UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RONALD CHISOM, ET AL

VERSUS

JOHN BEL EDWARDS, ET AL

CIVIL ACTION
NO. 86-4075
SECTION "E"(1)
MARCH 24, 2022

TRANSCRIPT OF MOTIONS PROCEEDINGS
HEARD BEFORE THE HONORABLE SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

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P-R-O-C-E-E-D-I-N-G-S

(MARCH 24, 2022)

(MOTIONS PROCEEDINGS)

(The Court was called to order.)

THE COURT: Be seated, please. Good afternoon, everyone.

DEPUTY CLERK: Calling Civil Action 86-4075, *Chisom, et al, versus Edwards, et al.*

If counsel could make their appearance for the record.

MR. QUIGLEY: Bill Quigley for the plaintiffs since 1986.

MS. ADEN: Good afternoon, Leah Aden from Legal Defense Fund also for the Chisom plaintiffs.

MS. GIGLIO: Good afternoon, Amanda Giglio of Cozen O'Connor also for Chisom plaintiffs and joined by my colleagues Michael de Leeuw and Andrew Linz.

MR. WILLIAMS: Good afternoon, Your Honor. James Williams on behalf of plaintiff intervenor Retired Chief Justice Bernette Joshua Johnson, along with Clarence Roby and Alanah Hebert.

MS. RYAN: Good afternoon, Your Honor. My name is Elizabeth Ryan. I represent the United States. I'm here with my two colleagues Emily Brailey and Peter Mansfield from the

U.S. Attorney's Office.

THE COURT: Anybody else? All right.

MS. SUDDUTH: Lauryn Sudduth on behalf of the State.

MR. JONES: Carey Jones, Your Honor, for the State.

MS. MURRILL: Liz Murrill for the State.

MR. McPHEE: Shae McPhee for the State.

THE COURT: All right, okay. Well, good, it's nice to see all of you here today. We've got two motions pending. The first one is Document 312, the State's motion to dissolve the Consent Decree, and the second is Document 278, the Chisom plaintiffs' motion to add and drop parties.

Since the State has -- I thought I'd take the motion to dissolve the Consent Decree first. And since the State has the burden of proof, I would like for them to go first.

MR. JONES: Good afternoon, Your Honor. By way of evidence, I would like to adopt the exhibits that were attached to the motion to dissolve. They were all, I think, paper exhibits; and to discharge our burden of proof, I think the exhibits accomplish that purpose.

THE COURT: Remind me what the exhibits were.

MR. JONES: There are a number of exhibits. The principal exhibits really are the election exhibits, the records from the Secretary of State that reflect election dates, terms of service, etcetera, for the Louisiana Supreme Court.

THE COURT: I'm looking at, I believe it looks like it's the motion to dissolve and the memo, the *Allen* case, Exhibit B, Louisiana Legislature Joint Governmental Affairs Committee Meeting, and that's the only...

All right, so.

MR. JONES: Thank you.

I think the place to begin the discussion for this afternoon, Your Honor, is probably with the scope of this Court's jurisdiction. As you obviously know, we filed a jurisdictional exception in a related case in the Middle District called the *Allen* case. That prompted --

THE COURT: I got it right here.

MR. JONES: We all have it. That prompted both the Middle District Judge deGravelles, and subsequently on appeal, the Fifth Circuit, to conduct a comparative analysis of the Middle District's jurisdiction in the *Allen* case.

THE COURT: I don't think you should spend a lot of time on that. I read it, and my understanding of the case is that the Fifth Circuit said that the fact that I had jurisdiction over the 7th District case did not affect the Middle District's jurisdiction over the 5th District case.

So I think we all understand that.

MR. JONES: Okay. Well, let me go then directly to the Consent Decree and 60(b)(5). 60(b)(5) provides for relief in three circumstances. First, it's where the judgment is

satisfied or discharged. That's just one of the disjunctives and one of the grounds through which you can consider the dismissal of a Consent Decree.

And then the second is the provision where the law changes dramatically, and I don't think that provision comes into play here.

And then the third is that circumstantial provision where it's no longer equitable to apply the Consent Decree prospectively.

THE COURT: Do you think that applies here?

MR. JONES: I do. I think the primary provision is the first one. And the Fifth Circuit commented pretty clearly on that, that the Consent Decree has been accomplished. The objective has been --

THE COURT: Don't go down that road. In *Allen*? That's not the way I read *Allen*. They said they're not commenting one way or another. They weren't called upon to decide it. "We express no opinion on the merits of plaintiffs' suit or on any other matter pending before the district court," which they're talking about the Middle District. But I also think they didn't decide that this Consent Decree had been, that the purpose had been satisfied.

MR. JONES: And maybe I misspoke in that regard, Your Honor. I don't think they decided anything with respect to this Court. This Court, no ruling by this Court was not

subject to the appeal.

