

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL,
Plaintiff

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CIVIL ACTION 3:12-cv-657

VERSUS

CHIEF JUDGE BRIAN A. JACKSON

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, and TOM
SCHEDLER, in his official capacity as
the Louisiana Secretary of State, CITY
OF BATON ROUGE, PARISH OF
EAST OF BATON ROUGE, and
BATON ROUGE CITY COURT,
Defendants

MAGISTRATE RICHARD L. BOURGEOIS

MEMORANDUM IN OPPOSITION TO MOTION FOR
PARTIAL SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

Plaintiffs have filed a Motion for Summary Judgment against (among others) Secretary of State, Tom Schedler, alleging violations of the Fourteenth and Fifteenth Amendments. But in order to prove racial discrimination in violation of these amendments, a plaintiff must prove that a defendant acted with discriminatory intent, intent that Plaintiff has already admitted the Secretary does not possess. Accordingly, Plaintiffs' Motion for Summary Judgment cannot succeed against the Secretary of State and must be dismissed as a matter of law.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Kenneth Hall, brought this action based upon alleged racial discrimination and improper assignment of voter districts for the election of City Court judges in Baton Rouge, Louisiana. Plaintiff named as a defendant (among others), Secretary of State Tom Schedler (hereinafter referred to as “the Secretary of State” or “the Secretary”). Plaintiff-Intervenor, Byron Sharper, intervened in the action alleging the same Constitutional and statutory violations brought by Mr. Hall.

Both Plaintiffs, in their instant Motion for Summary Judgment, seek a judgment as a matter of law declaring that all Defendants have violated the Fourteenth and Fifteenth Amendments to the United State Constitution. They also seek to “find Defendants liable under the 1871 Civil Rights Act, as amended, 42 U.S.C. § 1983, as amended § 1986, and issue an award of attorney’s fees under 42 U.S.C. § 1988.” Plaintiffs allege that “Defendants have intentionally discriminated against Plaintiffs and all those similarly situated in the Defendants’ failures to amend and/or revise Act 609 of the 1993 Regular Session (LSA-R.S. § 1(4)(a)(b)(c) ...” Plaintiffs further allege that Defendants’ “refusal to reapportion the Baton Rouge City Court ... judges and/or redraw the geographic boundaries ... is an intentional attempt to dilute the votes of African Americans ...” Plaintiffs do not specify to which defendants they refer throughout their motion and memorandum and do not distinguish the actions of one defendant from another, yet they seek a judgment and attorney fees as to all.

Despite the allegations above, however, Plaintiffs have both stated the exact opposite in their responses to discovery. In fact, Plaintiff and Plaintiff-Intervenor both stated, “There is no known evidence that the Secretary of State had, as of the date of the filing of this litigation, personally intentionally discriminated against Plaintiff or the African American population of the

City of Baton Rouge in relation to the subject matter of this litigation,”¹ and “There is no known evidence that the Secretary of State had, as of the date of the filing of this litigation, personally intentionally violated 42 USC §1983 in relation to the subject matter of this litigation.”² Plaintiffs further reiterated, “There is no contention that the Secretary of State intentionally discriminated against [Plaintiffs] and/or any other African American voters in relation to the subject matter of this litigation ...”³

Plaintiffs have not submitted any evidence in support of their Motion for Summary Judgment that has anything to do with the Secretary of State or any actions taken by him or his predecessors in relation to the subject matter of this litigation.

II. LAW AND ARGUMENT

Plaintiffs have not carried their summary judgment burden to prove that the Secretary intentionally violated their rights arising under the Fourteenth and Fifteenth Amendments. A defendant can only violate these provisions if he performed a discriminatory act with an intent or purpose to violate a plaintiff’s rights. Plaintiffs in this action admit that the Secretary of State did not act with such an intent, and they have not submitted any evidence stating otherwise. Accordingly, Plaintiffs’ motion should be denied as a matter of law and their requests for attorneys’ fees should also be denied.

¹ Plaintiff Kenneth Hall’s Objections and Responses to Defendant Secretary of State Discovery Requests attached hereto as Exhibit “A” at Answer to Request for Admission No. 1; *see also* Plaintiff-Intervenor Byron Sharper’s Objections and Responses to Defendant Secretary of State Discovery Requests attached hereto as Exhibit “B” at Answer to Request for Admission No. 1.

² *Id.* at Answer to Request for Admission No. 2.

