. ROA.380. *See* ROA.239-257 (hereinafter the "Decree" or "*Chisom* Decree").[1]

The Louisiana legislature subsequently enacted Act 776 in 1997, providing for the reapportionment of the Supreme Court districts as envisioned by the Consent Decree by creating seven single member districts. ROA.555 (citing *Chisom v. Jindal*, 890 F. Supp. 2d at 705-06). On January 3, 2000, the *Chisom* parties filed a joint motion to amend the Consent Judgment. ROA.251-257. The parties asserted that because Orleans Parish was split between the First District and the Seventh District, Act 776 was "not in strict conformity with the Consent Judgment" but the Act still "[met] the intent of all parties to this litigation for *final resolution of the matter*." ROA.555 (emphasis added). The Eastern District agreed and ordered the 2000 modification of the 1992 Decree on January 3, 2000. ROA.257. The Order, in its entirety, states:

> Considering the consent of all parties herein to amend the Consent Judgment of August 21, 1992 to reflect the intent of the parties to accept Louisiana Acts 1997, No. 776 as *compliance with the mandates of said consent judgment*;
>
> IT IS HEREBY ORDERED that Louisiana Acts 1997, No. 776 be and is hereby added as an addendum to the Consent Judgment in Civil Action No. 86-4075, *Chisom, et al. v. Edwards, et al.*

[1] The *Chisom* Decree is referred to variously in the record as "the Decree," the "*Chisom* Decree," the "*Chisom* Consent Judgment," etc. Plaintiffs use the term *Chisom* Decree except when quoting from another source.

Id. (emphasis added).

As a result of the *Chisom* litigation, the process for electing justices to the Louisiana Supreme Court from the *First District* was changed from at-large to election from two single member districts, one of which was majority-minority. ROA.380. There was never an allegation in *Chisom* that the Black vote outside that district was diluted, nor did the *Chisom* Decree purport to impose obligations elsewhere in Louisiana.[2] *See* ROA.398. After 2000, *Chisom* and the Consent Decree laid dormant for over a decade.[3]

III. The Subsequent 2012 Litigation Concerning Justice Johnson's Tenure on the Louisiana Supreme Court, Not a Voting Rights Dispute

In 2012, the Eastern District revisited *Chisom* for the sole purpose of determining the seniority of two Louisiana Supreme Court Justices, because under the Louisiana Constitution the chief justice is the senior justice. ROA.388 (citing

[2] Ultimately, the *Chisom* Decree was concerned with the existence of a majority-minority district centered in Orleans Parish, and did not touch on the number, location, or boundaries of any of the other Districts in Louisiana. Here, Plaintiffs do not challenge the elimination of the at-large system in the Orleans Parish area; nor do they challenge the creation of what is presently Louisiana's only majority-minority single member district. And *Chisom* did not concern itself in any way with the only judicial district at issue in this case: the district surrounding Baton Rouge. In contrast, Plaintiffs here contend that an additional majority-minority Louisiana Supreme Court district can be drawn without impacting the single member district in Orleans Parish created by the *Chisom* Decree. *See* ROA.398.

[3] Defendants assert that "[l]itigation over Louisiana's Supreme Court districts has a history which spans 33 years." Defs.' Br. at 3. Not really. *Chisom* wound its way to the U.S. Supreme Court and back over the course of a few years from 1989 to 1992. It briefly came to life in 2000 when the Consent Decree was modified and again in 2012 when the Eastern District revisited *Chisom* for the limited purpose of calculating the tenure of Louisiana Supreme Court Justice Johnson.

Chisom v. Jindal, 890 F. Supp. 2d 713-15). At issue was whether the sole Black justice on the Court, Bernette Johnson, would ascend to the position of chief justice. In *Chisom v. Jindal*, the Eastern District held that the seat created by the *Chisom* litigation—the "*Chisom* seat"—was entitled to the same accrual of tenure as any other Supreme Court seat. *See generally* 890 F. Supp. 2d 696. Given that the issue presented in *Chisom v. Jindal* concerned the very seat created by the prior litigation, it was not surprising that the Eastern District held "that it had jurisdiction over the matter" and "continuing jurisdiction and power to interpret" the terms of the *Chisom* Decree with regard to the *Chisom* seat held by Justice Johnson. ROA.387.

