



**B. BRIEF EXPLANATION OF THE CASE**

1. **Plaintiffs' Claims:** Plaintiffs claim that the current voting districts for the Louisiana Supreme Court ("the Supreme Court") have the effect of denying African American voters an equal opportunity to participate in the political process to elect candidates of their choice in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Although the voting-age population of Louisiana is approximately 30% African American, African Americans comprise a majority in only one of the seven Supreme Court electoral districts (i.e., 14% of the districts). Six of the seven voting districts for the Supreme Court are majority-white. As a result of the demographics of those districts and racially polarized voting, African Americans have been prevented from equal participation in the election of justices to the Supreme Court. Although Supreme Court Justices have been elected in Louisiana since 1904, the Court has had only two African American justices in its history. Both were elected from the sole majority-black district in the State -- a district created as a result of voting rights litigation.

Louisiana's African-American population is sufficiently large and geographically compact to constitute a majority in two fairly drawn, constitutional single-member districts for the Supreme Court; the state's African American population is politically cohesive; and the State's white voting-age majority votes sufficiently as a bloc to enable it to defeat African-American voters' preferred candidates in six of Louisiana's seven Supreme Court districts. These districts have not been redrawn since 1999. Because of these circumstances, as well as the historical, socioeconomic and electoral conditions of Louisiana, Plaintiffs allege that the Supreme Court districts as currently drawn violate Section 2 of the Voting Rights Act.

The Fifth Circuit has already considered Defendants’ arguments concerning this Court’s jurisdiction and the relationship between the *Chisom* decree, on the one hand, and the relief Plaintiffs seek in this case, on the other. The Fifth Circuit stated:

Three decades ago, a federal consent decree—the “*Chisom* decree”—created Louisiana’s one majority-black supreme court district. In this appeal, we are asked whether that decree also governs the other six districts. The answer is no.

The district court therefore rightly denied Louisiana’s motion to dismiss this Voting Rights Act suit for lack of jurisdiction. The state argued that the *Chisom* decree centralizes perpetual federal control over all supreme court districts in the Eastern District of Louisiana, which issued the decree.

The district court rejected that reading for good reason: it is plainly wrong. Louisiana would inflate the *Chisom* decree beyond its terms and the lawsuit that spawned it. The present suit, however, addresses a different electoral district untouched by the decree. . . .

14 F.4th 366, 368 (5th Cir. 2021). The Fifth Circuit reasoned that the *Chisom* “suit had nothing to do with the other districts and, accordingly, the decree has nothing to say about how they are to be apportioned.” *Id.* at 372. In light of these findings, Plaintiffs view Defendants’ ongoing attempts to conflate this case with *Chisom* as nothing more than an attempt to create further delay. Therefore, Plaintiffs request that this Court set dates-specific for discovery and pretrial motions, as outlined below.

To the extent that the Louisiana legislature takes up redistricting or reapportionment of the districts for electing justices to the Louisiana Supreme Court during or before its Regular Session commencing in March 2022, Plaintiffs maintain that the appropriate time to consider the impact of any such legislative action on the merits of this case would be only after an enactment impacting those districts. Defendants indicate below that it is only “possible” that the legislature may include the Louisiana Supreme Court districts in its consideration of redistricting or reapportionment in 2022. This case has been pending for nearly two-and-a-half years. The

possibility that the legislature may (or may not) take up related issues at some unknown time in 2022 is no reason to further delay discovery and resolution of this case on the merits.<sup>1</sup>

2. **Defendant's Claims:**

Defendant Secretary of State: The Court lacks Art. III jurisdiction over the claims asserted against his office in this case. Otherwise, the Secretary of State maintains and adopts the defenses set out by the State of Louisiana.

Defendants State of Louisiana, by and through the Attorney General of Louisiana, and the Louisiana Secretary of State maintain this case should be dismissed for several reasons.<sup>2</sup>

First, the State of Louisiana maintains its objection that this Court cannot enter a judgment that is governed by the Chisom consent decree. To the extent the Chisom consent decree preserves the boundaries of one of the Supreme Court districts, complementary and constitutional redistricting by this Court and/or the Louisiana Legislature cannot be undertaken. It is necessary to terminate the Chisom consent decree for this litigation to go forward in any meaningful way, and a motion to terminate the decree will be filed at or around the time this Status Report is submitted to the Court. The “Chisom” district has the effect of denying non-African-American voters an equal opportunity to participate in the political process to elect candidates of their choice to the Supreme Court so that it must be re-drawn in order to comply with Section 2 of the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments of the U.S. Constitution.

