

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL : **CIVIL ACTION NO. 3:12-CV-0657**
:
VERSUS : **CHIEF JUDGE BRIAN A. JACKSON**
:
STATE OF LOUISIANA, ET AL. : **MAGISTRATE JUDGE**
RICHARD L. BOURGEOIS, JR.

MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE MOTION FOR PRELIMINARY INJUNCTION

MAY IT PLEASE THE COURT

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana; Bobby Jindal, in his capacity as Governor of the State of Louisiana; James D. “Buddy” Caldwell, in his capacity as Attorney General of the State of Louisiana; the City of Baton Rouge, the Parish of East Baton Rouge, and the Honorable Melvin “Kip” Holden, in his capacity as the Mayor-President of the City of Baton Rouge and East Baton Rouge Parish (hereafter collectively the “Defendants”), and move this Honorable Court to strike the Motion for Preliminary Injunction (Rec. Doc. 559), filed by the Plaintiff, Kenneth Hall, and Intervenor, Byron Sharper (hereinafter the “Plaintiffs”) pursuant to Fed. R. Civ. P. 12(f).

I. BACKGROUND

Following the completion of a six day bench trial, the Plaintiffs have filed a Motion for Preliminary Injunction, asking this Honorable Court to issue a preliminary injunction to restrain Defendants from qualifying candidates for the recently vacated Division “C” seat on the Baton Rouge City Court pending disposition of Plaintiffs’ claims that the current method of electing

judges to the Baton Rouge City Court violates Section 2 of the Voting Rights Act. (See Rec. Doc. 559). The Plaintiffs have also asked for an order enjoining voting for the Special Election under the current election boundaries for the Baton Rouge City Court.

The election at issue in the preliminary injunction motion is not scheduled until October 24, 2015, and qualifying would not occur until September 8-10, 2015.

II. LAW AND ARGUMENT

Pursuant to Fed. R. Civ. P. 12(f) the Defendants request that the Court strike the Plaintiffs' Motion for Preliminary Injunction for the reasons explained below.

A. THE PLAINTIFFS ARE NOT TRYING TO PROTECT THE STATUS QUO

A preliminary injunction is generally designed to protect the status quo pending a trial on the merits. In this case, a bench trial on the merits was completed on November 19, 2014. (Rec. Doc. 539) This is not a situation where the Plaintiffs are trying to protect the status quo pending a trial on the merits.

The primary justification for the entry of a preliminary injunction is to preserve the trial court's ability to render a meaningful decision on the merits. *Canal Authority v. Callaway*, 489 F.2d 567, 572-73 (5th Cir. 1974). In this case, qualifying is not imminent. The election is not scheduled until October 24, 2015, and qualifying would not occur until September 8-10, 2015. Therefore, this Honorable Court still has a significant amount of time to render a decision on the merits of the Plaintiffs' case prior to qualifying or any election.

B. THE RELIEF REQUESTED IS DUPLICATIVE

A motion for preliminary injunction at this juncture is improper and unwarranted, as the trial has already occurred. Moreover, it is duplicative of relief previously requested by the Plaintiffs. (See Rec. Doc. 1, Paragraph 19(c), where Plaintiff Hall requests an injunction with

regard to qualifying candidates, and Paragraph 88(b)(i), where Plaintiff Hall prays for a preliminary and permanent injunction enjoining the Defendants from “further calling, holding, supervising or certifying any elections . . . under the Current Judicial Election Plan.” See also Rec. Doc. 133, Paragraph 28, where Intervenor Sharper prays for the Court to enter an order “Enjoining Defendants . . . from administering, implementing, or conducting any future elections for the Baton Rouge City Court under the current sub-district method of electing judges”.) The Plaintiffs’ request for injunctive relief was part of the claims which were tried before this Court over the course of the six day bench trial.

C. THE DEADLINE FOR FILING POST TRIAL BRIEFS HAS PASSED

A reading of the Plaintiffs’ twenty-page memorandum in support of their motion for preliminary injunction reveals that the Plaintiffs are simply supplementing their previously submitted proposed findings of fact and conclusions of law. Any supplementation would be untimely as post-trial briefs were due on December 10, 2014 and were limited to 50 pages. (Rec. Doc. 539) Should the Plaintiffs believe that it is necessary to provide this Honorable Court with additional post-trial briefing, they should have requested leave of court to file a supplemental post-trial brief.

D. THE DEFENDANTS PLAY NO ROLE IN QUALIFYING CANDIDATES FOR BATON ROUGE CITY COURT

The Plaintiffs are asking that this Court issue a preliminary injunction to restrain Defendants from qualifying candidates for the recently vacated Division “C” seat on the Baton Rouge City Court. (See Rec. Doc. 559). However, the Defendants have no role in qualifying candidates for Baton Rouge City Court Judge. See La. R.S. 18:461, et seq. Local and municipal

candidates qualify for a primary election with the clerk of court for the parish in which the candidate is registered to vote. La. R.S. 18:462(B).

E. THE PLAINTIFFS FAILED TO GIVE THE DEFENDANTS AN ADEQUATE OPPORTUNITY TO RESPOND PRIOR TO FILING THE MOTION

Plaintiffs' counsel notified counsel for the Defendants of their intent to file a preliminary injunction at the end of the business day on Tuesday, May 19, 2015, and sought the Defendants' position on the motion by 5:30 p.m. on May 20, 2015. (See Attached A) Both counsel for the City-Parish Defendants and the State of Louisiana requested additional time to respond since they were out of the office and were unable to confer with their clients.¹ (See Exhibit B, Attached emails) The Plaintiffs declined to give the Defendants any additional time and instead filed the Motion for Preliminary Injunction on Friday, May 22, 2015. (Rec. Doc. 559)

Based on the fact that qualifying is not even scheduled until September of 2015, there was no reason for the Plaintiffs to file the instant motion for preliminary injunction without giving the Defendants an opportunity to confer with their clients, which violates the spirit of the local rules that requires consultation with opposing counsel prior to the filing of the injunction and would warrant striking the motion.

F. CONSIDERATION OF FACTS NOT PRESENTED AT TRIAL WOULD BE IMPROPER

Further, to the extent that the Plaintiffs are asking this Honorable Court to consider facts not presented at trial and not alleged in their complaints, their request for preliminary injunction is improper.

¹ The request received from the Plaintiffs' counsel came on the eve of the Memorial Day Holiday weekend and while the Louisiana Legislature was in session, making it difficult to confer with clients under the time frame afforded to the Defendants by the Plaintiffs.

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**Counsel for the Defendants, City of Baton
Rouge, Parish of East Baton Rouge and Mayor-
President Melvin “Kip” Holden**

CERTIFICATE OF SERVICE

I hereby certify that, on June 3, 2015, I electronically filed the forgoing with the Clerk of Court by using the CM/EMF system, which will send a notice of electronic filing to all counsel of record.

/s/Angelique Duhon Freel

Angelique Duhon Freel