Notably, Appellants here *objected* to the Eastern District's jurisdiction over the matter in 2012, arguing "that the Consent Judgment explicitly limits the Court's jurisdiction over this case by providing that the Court 'shall retain jurisdiction over this case until the complete implementation of the final remedy has been accomplished,' and that complete implementation was accomplished on October 7, 2000 when Justice Johnson was elected[.]" *Chisom v. Jindal*, 890 F. Supp. 2d at 709 (quoting *Chisom* Decree ¶ K, ROA.246). The court held that it had power to "interpret" the language of the decree, noting that "[b]ecause . . . the Court finds that the Consent Judgment calls for Justice Johnson's tenure from November 16, 1994, until October 7, 2000, to be credited to her for all purposes

under Louisiana law, the Court finds that the 'final remedy' in the Consent Judgment has not yet been implemented." *Id.* at 711. In other words, the Eastern District's finding that the "final remedy" had not been implemented as of 2012 was based solely on the to-be-decided question regarding Justice Johnson's tenure. As the District Court observed:

> [This] case is easily distinguishable from *Chisom v. Jindal* and Chief Justice Johnson's dispute, as that suit involved the interpretation of an express provision of the Consent Decree—the one dealing with emoluments and equal participation in the cases, duties, and powers of other justices.

ROA.398 (citing *Chisom v. Jindal*, 890 F. Supp. 2d at 713-15).

IV. District Court Proceedings

In response to Plaintiffs' Complaint in this matter, Defendants the State of Louisiana and R. Kyle Ardoin, Secretary of State of Louisiana, filed two separate motions to dismiss, arguing that the action "should be dismissed for lack of jurisdiction because the *Chisom* Consent Decree issued by the Eastern District . . . controls." ROA.557. In those motions, Defendants reversed their position in *Chisom*, arguing that the Eastern District retained jurisdiction over all voting rights cases concerning Louisiana Supreme Court justicesw in perpetuity. They argued that "Plaintiffs should . . . be required to bring their claims—through intervention or other mechanism—in the Eastern District of Louisiana." ROA.391. Defendants also attempted to argue that Plaintiffs should be precluded from bringing their

claims in the Middle District on venue grounds and "first-to-file" grounds.[4] ROA.392.

In response to Defendants' arguments, Plaintiffs argued that "the Consent Decree in the Eastern District had nothing to do with the issues . . . in this case" and, therefore, "Plaintiffs' choice of forum should control." ROA.390. Plaintiffs also argued "that the concept of collateral attack – and for that matter the concept of adequacy of representation and privity discussed in those cases—have no applicability to this case, because this case in no way presents a collateral attack on the *Chisom* Decree." ROA.392. Plaintiffs noted that "[t]he two cases [(*Chisom* and the instant case)] differ so greatly in subject matter—both in time and geography—and in the relief sought that Defendants will never be able to demonstrate the existence of the 'types of relationships sufficiently close to justify preclusion.'" ROA.392. Moreover, to address the State's concern about allegedly conflicting orders, Plaintiffs also offered "to stipulate that the remedy here will not affect the *Chisom* case." *Id*. In sum, Plaintiffs' Complaint calls for the creation "two properly-apportioned, majority-black, constitutional single-member Louisiana Supreme Court districts in a seven-district plan," ROA.383-384, which need not touch those districts covered by the *Chisom* Decree.

[4] The District Court declined to entertain these arguments because Defendants failed to raise them in their initial motion to dismiss and supporting memoranda. ROA.392.