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<sup>1</sup> Plaintiffs will not, in this joint Status Report, respond to each of Defendants’ other new and belatedly raised arguments set forth below, including jurisdictional and standing issues. Plaintiffs will vigorously contest any such arguments when and if they are properly before the Court.

<sup>2</sup> As explained in Defendants’ Motion for Extension, *see* (ECF No. 18), what is contained herein remains a preliminary assessment subject to Defendants on-going investigation of facts. Nothing in this Status Report should be construed as a waiver of any other defense or admission of any fact. Defendants reserve all rights to amend consistent with the Court’s precedents and the Federal Rules of Civil Procedure.

Second, federal courts have already wrestled with configuring a 7-district map with two majority-minority districts. Three times the Western District of Louisiana rejected a 7-district congressional map with two majority minority districts as a racial gerrymander. *See e.g. Hays v. State*, 936 F. Supp. 360, 362 (W.D. La. 1996) (“For yet a third time . . . the redistricting plan enacted by the Legislature violates the equal protection rights of the Plaintiffs”).

Third, the State of Louisiana maintains that only official United States Census Data may be used to configure any redistricting plan in the state of Louisiana.

Fourth, the Legislature is expected to meet soon for a redistricting session for its various election districts, including a possible redistricting of the Louisiana Supreme Court or alternatively, may take up Supreme Court reapportionment and redistricting in its Regular Session commencing in March 2022. The State of Louisiana maintains that the Legislature should have the opportunity to redistrict prior to any action of this Court.

Fifth, the Voting Rights Act does not require racially proportionate representation on the Louisiana Supreme Court. Section 2 of The Voting Rights Act requires only “the potential to elect,” not a guarantee of electoral victory or a guarantee to any minority group that its preferred candidate must win to avoid violating federal law. *Magnolia Bar Association*, 793 F. Supp. 1386, 1421 Note 14 (S.D. Miss. 1992). “[Section 2] does not require a showing of proportional representation at the liability phase, nor does it require proportional representation as a remedy.”

Sixth, the Plaintiffs cannot show that they “suffered ‘injury in fact,’ that the injury is ‘fairly traceable’ to the actions of the defendants, and that the injury will likely be redressed by a favorable decision.” *Bennett v. Spear*, 520 U.S. 154, 162, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997); accord *Dep’t of Tex., Veterans of Foreign Wars of U.S. v. Tex. Lottery Comm’n*, 760 F.3d 427, 432 (5th Cir. 2014) (en banc); *K.P. v. LeBlanc*, 627 F.3d 115, 122 (5th Cir. 2010).

Seventh, the Plaintiffs will not be able to show by a preponderance of the evidence, the following three preconditions are met for Supreme Court election districts: (1) the affected minority group is sufficiently large and geographically compact to constitute a voting age majority in a district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc that it is usually able to defeat the minority group's preferred candidate. *NAACP v. Fordice*, F.3d 361, 366 (5th Cir. 2001) (*Gingles*, 478 U.S. at 50-51).

Eighth, the Plaintiffs will not be able to show that the totality of the circumstances show that African-American voters have less opportunity than other members of the electorate to participate in the political process and to elect candidates of their choice to the Supreme Court in violation of Section 2 of the Voting Rights Act.

Ninth, when proposed redistricting plans are challenged on racial grounds, courts must review each challenged district to determine whether race predominated over legitimate districting considerations. *Bush v. Vera*, 517 U.S. 952, 963 (1996). And see: *Miller* at 917, *Shaw v. Hunt*, 517 U.S. 899, 904-907 (1996) and *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999). Such a review here must find that if any malapportionment exists, it is attributable to a Supreme Court map that is subject to federal court jurisdiction in the Eastern District of Louisiana. The State of Louisiana has enrolled counsel to petition the Eastern District for termination or dissolution of the Chisom consent decree so that the Legislature and/or this Court has the ability to reapportion its Supreme Court Districts in accordance with the applicable statutes and the U.S. and Louisiana Constitution.

### **C. PENDING MOTIONS**

There are no pending motions at this time.

The Attorney General, on behalf of the State of Louisiana, has enrolled counsel in the matter of *Chisom, et al. v. Jindal, et al.*, U.S.D.C. (Eastern District), Docket No. 86-4075 in order

to petition the court to terminate or dissolve the Consent Decree entered therein to the extent it preserves in perpetuity the boundaries one of the Supreme Court district essential to a lawful reapportionment/redistricting plan. Any malapportionment which exists among all seven districts with the Louisiana Supreme Court can only be remedied if the court dissolves or terminates the *Chisom* consent decree.

