

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL

Plaintiff,

and

BYRON SHARPER

Plaintiff-Intervenor,

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

BAJ/RLB

v.

STATE OF LOUISIANA, et al

Defendants.

MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
BY THE GOVERNOR AND THE ATTORNEY GENERAL

MAY IT PLEASE THE COURT:

Every Louisiana elected official is required to take the following oath of office:

“I, ..., do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ..., according to the best of my ability and understanding, so help me God.”

La. Const. Art.X § 30.

The Governor and the Attorney General move for summary judgment contending that in spite of their oath of office, they have no duty to enforce federal law. This motion is due to be denied.

The duties of the Governor are set forth in Article 4 §5 of the Louisiana Constitution of 1974. The immediately relevant duties are as follows:

Section 5.(A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States **and shall see that the laws are faithfully executed.**

(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and

recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition. (Emphasis added).

Louisiana Revised Statutes Title 33, Section 1371 requires reapportionment of *all* local districts from which public officials are elected by local government within one year of the release of the official census data. This section reads in part as follows:

Except as otherwise provided in a home rule charter, the governing authority of any municipality which contains two or more districts from which public officials are elected shall, within one year after the official release of every decennial census, examine the apportionment plan of the municipal districts composing the municipal governing authority to determine if there exists any substantial variation in the representation of the districts. After the examination the governing authority of such municipality shall, by ordinance adopted by a majority of the members thereof, either declare the apportionment of the districts to be equitable and continue its existing apportionment plan or provide for a new apportionment plan.

There is no home rule charter provision to the contrary. The use of the term "Public Officials" clearly shows intent to have broader coverage than just the local governing body members. This reading is supported by another provision for parish governing bodies which is expressly limited to reapportionment of "its members." La. R.S. § 33:1411.

The mandate that local districts be reapportioned with each census is also found in the Louisiana Election Code at La. R.S. § 18:1922 which reads as follows:

A. Unless a different period of time is specified by the constitution or by statute, the governing authority of each local governing body shall reapportion its voting districts by the end of the year following the year in which the population of this state is reported to the president of the United States for each decennial census.

Title 18 provides, that "precinct" means the smallest political unit of a ward having defined geographical boundaries. La. R.S. § 18:2(6). Further, a "voting district" means a geographical area composed of one or more precincts in a parish in which every elector within that area votes in the same congressional district, statewide board or commission district, *judicial districts*, Senate District, House of Representatives District, parish governing authority district, local and

ward office district, municipal office district, and all other special election districts." La. R.S. § 18:2(10). A "ward" means a police jury ward in a parish and in parishes having no police jury wards means the subdivision of the parish equivalent to a police jury. La. R.S. § 18:2(11). (Emphasis added).

The subdistricts at issue are clearly voting districts of the City of Baton Rouge.¹ Together these provisions are a clear mandate from the Legislature that timely use of the delegation of authority from the Legislature to reapportion local government districts is expected. The provisions also establish reapportionment with each census as a public policy of the State of Louisiana. There has been no such reapportionment of the Baton Rouge City Court subdistricts since the subdistricts were created in 1993, two census cycles.

While the primary duty of enforcing election laws is constitutionally and statutorily given to the Secretary of State, as the state's chief election official, the Governor also has this responsibility. The Governor cannot himself reapportion the districts of the Baton Rouge City Court as that is a function given by the constitution to the Louisiana Legislature and delegated by the Legislature to local government with a mandate to implement reapportionment within a year of the release of the result of each census. The Governor can, however, as a part of his duty to see that the laws of the State of Louisiana and of the United States are carried out, report to the Legislature the malfeasance of local government in failing to carry out its reapportionment duty for a period in excess of 10 years. He can also bring suit against the City of Baton Rouge to force compliance with the statutory mandate to timely reapportion the local election districts.

Constitutionally, the Governor reports to each and every legislative session. While there have been efforts to legislatively reapportion the Baton Rouge City Court subdistricts these efforts have arisen from individual legislators and not as a result of any report from the

¹ A listing of the Baton Rouge City Court Precincts and Wards are attached hereto as Exhibit A.

Governor. The failure of the Governor to report the violation of state and federal election law is a substantial factor in the failure of the legislature to respond to the violation. In fact, the Legislature has yet to hear that a problem exists from any executive branch official.

The constitutional duties of the Attorney General are provided in Article 4 § 8, which states the following:

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district **attorney**, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law

Among the statutory duties of the Attorney General, he is an ex officio member of the State Board of Election Supervisors. The State Board of Election Supervisors, a statutory legal entity, housed in the Secretary of State's Office is created by La. R.S. § 18:23. The Board of Election Supervisors has the statutory duty to address the exact issue pending before this Court.

A. To accomplish the purposes of this Part and Subpart G of Part V of Chapter 5 of this Title, the board shall have the following powers, duties, and functions:

. . .

(3) To review election laws and procedures and to report to the legislature as required by this Part.

To fulfill its mission, the Board of Election Supervisors has authority to hold hearings, issue subpoenas and employ legal counsel.² In spite of this duty, the Attorney General, as a member of the Board of Election Supervisors has not investigated the Baton Rouge City Court subdistricts and has not reported to the Legislature that a violation of the Voting Rights Act exists with regard to the apportionment of the election districts for the Baton Rouge City Court

²La. R.S. §18:24 A (2), (4).

even though two state statutes require that the subdistricts be reapportioned within a year of each census.

The state has an interest in its laws being carried out and an interest in complying with the requirements of federal laws. The Attorney General may not be able to force the Louisiana Legislature to adopt a law reapportioning the subdistricts of the Baton Rouge City Court, but he can bring suit himself to force the City of Baton Rouge to comply with the Legislative policy requiring reapportionment of local election districts within one year of each census. He has not done so.

CONCLUSION

State executive branch officials, including the Governor and the Attorney General in the present case, have, en masse, decided to hide behind the skirts of the legislature's failure to adopt a reapportionment of the Baton Rouge City Court election districts. While the Legislature is given ultimate constitutional authority to change the election districts, the Legislature, being aware that its sessions are limited in duration,³ has by statute created a mechanism for reapportionment of local election districts and a mechanism for election issues such as the failure to reapportion districts to be investigated and reported to them. The Legislature has also clearly established a policy of review of the apportionment of all local districts with each census and a timetable for that to happen. The legislature's lack of response to the need to reapportion the subdistricts of the Baton Rouge City Court stems in large part from the fact that state executive branch officials like the Governor and the Attorney General have failed to act and failed to bring suit against Baton Rouge to force compliance and/or failed to investigate and bring the violation

³ The Legislature meets for only a total of 60 days during an 85 day period in even numbered years to consider substantive legislation. La. Con. 1974, Article 3 § 1

to the Legislature leaving legislative committees, already having constitutionally limited time, little information upon which to form a conclusion.

RESPECTFULLY SUBMITTED:

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s/ Ronald R. Johnson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2014, a true and correct copy of the foregoing Memorandum in Opposition to Defendant Governor and Attorney General's Motion for Summary Judgment 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 23rd day of June, 2014.

/s/ Ronald R. Johnson

RONALD R. JOHNSON