The District Court denied both motions. ROA.377. The court found that "[i]t cannot be questioned that most of the preamble of the [*Chisom*] Consent Judgment and great majority of the order itself are devoted almost entirely to the creation of the Supreme Court district in Orleans Parish and the operation of its new justice." ROA.397. "Plaintiffs—from East Baton Rouge Parish, and thus outside the *Chisom* class—are in fact seeking relief by the redrawing of Supreme Court District 5 in Baton Rouge. Contrary to Defendants' arguments, this relief can easily be accomplished without redrawing District 1 in Orleans Parish." ROA.398.

Defendants jointly moved the district court to certify the case for interlocutory review and stay proceedings in the district court and to transfer the case to the Eastern District. ROA.11. The District Court certified the case for interlocutory review but declined to stay proceedings and denied the motion to transfer venue. ROA.12.

SUMMARY OF THE ARGUMENT

Defendants' litigation position in this matter—that the Eastern District has perpetual, exclusive jurisdiction over any case involving the voting rights of Louisiana residents concerning Supreme Court elections (even in a different district), the apportionment of districts, and the election of Louisiana Supreme Court justices—is a reversal of its prior position on the issue and finds no support at law.

Defendants present two central arguments, both of which fail under scrutiny. First, Defendants argue that this is "a case involving a consent decree that was approved and maintained by a different federal district court" and the "Middle District acted without regard for the fact that the Consent Decree governing this case was approved by its sister court in the Eastern District of Louisiana . . . ." Defs.' Br. at 8. But it is *not* a "fact" that the *Chisom* Decree "governs" this case, nor is it a given that this case "involves" the *Chisom* Decree. These are Defendants' own, erroneous legal conclusions. The decision below shows, and the record supports, that this case concerns the Fifth District—in and around Baton Rouge Parish—and need not implicate the First District (or the Seventh District) or the *Chisom* Decree. This Court should not and need not assume, as Defendants do, that "there is no relief that can be ordered by the Middle District that will *not infringe* upon the Eastern District's Decree." Defs.' Br. at 11.[5] Quite the contrary.

The Eastern District never held, nor does it follow, that the *remedy* put into place by the *Chisom* Decree was less-than-final or that no other court could *ever* exercise jurisdiction over a case involving the election of Louisiana Supreme Court

[5] While Defendants note that state legislatures are typically tasked with redistricting, *see* Defs.' Br. at 19-20, there is no reason why the Louisiana state legislature, if tasked with implementing the remedy in this case, could not both provide adequate relief to the Plaintiffs in the Fifth District while simultaneously adhering to any continuing obligations in the *Chisom* Decree. Indeed, contrary to Defendants' conclusory assertions, there is nothing contradictory about this outcome.

Justices. Indeed, the State of Louisiana itself recognized this when it *objected* to the continuing jurisdiction of the Eastern District in 2012. 890 F. Supp. 2d at 708.

Second, Defendants' contention that the District Court's reliance on *Martin v. Wilks*, 490 U.S. 755 (1989), was "misplaced" because voting rights litigation should be distinguished from "run-of-the-mill civil rights litigation" is without merit. Defs.' Br. at 17-18. Defendants contend, in essence, that *Martin* only applies in cases where the relief sought can have no effect on other individuals. This argument misapprehends both the facts of *Martin* and the impact of the relief it sought. Although the plaintiffs in *Martin* only sought to resolve the case as between themselves and the defendants, the decree at issue in *Martin* did, in fact, carry the potential for wider impact on individuals other than the plaintiffs themselves. Defendants' speculation that if *Martin* does apply to this case, then electoral redistricting amounts to a "special remedial scheme" that would foreclose the Middle District's jurisdiction is not supported by any authority. Moreover, the Court should ignore this argument because Defendants failed to raise it below, and even if the Court considers it, Defendants are incorrect. As discussed below, courts applying *Martin* have consistently understood a "special remedial scheme" to be a statutory mechanism that affords procedural protections for the rights of non-parties, such as bankruptcy and probate statutes. Neither situation is presented here. The Court should affirm.