What I was referring to was some of the comments that the Court made that the State needs to get off its behind and bring this motion to the Court.

THE COURT: Well, I think if you thought it was important, I don't think they said you need to -- you apparently don't need to do it for the Middle District case. I don't think they're expressing any opinion about that either.

But in any event, we're here. I'm going to have to decide this.

MR. JONES: And back to 60(b)(5) and the judgment being satisfied and discharged.

THE COURT: And I know what you're going to say. I know that Justice Johnson was elected. Let me ask you some questions, and maybe we can get to what I'm concerned about.

One thing that you-all talked about a lot is what has changed, factually or legally. So what in your opinion has changed?

MR. JONES: Since the decree was issued?

THE COURT: Yes.

MR. JONES: 30-some years of electing African-American judges to the Supreme Court: Judge Ortique, then Justice Johnson who served through her retirement, and now Justice Piper Griffin who was elected to the Court and is not up for re-election for seven or eight years. That's changed.

The other thing that's changed is reapportionment time has come, and reapportionment bills are pending in this session of the legislature. That's new. That's significant, and that's directly impacted, I think, by this Consent Decree.

THE COURT: But there have been others since this, cycles when the State has tried to reapportion the Supreme Court, and they haven't come here to ask that the Consent Decree be terminated.

MR. JONES: That's happened and probably shouldn't have. That was probably the State not giving enough attention to whether or not the Consent Decree needed to be lifted.

THE COURT: Let me ask you a question. In your complaint, in the prayer, let me see if I can find that. Do I have that?

So I'm looking at Document 257-1. Actually, it's not the prayer. It's your prayer in connection with this motion that I was reading. It's Document 257-1 at page 12. And what you ask is that, B, the Consent Decree, here that I declare that the Consent Decree entered herein is no longer binding on the State of Louisiana.

So I guess does that mean that if I terminate the Consent Decree that the State is no longer required to have a, "single-member district that is majority black in voting age population that includes Orleans Parish in its entirety"? I'm reading that from the Consent Decree itself which is Document

257-4 in one place. That's on page 6.

So I guess, you know, I was thinking, well, what does it mean to terminate this Consent Decree. And I was thinking, okay, does that mean that the State is free to not have a district in New Orleans where an African-American can be elected? And instead, if the State comes up with a reapportionment plan that splits Orleans Parish up into other districts so that there's no possibility for an African-American to be elected, the plaintiffs, or anybody else who disagree with that, have to start all over. They would start from scratch.

They couldn't say, "Oh, look, we already -- we dealt with this in this Consent Decree," because the obligation created in this Consent Decree would be gone.

Is that the State's position?

MR. JONES: It is the State's position, Your Honor. If you dissolve an injunction, that injunction is no longer binding on whoever the defendants may have been.

THE COURT: You know, we did this in the form of a Consent Decree like a judgment.

MR. JONES: Well, a Consent Decree is both contract and judgment I think, certainly enforceable by the Court.

But if the legislature did reapportion in a manner that violates Section 2, yes, suit would be filed. Facts would have to be alleged, and the case would go forward and be tried.

But I don't think if the legislature is going to truly reapportion the districts that they can be bound or committed to making any one parish any particular kind of district. The reapportionment rules don't require that and don't mandate that.

So if the legislature goes forward with reapportionment and this case is dissolved, then the result that Your Honor described is the result.

THE COURT: What about the provisions of Act 776 that say that there can be future reapportionment, just so Orleans Parish is preserved as a single district where an African-American has a chance to be elected? I know that's not the exact legal phrase, but that's the concept.

So it's built into the Consent Decree now. And in fact, at the time of Act 776, there were some changes made, but the parties agreed that it complied with Section 2. And so they came together to the Court and said, "We want you to amend the Consent Decree."

Doesn't that indicate that there can be reapportionment without terminating the Consent Decree?

MR. JONES: I didn't read it that way, Your Honor. Act 776 is a statute. As a statute, it allows reapportionment without limitation. The statute was incorporated into the agreement, and that agreement was made by all parties with that provision that the legislature can reapportion after census.

I did not read that as perpetuating New Orleans Supreme Court district.

THE COURT: Well, the plaintiffs may disagree with you on that.

Do you believe that -- is it the State's position that the need for the Consent Decree has abated?

MR. JONES: I'm sorry?

THE COURT: Is it your position, the State's position that the need for the Consent Decree has abated?

MR. JONES: I think that's true. If the legislature is now going to reapportion, then the Consent Decree really doesn't protect anything. The legislature can reapportion under the applicable constitutional provisions in the statutes, and I don't think the Consent Decree has a great deal of impact on that.

The Consent Decree was for one purpose, and that was to solve a problem with the First District that included Orleans Parish and three other parishes and elected two Supreme Court justices. And the allegation was that violates Section 2 because it's a device effectively designed to prevent the election of an African-American judge in Orleans Parish. That was the problem brought to the Court to solve.