#### **D. ISSUES**

The principal legal issues, which are in dispute, are as follows:<sup>3</sup>

1. Does the Voting Rights Act apply to the Judiciary?
2. (a) As currently drawn, do the voting districts for the Supreme Court have the effect of denying African American voters an equal opportunity to participate in the political process to elect candidates of their choice in violation of Section 2 of the Voting Rights Act? (b) Does one or more of the districts have the effect of denying non-African-American voters an equal opportunity to participate in the political process to elect candidates of their choice in violation of the Voting Rights Act of 1965?
3. Can two constitutional single member African American-majority districts be drawn to enable African Americans an equal opportunity to elect Supreme Court candidates of their choice, and is it required by Section 2 of the Voting Rights Act?
4. Is it legally permissible for race to be the primary consideration in drawing election districts?

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<sup>3</sup> Plaintiffs do not agree that item numbers 1, 2(b), 4, 5, and 6 are “issues” before the Court. In their initial joint Status Report in September 2019, the parties jointly identified items 2(a) and 3 as the two issues raised in this case. Plaintiffs maintain that those are the two issues at stake in this case. Plaintiffs dispute the other five “issues” newly-raised by Defendants in this report (i.e., items 1, 2(b), 4, 5, and 6) and see this as a further attempt to conflate this case with *Chisom* and to create delay.

5. Whether the number of voters in the Chisom district is so badly out of proportion to the number of voters in other Supreme Court districts that it dilutes the voting strength of voters in the other districts in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the U.S. Constitution.
6. Whether a constitutional reapportionment/redistricting plan can be drawn without substantially altering the Chisom district.

**E. DAMAGES**

This case does not involve a traditional calculation of monetary damages. Plaintiffs seek declaratory and injunctive relief pursuant to 52 U.S.C. § 10301. Plaintiffs also seek an award of their reasonable attorneys' fees and the costs and disbursements of maintaining this action pursuant to 52 U.S.C. § 10310(e) and 42. U.S.C. § 1988.

The Secretary of State avers that the attorney fees calculated in accordance with the *Lodestar* formula are due by the Plaintiffs should the Secretary of State prevail. Plaintiffs contest this assertion by the Secretary of State.

**F. SERVICE**

All Defendants have been served and there are no unresolved issues concerning service of process and personal jurisdiction.

**G. DISCOVERY**

1. **Initial Disclosures:**

A. Have the initial disclosures required under FRCP 26(a)(1) been completed?  YES  NO

2. **Discovery in Progress:**

No discovery has been taken at this time.



3. **Protective Orders and Limitations on Discovery:**

The parties do not anticipate any discovery that will require protective orders or limitations on discovery, unless Plaintiffs intend to seek or access the confidential portions of the State's voter files for any reason.

The State of Louisiana does not believe that expert discovery is feasible before the Chisom consent decree is terminated or modified. It is impossible to ask any expert to craft a redistricting plan and formulate opinions about the Supreme Court districts without taking account of the Chisom district.

4. **Discovery from Experts:**

Identify the subject matter(s) as to which expert testimony will be offered:

a. **Plaintiffs' Expert Topics:** Plaintiffs anticipate submitting expert witness testimony concerning (1) the historical, socioeconomic and electoral conditions in Louisiana generally and with regard to judicial elections specifically; (2) analyses showing that the State's African American population is politically cohesive; (3) analyses showing that the State's white voting-age majority votes sufficiently as a bloc to enable it to defeat African American voters' preferred candidates; (4) Louisiana's history of official voting discrimination; (5) Louisiana's history of racially polarized voting; (6) Louisiana's use of enhancing practices; (7) socio-economic barriers to voting in Louisiana; (8) analyses showing racial appeals in campaigns; (9) analyses showing the persistent under-representation of African Americans in public office in Louisiana; and (10) analyses showing that two constitutional majority-African-American Supreme Court districts can be drawn.

b. **Defendants' Expert Topics:** Defendant State of Louisiana will likely submit expert reports to rebut one or more of the expert reports to be submitted by Plaintiffs, and may submit one or more expert reports covering subjects not listed above.

#### **H. PROPOSED SCHEDULING ORDER**

1. If the parties propose an alternative timeframe for exchanging initial disclosures, please provide that proposed deadline:

Initial disclosures have been completed.

2. Recommended deadlines to join other parties or to amend the pleadings:

Plaintiffs' proposal: **March 4, 2022.**

Defendants' proposal: The deadline for amendment of the pleadings should follow a final ruling on the dissolution or termination of the consent decree in the Chisom.

