

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL

Plaintiff,

and

BYRON SHARPER

Intervenor-Plaintiff,

v.

STATE OF LOUISIANA, et al

Defendants.

CIVIL ACTION NO.: 3:12-cv-657

BAJ/RLB

INTERVENOR-PLAINTIFF BYRON SHARPER'S COMPLAINT

Intervenor-Plaintiff Byron Sharper seeks declaratory and injunctive relief, for himself and other similarly situated individuals and compensatory, nominal, equitable, and punitive damages to secure both future protections for him and all others similarly situated against Defendants, and, in support thereof, states as follows:

JURISDICTION AND VENUE

1. This case is brought under 42 U.S.C. §1973c and §1983. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1343, particularly 1343a(1)-(4). Intervenor-Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. §2201 and 2202.
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because events of Defendants occurred in this district, the harm suffered by Intervenor-Plaintiff occurred in this district and the citizens' and voters' federal rights are threatened in this district.

PARTIES

3. Intervenor-Plaintiff Byron Sharper is an African American and qualified elector residing in Election Section 1 of the Judicial Election Plan -- LSA-R.S. §13:1952(4)(a-d).
4. Defendant, State of Louisiana, is a sovereign State of the United States of America.
5. Defendant, Piyush (“Bobby”) Jindal, is the Chief Executive Officer of Defendant, State of Louisiana and he is sued in his official capacity as Governor of the State of Louisiana.
6. Defendant, James (“Buddy”) Caldwell, is the Chief Legal Officer of Defendant, State of Louisiana, and he is sued in his official capacity as the Attorney General of the State of Louisiana.
7. Defendant, Tom Schedler, is the Chief Election Officer of the Defendant, State of Louisiana, with authority over elections in Louisiana, and he is sued both in his individual (personal) and official capacity as the Louisiana Secretary of State.
8. Defendant, Melvin “Kip” Holden, is the Mayor-President of the city of Baton Rouge and the parish of East Baton Rouge and in that capacity serves as the head of the Executive Branch of city government, and he is sued in his official capacity as the Mayor-President of Baton Rouge.
9. Defendant, City of Baton Rouge, Louisiana, is an incorporated political subdivision of the State of Louisiana.
10. Defendant, Parish of East Baton Rouge, Louisiana, is an incorporated political subdivision of the State of Louisiana.
11. Defendant, City Court of Baton Rouge, a/k/a Baton Rouge City Court, is a subunit and/or political subdivision of the State of Louisiana and is also a department by home rule charter of the city of Baton Rouge.

12. Defendants, Judge Susan Ponder, Judge Alex “Brick” Wall, and Judge Laura Davis, are sued in their individual (personal) and official (judges) capacities as judges of the City Court of Baton Rouge.
13. Defendant, the Louisiana House of Representatives, by and through Charles “Chuck” E. Kleckley, in his official capacity as Speaker of the Louisiana House of Representatives and Walt Leger, III, in his official capacity as Speaker Pro Tempore of the Louisiana House of Representatives, are legislative officers and in that capacity are sued in their official capacity as the heads of the Legislative Branch of state government.
14. Defendant, the Louisiana Senate, by and through John A. Alario, Jr., in his official capacity as President of the Louisiana Senate and Sharon Weston Broom, in her official capacity as President Pro Tempore of the Louisiana Senate, is legislative officers and in that capacity is sued in their official capacity as the heads of the Legislative Branch of state government.

FACTUAL ALLEGATIONS

15. The State of Louisiana through the Louisiana Legislature by Act 609 of the 1993 Regular Session amended an at large citywide election system through LSA-R.S. §13:1952(4)(b) and (c) [hereinafter sometimes referred to as the “*Judicial Election Plan*”] for the Baton Rouge City Court. City Court is domiciled in Baton Rouge, Louisiana, and it is a state legislative entity established with home rule status within the government of the city of Baton Rouge.
16. The 2010 United States Census revealed the shift in the city of Baton Rouge’s population. As of 2010, Baton Rouge consisted of 229,493 persons with an African American population of 124,542 or 54.3% of the total population. The population of

Caucasian persons not Hispanic was 86,679 or 37.8% of the city of Baton Rouge. As of the 2010 Census, the African American voting age population of Baton Rouge was more than 50% of the total voting age population.