The Consent Decree solved that problem, and the recitals in the Consent Decree say that if these five or six things are done by the State, that solves the issue that was

brought to the Court.

THE COURT: If you don't need the Consent Decree terminated, why are you here?

MR. JONES: There's several reasons, Judge. But the principal reason is if you're a legislator, you don't know if you're bound by this Consent Decree or not. We can advise them all day, but I can assure you, they don't listen to our advice all that often. So the legislature needs a clean slate if they're going to reapportion.

THE COURT: You know, one of the things that the people on the other side of the courtroom have mentioned is why didn't the State, why don't you formulate a plan as a legislature, adopt a plan, and then come and say -- similar to what happened in Act 776 -- that we'd like the Consent Decree amended to incorporate this new plan which preserves the purpose of the Consent Decree with respect to this district?

MR. JONES: Well, for one thing, that would require a new Consent Decree.

THE COURT: I'm sorry?

MR. JONES: That would require extending the Consent Decree and would require a new decree.

This decree has been done. It's been accomplished. All of the steps that were prescribed in this Consent Decree have been taken. It's done. To do something more in the Consent Decree would require a new agreement.

THE COURT: No, I think it could be done the same as Act 776. You could amend what's in place right now.

And I think if the legislature did preserve the electability of an African-American candidate in this district that the parties would agree to that. I don't think that they expected that none of the other districts would ever change. That's not the concern. It's that this district continue to comply with the purpose of the Consent Decree.

MR. JONES: Well, let me refer you to the bills that are presently pending which you can take judicial notice of because they're on the legislative website. It's HB 738, SB 288, SB 307, SB 308, and SB 309. Those are the bills that have been introduced to reapportion.

All of those bills preserve New Orleans in a minority district. Some of the bills include Orleans Parish with parts of St. James and parts of St. Charles. Others include, I think, just Orleans Parish, and others have a little bit different configuration. But Orleans Parish is in a minority district in all of these bills.

So there's no move afoot to do away with Orleans Parish as a majority minority district. There's no threat. I've personally heard no discussion of it and probably would have.

But part of the issue is trying to keep a federal finger on the legislature because all of the laws say that you

should return control to the State because that's the appropriate thing to do, and this Consent Decree is no different. Control can be returned to the State because everything in this Consent Decree has been done and accomplished, and there's no reason to try to influence the legislature to enact any particular district.

The legislature is bound by Section 2, Article 14 and by article -- the 14th Amendment, rather, and the 15th Amendment. They have to comply with those things. If they do, the judge has no jurisdiction to consider what they've done. And that's what the legislature is doing. They're doing their job. They're carrying out their purpose.

And so far as I know, nobody's threatening to change the New Orleans district dramatically except to include part of St. Charles, part of St. James, and maybe there's a little sliver of Jefferson Parish in one of them. But it doesn't change the composition of the district.

So that's why I think the Consent Decree needs to be dissolved because the legislature doesn't need to be looking over their shoulder thinking, you know, "We got to satisfy that judge in New Orleans. She wants us to include a particular district. We better do it." That's not really what the federal-state relationship is. The State has the authority, the responsibility, and they have to follow the law, state and federal. So that's 15 minutes.

THE COURT: Yes. All right, thank you.

Who is next?

MS. ADEN: Good afternoon, Your Honor. Again, I'm Leah Aden with the Legal Defense Fund for the Chisom plaintiffs.

Your Honor, this is an institutional reform case brought to effectuate structural change to the electoral method for the manner of electing justices of the Louisiana Supreme Court and to ensure that black voters have an equal opportunity to elect their preferred justices in a functional single-member district.

This restructuring remains necessary to provide voters with that ability to elect given the presence of certain realities. Key among them, the differing electoral preferences of black and white voters in Louisiana known as racially polarized voting. The State has not put on any evidence in the record that those circumstances which is the key to why this *Chisom* decree was necessary, they've put on no evidence that those circumstances have changed.

Prior to this structural reform, no black justice had ever served on the Louisiana Supreme Court; and frankly, to this day, no other black justice serves on the Supreme Court outside of the New Orleans based district brought about by this Consent Decree.

All of a sudden, the attorney general seeks to end

this landmark decree, but his paltry effort, including, the lack of any record to do so, comes nowhere close to the burden that he must satisfy in order to dissolve the Consent Decree under the Supreme Court precedent of moving for a 60(b) motion, and that's *Rufo*. The Fifth Circuit in the *Boerne* case also makes that very clear.

The attorney general, you hear, purports to want to end the Consent Decree because he contends that the legislature's hands are tied and they can't correct for population imbalance among the legislative districts. But that is simply not so.

The Consent Decree as amended contemplates, expressly contemplates the ability to reapportion so long as the purpose of the Consent Decree, to ensure the ability to elect of black voters in the New Orleans area where those conditions are necessary, so long as that is maintained.

