

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

KENNETH HALL

Plaintiff,

**CIVIL ACTION NO.: 3:12-cv-657
BAJ/DLD**

v.

**STATE OF LOUISIANA,
PIYUSH (“BOBBY”) JINDAL,
in his official capacity as Governor
of the State of Louisiana,
JAMES “BUDDY” CALDWELL, in
his official capacity as Attorney General,
TOM SCHEDLER, in his official
capacity as the Louisiana Secretary of State,
CITY OF BATON ROUGE,
PARISH OF EAST BATON ROUGE,
BATON ROUGE CITY COURT, and
JUDGES SUSAN PONDER, ALEX WALL,
and LAURA DAVIS**

Defendants.

SECOND AMENDING AND SUPPLEMENTAL COMPLAINT

Additionally and more specifically, plaintiff petitions this Court to remedy, enjoin, find, and to declare violations of (1) the First, Fourteenth, and Fifteenth Amendments to the United States Constitution; (2) the United States Constitution’s majority rule principle; and (3) of Sections 2 and 5 of the Voting Rights Act of 1965, as amended 42 U.S.C. § 1973c to enforce civil and voting rights guaranteed thereby, and for judgment of liability against the defendants and for any and all equitable relief based on the premises.

JURISDICTION AND VENUE

1. Pursuant to 42 U.S.C. §§ 1973c, 1983, 28 U.S.C. 1331, and 28 U.S.C. 2284, this Court has jurisdiction to afford the plaintiff the judicial relief he seeks for violation of his individual,

associational, and political rights protected by the aforesaid constitutional amendments and principles, and statutory provisions.

2. The City of Baton Rouge and the Judicial Department (City Court) of City Court as created in the home rule charter and as constituted by said Plan of Government lies within this judicial district, the Middle District of Louisiana and is the place where the events giving rise to the plaintiff's claims occurred and is located within the Parish of East Baton Rouge, Louisiana, which likewise lies within this judicial district.
3. Defendants, City of Baton Rouge officials, East Baton Rouge officials, and City Court officials Susan Ponder, Alex Wall, and Laura Davis, also all reside and are domiciled in and perform their official duties in this judicial district, which, acting individually, and collectively, at times have caused or contributed to the harms asserted in the original, first, and this second amending and supplemental petition. Upon information and belief, all Defendants by law reside in the State of Louisiana.
4. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391(b).

PARTIES

5. Defendant, City of Baton Rouge, Louisiana, and its Mayor, as chief executive officer are charged with the joint responsibility with the State of Louisiana of ensuring that its election laws established in its Charter and Plan of Government, as applied, comply with the First, Fourteenth, and Fifteenth Amendments to the United States Constitution; (2) the United States Constitution's majority rule principle; and Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.
6. Defendant, Parish of East Baton Rouge, and its President as chief executive officer are jointly charged with the responsibility of ensuring that its election laws, as applied,

established in its Plan of Government comply with the First, Fourteenth, and Fifteenth Amendments to the United States Constitution; (2) the United States Constitution's majority rule principle; Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c.

7. Defendant, City Court of Baton Rouge, a/k/a Baton Rouge City Court, is an official department of the City of Baton Rouge, and jointly with its judicial officers are charged with the responsibility of adjudicating local, municipal, and state laws, and is presently comprised of five judges elected pursuant to the aforesaid defendants' City Charter and defendants' City and Parish's Plan of Government, as from time to time amended, and laws of the defendant, State of Louisiana.
8. Defendants, selectively and individually, Judges of City Court of Baton Rouge, a/k/a Judges Susan Ponder, Alex "Brick" Wall, and Laura Davis, Baton Rouge City Court, Louisiana, are sued as individuals and as officials of the Judicial Department of the City of Baton Rouge; each are charged with the responsibility of adjudicating local, municipal, and state laws; and pursuant to the aforesaid City Charter and City/Parish's Plan of Government, as from time to time amended, and laws of the Defendant, State of Louisiana, each must comply with the First, Fourteenth, and Fifteenth Amendments to the United States Constitution; (2) the United States Constitution's majority rule principle; and Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.
9. Defendant, Secretary of State of Louisiana, is an elected public official of the Defendant, State of Louisiana, and as such, is the Chief Election Officer; he is charged with maintaining voter records, and is the enforcement officer of the State of Louisiana elections laws, and as such, implements and maintains State of Louisiana and its

municipal election standards, regulations, practices, and procedures as required by the State of Louisiana, the City of Baton Rouge, and the Parish of East Baton Rouge, particularly, governing and regulating enforcement of the previously identified discriminatory 1993 Judicial Election Plan.