17. The 2000 United States Census population of the city of Baton Rouge was 227,818 with an African American population of 113,953 or 50%. The population of Caucasian persons made up 45.7% of Baton Rouge's population with a population of 104,117. The African American voting age population of Baton Rouge was less than 50% of the total voting age population.
18. All defendants were aware in 2004 and 2006 of these shifts in the city's demographics and population.
19. The amendment to 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 the sections, apportioning and redistricting by population and the "one-person, one-vote" principle, recognizing past voter discrimination against African-Americans by Caucasians in elections.
20. Election Section 1, when originally created, contained a majority population of African American citizens as well as a majority of the African American voting age population. Election Section 2, when originally created, contained a majority of Caucasian citizens as well as a majority of the Caucasian voting age population.
21. The Judicial Election Plan allocated a particular and selective number of majority and minority race-based precincts to Election Section 1 and 2. On this basis, Election Section 1 was assigned two (2) judicial election officers and Election Section 2 was assigned

three (3) judicial election officers and intended that the “one-person, one-vote” principal apply politically and become effective for prospective elections of judges to City Court.

22. The proportional allocation assignments were based on 1993 Louisiana Voter Registration data (City of Baton Rouge voting age population), 1990 United States Census data, estimated statistical U.S. Census data, and in consideration of perspective litigation against it, as well as, the Judgments against the State of Louisiana in the *Clark v. Edwards*, 958 F.2d 614 (5th Cir. 1992) and *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354 (1991) judicial action suits.
23. Baton Rouge City Court judges are elected to numbered posts (Divisions “A”, “B”, “C”, “D”, and “E”) from two election sub-districts (Election Section 1 and 2). Divisions A”, “C” and “E are assigned to Election Section 1 and Divisions “B” and “D” are assigned to Election Section 2.
24. The Defendant’s utilization of the Judicial Election Plan’s outdated 1990 Census data and 1993 voter registration information has had an adverse impact upon Plaintiff-Intervenor and other similarly situated African Americans, in violation of the 1965 Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.
25. Intervenor-Plaintiff Sharper was not qualified to vote as an elector in the just held City Court election on November 6, 2012 nor the run-off election on December 8, 2012. He was directly and adversely affected in his right to vote, his right not to be discriminated against based on his race and residency, and his right to participate equally in the election process for City Court judgeships, unlike that of Plaintiff Kenneth Hall and other African Americans residing and voting in Section 2, who were afforded elector standing, but

whose vote was subject to discrimination and dilution in the elections for City Court judgeships, Divisions C and E.

26. Intervenor-Plaintiff Sharper is a member of a politically cohesive and geographic compact group of African American citizens and voters in the city of Baton Rouge.
27. Intervenor-Plaintiff Sharper seeks to join as a member of a certifiable class consisting of all current and future African American citizens and voters in City Court elections who have been or will be subjected to vote dilution and/or discrimination on the basis of color, race, or national origin because of the unlawful criteria and selection process utilized by Defendants in City Court elections.
28. The Defendants have utilized the Judicial Election Plan with the intention of discriminating against African American citizens and voters.
29. The *Wells v. Edwards*, 347 F.Supp. 453 (1972) general principle that the "one-person, one-vote" is not applicable to judicial elections does not apply to election of judges to the Baton Rouge City Court.
30. Moreover, whenever a State government decides to selectively incorporate the Equal Protection Clause of the Fourteenth Amendment to select persons by popular election to perform judicial functions, the Amendment "requires that each qualified voter must be given an equal opportunity to participate in that election."
31. The November 6, 2012 and December 8, 2012 judicial elections for City Court were racially polarized elections. Two African American candidates, Joel G. Porter, Esq. and Tiffany L. Foxworth, Esq. were defeated by incumbent Caucasian Judges Alex "Brick" Wall and Suzan Ponder, respectively, directly as a result of race and residence

discrimination in violation of the United States Constitution, the 1871 Civil Rights Act, and the 1965 Voting Rights Act. The minority/majority preferred candidate in the election to Division "E" was Tiffany L. Foxworth. The minority/majority preferred candidate in the election to Division "C" was Joel Porter.

32. Plaintiff Hall's expert reported on April 15, 2013 that the election returns of several judicial elections held in 2012 indicated racially polarized voting was "pronounced" against the African American candidates by Caucasian voters participating and voting in Election Section 2.