ARGUMENT

I. The Middle District's Exercise of Subject Matter Jurisdiction Will Not Infringe Upon the *Chisom* Decree Because the Relief Plaintiffs Seek Does Not Implicate that Decree

Defendants raise the specter of a jurisdictional problem that does not exist, either legally or practically. At the threshold, in order to alleviate Defendants' purported concern about the potential for "conflicting" district court orders, Plaintiffs offered to stipulate that the Middle District need not modify the *Chisom* Decree, which established the First District, as part of any remedy Plaintiffs may obtain. ROA.392. Defendants now argue, incorrectly, that this amounts to an attempt by Plaintiffs to "amend their Complaint." Defs.' Br. at 11 n.6. This argument assumes, of course, that the Complaint would need to be amended in the first place in order to avoid conflicting with the *Chisom* Decree. But, as the District Court correctly observed in denying Defendants' motion to dismiss:

> [A] fair reading of the *Complaint* as a whole demonstrates that these Plaintiffs—from East Baton Rouge Parish, and thus outside the *Chisom* class—are in fact seeking relief by the redrawing of Supreme Court District 5 in Baton Rouge. Contrary to Defendants' arguments, this relief [the redrawing of Supreme Court District 5 in Baton Rouge] can easily be accomplished without redrawing District 1 in Orleans Parish[.]

ROA.398.

Furthermore, the *Chisom* parties agreed over two decades ago that Act 776 "[met] the intent of all parties to this [*Chisom*] litigation *for final resolution of the*

matter." ROA.387 (first modification in original; emphasis added). Given the express intent of the *Chisom* parties and the Eastern District that Act 776 constituted the "final resolution" of *Chisom*—notwithstanding that court's later interpretation of an isolated, express provision of the Decree in *Chisom v. Jindal*—Defendants fail altogether to offer any argument or authority explaining how a ruling of the Middle District, in and of itself, could infringe upon the Decree.[6]

II. The *Chisom* Decree Cannot Preclude Plaintiffs From Enforcing Their Rights in a Separate Action Involving Different Claims and Different Louisiana Voters Outside the *Chisom* Class

Even if the relief sought by Plaintiffs conflicted with the *Chisom* Decree—which it does not—the State's voluntary settlement of a lawsuit, in which Plaintiffs were not parties, cannot foreclose Plaintiffs' ability to commence their own lawsuit seeking redress for violations of their own constitutional and statutory rights.

As the District Court recognized, the State's position rests on the faulty premise that Plaintiffs may not pursue their redistricting claims in the Middle District because "only the district court supervising implementation of the [*Chisom*] decree would have subject matter jurisdiction to modify the decree as they relate to the mechanisms for achieving the goals of the decree." Defs.' Br. at

[6] The only body empowered with plenary authority to do anything that would violate the *Chisom* Decree is the State legislature, which could repeal or change Act 776 in a manner that eliminates the majority-minority district created by the Decree. That is not this case. Plaintiffs obviously have no desire to create a new majority-minority district at the expense of another. Indeed, the Complaint's goal is abundantly clear: "two fairly drawn, constitutional single-member districts for the Supreme Court" and, thus, "the creation of a second majority-black district in the State." ROA.379.

14-15 (citing *Thaggard v. Jackson*, 687 F.2d 66, 69 n.3 (5th Cir. 1982)) (internal quotations and alterations omitted). To the extent that *Thaggard* would allow a "voluntary settlement in the form of a consent decree between" the State and the *Chisom* plaintiffs to preclude Plaintiffs from enforcing their rights in this action, *Thaggard* is inconsistent with the U.S. Supreme Court's holding in *Martin v. Wilks*. *See* 490 U.S. at 768-69 (holding that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party" and, thus, the court could not preclude plaintiffs from challenging decisions taken pursuant to consent decrees at issue).