FACTS ALLEGED

10. All factual and actionable allegations alleged in the Original Complaint are re-alleged herein as if set out fully herein.
11. All additional factual and actionable allegations alleged in the First Amending and Supplemental Complaint are re-alleged herein as if set out fully herein.
12. This Second Amending and Supplemental Complaint does in no way supersede or replace the Original and/or the First Amending and Supplemental Complaints, but only adds necessary, specific, and detailed facts and individual and state actions regarding the Defendants identified the initial and subsequent complaints, and the added Defendants, as alleged herein.
13. The Baton Rouge City Court Judges identified as Defendants herein, are local judges, who from time to time have specifically acted individually and in concert with others in the intentional defiance of the Plaintiff's right of suffrage, right to majority rule, and right of freedom from discrimination as asserted heretofore and herein in their invidious opposition to the Plaintiff's claims individually, and, as a group of individuals, who are acting and have also acted as State of Louisiana judicial officers and agents, endowed by the State with powers and functions of government, and, are thereby agents and instrumentalities of the State, and each are subject to United States Constitutional and statutory limitations; and as such, each individually and collectively, must comply with

Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, the United States Constitution's majority rule principle, and the First, Fourteenth, and Fifteenth Amendments to the United States Constitution.

14. The identified Baton Rouge City Court Judges herein are elected by the City of Baton Rouge's Charter and Plan of Government, and the State of Louisiana's Judicial Election Plan, and they have personally benefitted and politically supported maintenance thereof and continuation of the election plan; they are subject to the imposition of the Judicial Election Plan's election sections and standards, which are discriminatory and which contravene restrictions that Sections 2 and 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, the United States Constitution's majority rule principle, and the First, Fourteenth, and Fifteenth Amendments to the United States Constitution impose and from which Plaintiff's rights are protected.
15. The identified Baton Rouge City Court Judges' actions before the Louisiana Legislature as public office holders of the State of Louisiana or as public employees of the City of Baton Rouge, must comply with federal constitutional and statutory laws; however, their actions helped to prevent the successful outcome of the remedial actions of state representatives and the legislative bills filed in 2004 and 2006 before the Louisiana Legislature to ameliorate the disparate effects of the Judicial Election Plan against the Plaintiff and all others similarly situated; specifically the aforementioned bills filed by former Representatives Michael Jackson and Avon Honey.
16. The State of Louisiana's Judicial Election Plan, as written, maintained and enforced, and as presently implemented by the Secretary of State as the Chief Elections and Administrative Officer compels all others, including the City Court, City Judges, and other

Defendants, as state officers, in concert to comply in the performance of their duties to carry out the discriminatory and disparate effects of the Judicial Election Plan against the Plaintiff and all others similarly situated.

17. All Defendants identified herein, and in the Original and First Amending and Supplemental Complaints, have authority under Louisiana law to enact, maintain, or administer voting qualifications or prerequisites to voting, or election standards, practices or procedures with respect to voting, or to support or oppose such matters.
18. Moreover, judges who are judicial candidates seeking re-election to City Court have authority to object to any other candidate who has qualified as judicial candidates for City Court, and each has authority pursuant to state law to petition the state to disqualify candidates who are contesting them in election races for City Court.
19. Baton Rouge City Court is regulated by several local amendments to the original Plan of Government for the City of Baton Rouge, Louisiana and the Parish of East Baton Rouge, Louisiana, particularly the series of municipal amendments adopted since 1949.
20. The City of Baton Rouge pursuant to its Charter, as well as, its joint Plan of Government with the Parish of East Baton Rouge, created a Judicial Department as early as January, 1949.
21. Pursuant to such municipal Charter and Plan of Government, the City of Baton Rouge has special home rule authority and status; and regularly the City and the Parish of East Baton Rouge have recognized and used its Charter and Plan of Government of co-equal status with that of the Louisiana State Constitution and at times the City of Baton Rouge has exercised superior authority to the State of Louisiana's legislative acts; particularly, when it pertains to matters regulated by, authorized within, and specifically identified in its

Charter and Plan of Government; and the City of Baton Rouge, may and has by said special power superseded the general laws of the State of Louisiana, which are inconsistent with its special powers of functional government and its authority to enact ordinances consistent with such grant of power. See *City of Baton Rouge v. Williams*, 661 So. 2d 445 (La. 1995).