33. Yet, Defendants, the State of Louisiana, the Governor, Attorney General, Secretary of State, the Louisiana Legislature, the city of Baton Rouge and the parish of East Baton Rouge, Baton Rouge City Court, Judges Suzan Ponder, Alex "Brick" Wall, and Laura Davis, have all failed in their constitutional and statutory duties to provide for equality of treatment under the law among citizens and voters of Baton Rouge in City Court elections.

34. In 2004, the Judicial Election Plan was maintained in law at the apolitical request, directive, and collaboration/agreement with others, of Defendants Judges Suzan Ponder, Alex "Brick" Wall, and Laura Davis to favor them in future election contests for judgeships on City Court against African American candidates and to the detriment of African American citizens and voters.

35. In 2006, the Judicial Election Plan was again maintained in law at the request, directive, agreement, and collaboration of Defendants Judges Suzan Ponder, Alex "Brick" Wall, and Laura Davis to favor them politically to the disadvantage of African American voters

and candidates with the Louisiana Legislature and other local and state government officials.

36. The maintenance of the Judicial Election Plan for the past two City Court elections and all future elections at the request, directive, or collaboration/agreement of Defendant Judges has harmed and continues to harm Intervenor-Plaintiff Sharper and other African Americans similarly situated by discriminating against them because of their minority race and residence, by denying or diluting their right to vote in each election, and by preventing him and other African Americans from equally participating in the elections for city court. Unless enjoined, future elections for City Court will further injure and discriminate against African Americans citizens and voters in Baton Rouge.

37. The Judicial Election Plan as applied to the election of judges to Baton Rouge City Court is per se unconstitutional as it has and will continue to adversely affect constitutional rights, privileges, and immunities of the Intervenor-Plaintiff and other African American citizens and voters residing in Baton Rouge.

38. The Judicial Election Plan's multimember Election Sections 1 and 2 districts are per se unconstitutional in the non-exclusive ways:

- a) structural dilution that creates two sub-districts with a disproportionate election plan whereby Section 2 has greater political power as it elects three judges to City Court in race polarized elections;
- b) submergence of African American voters in Section 2, wherein Section 2 voters have greater political power as it elects three judges to City Court in race polarized elections;

- c) submergence of a super-majority in number (African American voters and citizens in the city of Baton Rouge) in Section 2, wherein Section 2 Caucasian voters have greater political power as they elect three judges to City Court in race polarized elections;
 - d) "packing" African American voters into Section 1 (packing is a type of minority disenfranchisement);
 - e) "cracking" African American voters into Sections 1 and 2 (cracking is also a type of minority disenfranchisement); and
 - f) denies one-person, one-vote.
39. The State of Louisiana and the City of Baton Rouge have used unusually large election districts, majority vote requirements, anti-single shot provisions, place system voting or other voting practices or procedures that enhance the opportunity for discrimination against minority groups.
40. Intervenor-Plaintiff Sharper asserts his right to vote and his vote in America cannot be outweighed by the sophisticated use of the Judicial Election Plan, which leaves his supermajority numerical status and equality in voting in Baton Rouge to the racially polarized whim or impulse of white electors assigned to an onerous racially populated Election Section 2 in the Judicial Election Plan's structure to elect judges to City Court. See *Baker v. Carr* (1962) 369 US 186, 7 L Ed 2d 663, 82 S Ct 691.
41. The boundary of Baton Rouge City Court is jurisdictional, but its State created election sections' (Election Section 1 and 2) territory and allotment of judgeships in the 1993 Judicial Election Plan is directly related to the percentage of the city's African American

and white voting age population derived from the 1990 census which became outdated for use during the 2006 and 2012 city court elections.

42. Despite the Louisiana Legislature's preferred and systematic method of making adjustments in the territorial boundaries and allotted precinct method for districts/sub-districts of the state's varied judicial election sections, based on traditional principles of "one-person, one-vote", majority rule, due process, and equal opportunity to participate in the electoral process, the State of Louisiana, particularly the Louisiana Legislature, has refused irrationally to provide for a systematic method to redistrict the courts of Louisiana, particularly, the City Court of Baton Rouge, despite demands by African American voters prior to regularly scheduled elections for City Court in 2006 and 2012, evidencing invidious discrimination and non-race neutral reasons for not doing so, consistently and in accordance with the same standards and evidence-based population and demographic data which it utilized in favor of whites starting in the 1990s post the race-based vote discrimination liability judgments rendered against it in the *Clark v. Edwards*, 958 F.2d 614 (5th Cir. 1992) and *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354 (1991) cases.