And that is consistent with Supreme Court law, *Wells versus Edwards*, which says that it is not mandatory for judicial districts to be redistricted. They may, but they may not. But no matter what, that law must be read alongside the Consent Decree and the need for the ability of black voters to elect their candidate of choice in the New Orleans based district.

THE COURT: How do you respond to the argument of the State that the purpose has been accomplished because this

district was established and we have had African-Americans elected to the Supreme Court over a long period of time?

MS. ADEN: That is an achievement that marks that the Consent Decree is necessary, but I think *Boerne* and if you look at what the Court -- in order to comply with the State's obligation to dissolve the Consent Decree, I think *Boerne* makes clear, *Rufo* makes clear, the *Thomasville* case makes clear that they have the burden to come back to court and show that there are changed factual circumstances.

And as a practical matter, you can look to *Boerne*. You can look to *Thomasville*. And that means they have to show whether there is a map that contains a sufficiently large, geographically compact black district. They have to tell us whether or not there is racially polarized voting and whether or not that has been remedied. They have to tell us all of the other elements of the vote dilution claim whether those exist or not.

And I think *Boerne* makes that very clear, *Thomasville* makes that clear, and there is nothing in the record to suggest that they have come close to that. They could do that.

THE COURT: So wait. For example, there hasn't been any evidence or any argument, to my knowledge, that there's no longer racially polarized voting in Louisiana.

MS. ADEN: And the burden is on the State to come forth and show, "We don't need this district anymore because

there is sufficient white crossover voting, because there is a map in place that will continue to allow black voters to elect their candidate of choice." That is their burden, and they have to satisfy that before it can be dissolved. And until that time happens, the Consent Decree does remain in place.

The fact that there are black elected is because of the district, but we don't know what it will look like in the absence of this Consent Decree. And they have to show that the circumstances no longer warrant it, and there is nothing in the record, including, the exhibits that they seek to move into evidence today, that comes nowhere close to what courts have been compelled to delineate and specific findings of fact. *Boerne* shows us that. The *Thomasville* case shows us that as well.

To the extent the Court disagrees that their motion should be denied as legally insufficient on its own, which we would urge this Court to do, we think that, once again, if the Court is compelled to consider their motion based upon their having moved to do so that there needs to be more put into the record. And that could include additional briefing. That could include -- so let me be clear. The Court can legally deny the motion based upon what has been shown today.

But if the Court is not inclined to do that, more needs to be put into the record, additional briefing, potentially discovery, potentially hearings, in order to be

able to specifically delineate that the purpose of the Consent Decree has or has not been met.

We have ideas about what that might look like, and if the Court is compelled to do that, we are happy to propose a schedule. We are happy to have a status conference and talk about the scope of what that might look like. But ultimately, the burden is on the State under Rule 60(b), under *Rufo*, under *Boerne*, and under *Thomasville*; and they have not satisfied that burden today.

THE COURT: It seems like there's a difference whether it has been accomplished for now and whether that's enough, and the decree is terminated in the sense of the obligation's no longer, there's no obligation.

You know, I thought, well, if you terminate the Consent Decree, but the obligation remains in place, okay, that's okay.

But that's not what the State is proposing. They're proposing that it be terminated in the sense of no obligation would remain. And so that makes me think, well, is the purpose of the Consent Decree, if it's satisfied at one moment in time, does that mean that it's satisfied, and the decree, the obligations should be terminated.

MS. ADEN: Absolutely not. Again, this is institutional reform litigation. The language of the Consent Decree requires that there be a restructuring, that the system

be changed. And the system was the operation of an electoral method, alongside these racially polarized voting patterns, and totality of evidence of inequality of opportunity of black voters in the New Orleans area. That is the purpose and the system that the Consent Decree was meant to address.

It was not -- it's not something that can be immediately addressed. It's not something that can be immediately resolved by the election of one black candidate or even multiple black candidates. In institutional reform litigation like this, it often times takes years to rid the system of the harm, and that's what we're seeing here.

Now if the State comes forward with a new map that satisfies their interests in reapportioning and also satisfies the agreed upon terms that there be an ability to elect district where the condition is necessitated, maybe we all go home. I don't know. But we are nowhere close to that because there has been no showing, and the showing is what is required under Supreme Court precedent, Fifth Circuit precedent, and they have not. They can't get around that.

Section 2 exists. Section 2 is a backstop, but that is far down the road. They have an obligation right now under this Consent Decree, and it is clear as day that in order to get out of it, they have to satisfy a burden. They had indicated that there are all these bills. There's all these bills that include single-member districts, but they have not

introduced those before today into evidence. Plaintiffs have not had an opportunity to scrutinize those bills.

And in all of the cases that Your Honor can look to, whether it's *Boerne*, whether it's *Thomasville*, the parties have had -- even when they've jointly come to the court and asked to propose an alternative or to propose a change, the court has had to scrutinize that. And the court has had to look at whether or not that change, that modification, fulfills the purpose of the Consent Decree. And that is what we are asking the State to do here.

