UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

Anthony Allen, *et al.* Plaintiffs, v. State of Louisiana, *et al*. Defendants.	NO. 19-479-JWD-EWD

DEFENDANT STATE OF LOUISIANA'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' COMPLAINT

On October 25, 2019, Plaintiffs, the Louisiana State Conference of the NAACP, completely failed to, among other things, carry their burden of proof on this Court's subject matter jurisdiction and standing.

ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction Due to the Currently Enforced *Chisom* Consent Decree, and Nothing Plaintiffs Argue Alters that Fact.

The die was cast on this litigation when the Eastern District of Louisiana approved the 1992 Consent Decree, modified that Decree in 2000, and restated its jurisdiction with respect to the subject matter of that Decree in 2012, *Chisom v. Jindal*, 890 F. Supp. 2d 696 (E.D. La. 2012).[1] Because the United States District Court for the Eastern District of Louisiana is currently enforcing the Consent Decree—as it has done for the past 27 years—and the State is still bound by the terms of the decree, there is nothing left for this Court to do but to dismiss for lack of jurisdiction.[2]

[1] While it is impossible under the rules of this Court to address every error of fact and law in Plaintiffs' brief, what follows represents a portion of the more glaring errors in Plaintiffs' arguments.

[2] Plaintiffs vastly overstate the State's position when it comes to the Eastern District's jurisdiction. It is not the case that the Eastern District has jurisdiction for all time. *See* (ECF No. 34 at 3). The Eastern District does, however, have jurisdiction until *it determines* it no longer has jurisdiction. *See Chisom v. Jindal*, 890 F. Supp. 2d at 710-11 (noting that (1) the court entering the decree retains subject matter jurisdiction to interpret the terms of the decree, and (2) the

a. The Consent Decree Continues to Govern Each and Every Louisiana Supreme Court District.

The terms of the Consent Decree are clear. Despite this, Plaintiffs incorrectly state that "[t]his case in no way implicates the final remedy in *Chisom*." *See* (ECF No. 34 at 4). Even a perfunctory reading of the Consent Decree easily contradicts this assessment. However, because Plaintiffs seemingly omitted analysis of the actual text of the Decree, the relevant sections, which state that *all* of Louisiana's State Supreme Court districts, are as follows:

> Legislation will be enacted . . . *which provides for the reapportionment of the seven districts of the Louisiana Supreme Court* in a manner that complies with . . . federal voting law, taking into account the most recent census data available. The reapportionment will provide for a single-member district that is majority black in voting age population that includes Orleans Parish in its entirety. . . . *[F]uture Supreme Court elections after the effective date shall take place in the newly reapportioned districts*.

1992 Consent Decree (ECF No. 27-3 at ¶ c. 8) (emphasis added). The Consent Decree goes on to state that "[t]his judgment is a restructuring of the Supreme Court of Louisiana by federal court order . . . ." (*Id*. at ¶ F). By its own terms, the Consent Decree covers every Supreme Court District, along with internal operations of the State's Supreme Court including selection of the Chief Justice, and binds the State to the terms of the Consent Decree for as long as the Decree is in effect. *See e.g.,* 1992 Consent Decree (ECF No. 27-3 at ¶ F and H); *Chisom v. Jindal*, 890 F. Supp. 2d at 705-706 ("Act 776 provided for the formal and *permanent reapportionment* of the State's Supreme Court Districts, as called for by the terms of the Consent Judgment.") ("Districts" plural in the original). As recently as 2012 the Eastern District addressed the extent of its jurisdiction under the Decree—hardly a time in the distant past.[3] In *Chisom v. Jindal*, the Eastern District of

court that enters the decree is *the* court with the power to dissolve the decree.). Because the Eastern District has issued "no affirmative ruling" that the Consent Decree has been fulfilled, only that court retains jurisdiction. *See id.*

[3] Plaintiffs repeatedly lament the age of the Decree, as if the age of the Decree had some bearing on its enforceability. Plaintiffs fail to mention that the Eastern District reasserted its authority over Louisiana's Supreme Court districts in 2012. *See Chisom v. Jindal*, 890 F. Supp. 2d 696.

Louisiana affirmed its continuing jurisdiction until such time as it divests itself of that very jurisdiction. *See* 890 F. Supp. 2d at 711. Because the Eastern District has yet to divest itself of jurisdiction under the Consent Decree, and the Consent Decree continues to bind the parties to the *Chisom* litigation, including the State of Louisiana, the Eastern District has exclusive jurisdiction over the modification of *any* State Supreme Court District.

b. Plaintiffs' Complaint is Not Limited to the Fifth Supreme Court District.