43. Despite the consequential growth from 1990 through 2013 in the African American population (citizens and qualified voters) in the city of Baton Rouge, electoral discrimination by Caucasian voters in elections for City Court has not ended, and race polarized voting is common in Baton Rouge to the detriment of Intervenor-Plaintiff Sharper's and others' similarly situated right to vote and to equally participate in City Court elections.

44. Race polarized voting in Election Section 2 is unlawfully reinforced in favor of a Caucasian minority population and candidates against Intervenor-Plaintiff and other African American voters and candidates through the Judicial Election Plan.
45. Defendant State of Louisiana, the Louisiana Legislature, the Attorney General and the Secretary of State, and the Mayor-President of the city of Baton Rouge and the parish of East Baton Rouge all have final authority to establish the Judicial Election Plan's policy for electing City Court judges, which is directly related to Intervenor-Plaintiff Sharper's claims and the violations of protected rights.
46. The Judicial Election Plan's policies and practices proximately caused Intervenor-Plaintiff Sharper's constitutional and statutory injuries alleged herein.

SECTION 1983 AND EX PARTE YOUNG VIOLATIONS

47. All allegations contained in paragraphs 15 – 46 are incorporated herein as if alleged fully herein.
48. Intervenor-Plaintiff seeks to enjoin Defendant, Tom Schedler, in his individual capacity from further enforcing (perspective relief) the challenged Judicial Election Plan, which is in violation of federal law.
49. The State's Judicial Election Plan compels Defendant Schedler as Chief Elections Officer to discriminate against African American voting age population because of race, color, and residence, as assigned to designated precincts within Election Sections 1 and 2, and to enforce and carry out City Court elections according to voter and registration assignments designated in the Judicial Election Plan.
50. Intervenor-Plaintiff seeks to enjoin Defendant Judges, Suzan Ponder, Alex Wall, and Laura Davis in their individual capacities, from further (perspective relief) consorting,

conspiring, and acting in concert with other state and local officials, particularly members of the Louisiana Senate and Louisiana House of Representatives to enforce and to maintain in law the Judicial Election Plan; and for compensatory, nominal, and punitive damages for violations of Intervenor-Plaintiff's federally protected civil and voting rights.

51. Defendant Judges Ponder, Wall, and Davis agreed among themselves to not support any modification of the Judicial Election Plan from 2004 through 2013 to remedy Intervenor-Plaintiff's harms. Defendant Judges' conduct was motivated by evil motive or intent to discriminate, or was reckless or callous indifference to Intervenor-Plaintiff's and similarly situated others' federally protected right not to be discriminated against based on race or color, right to vote, right to majority rule, equal protection, due process, and the right to participate equally in the political process regarding city court elections.
52. The Defendant Judges were re-elected in the fall of 2012 through the Judicial Election Plan that is maintained in law by the Louisiana Legislature and that is implemented and enforced by the Secretary of State, in his statutory duties as Chief Election Officer.

SECTION 1983 VIOLATIONS

53. All allegations contained in paragraphs 47 – 52 are incorporated herein as if alleged fully herein.
54. The enforcement of the Judicial Election Plan racially discriminates against Intervenor-Plaintiff Sharper, dilutes and debases his and other African American voting power, and prevents equality in the opportunity to vote and elect judicial candidates.
55. Intervenor-Plaintiff meets the basic qualifications as a qualified elector to vote for judges to Baton Rouge City Court, but is:

- i. Prevented as a citizen to elect his preferred candidates of choice in City Court elections;
- ii. Not treated fairly and equally as are white electors and candidates by the State of Louisiana, the Louisiana Legislature, and the Secretary of State in the application of the Judicial Election Plan in elections for City Court because of the gerrymandered election plan that establishes inequality in the voting age population;
- iii. Subjected to irrational discrimination based on his African American race and residence as assigned by the Judicial Election Plan's Section 2;
- iv. Constrained in voting power in that most white voters in Election Section 2 are motivated by racial bias against African American candidates seeking election to City Court;
- v. Subjected by State of Louisiana action and inaction to irrational discrimination as a racial minority (African American) within a racially supermajority African American jurisdictional election system encompassing the city of Baton Rouge for the several offices of City Court Judge, Divisions A, B, C, D, and E;
- vi. Denied by the Judicial Election Plan the right to vote and participate equally in City Court elections based on his national minority race classification but numerical supermajority in the city of Baton Rouge;
- vii. Regulated to permanent anti-minority (i.e., anti-African American) majority status within the Judicial Election Plan's structure;