³ *Id.* at Response to Interrogatories No. 5 and 6. Plaintiffs went on to state that “The Secretary of State has failed to do his duty to report to the legislature and the Governor that election subdistricts have become unconstitutionally constituted and has promulgated the results of elections in the unconstitutional subdistricts without noting that the elections were held in illegal subdistricts.” However, these allegations were not asserted in Plaintiff’s Motion for Summary Judgment, and therefore are not at issue at this time.

A. To prove racial discrimination in violation of the Fourteenth and Fifteenth Amendments, a plaintiff must prove that a defendant acted with an intent or purpose to discriminate against him.

Plaintiffs acknowledge that to state a claim for racial discrimination against a governmental official under the Equal Protection Clause and § 1983, a plaintiff must demonstrate that the governmental official was motivated by intentional discrimination on the basis of race.⁴ "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."⁵

Likewise, "[t]o prove racial discrimination in violation ... the Fifteenth Amendment's right to vote, a plaintiff must prove the government acted with discriminatory intent."⁶ Accordingly, "vote dilution does not give rise to a cause of action under the Fifteenth Amendment."⁷

Therefore, in order to prove that the Secretary of State violated their Fourteenth and Fifteenth Amendment rights, Plaintiffs must prove that the Secretary performed a discriminatory action and that when he did so, he was motivated by intentional discrimination based on race.

⁴ See *Washington v. Davis*, 426 U.S. 229, 238-42 (1976); *Vera v. Tue*, 73 F.3d 604, 609 (5th Cir. 1996).

⁵ *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977).

⁶ Order, Rec. Doc. 277.

⁷ See *Reno v. Bossier Parish*, 528 U.S. 320, 334 n.3 (2000); *Holder v. Hall*, 512 U.S. 874, 920 (1994) (Thomas, J. concurring in judgment); *Mobile v. Bolden*, 446 U.S. 55, 84 n.3 (1980) (Stevens, J. concurring); see also *Tigrett v. Cooper*, No. 10-2724-STA-tmp, 2012 WL 691892, at *10 (W.D.Tenn. Mar. 2, 2012) (summarizing Supreme Court precedent); see also *Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000) (The Fifth Circuit has recognized that "the Supreme Court has rejected application of the Fifteenth Amendment to vote dilution causes of action.").

B. Plaintiffs have not submitted any evidence or argument sufficient to prove that the Secretary of State acted with intent or purpose to discriminate against them.

As noted above and as stated more fully in the Secretary's motions for summary judgment incorporated fully herein,⁸ Plaintiffs have readily admitted that they do not contend that the Secretary of State intentionally discriminated against them personally or African Americans in general in relation to the subject matter of this litigation.⁹ Plaintiffs have also not submitted any summary judgment evidence to prove otherwise.

Further, all actions which Plaintiffs allege were performed with discriminatory intent were not performed and could not have been performed by the Secretary of State. For instance, Plaintiffs allege that Defendants have failed to amend and/or revise the 1993 Judicial Election Plan. But Plaintiffs admit that the Secretary does not have the authority to enact any laws relating to reapportionment.¹⁰ Plaintiffs likewise contend that Defendants' "refusal to reapportion the Baton Rouge City Court ... and/or redraw the geographic boundaries [of the City Court election districts] is an intentional attempt to dilute the votes of African Americans ..." But again, Plaintiffs have admitted that "the Secretary of State does not have the authority to apportion or reapportion election districts for the Baton Rouge City Court."¹¹ Plaintiffs, in their motion, do not allege any discriminatory actions that were specifically performed by the Secretary or that were in the purview of the Secretary's official duties. Therefore, Plaintiffs' motion is not only void of any evidence or argument relating to the Secretary's discriminatory intent, but it also omits any discussion regarding any allegedly discriminatory act that the Secretary performed.

⁸ Rec Docs. 290 and 291.

⁹ See *supra*. Notes 1-3.

¹⁰ *Id.* at Request for Admission No. 4.

¹¹ *Id.* at Answer to Request for Admission No. 6.

III. CONCLUSION

For the purposes of summary judgment, in order to prove that the Secretary of State violated Plaintiffs' Fourteenth and Fifteenth Amendment rights, Plaintiffs must present actual evidence or supported argument that (1) the Secretary discriminated against them based upon their race, and (2) that he did so intentionally. Plaintiffs have proven neither. Accordingly, Plaintiffs' Motion for Partial Summary Judgment should be denied as a matter of law as well as request for attorneys' fees arising under 42 U.S.C. § 1988.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2014, a copy of the foregoing Memorandum in Opposition to Motion to Compel was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the court's electronic filing system.

/s/ Beth P. Everett
BETH P. EVERETT