Nothing in Plaintiffs' Complaint justifies the attempt at a *post hoc* assertion that this case is only about the Fifth district. The Complaint mentions the Fifth District exactly three times. *See* ECF No. 1 at ¶¶ 47, 48, 56). Not once does it say that the relief it requests is limited to the Fifth District. In fact, in their Complaint, Plaintiffs request the Court "[d]eclare that the current apportionment of Louisiana Supreme Court districts violates Section 2 of the Voting Rights Act." (ECF No. 1 at 15 ¶ a.); *see also id*. at ¶ 5. Similarly, nothing in the Claim for Relief specifically mentions the Fifth District. *See e.g., id*. at ¶ 67 ("Louisiana's African-American population is sufficiently numerous and geographically compact to provide for two properly-apportioned . . . single-member Louisiana Supreme Court districts in a seven-district plan."). As such, the Court should entirely disregard Plaintiffs' *post hoc* rationalizations regarding the Fifth District.

Further, Plaintiffs' attempt to cast their Complaint as singularly alleging a change in the Fifth Supreme Court District only seeks to highlight their pleading failures under *Iqbal*, *Twombly*, and their progeny. While the State maintains that the Complaint is not limited to altering only the Fifth District as a factual, legal, and practical matter, Plaintiffs simply do not meet the notice pleading standards by attempting to amend their Complaint in a Response to a Motion to Dismiss. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("Federal Rule of Civil Procedure 8(a)(2) requires only a short and plain statement of the claim showing that the pleader is entitled to relief,

in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." (emphasis added) (internal quotations omitted)); *see also infra* at 4. This Court should disregard Plaintiffs' attempt to improperly amend their Complaint through argument in contravention of the Federal Rules.

Finally, even if the Consent Decree only controls the First District, which it decidedly does not, the Eastern District would still have jurisdiction under the Consent Decree. Any redrawing of the Fifth District will necessarily impact the surrounding districts, which include the First, Third, Fourth, Sixth, and Seventh Districts.[4] Plaintiffs' belated and newly promised "stipulation" to not touch the First District, *see* (ECF No. 34 at 5 n.1), only serves to further highlight their pleading failures.

c. Even if this Court has Jurisdiction, Plaintiffs Still Lack Standing.

While Plaintiffs' arguments on standing are, on the whole, deeply flawed, there is one specific section that highlights the extent of their misunderstanding of Article III standing. Pages seven and eight of their response contain a laundry list of supposed factual allegations that, in Plaintiffs' minds, demonstrate standing. *See* (ECF No. 34 at 7-8). These "factual assertions" are actually anything but facts; they are simply a recitation of the elements of a cause of action or legal conclusions.

For example, bullet one focuses on the total statewide African American population of Louisiana, which has nothing to do with drawing an additional majority-minority district, *see* (ECF No. 9-19), and is specifically disclaimed by the voting rights act itself as evidence of anything. *See* 52 U.S.C. § 10301(b). Bullet two simply restates the *Gingles* preconditions and the senate factors.

[4] Redistricting works somewhat like sand sculptures, where moving a grain in one portion of the sculpture requires moving one or more grains in other portions of the sculpture. In other words, it is impossible to adjust the 5th without impacting one or more of the surrounding districts.

Compare ECF No. 34 at 7 bullet 2 *with Thornburg v. Gingles*, 478 U.S. 30, 51-52 (1986). This is facially insufficient under *Twombly* and *Iqbal*. *Twombly*, 550 U.S. at 555 ("[A] formulaic recitation of the elements of a cause of action will not do."); *see also id*. ("[C]ourts are not bound to accept as true a legal conclusion couched as a factual allegation." (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The second bullet also has the ignominy of being in direct conflict with Plaintiffs' assertion that only the Fifth District is implicated in their Complaint. Bullets three and four are both merely legal conclusions. *See* (ECF No. 34 at 7). Bullet five simply restates the third *Gingles* precondition. *See Gingles*, 478 U.S. at 52. Finally, bullet six is, once again, merely a legal conclusion.

CONCLUSION

For the aforementioned reasons and the reasons presented in the State's Memorandum in Support, this Court should either dismiss for lack of subject matter jurisdiction, dismiss for failure to state a claim, or order Plaintiffs to amend their Complaint and file a more definite statement.

Dated: November 8, 2019

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was filed electronically and served on counsel for the parties by electronic notification by CM/ECF on November 8, 2019.

/s/ Jason B. Torchinsky
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