In *Martin*, the Supreme Court made clear that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party." *Id.* Because Plaintiffs were not parties in *Chisom*, the *Chisom* decree cannot prevent them from commencing their own action in the Middle District, the location of Plaintiffs' residences and the location of the Fifth District, the district which Plaintiffs claim is currently drawn in violation of their rights. Accordingly, the District Court correctly denied Defendants' motion to dismiss this action.

The State badly misreads *Martin* by arguing that the relief sought in that case would have "had no effect on the rights of other individuals in the State of Alabama" while the relief sought by Plaintiffs here "may" impact other state residents. Defs.' Br. at 21-22. To the contrary, the relief sought in *Martin* would

have necessarily affected the rights of others. In *Martin*, a group of white firefighters challenged their employer's implementation of two consent decrees, which set annual goals for hiring and promoting black firefighters. As a result, the plaintiffs' ultimate success in that case would have directly and negatively impacted the rights of Black firefighters and job applicants who would otherwise have benefitted from hiring and promotion goals set forth pursuant to the challenged consent decrees. Clearly, the Supreme Court's holding in *Martin* was not limited to cases which could not affect the rights of others.

Defendants also argue that *Martin* is distinguishable because the plaintiffs there filed their claim in the same district as the original action. Defs.' Br. at 22. There is no authority in *Martin* or elsewhere that suggests that this is a significant distinguishing factor, and Plaintiffs cite none. Moreover, it is a distinction without a difference. There is, in fact, no practical difference between filing a separate action in the same district—where there is a strong likelihood of having a different judge decide the matter, and the decisions of one district judge are not binding on another—and a separate action in another district.

As the State points out, the *Martin* court also recognized that "where a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants, as for example in bankruptcy or probate, legal proceedings may terminate preexisting rights if the scheme is otherwise consistent with due

process." *Martin*, 490 U.S. at 762 n.2. The State asserts for the first time on appeal that a "redistricting plan," created in compliance with the *Chisom* Decree, qualifies as a "special remedial scheme" because it allegedly affects every voter in the State and it would have been burdensome to join all affected persons in litigation. Defs.' Br. at 23. As an initial matter, this argument was not raised in the District Court, despite the District Court's specific request for supplemental briefing regarding the applicability of *Martin*. Therefore, this argument is waived and should not be considered. *Sindhi v. Raina*, 905 F.3d 327, 333 (5th Cir. 2018) ("[A]rguments not raised before the district court are waived and cannot be raised for the first time on appeal") (quoting *LeMaire v. Louisiana Dep't of Transp. & Dev.*, 480 F.3d 383, 387 (5th Cir. 2007)).

Even if the State's argument were to be considered for the first time on appeal, it is without merit. The defendant in *Martin* similarly argued that the "need to join affected parties will be burdensome and ultimately discouraging to civil rights litigation [because p]otential adverse claimants may be numerous and difficult to identify[.]" *Martin*, 490 U.S. at 766-67. Yet, the Supreme Court did not even suggest that the "extensive remedial scheme" set forth in the applicable consent decrees could have qualified as "special remedial schemes" if a sufficient number of people were potentially affected. *Id.* at 759, 762 n.2.

To the contrary, courts applying *Martin* have consistently understood a "special remedial scheme" to be a statutory mechanism that affords procedural protections for the rights of non-parties. *See Edwards v. City of Houston*, 78 F.3d 983, 997 (5th Cir. 1996) (characterizing as a special remedial scheme 42 U.S.C. § 2000e-2(n), under which litigants are precluded from challenging employment practices implementing a consent judgment if certain procedural requirements are satisfied); *Griffin v. Burns*, 570 F.2d 1065, 1072 n.7 (1st Cir. 1978) ("There are specialized proceedings, such as bankruptcy, reorganization, or probate proceedings, where a party may be barred from future litigation by his mere failure to intervene. . . . Cases in that category would seem limited, however, to ones where by statute, rule or practice, intervention, after notice, is invited, or at least where the affected parties have reason to understand that their rights will be foreclosed unless timely asserted in the original proceeding."); *G-I Holdings, Inc. v. Bennet (In re G-I Holdings, Inc.)*, No. 02-3626 (SRC), 2008 WL 11513187, at *8-9 (D.N.J. May 30, 2008) (holding that declaratory judgment action was not a "special remedial scheme" because it afforded non-parties none of the procedural protections that would have been provided by such a scheme); *In re Reagor-Dykes Motors, LP*, 613 B.R. 878, (N.D. Tex. 2020) (characterizing procedural protections set forth in Fed. R. Bankr. P. 9019 as a remedial scheme sufficient to bind non-parties).