3. Filing all fact discovery motions and completing all discovery except experts:

Plaintiffs' proposal: **March 18, 2022.**

Defendants' proposal: 60 days after the amendments to the pleadings.

4. Disclosure of identities and resumes of expert witnesses (if appropriate, you may suggest different dates for disclosure of experts in different subject matters):

Plaintiffs' experts:

Plaintiffs' proposal: **April 4, 2022.**

Defendants' proposal: 30 days after fact discovery.

Defendants' experts:

Plaintiffs' proposal: **June 4, 2022.**

Defendants' proposal: 60 days after plaintiffs' experts.

5. Rebuttal experts (if any):

Plaintiffs' proposal: **July 3, 2022.**

Defendants' proposal: 30 days after plaintiffs' rebuttal expert(s).

6. Exchange of expert reports:

Plaintiffs' experts:

Plaintiffs' proposal: **April 29, 2022.**

Defendants' proposal: 30 days after naming rebuttal experts.

Defendants' experts:

Plaintiffs' proposal: **June 30, 2022.**

Defendants' proposal: 90 days after plaintiffs' expert report(s).

Rebuttal experts (if any):

Plaintiffs' proposal: **July 31, 2022.**

Defendants' proposal: 30 days after defendant's expert(s)  
report(s).

7. Completion of discovery from experts:

Plaintiffs' proposal: **August 30 2022.**

Defendants' proposal: 120 days after rebuttal expert report(s).

8. Filing dispositive motions and *Daubert* motions:

Plaintiffs' proposal: **September 30, 2022.**

Defendants' proposal: 30 days after the close of expert discovery.

9. All remaining deadlines and the pre-trial conference and trial date will be included in the initial scheduling order. The deadlines will be determined based on the

presiding judge's schedule, within the following general parameters.<sup>4</sup> The parties should not provide any proposed dates for these remaining deadlines.

- a. Deadline to file pre-trial order (approximately 16 weeks after dispositive motion deadline).
  - b. Deadline to file motions in limine (approximately 20-22 weeks after dispositive motion deadline).
  - c. Deadline to file responses to motions in limine (approximately 22-24 weeks after dispositive motion deadline).
  - d. Deadline to file an affidavit of settlement efforts (approximately 22-24 weeks after dispositive motion deadline).
  - e. Deadline to submit joint jury instructions, voir dire, verdict forms, and trial briefs to the presiding judge (approximately 25-27 weeks after dispositive motion deadline).
  - f. Pre-trial conference date (approximately 18-20 weeks after dispositive motion deadline).
  - g. Trial date (approximately 27-29 weeks after dispositive motion deadline).
9. If the general outline of proposed deadlines does not fit the circumstances of your particular case, please provide a proposed joint schedule of deadlines which is more appropriate for your case.

## **I. TRIAL**

1. Has a demand for trial by jury been made? [ ] YES [ **X** ] NO

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<sup>4</sup> The date ranges provided for the new deadlines, pre-trial conference, and trial date are a general guideline only. The actual dates may vary depending on the complexity of a particular case. All requests for subsequent changes to the deadlines set in the scheduling order under paragraph numbers 7 or 8 must be by motion directed to the presiding judge.

2. Estimate the number of days that trial will require: **Seven days**

a) Defendants request the same number of days as Plaintiffs for trial.

**J. OTHER MATTERS**

Are there any specific problems the parties wish to address at the scheduling conference?

YES  NO

i. If the answer is *yes*, please explain:

ii. If the answer is *no*, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report? **CHECK “NO” IF YOU HAVE NOT SUBMITTED**

**JOINT PROPOSED DEADLINES.**  YES  NO

**K. SETTLEMENT**

1. Please set forth what efforts, if any, the parties have made to settle this case to date.

There have been no settlement discussions at this time.

2. Do the parties wish to have a settlement conference:  YES  NO

If your answer is *yes*, at what stage of litigation would a settlement conference be most beneficial?

Plaintiffs would be willing to engage in settlement discussions at any time.

**L. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE**

You have the right to waive your right to proceed before a United States District Judge and may instead consent to proceed before a United States Magistrate Judge. Indicate whether, at this time, all parties will agree, pursuant to 28 U.S.C. § 636(c), to have a Magistrate Judge handle all the remaining pretrial aspects of this case and preside over a

jury or bench trial, with appeal lying to the United States Court of Appeals for the Fifth Circuit.

All parties agree to jurisdiction by a Magistrate Judge of this court: [ ] YES [X] NO

**If your response was “yes” to the preceding question, all attorneys and unrepresented parties should sign the attached form to indicate your consent.**

Dated: December 2, 2021

Respectfully submitted,

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