- viii. Denied as an African American entitlement to more election opportunities in City Court elections given the racial makeup of the city and evidence of racially polarized voting in Election Section 2;
- ix. Regressed in voting strength in that the value of his and the other African American votes is roughly 3/5ths to that of Caucasians participating and voting in the recent elections for City Court on November 8, 2012 and December 6, 2012; and
- x. Denied an equal opportunity in the voting chance and equality in voting by use of the outdated Judicial Election Plan's structural remedy to redress racially polarized elections for City Court.

56. The State of Louisiana, the Parish of East Baton Rouge, and the City of Baton Rouge, Louisiana have a long history of utilizing the state constitution, the power of central state and local home rule government, to deny African Americans the ability to govern, to make and to enforce laws of their choice, and to elect and promote candidates of their choice.

57. Despite, former Louisiana Attorney General Richard Ieyoub's affidavit that under the terms of the consent decree he helped craft in 1992, Justice Bernette Johnson was entitled to the seniority that would make her the next chief justice of the Louisiana Supreme Court, Governor Jindal of Louisiana and the State of Louisiana on August 12, 2012, intentionally took state interventionist action (sought dismissal of Justice Johnson's Motion to Reopen the *Chisom* case and for Contempt against fellow justices) adverse to the senior judicial officer of the State Supreme Court of Louisiana and sought to deny the position of Chief Justice to Justice Johnson as proscribed for and as provided for in

the settlement of the *Chisom* case (*Chisom v. Jindal*, 2012 WL 3891594 (E.D. La. 9/1/2012)).

58. Moreover, Governor Jindal vetoed Louisiana Senate Bill 429, which would have allocated another judgeship in the court's "minority district" in 2009; a veto that delayed for several years creation of a third minority judgeship on the 24th Judicial District Court in Gretna, Louisiana.
59. Former White City Court Judge Rosemary Pillow publicly appeared before the Louisiana Legislature and opposed Senate Bill 1126, which created the 1993 amendment to the Judicial Election Plan.
60. The Defendants State of Louisiana and City-Parish of Baton Rouge have a long history of both de jure and de facto discrimination against African Americans.
61. The Defendant State of Louisiana had an official state policy per its Chief Legal Official, the Attorney General of the State of Louisiana, to discriminate against Louisiana's African American voters, particularly not to comply with the 1965 Voting Rights Act since its inception.
62. The Defendants State of Louisiana and City-Parish of Baton Rouge have and continue to utilize (based on census data and voting age population) a mal-apportioned and maladjusted election system (Judicial Election Plan) to conduct elections for the office of City Court Judge.
63. Defendant Louisiana Legislature failed to consider and pass into law Louisiana House Bill 1013 in Regular Session 2004, and/or House Bill 945 in Regular Session 2006, which would have partially or fully negated the disparate and now consequential adverse

impact upon African American voters in Baton Rouge and remedied the complaints alleged herein and legally salvaged the current Judicial Election Plan.

64. The State of Louisiana and the Louisiana Legislature have a continuing duty not to minimize Intervenor-Plaintiff and other African American's equality in candidate opportunity and participation in City Court elections, and in election and voting opportunities of African Americans especially as the result of the State's and City's past racially discriminatory practices and history.
65. The Louisiana Legislature by its inaction to revise the Judicial Election Plan has made itself a party to Intervenor-Plaintiff's claims and causes of action. It has elected to place its power and prestige behind what has become racially discriminatory voting methods codified to insure inequality within the Judicial Election Plan.
66. The State of Louisiana and the Louisiana Legislature exhibited invidious racial discrimination or animus and actively engaged in racial discriminatory practices once Intervenor-Plaintiff, as an African American, became a member of the majority in population class, voting age population, and qualified voters in the city of Baton Rouge when they failed to afford him and other African Americans similarly situated equality in voting, participation as candidates, and in the opportunity to elect preferred candidates to City Court.
67. The actions of Defendants complained of herein perpetuate the historical discrimination against African Americans in Louisiana and their actions have the racially discriminatory purpose and/or effect of denying Intervenor-Plaintiff equal opportunity to elect representatives of his choice.

