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

STATE OF LOUISIANA, *et al.*,

Defendants.

MOTION TO INTERVENE

John L. Weimer, Greg Champagne, Mike Tregre, and Craig Webre ("Intervenors"), through undersigned counsel, respectfully move under Federal Rule of Civil Procedure 24 to intervene in this action for the limited purpose of filing a Motion to Partially Lift Consent Stay Order.[1] That motion, which is attached hereto as Exhibit A, requests that the Court modify the May 4, 2022 Order, which was entered with the consent of the parties and stays *all* Louisiana Supreme Court elections indefinitely. Rec. Doc. 101 (the "Consent Stay Order"). The requested modification if granted would allow the upcoming election in Louisiana Supreme Court District Six, which is not a part of this lawsuit, to proceed.

Federal Rule of Civil Procedure 24(a) provides that "[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute;

[1] Pursuant to the Local Rules of the United States District Court for the Middle District of Louisiana, no accompanying memorandum is attached to this motion to intervene. *See* LR 7(e) ("No memorandum is required by either movant or respondent, unless otherwise directed by the Court, with respect to the following motions: . . . (7) to intervene[.]").

the relief sought by the plaintiffs as the "status quo" despite the fact that the requested relief departed from existing law. Id. ("[T]he Fifth Circuit held that the district court issued a last-minute, eleventh-hour injunction that alters the status quo, not the Texas legislature's 2017 duly enacted law." Id. at 568 ("[T]he Court's order fundamentally changed the status quo ante that was in place for several years before the 2020 election."). Here, the status quo ante is the election map in place for the 2020 election, which is untouched by the present litigation or Chisom, to go forward, thereby ensuring that the voting rights of District Six voters remains uninfringed.

Relatedly, a partial narrowing or lifting of the stay for this limited purpose will not impair the interest of either party. If the legislature post-election changes the contours of District Six in accord with legislation or a court decree, then the next election will occur in that new district. But such a remote and hypothetical possibility is no reason to deviate from the present status quo and enjoin this election, particularly when there is no practical prospect that the district will be altered in time for the November 2022 election. In sum, lifting the stay will not impair any future remedy available to the court or to the parties, and doing so will accommodate and ensure the existing constitutional rights of the voters of District Six. See, e.g., League of United Latin Am. Citizens Council No. 4434 v. Clements, 999 F.2d 831, 845 (5th Cir. 1993) ("The settlement agreement

would deprive voters of the right to vote for judges with general jurisdiction over their county.´ [6]

A further issue warrants lifting the stay and preserving the status quo, allowing the November 2022 election in District Six to proceed. Louisiana law provides that "[e]very public officer in this state except in case of impeachment or suspension shall continue to discharge the GXWLHV RI KLV RIILFH XQWLO KLV VXFFHVVRU VKDOO EH GXO\ TXDOLILHG Consequently, the present Consent Stay, if it remains in place, may implicate provisions for the continuity of government. Compare Miller v. Oubre, 682 So.2d 231, 237 (La. 1996) (unanimously ruling that La. R.S. 42:2 applies to the judicial branch) with Original Complaint for Declaratory Relief, Rec. Doc. 1 at ¶21 (alleging that the governor has the right to appoint a justice if there is a vacancy). The fact that this question is or may be unsettled is an additional reason to allow the District Six election to proceed as planned, ensuring that the voters of District Six remain enfranchised for the present. No compelling state interest to the contrary is apparent.

D. The Fifth &LUFXLW¶V 5XOLQJ LQ .KDQQD &DVH LV &RQVLVWHQW :LWK WKH ,QWHUYHQRUV¶ 5HTXHVW

The Fifth Circuit has previously DIILUPHG WKLV &RXUW¶V GHQLDO RI W dismiss for lack of subject matter jurisdiction, resolving the question of ³:KHWKHU WKH (D District [of Louisiana] has exclusive subject matter jurisdiction over all matters involving Louisiana Supreme Court districts under the [so GHFUHH@´ See Allen v. State of Louisiana,

[6] Rather than advance a compelling state interest, the Consent Stay impairs important state interests. The current sitting Justice from District Six also acts as Chief Justice under the Louisiana Constitution, which mandates that the ³MXGJH ROGHVW LQ SRLQW RI VHUYLFH´ shall serve as Chief EH FKLHI MXVWLFH ´ Assuming that the currently sitting Justice qualifies to run again, and is elected, he would continue to serve as Chief Justice as required by the state constitution, and maintaining the administrative stability of the Court and leadership of WKH VWDWH¶ entire judicial system.