If it legitimately is concerned with reapportionment, it has the ability to do that under the act and under the terms of the Consent Decree as amended. And if they want to -- and when they do that and if they want to sincerely do that, they must do that alongside of protecting the New Orleans based district to the extent that the underlying conditions still necessitate that. And they need to show us that.

THE COURT: I wonder if the language of the Consent Decree that says the reapportionment will provide for a single-member district that's majority black in voting age population that includes Orleans Parish in its entirety, does that agreement by the State to reapportion, but comply with that obligation, does that change what the State has to show to terminate the Consent Decree?

You know, this is their expression of their intent,

for this obligation to continue into the future.

MS. ADEN: I think the devil's in the details, and I think we would have to see what that map looks like and whether it actually does reapportion and does still comply with the purpose of the Consent Decree and the ability to elect. And that is very fact dependent, and I think it requires them to show us frankly and to show the Court, so.

Ultimately, Your Honor, the motion that the State has proposed is legally insufficient. If Your Honor is inclined to give the State another opportunity to put more information into the record to comply with Rule 60(b), they need to do what is expressed because of *Boerne* and because of *Thomasville* which is to make a showing under *Thornburg versus Gingles* that those conditions have changed and are no longer necessary.

We cannot go back to the way things were 35 years ago, and that is the point of this Consent Decree. And it is expressed that they have obligations under Rule 60(b), and that is expressed in light of *Boerne* that this Court has an obligation to make detailed factual findings. As it exists today, there is a record that is completely lacking in order for the Court to also fulfill its obligations.

If Your Honor has no further questions.

THE COURT: Why don't you keep a few minutes in case you want to respond?

MS. ADEN: Thank you. And I believe the DOJ would

like to speak.

MS. RYAN: Good afternoon, Your Honor. My name is Elizabeth Ryan. I represent the United States. We oppose the State's motion to dissolve.

You've already heard a lot of argument this afternoon, and you have our brief which states our position, our argument. I'm not going to repeat all of that; although I'm, of course, happy to answer any of your questions.

I wanted to use my time this afternoon to highlight just a few points. The first of which is to point out the timing of the State's motion. As you know, Louisiana adopted this remedial structure in 1997, and then they didn't touch the plan for 25 years. And now, apparently, the legislature is poised to redistrict the Supreme Court for the first time, and it's at this moment that the State wants to remove the protections of the Consent Decree.

Our main concern here is really that it appears the State may be poised to abandoned the remedial system if freed from the Consent Decree, and there are several concrete reasons that we have that concern. It's clear from the State's briefing that they want to be released from the decree so that the legislature is free to redraw District 7, and at the same time, they're insisting that nothing in the constitution or the Voting Rights Act requires the legislature to maintain a majority black district in Orleans Parish.

This is consistent with the State's -- the position the State has taken in the *Allen* case in the Middle District where they continue to argue that Section 2 does not apply to judicial elections at all which was one of the legal issues decided in this case by the Supreme Court back in 1991. And it's consistent with recent activity in the legislature which last year rejected an amendment that would have required it to comply with Section 2 when drawing districts.

So all of these things are signals to us that if freed from the Consent Decree, the State may abandon the remedial system. And, of course, this matters because the State is asking the Court to dissolve the decree without showing that the remedial structure is no longer necessary, as you were alluding to earlier, and without providing any assurance that a new structure would continue to comply with Section 2 and provide black voters that equal opportunity.

So given this factual context and the State's burden under Rule 60(b), what we are really looking for is for the State to provide that assurance. We think that the *City of Thomasville* case is a useful model here. And the State, sort of akin to what happened in *Thomasville*, the State could come forward with a new plan that complies with Section 2. I think there are a number of ways they could do that. It could be an enacted plan that has already been through the legislature. The parties could work on a plan together and present it

pre-enactment to the Court.

And we think there probably are other ways to resolve the matter. We're open to other ways. We think that with some assistance the parties may be able to reach an agreement that accommodates, you know, both sides' interests in moving forward, but ensuring that the system continues to comply with Section 2. A structured mediation could be helpful with that process.

THE COURT: I guess the problem, as I think the State has expressed it, is it's up to the legislature to do this reapportionment. Although I understand there are also a couple of suits pending in state court, I believe, on reapportionment. I don't know how that ties into this. But I guess at this point, the legislature is expressing its intent to try to deal with this topic.

And I'm glad to hear you say that you-all are willing to -- interested in talking to the State about how it might be resolved and to protect the interests of the plaintiffs as expressed in the terms of the Consent Decree that exist right now. It might be difficult because of all the things that would have to happen, but at least, I think that's, you know, the State should be aware of that and acknowledge that the plaintiffs are interested in allowing the State to do what it needs to do without sacrificing what was gained in the Consent Decree. I guess that's the way I would say it.