SECTION 2 CLAIMS FOR VIOLATION OF THE VOTING RIGHTS ACT

68. All allegations contained in paragraphs 53 – 67 are incorporated herein as if alleged fully herein.
69. Defendant State of Louisiana, City of Baton Rouge and Parish of Baton Rouge are subject to the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973.
70. Twenty-one years ago, a final judgment was entered against the State of Louisiana in the *Clark v. Edwards*, 958 F.2d 614 (5th Cir. 1992) litigation, which established vote dilution liability against the Defendants in the election of judges to state court judgeships in the 19th Judicial District Court, East Baton Rouge Parish based on race discrimination and vote dilution [according to threshold standards and totality of the circumstances established in and articulated by the U.S. Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)] by Caucasians against African Americans in most state court electoral jurisdictional districts, but particularly within the enumerated majority White voting precincts of Election Sections 1 and 2 of the 1993 Judicial Election Plan within the City-Parish of Baton Rouge.
71. Defendants' actions complained of herein and the current Judicial Election Plan have resulted in the denial of Intervenor-Plaintiff's right to fairly participate in the electoral and political process, the right to vote, and the right to vote for candidates of his choice as other citizens of Baton Rouge.
72. Enforcement of the Judicial Election Plan has had the disparate effect of canceling out or minimizing African American voting strength, and/or minimizing the collective voting strength as numerical a majority in Baton Rouge in violation of Section 2 of the Voting Rights Act.

73. Enforcement of the Judicial Election Plan has resulted in the abridgement, denial, and dilution of Intervenor-Plaintiff's right to vote and has intentionally and overly concentrated the City's African American population and voting strength into Election Section 1, in violation of Section 2 of the Voting Rights Act.
74. African Americans are sufficiently large in numbers and reside geographically compact to constitute a numerical majority in a new, but enlarged multi-member district (Election Section 1) of the Judicial Election Plan; they are politically cohesive both in their voting preferences and in their voting registration as Democrats; and the Caucasian majority within the Judicial Election Plan, Section 2, votes sufficiently as a bloc to enable them, in the absence of special circumstances, to defeat the African American's preferred candidate in Section 2.
75. African Americans are sufficiently large and geographically compact to constitute a majority in both a single member district and a multi-member election district system within the city of Baton Rouge for elections to City Court; they are politically cohesive both in their voting preferences and in their voting registration as Democrat; and the Caucasian majority within Election Section 2 district votes sufficiently as a bloc to enable them, in the absence of special circumstances, to defeat the African American's preferred candidate within that district.
76. African Americans are sufficiently large and politically cohesive in voting to constitute a supermajority in an at large member citywide election district within the city of Baton Rouge for elections to City Court; also they are politically cohesive both in their voting preferences and in their voting registration as Democrat; and that the Caucasian majority within Election Section 2 district votes sufficiently as a bloc to enable it, in the absence

of special circumstances, to usually defeat the African American's preferred candidate within that district.

77. Past and present voting data and election returns of elections occurring within Election Section 2 of the Judicial Election Plan concerning judicial and other types of elections between African American and Caucasian candidates evidence a pattern of racial polarized voting.
78. African American voters and Caucasian voters in Election Section 2 of the Judicial Election Plan routinely vote differently based on race in all of types of elections, particularly for judgeships, and specifically those City Court judgeships contested in the elections held this past year.
79. City Court elections in Section 2 of the Judicial Election Plan for Divisions C and E, which occurred on November 6, 2012 and on December 8, 2012 were racially polarized elections.
80. A member of the Louisiana Legislature pre-filed on March 27, 2013 a bill to redistrict the Election Sections 1 and 2 of the challenged Judicial Election Plan in acknowledgment of the legal complaint and issues raised in this complaint, as amended by Plaintiff Hall; presumably to remedy the alleged violations of federal law alleged heretofore, but the bill fails to immediately and adequately address and remedy current (unlawful Fall 2012 qualifying and elections for City Court), ongoing, and future structural and applied discriminatory effects as outlined in the proposed revisions in Judicial Election Plan to lawfully conduct elections for candidates to City Court to effectuate a valid remedy to redress Plaintiff Hall's claims.

