

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL

Plaintiff,

v.

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

STATE OF LOUISIANA, et al

Defendants.

**OBJECTION TO STATE DEFENDANTS' MOTION TO DISMISS AND
OPPOSITION TO 12b(6) MOTION TO DISMISS SECTION 3c REMEDY**

MAY IT PLEASE THE COURT:

Defendants, State of Louisiana, Louisiana Governor Piyush “Bobby” Jindal, and Louisiana Attorney General James D. “Buddy” Caldwell (collectively the “State Defendants”), filed Defendant’s Motion to Dismiss Amended Complaints, *see* Docket No. 190. Plaintiff Hall files this objection to the State Defendant’s Motion to Dismiss and opposition to the 12b(6) claim for failure to state a claim upon which relief can be granted with respect to Section 3c of the Voting Rights Act of 1965.

BACKGROUND

Although the State Defendants allege that the instant Motion to Dismiss is related to Plaintiff Hall’s amended complaints, the instant motion actually re-alleges arguments previously made and ruled upon. The State Defendants filed a Motion to Dismiss on November 1, 2012 (Doc. 39). Since the filing of the original Motion to Dismiss, Plaintiff Hall filed several amending complaints.¹ State Defendants assert in the preamble that the instant Motion to

¹ First Amending and Supplemental Complaint (Doc. 13) was filed before State Defendant’s Original Motion to Dismiss; the Second Amending and Supplemental Complaint and Third Amending and Supplemental Complaint (Docs. 74 and 76) were filed thereafter on January 10, 2013. The Court heard oral argument with respect to *all*

Dismiss is related to the amended complaints, but then in the “Background” assert that the motion is only related to Section 3 claims. The State Defendants are attempting to re-allege all previously disposed issues. This Honorable Court ruled on all of the State Defendants’ allegations (Doc. 174). The State Defendants themselves admit that the arguments set forth in the original motion to dismiss are applicable to all of the Plaintiff’s amended complaints.

To the extent the Court has already ruled upon the arguments in the instant Motion to Dismiss, Plaintiff Hall objects to the filing of the instant motion. The State Defendants should be precluded from reasserting any allegations or contentions previously ruled upon by this Honorable Court as a matter of law.² The law-of-the-case doctrine “posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 1391, 75 L. Ed. 2d 318 (1983). Based on this general principle, the Fifth Circuit has developed specific rules about how earlier decisions affect later proceedings and cases. *See Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995).

The law-of-the-case doctrine follows from the “sound policy that when an issue is once litigated and decided, that should be the end of the matter.” *United States v. United States Smelting Ref. & Mining Co.*, 339 U.S. 186, 198, 70 S.Ct. 537, 544, 94 L. Ed. 750 (1950). It is an exercise of judicial discretion, not a limit on judicial power. *See Messinger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 740, 56 L. Ed. 1152 (1912). Accordingly, under the law-of-the-case doctrine, the State Defendant’s Second Motion to Dismiss should be denied and/or dismissed.

claims on May 31, 2013 and issued its ruling on September 30, 2013 (Doc. 174). The Fourth Amending Complaint (Doc. 180) asserted no additional claims but added a remedy under Section 3c of the Voting Rights Act of 1965.

² The arguments in the instant motion to dismiss are the subject of a pending motion for reconsideration.

The State Defendant's Motion to Dismiss also addresses Plaintiff Hall's claim for Section 3c relief afforded by the Voting Rights Act of 1965. As all other issues have been previously addressed and ruled upon, Plaintiff Hall files this Memorandum in Opposition with respect to the Section 3c remedy only.

LAW AND ARGUMENT

A. Plaintiff Hall's remedy under Section 3c of the Voting Rights Act

State Defendants incorrectly assert that Plaintiff Hall has added a *claim* under Section 3c of the Voting Rights Act of 1965. This contention is totally absurd and without merit. Plaintiff Hall filed a motion for leave to add the Section 3c *remedy* (Doc. 160). The Court granted leave and Plaintiff Hall filed his Fourth Amending and Supplemental Complaint (Doc. 180) asserting that after a finding of intentional discrimination on *claims* of violations of the Fourteenth and Fifteenth Amendments to the United States Constitution, the court fashion a *remedy* under Section 3c of the Voting Rights Act. (Emphasis added). The State Defendants are correct in their assertion that there has been no determination of a Fourteenth or Fifteenth Amendment violation; there has been no trial of this matter as of yet to make that determination. Plaintiff Hall has only added Section 3c as a remedy in the event the Court rules that the State Defendants have violated the Fourteenth and Fifteenth Amendments to the United States Constitution.

Therefore, this argument is without merit and should be denied.

B. Previously alleged arguments under 12(b)(1) and 12(b)(6).

Plaintiff Hall adopts in *extension* as if copied herein, all arguments previously made in his Opposition to the State Defendants' Motion to Dismiss (Doc. 51), Opposition to the State Defendants' Motion for Reconsideration (Doc. 184), and in oral argument before this Honorable Court.

CONCLUSION

Plaintiff Hall asks this Honorable Court to deny and/or dismiss the State Defendant's Second Motion to Dismiss for all the reasons stated above.

RESPECTFULLY SUBMITTED:

The Law Office of Ronald R. Johnson

/s/ Ronald R. Johnson
Ronald R. Johnson (La Bar Roll No. 14402)
Law Offices of Ronald R. Johnson
5550 North Foster Drive
Baton Rouge, Louisiana 70805
Telephone: (225) 356-3408
Facsimile: (225) 356-4438
ronaldjohnson@bellsouth.net

Stephen M. Irving (La Bar Roll No. 7170)
Steve Irving, LLC
111 Founders Drive
Baton Rouge, Louisiana 70810
Telephone: (225) 752-2688
Facsimile: (225) 752-2663
steve@SteveIrvingLLC.com

Joel G. Porter (La Bar Roll 21825)
Attorney at Law
1208 Julia Street
Baton Rouge, Louisiana 70802
Telephone: (225) 978-1955
Facsimile: (225) 456-2886
Joel9962@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2013, a true and correct copy of the foregoing 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 14th day of November, 2013.

/s/ Ronald R. Johnson
RONALD R. JOHNSON