MS. RYAN: Absolutely. And as, you know, folks have said before me, the Consent Decree as amended allows the legislature to go ahead and reapportion consistent with the purpose of the legislature -- excuse me, of the Consent Decree to maintain an equal opportunity district around Orleans Parish.

And absolutely, we are ready and willing to work with the State to try to reach a resolution that satisfies, you know, both sides of this issue. And we think that that is very likely possible here.

THE COURT: All right, thank you.

Does the State want to make any further remarks?

MR. JONES: Just very briefly, Your Honor, if I could.

THE COURT: All right, come on up.

MR. JONES: Just a couple of things real quickly. There's been argument that this is an institutional reform case, which it is. And the instructions from the higher courts have been in an institutional reform case it's particularly important that the power be returned to the State to let the State run its own business.

As to whether or not there is bloc voting in this jurisdiction which is District 7, do we really have to show that there's bloc voting or not bloc voting in District 7 to get out from under the Consent Decree? If there is bloc voting in District 7, it's elected African-Americans in this district.

So I don't think there's any burden that we come forward and show that bloc voting occurs.

THE COURT: But I think the concern is that the bloc will be split up into several districts. And I know you've said, "Well, nothing I've seen indicates anybody is planning to do that." But you know, I guess you could understand why there might be some concern about that.

MR. JONES: I do, and I don't even say that that's impossible. But there's no guarantee that any parish in this State will be in any particular district. You can't guarantee that. Section 2 doesn't guarantee that. Nor does the 15th Amendment, nor does the 14th Amendment. That can't be a guarantee.

And this Consent Decree that has been completely satisfied in all respects can't hold the legislature hostage to maintain a Consent Decree in Orleans Parish to make it a minority district as a guarantee. It can't happen in perpetuity certainly, and it's been 30-some years. So that argument just doesn't make sense to me.

As to the circumstances, I was listing those earlier. I didn't finish. Malapportionment of the districts, and Orleans is severely malapportioned, is another circumstance that suggests that the decree ought to --

THE COURT: But is that a change? It's been that way for many, many years. I think the plaintiffs say that it was

more malapportioned at the time of the Consent Decree than it is now, and the legislature -- I don't know if that's true or not, but that's what their argument is.

I think everybody would agree there's been malapportionment for many years; so that's not really a change. And the plaintiffs argue that there's no requirement that the districts have the same number of people. So I don't know if that --

MR. JONES: With the Louisiana Supreme Court, I'm not sure that's true. Article III Section 6(B) of the Constitution gives a legislative and political function to the Supreme Court. So effectively, you are electing representatives, and one man one vote, I think, does apply pretty clearly to the Supreme Court.

One other case I would like to cite to the Court on the discharge under 60(b)(5) is *Peery*, P-E-E-R-Y, *versus City of Miami*. I did not include it, should have, but did not include it in the reply memorandum. That case is at 977 F.3d 1061, and it does deal with the circumstance where a consent judgment had been satisfied.

THE COURT: All right, thank you.

MR. JONES: Thank you.

MS. ADEN: May I, Your Honor?

THE COURT: Yes.

MS. ADEN: This will be very brief. Simply, Your

Honor, Mr. Jones, respectfully, his promises to you, that is not evidence in the record that is necessary for you to rule on his motion and to comply with Rule 60(b).

All of the questions that you have, all of the things that he doesn't know, those can be found with evidence and with investigation. That needs to be brought before this Court in order to dissolve a landmark Consent Decree.

The legislature is simply not held hostage by the *Chisom* Consent Decree because of Act 776 read in conjunction with the *Chisom* Consent Decree. If they wanted to reapportion, they could under both the terms of the Consent Decree as well as Supreme Court precedent.

And finally, we are simply not saying that this Consent Decree must exist in perpetuity. We recognize the law, and we recognize the point of consent decrees. What we are simply asking is that it took a lot for the plaintiffs to get to the point where they are today. In order to dissolve the Consent Decree, work must be done. And a showing must be made, and the showing has not been made. And that is what the plaintiffs request from this Court.

We are, like the DOJ, open to conversation. We're open to seeing legislation. But none of that is in the record. None of that is before us today.

THE COURT: All right, thank you.

MS. ADEN: Thank you, Your Honor.

THE COURT: Ms. Ryan.

MS. RYAN: I don't have anything further unless you have a question.

THE COURT: No. Thank you all for your argument on that motion.

The other motion that's pending is the plaintiffs' motion to add and drop parties.

MS. GIGLIO: Good afternoon, Your Honor. My name is Amanda Giglio. I'm also speaking on behalf of the Chisom plaintiffs, specifically, plaintiffs Ronald Chisom and Marie Bookman.

As Your Honor is aware, we have moved to add the Urban League of Louisiana as a plaintiff to this case. The intention of that motion is to replace the original institutional plaintiff or the original organizational plaintiff, the Louisiana Voter Registration/Education Crusade as an organizational plaintiff because that organization no longer exists.