81. The Louisiana Legislature's preferred systematic method to redistrict Baton Rouge City Court will be reestablished by House Bill No. 318, 2013, Regular Session, if adopted, wherein Baton Rouge City Court is proposed to be redistricted and reorganized on the basis of one person, one vote and in accordance with standards promulgated by Section 2 of the 1965 Voting Rights Acts, as amended.

SECTION 5 CLAIMS FOR VIOLATION OF THE VOTING RIGHTS ACT

82. All allegations contained in paragraphs 68 – 81 are incorporated herein as if alleged fully herein.

83. The State of Louisiana, its subdivisions, the city of Baton Rouge, and the Parish of Baton Rouge, and City Court are covered jurisdictions and are subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c; 28 C.F.R. §51 app.

84. Section 5 of the 1965 Voting Rights Act states that any “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” different from that in force or effect in the City of Baton Rouge, Louisiana, and in the Parish of East Baton Rouge, Louisiana, and in the State of Louisiana on November 1, 1964, may not be lawfully implemented unless the State of Louisiana, or other appropriate authority with the power to enact or administer voting changes such as the City of Baton Rouge and the Parish of East Baton Rouge, and Baton Rouge City Court obtains a declaratory judgment from the United States District Court for the District of Columbia that the changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, such change may be implemented without such judgment if it has been submitted to the United States Attorney General,

and the Attorney General has not interposed an objection within sixty days. 42 U.S.C. §1973c.

85. The Defendants State of Louisiana and/or City-Parish and/or City Court failed to submit preclearance and/or seek administrative or judicial review for 21 annexations (Ordinance Nos. 1585, 1586, 1602, 1622, 1656, 1688, and 1736 (1965), 1855-1856 (1966), 2042 (1967), 2114, 2117, 2140, 2215, 2240, and 2241 (1968), 2264 and 2416 (1969), 2647 (1971), 9845 (1994), and 10238 (1995)) to the City of Baton Rouge as it pertains to Defendant, City Court.
86. The Defendants State of Louisiana and/or City-Parish and/or City Court failed to submit preclearance and/or seek administrative or judicial review the sections of the City-Parish Plan of Government, as amended, as they pertain to voting changes, qualifications, time period, mode, and the holding and method of elections to City Court.
87. The Defendants State of Louisiana and/or City-Parish and/or City Court failed to submit preclearance and/or seek administrative or judicial review the applicable sections of the 1974 Louisiana Constitution and Election Code, as amended, as they pertain to voting changes, qualifications, description of and types of election, joint elections, time period, the holding, and the method of elections to City Court.
88. The failure of the Defendants to obtain requisite and sufficient Section 5 preclearance of any and all voting changes, particularly, annexations, in the methods of elections, the change in the election periods, the change in qualifications, the change in boundaries, the relevant changes in the 1974 Louisiana Constitution, and the Louisiana Election Code as it pertains to City Court renders any and all such changes legally unenforceable.

VIOLATIONS OF CONSTITUTIONAL CLAIMS

89. All allegations contained in paragraphs 82 – 88 are incorporated herein as if alleged fully herein.

90. Intervenor-Plaintiff is not treated equally by the Defendants and is subjected to irrational discrimination based on his residence in Election Section 1 in violation of the right of majority rule, we the people, penumbra constitution provisions, and the Fourteenth, and Fifteenth Amendments to the U.S. Constitution. See *Gray v. Sanders*, 372 U.S. 368 (1963).

PRAYER FOR RELIEF

91. In the absence of declaratory and injunctive relief from this Court, Intervenor-Plaintiff Sharper and all other African American similarly situated will be irreparably harmed.