Both of the examples offered by the Supreme Court (i.e., bankruptcy proofs of claim and probate claims) involve such procedures and are consistent with the understanding applied by subsequent courts. *See, e.g.*, Okl. Stat., Tit. 58 § 331 (probate procedures concerning "notice to the creditors of the decedent stating that claims against said deceased will be forever barred unless presented"); Fed. R. Bankr. P. 2002(a)(7) (bankruptcy procedures concerning notice to creditors of "time fixed for filing proofs of claims"). In contrast, Defendants identify no case in which a consent decree or other settlement of a civil lawsuit concerning redistricting (or any other topic of statewide application) was held to constitute a "special remedial scheme" sufficient to impair the rights of non-parties. *See* Defs.' Br. at 23. Because neither redistricting litigation in general, nor the *Chisom* Decree in particular, constitutes the type of procedural mechanism contemplated by *Martin* or its progeny as a "special remedial scheme," Plaintiffs are entitled to pursue their claims in the Middle District of Louisiana.

The State's reliance on *Mann Mfg., Inc. v. Hortex, Inc.*, 439 F.2d 403 (5th Cir. 1971) is misplaced because that case did not involve the rights of non-parties. *Mann* held that the court in which a case is first filed can preclude the parties—over whom it has jurisdiction—from commencing related actions in other courts. *See id.* Because the State seeks here to invoke the *Chisom* Decree to impair the rights of non-parties in that action, *Mann* is clearly inapplicable. In any event, the

Court's holding in *Mann* concerns this Circuit's "first-to-file" rule (*Ethos Grp. Consulting Servs., LLC v.v Kawecki*, Civ. A. No. 3:20-cv-1488-L, 2020 WL 7828789 (N.D. Tex. Dec. 31, 2020))—an issue which the District Court expressly declined to consider because it was not raised in the State's initial memoranda. ROA.392. The State does not argue that the District Court's refusal to consider this doctrine constituted reversible error.

III. Federalism Principles Do Not Support the State's Position

Our country's "federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-a-vis one another" and federalism principles generally concern the "allocation of powers" between the two. *Bond v. United States*, 564 U.S. 211, 221 (2011). In the context of the instant dispute regarding the jurisdiction of one federal court vis-à-vis another federal court, federalism principles simply are not implicated. Moreover, if followed to its logical conclusion, the State's position would actually undermine federalism principles. According to the State, a federal court order concerning redistricting implicitly precludes every other court—including state courts—from hearing any other redistricting case, ever. Thus, the State claims, the thirty-year-old *Chisom* Decree effectively requires that every redistricting case involving the electoral districts for the Louisiana Supreme Court must be commenced in the Eastern District, "in perpetuity," a position that finds no support in the Eastern

District Consent Decree or any reported decision of any court. Defs.' Br. at 26. Surely, federalism principles do not support authorizing a federal court to forever deprive other federal courts and state courts of jurisdiction to decide cases involving state redistricting schemes—especially cases brought by different plaintiffs, in different parts of the State, alleging different claims based on changed demographic data.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the District Court's denial of the motions to dismiss.

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Respectfully submitted,

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I, Adam L. Shaw, certify that on this 12th day of February, 2021, a true and correct copy of the foregoing Original Brief of Plaintiffs-Appellees has been served on all parties through the Court's electronic filing system and forwarded by electronic mail to the following:

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