22. The City of Baton Rouge and the Parish of East Baton Rouge both have the power to make annexations, pass ordinances, and declare resolutions to remedy violations of protected federal rights of the Plaintiff and all others similarly situated, as asserted herein, and the City and the Parish both have the power to regulate the elections of judges to City Court, and to require its municipal elections to be held in accordance with federal constitutional and statutory laws, local laws, and state laws.
23. Such special power and authority of the City of Baton Rouge is granted by the 1921 and 1974 Constitutions of Louisiana. “The Charter of Baton Rouge was enacted under the authority of Article XIV, Section 3(a), of the Louisiana Constitution of 1921. The Louisiana Constitution of 1974, Art. VI, Section 4 provides for the continuance of existing home rule charters, as follows: Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. *Except as inconsistent with this constitution*, each local government subdivision, which has adopted such a home rule charter or plan of government, shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.” (Emphasis added); see *City of Baton Rouge v. Williams*, 661 So. 2d 445 (La. 1995).

24. For example, in 1960 pursuant to Act No. 32 (House Bill No. 189) of the Louisiana Legislature “the judges of the city court of Baton Rouge” were specifically “excepted” . . . “for election for terms of six years at the congressional election for representatives beginning with the judges elected at the congressional election for representatives in the year 1960” from “[t]he judges of the city courts, whether these courts are presently in existence or are subsequently created”. Moreover, “[t]he terms of office of city court judges, whether their respective offices are presently in existence or are subsequently created, the judges of the city court of Baton Rouge, excepted, shall expire on the 31st day of December in the year 1966, and every six years thereafter.” Additionally, “Judges of city courts elected after the effective date of this Section shall be licensed to practice law in the State of Louisiana for at least five years previous to their election, and qualified resident electors of the territorial jurisdiction of the court for at least two years prior to their election.” Moreover, said Act provided and noted “[t]he City Court of Baton Rouge, domiciled in the city of Baton Rouge, parish of East Baton Rouge, having two city judges and a city constable. The court shall be divided into two divisions, namely, division “A” and division “B”, and its territorial jurisdiction shall extend throughout the territorial area of the city of Baton Rouge as extended from time to time,” said Act became effective January 1, 1961.
25. Pursuant to such special authority sanctioned by the Charter of Baton Rouge, upon the available information of the City Council of Baton Rouge, and upon information and belief, the City of Baton Rouge, Louisiana, on behalf of City Court approved and created the office of City Judge, as well as, authorized from time to time the manner of the elections of city judge, the mode of a plurality municipal election to office of city judge,

judge qualifications, terms of office, residence requirements, vacation, employment of clerk and stenographers; and authorized said judges authority to administer and adjudicate violations of city ordinances in accordance with state and local rules and law.

26. Specifically, pursuant to such Charter of Baton Rouge, on April 27, 1988, upon the available resolution and Ordinance 8646 of the Metropolitan Council of City of Baton Rouge and the Parish of East Baton Rouge, the City of Baton Rouge, Louisiana, on behalf of City Court authorized and created the office of City Judge (Division "E"), as well as, authorized the manner of the election of City Judge (Division "E"), which city judge "shall be elected at the same time and in the same manner as provided for the election of Judges for Divisions A, B, C, and D of City Court." The judge "shall be elected for such term of office as provided by the provisions of Section 11.04 of the Plan of Government and ordinances of the Metropolitan Council adopted pursuant thereto."
27. Furthermore, pursuant to such authority, on more than one occasion, particularly on August 26, 1996, upon the available Resolution 38931 of the Metropolitan Council of the Parish of East Baton Rouge, and upon information and belief, the City of Baton Rouge, acting on behalf of City Court authorized that "Judges of the Court shall not practice law, nor shall they or any officer or employee of the Court receive any fees."
28. Moreover, pursuant to such authority, earlier on October 10, 1973, upon the available resolution and Ordinance 3103 of the City Council of Baton Rouge, and upon information and belief, the City of Baton Rouge, acting on behalf of City Court authorized and created the office of City Judge (Division "C"), as well as, authorized the manner of the elections of City Judge (Division "C"), which city judge "shall be elected at the same time and in

the same manner as provided for the election of members of the Parish Council and the Mayor-President.”