No. 20-30734 (5th Cir. Sept. 17, 2021) at 4. In answering in the negative, the Fifth Circuit agreed that W K L V & R X U W ¶ V F W L R Q R Y H U 3 O D L Q W L I I V Y L Z D V X Q C principally concerned a different electoral district from the one at issue here. Id. at 5. The Chisom decree, according to the Fifth Circuit, affects only the existing majority-black district in Orleans Parish (District Seven D Q G S U R S H U O \ U H D G L Q F R Q W H [W W K H G H F U H H H O H F W L Q J W K H / R X L V L D Q D 6 X S U H P H & R X U W ´ R U W R W K H ³ U H point to converting the one-at-large district into the present-day majority-black district. Those references do not, as Louisiana argues, mean the decree overhauled all supreme court electoral districts.´ Id. at 9.

Accordingly, the Fifth Circuit explained that a federal consent decree cannot manacle a V W D W H ¶ V H Q W L U H M X G L F L D O H O H F W L R Q V \ V W H P and a court-ordered R Z R X O G O D F N D X W K R U L W \ W R H Q W H U V X F K Id. at 10; see also ³ H Y H Milliken v. Bradley, 433 U.S. 267, 282 (1977) (³ >) H G H U D O court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution . . . or if they are imposed upon governmental units that were neither involved in nor affected by the constitutional Y L R O D W L R Q ´ F L W L Q J Horne v. Flores, 557 U.S. 433, 450 (2009) (same); M.D. ex rel. Stukenberg v. Abbott, 907 F.3d 237, 271 (5th Cir. 2018) (same).

& R Q V L V W H Q W Z L W K W K L V J X L G D Q F H Q H L W K H U F D Q D ³ specific district at issue in the underlying litigation. The stay should apply to the specific district at issue, and no further. The Fifth Circuit explained that the ³ H U H S R V V L E L O L W \ of some future W K D W remedy may also include District Seven is not enough to implicate subject matter jurisdiction as to another District. See id. at 12. The same conclusion also applies to District Six.

This conclusion is likewise supported by the case filings and initial District Court decision. See, e.g. 3 O D L Q W L II V¶ Reply in Opposition to ' H I H Q G D Q W 6 W D W H R I / R X L V L D Dismiss, Rec. Doc. 34 at 5 n.1³ > 7 @ K H D O O H J D W L R Q V L Q W K L V F D V H F H Q W 5 and the Baton Rouge area are not implicated, much less preempted by the Consent Decree. If there is any doubt on the issue of the relevance of Districts 5 and 6 to this case, Plaintiffs will stipulate that any remedy they seek will not affect the Supreme Court Districts. Id. at 4 ´³ 7 K H [Voting Rights Act] allegations in this case focus solely on the single-member Supreme Court District 5 and the % D W R Q 5 R X J H Z K R O O \ G H Q \ L Q J the motion to dismiss, the District Court observed that ³[c]onversely, as will be manifestly clear from this Ruling (particularly the standing section infra), a fair reading of the Complaint as a whole demonstrates that these Plaintiffs live in East Baton Rouge Parish, and thus outside the class,² are in fact seeking relief by the redrawing of 6 X S U H P H & R X U W ' L V W U L F W Ruling and Order, Rec. Doc. 47 at 22 ´ J H

In sum, the present lawsuit does not concern District Six and, for this reason, the Consent Stay agreed to by the parties should not apply to divest the voters of District Six of their constitutional right to vote, absent any compelling state interest to the contrary.

III. CONCLUSION

For these reasons, the Intervenors respectfully request that the Court modify the Consent Stay entered in this matter in order to permit the voters of District Six to exercise their right to vote and elect a Justice from that district in the election scheduled for November 8, 2022.

Dated: June 29, 2022.

Respectfully submitted,

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