The motion was prompted by the State's motion to dissolve when we realized that in the interim period that organization had disbanded, and we needed another organizational defender. Plaintiffs realized that they needed another organizational defender to stand ready, willing, and able to defend and enforce the Consent Decree.

The Urban League of Louisiana is an affiliate of the

National Urban League and has maintained offices in New Orleans since the '30s. And as laid out in our briefing, they seek to serve underserved communities by, among other things, ensuring that they enjoy shared dignity under the law. And that also includes dedication to ensure that its members, which include black voters in Louisiana and in Orleans Parish, take full advantage of their voting rights.

Indeed, their voter registration and mobilization efforts have been central to their work for decades and have included major voter registration efforts at high school and college campuses, canvassing, candidate forums, voter education events, and social media campaigns.

We're aware that the State has asserted that this motion is unduly delayed and is prejudicial to the State. It is simply not true. The State, in arguing that this motion is prejudicial, asserts that the Court will have to assess issues of organizational standing which will include discovery and other related motions. That is simply not true. Because this litigation deals only with injunctive relief, there is no need to assess the Urban League's organizational standing here because it is undisputed that plaintiffs Ronald Chisom and Marie Bookman maintain standing in this case. And in situations where the court is assessing only injunctive relief, only one plaintiff need have standing to continue on.

But even if this Court were to assess the standing of

the Urban League, its allegations in its motion make clear that it meets the standard for organizational standing because its membership would otherwise have standing in this case as its members are black voters who are residents of Louisiana. Voting rights and ensuring that its membership has the opportunity to enjoy their voting rights under the law is germane to the organization's purpose.

And as evidenced by the fact that this litigation was started by an organizational plaintiff in tandem with individual plaintiffs, there's no need for individual members to be the ones who pursue this case.

So if the Court has no questions or has no questions for me, I'm happy to stand on our papers.

THE COURT: Thank you. Anyone else?

MS. GIGLIO: Thank you.

MS. RYAN: No, Your Honor.

THE COURT: How about the State?

MS. SUDDUTH: Hello, Lauryn Sudduth on behalf of the State.

We do oppose this motion in its entirety because it would bring undue delay, prejudice to the resolution of this matter, and then also it's kind of unnecessary when the original plaintiffs are willing and able to proceed in the matter.

As to the addition of the Urban League, the Court is

well aware that we filed this motion to dissolve the Consent Decree, and plaintiffs did argue that our position was almost absurd that we suggest that the Court keep in place the same plaintiffs from 30 years ago, or in the alternative, that they would have had to have intervened in the off chance that we would dissolve the Consent Decree.

But that is exactly the point here. As the Fifth Circuit noted in that *Allen* case, a consent decree is part contract and also part judicial decree. It is a contract that the parties both agreed to in order to end litigation and is binding on those parties itself. And so the Urban League is not a party to that Consent Decree, and therefore, the timing of this motion is completely improper.

Class certification is complete. All litigation is complete and all appeals and everything. All we're doing now is dealing with whether the actual Consent Decree has been satisfied.

Further, the Urban League has been around since the inception of this litigation and has always had that same noble cause, and presumably, it would have been aware of this litigation. So it could have intervened at the trial court level back in the '80s or throughout the seven years of the litigation. However, it did not.

Additionally, two original plaintiffs are still in the suit, and they are, you know, minority voters in Orleans

Parish, the same voters that the Urban League says or the same people that the Urban League says that they would be representing. So those members are still well represented in our case.

And as the Court knows, as much as what the Urban League says in their motions, we do not have to take that on -- just take their word for it on there. There actually has to be actual evidence produced in order to support that organizational standing.

THE COURT: Let me ask you. Do you agree with the argument that because this is injunctive relief, that only one of the parties has to have standing, and so it doesn't matter whether the Urban League has standing or not?

MS. SUDDUTH: No, Your Honor, I do not. In *Summers versus Earth Island Institute,* a Supreme Court case from 2009, Justice Scalia said that standing is a necessary component that we have to actually satisfy in order to move forward and that the Court is incumbent to find regardless of if it's challenged by any parties.

In that case, they were seeking injunctive relief against a federal action that involved the selling of timber in a burned area in California. And in that case, the Sierra Club actually tried to intervene after judgment, similar to where we are here, and Scalia wrote that we didn't have to take what they said just as fact; even though it might be true. And we

all know that it's true. In that case, they said that they had 700,000 members who enjoyed going out into nature and what not.

Here, obviously, the Urban League probably does have New Orleans voters that, you know, would be of the class that, you know, are plaintiffs. But unfortunately, they haven't put forth any evidence or any affidavits that actually support that position.