29. Also, the State of Louisiana via the Louisiana Legislature, and upon information and belief, the City of Baton Rouge and the Parish of East Baton Rouge, acting on behalf of the City of Baton Rouge and/or on behalf of City Court authorized an amendment to LSA-R.S. §13:1952 [heretofore and hereafter sometimes referred to as the Judicial Election Plan], through provisions (4) b and c, created two election districts (Election Section 1 and Election Section 2) and assigned various voting precincts to Election Sections 1 and 2, apportioning and redistricting by population and the one-person, one-vote principle, recognizing past voter racial discrimination against Blacks by Whites. Election Section 1 was assigned Divisions B, and D. Election Section 2 was assigned Divisions A, C, and E. Election Section 1, when originally created, contained a majority population of Black citizens as well as a majority of the Black voting age population. Election Section 2, when originally created, contained a majority of White citizens as well as a majority of the White voting age population.
30. The Defendant State of Louisiana, particularly the Louisiana Legislature, has knowledge and has repeatedly been asked by Louisiana citizens to redistrict the state Supreme Court, the five appeals court, and Baton Rouge City Court, to no avail; showing and exhibiting no intent to address or remedy any of the many claims by minority citizens to address minority vote dilution. At times, such inaction as to City Court was at the behest of the members/judges of Defendant City Court, which constitutes state action against Plaintiff, and all others similarly situated.

31. All Defendants, City of Baton Rouge, Parish of East Baton Rouge, Baton Rouge City Court, the Attorney General of Louisiana, the Secretary of State of Louisiana, and the Governor of Louisiana are particularly aware that the 1993 Judicial Election Plan redistricting the Baton Rouge City Court may seem fair on its face; nevertheless, their application of the Plan invidiously discriminates against, and adversely impacts, Plaintiff, as a citizen and voter, as their state action as individuals and/or public officials violate the equal protection of the laws, the right to vote, due process of law, and Plaintiff's right as a racial majority of the City of Baton Rouge, to communicate and associate the majority power of his vote with that of other similarly situated citizens.
32. The Metropolitan Council for the City of Baton Rouge and Parish of East Baton Rouge is particularly authorized to assign annexations and precincts for the election of City Court judges by several provisions of local law, particularly the City's Charter of home rule, the joint Plan of Government, and state law particularly, Louisiana Act 609 of 1993.
33. The State of Louisiana, particularly leaders of the Louisiana Legislature, such as then House Speaker Jim Tucker and Senate Secretary Glenn Koepp in February, 2011 have repeatedly reneged on promises, commitments, or overtures to revamp state courts, particularly district lines despite having been asked by Louisiana citizens and other elected and/or public officials; showing and evidencing no intent to address or remedy any of the many claims advanced by minority citizens to address minority vote dilution.
34. Upon this additional information and belief, and upon further discovery, neither the City of Baton Rouge, the Parish of East Baton Rouge, nor the State of Louisiana acting on behalf of the City of Baton Rouge, Louisiana, submitted for review under Section 5 of the 1965 Voting Rights Act all of the necessary material, city, parish, and particularly state

laws pertaining to plurality elections for City Court judges, and information pertaining to changes in the election of city judges as authorized, directed, and as individually and specifically required and specifically enumerated in the Charter of Baton Rouge, the referred to Plan of Government; and moreover, nor did the State of Louisiana, specifically call to the attention of any Submission to the United States Attorney General, its own state Acts; noting and directing that the elections for judges of Baton Rouge City Court, their method of selecting judges to Baton Rouge City Court, the qualifications for selecting judges to the Baton Rouge City Court, and annexations to the Baton Rouge City Court, were different from the Charter methods of electing Baton Rouge City Court judges.

PRAYER FOR RELIEF

35. **WHEREFORE**, Plaintiff respectfully prays that this Court convene to hear this action pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284 and thereafter enter a judgment:

- a. Finding liability against all named Defendants for violations of Plaintiff Kenneth Hall's civil and voting rights;
- b. Plaintiff Kenneth Hall further prays that this Court grant such additional relief as the interests of justice may require, for equitable relief, and together with the costs of this action.

Date, 30th day of November, 2012.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing “Second Amending and Supplemental Complaint” was sent electronically or via U.S. First Class Mail, postage prepaid, to all counsel of record.

Baton Rouge, Louisiana, this 30th day of November, 2012.

/s/ Ronald R. Johnson
RONALD R. JOHNSON