WHEREFORE, Intervenor-Plaintiff asks this Court to enter an Order and Final Judgment:

- (1) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate the Fifteenth Amendment's Right to Vote;
- (2) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate the Equal Protection Clause of the Fourteenth Amendment;
- (3) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate the Due Process Clause of the Fourteenth Amendment;
- (4) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate the Privileges and Immunities Clause of the Fourteenth Amendment;

- (5) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate penumbra rights of the Bill of Rights and/or the Due Process Clause of the Constitution of the United States;
- (6) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate the right of Majority Rule within the Due Process, Privileges and Immunities, and Equal Protection Clauses of the Constitution of the United States;
- (7) Declaring the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012, violate Section 2 of the 1965 Voting Rights Act;
- (8) Enjoining and directing Defendant Secretary of State to cancel or vacate six-year commissions or to issue a recall from his office's certification of the returns for the 2012 elections for Baton Rouge City Court setting forth detailed standards, procedures, and rules for the City Judges to be implemented by each of the City Court Judges in Baton Rouge;
- (9) Enjoining and directing Defendants Judges Suzan Ponder, Yvette Alexander, Alex Brick Wall, Laura Prosser, and Kelli Temple to return their state issued six-year commissions or to vacate their offices for both the unopposed and contested 2012 elections for Baton Rouge City Court setting forth detailed standards, procedures, and rules for the City Judges to be implemented by each of the City Court Judges in Baton Rouge to effectuate the Court's order;
- (10) Enjoining and directing Defendants to ensure that all future elections for City Court comply in all respects with the "one person, one vote" principle of the Fourteenth Amendment;

- (11) Enjoining and directing Defendants to ensure that all future elections for City Court comply in all respects with the 1965 Voting Rights Act;
- (12) Enjoining and directing Defendants to ensure that all future elections for City Court comply in all respects with the “one person, one vote” principle of the Fourteenth Amendment; and the reapportionment of City Court for all Divisions of Court to occur no less than once post the decennial census to assure that the uniform standards, procedures and rules set forth herein are complied with in full prior to the certification of the tabulation of future elections;
- (13) Requesting the assignment of a Three Judge Court convened to hear those Section 5 parts of this action pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284 and thereafter enter an appropriate judgment:
 - a. Declaring that the Judicial Election Plan with respect to any and all voting changes and any and all methods of selecting judges to Baton Rouge City Court including but not limited to: conversion from plurality to majority vote, designation of sections of court (A through E), additional judgeships, and the terms of office for Baton Rouge City Court judges; the qualifications for selecting judges to the Baton Rouge City Court; and annexations to the City of Baton Rouge, from which precincts were allocated, assigned, and designated to the Baton Rouge City Court, are legally unenforceable because the Defendants have not received the requisite preclearance under Section 5 of the Voting Rights Act;
 - b. Declaring that the implementation the Judicial Election Plan with respect to any and all voting changes as it pertains to any and all methods of selecting

judges to Baton Rouge City Court including but not limited to: conversion from plurality to majority vote, designation of sections of court (A - E), additional judgeships, and the terms of office for Baton Rouge City Court judges; the qualifications for selecting judges to the Baton Rouge City Court; and annexations to the City of Baton Rouge, from which precincts were allocated, assigned, and designated to the Baton Rouge City Court, violate Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c;

c. Enjoining the Defendants, their successors in office, their agents and all persons acting in concert or participation with them, from administering or implementing the Judicial Election Plan with respect to any and all voting changes as it pertains to the methods of selecting judges to Baton Rouge City Court including but not limited to: conversion from plurality to majority vote, designation of sections of court (A - E), additional judgeships, and the terms of office for Baton Rouge City Court judges; the qualifications for selecting judges to the Baton Rouge City Court; and annexations to the City of Baton Rouge, from which precincts were allocated, assigned, and/or designated to the Baton Rouge City Court, unless and until preclearance under Section 5 of the Voting Rights Act of 1965 is obtained;

(14) Granting Intervenor-Plaintiff such additional relief as justice may require, together with his attorneys' fees pursuant to 42 U.S.C. §1988 and 42 U.S.C. §1973(l) and the costs and expenses to include reasonable expert fees, and other reasonable litigation expense in maintaining this action;

- (15) Awarding Intervenor-Plaintiff such additional relief as justice may require, together with nominal, compensatory, and punitive damages as the cause may permit.

RESPECTFULLY SUBMITTED:

The Law Office of Ronald R. Johnson

s/ Ronald R. Johnson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2013, a true and correct copy of the foregoing Plaintiff-Intervenor Complaint was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

Baton Rouge, Louisiana, this 13th day of May, 2013.

s/ Ronald R. Johnson

RONALD R. JOHNSON