And at this point, we're so far down the road that we're not even sure that in order to figure out those situations or see if that is true that we would need discovery, and we're not sure if we can actually get that at this point. Because also in that *Earth Island* case, Justice Scalia continued, saying and rejected the dissent's position that they should have accepted the late filed affidavits post-judgment in the district court. Saying that they could find -- he could find no cases that would allow either 15(b) or 21, Federal Rule 21, that would allow the addition of those -- the supplementation of those records in order to allow a new party.

He said that if that were to be the case, then Rule 60(b) would almost be completely consumed by 15, by Rule 15, if you could just like supplement the record at such a late date.

And so it's our position that adding a new party at this late stage at the twilight of this case is improper. It would -- we would just need to figure out the standing for the Urban League, and we're not really sure if they could even get

those documents into the record.

But at the end of the day, the parties and the interests that the Urban League would represent are well represented already by the Chisom plaintiffs.

THE COURT: What is the prejudice to the State by allowing the Urban League to -- I guess technically, it's an intervention, I think.

MS. SUDDUTH: I think the prejudice would be the delay. Like at this point, we've expressed our position that we want to allow the legislature the ability to reapportion. And so to continue the delay and all of the discovery that would be necessary to establish that standing, who knows once we open that box where that would lead. That would be a lot of motions. That would take a lot of time. And it would be a burden on us in order to actually figure out that part.

THE COURT: I think I could solve that problem. I would not allow the -- it would not affect my moving forward on the motion to terminate the Consent Decree.

The other parties, who are already plaintiffs, made the same arguments. And so it's not like I would have to say, "Oh, I have to decide whether the Urban League can be a plaintiff before I can decide this motion." I might at the same time, but I don't think I would have to.

MS. SUDDUTH: Of course.

THE COURT: So I just don't think it would delay. And

if there's going to be any discovery, it hasn't even started yet. Usually, we think of prejudice in discovery if there's been a lot of discovery done and then you want to add a party, and the prejudice is, oh, no, now we're going to have to go back and redo all those depositions and all that discovery.

Well, that wouldn't happen here because we haven't done any discovery. We're not about to do any discovery. So I'm just not -- I'm not sure I see the prejudice.

MS. SUDDUTH: Additionally, we would say that since a consent decree is a contract between the parties, opening this up to allow any new party who hasn't gone through, you know, all the previous litigation to piggyback on those initial plaintiffs would create kind of a bad precedent in which parties can move in and out of lawsuits at will and join in at the last minute in order to continue something in perpetuity in order to just delay the actual resolution.

THE COURT: All right. Well, thank you.

MS. SUDDUTH: Thank you.

MS. GIGLIO: May I respond?

THE COURT: Yes.

MS. GIGLIO: First and foremost, as to the State's position that this is a contract and so new parties should not be allowed to be added into the litigation at the enforcement stage, that position is frankly absurd. If we were to accept the State's position, then the State could simply wait out

every single plaintiffs' lack of -- loss of standing and then get out from under the Consent Decree that way.

Clearly, that's not the intention here in, as my colleague said, an institutional reform case which is meant to ensure that the purpose of the Consent Decree, this agreement between the parties to ensure that individual voting rights of black voters in Orleans Parish, are fully met.

Second, the State maintains that the addition of the Urban League is unnecessary. I would echo my first point, Your Honor. The State's position here has made it clear that now more than ever the Consent Decree needs a defender. It intends to reapportion these districts in ways that we are not clear on, in ways that very well may violate Section 2, and may violate the purpose of the Consent Decree. And so it is essential that there are plaintiffs in addition to Mr. Chisom and Ms. Bookman, who are respectfully individuals who may move, to defend the decree at this time.

With respect to the State's reference to the *Summer*s cases I believe that that case references that plaintiffs need to demonstrate standing as to each claim being asserted, not as to each plaintiff moving forward, and doesn't change the fact that in a case where we're only dealing with injunctive relief, only one plaintiff need have standing in order for the entire case to move forward. That is Supreme Court precedent. That has been tacked on by the Fifth Circuit and accepted by

additional circuits, Your Honor.

And as a conclusion, there's no delay here. As Your Honor pointed out, Your Honor is free to move forward with the motion to dissolve without resolving the motion to add or drop parties. In addition, as I said before, there's no discovery necessary here to assess standing because there's no standing inquiry that needs to be completed before this motion is resolved.

If Your Honor has any additional questions, I'm happy to respond.

THE COURT: That's it.

MS. GIGLIO: Thank you, Your Honor.

THE COURT: Okay. Well, thank you. I thank you all for coming today. It's nice to see all of you in the courtroom live. I can see your faces.

All right, Court's adjourned. I'll take these matters under advisement.

DEPUTY CLERK: All rise.

(Whereupon this concludes the proceedings.)

CERTIFICATE

I, Alexis A. Vice, RPR, CRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

/s/Alexis A. Vice, RPR, CRR
Alexis A. Vice, RPR, CRR
Official Court Reporter