UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

KENNETH HALL
Plaintiff

Civil Action No. 3:12-cv-657
BAJ/RLB

and

BYRON SHARPER
Intervenor-Plaintiff

v.

STATE OF LOUISIANA, et al.
Defendants

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

Plaintiff Kenneth Hall and Intervenor Byron Sharper ("Plaintiffs") respectfully move this Court pursuant to Fed. R. Civ. P. 60(b)(6) to vacate the judgment of June 9, 2015 (Doc. 562), in the above-captioned action. As shown below, the actions of the Defendants, together with other circumstances beyond the control of the Plaintiffs, have left no live case or controversy and thereby mooted this action, as a consequence of which the federal courts are deprived of jurisdiction. Accordingly, Plaintiffs no longer have an opportunity to seek modification or appellate review of the Court's June 9 judgment. In such circumstances, *vacatur* of the June 9 judgment is required.

I. BACKGROUND

1. Plaintiffs are African-American voters in Baton Rouge, Louisiana who brought this action to challenge the method of electing judges to the Baton Rouge City Court.[1] Act 609

[1] *See* Docs. 1, 13, 74, 128, 133, 180-81; *see also* Pls.' Post-Trial Proposed Findings of Fact and Conclusions of Law (Doc. 546) at ¶¶ 2-12.

(1993) of the Louisiana Legislature (hereinafter "1993 Plan") was the sole statutory provision with respect to which Plaintiffs sought declaratory and injunctive relief.[2]

2. Trial in this action concluded in November, 2014.[3] The Court issued final judgment on June 9, 2015, denying all relief for which Plaintiffs had prayed and awarding judgment to Defendants. (Doc. 562 at 3) ("Final Judgment"). The Court found that Plaintiffs' Section 2 claim failed because the Plaintiffs' evidence of racially polarized voting was limited to contests occurring over the course of only one year: 2012. (Doc. 562 at 2-3, 26-27). The Court specifically noted, however, that "[d]ata from one additional election cycle may very well have enabled Plaintiffs to meet their burden in proving vote dilution in violation of the VRA." (Doc. 562 at 3). After acknowledging that another election cycle may have dispositively changed the case's outcome, the Court recognized its prior decision to preclude any consideration of the 2014 election results. (Doc. 562 at 18 (citing Tr. IV at 105:19-106:5)).[4] The Court also took notice of the fact that African Americans constituted a majority of Baton Rouge's city-wide population. (Doc. 562 at 5).

3. On June 12, 2015, the Louisiana Legislature enacted House Bill 76, which

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[2] *See* Doc. 1 at ¶ 88; Doc. 13 at ¶ 19; Doc. 74 at ¶ 35; Doc. 128 at ¶ 91; Doc. 133 ¶¶ 27-30; Doc. 180 at 4; Doc. 181 at 4-5.

[3] Plaintiffs sought declaratory and injunctive relief on the grounds that the 1993 Plan impermissibly diluted African-American voting strength, and this Court held a six-day trial to adjudicate Plaintiffs' claims arising under Section 2 of the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301 ("Section 2"), the Fourteenth and Fifteenth Amendments of the U.S. Constitution and 42 U.S.C. §§ 1983, 1986. (Doc. 562 at 1-2). Plaintiffs challenged the 1993 Plan under Section 2 on the grounds that, in light of racially polarized voting, African Americans received a lesser opportunity to elect candidates of their choice due to the lopsided allocation of divisions that was inconsistent with population demographics: African Americans comprised a citywide majority, yet the majority-black Section One elected only two judges while the majority-white Section Two elected three, all of whom had been white. (Doc. 546 at 31-50). In support of their claim, Plaintiffs provided expert testimony to evidence racially polarized voting in the 2012 biracial, judicial contests, which comprised the most relevant biracial, judicial contests through the commencement of trial in August 2014. (Doc. 546 at 9-18 ¶¶ 44-79, 34-41 ¶¶16-36).

[4] Plaintiffs had unsuccessfully moved the Court to take judicial notice of the 2014 election results wherein several African-American candidates for District Court in Baton Rouge lost to white opponents. However, the Court denied Plaintiffs' request on the grounds that since the 2014 election occurred mid-trial, "there was insufficient time for the parties to have a fair opportunity to conduct discovery and properly analyze the data. . . ." (Doc. 562 at 18).

fundamentally altered the 1993 Plan by substituting an at-large seat for one of the pre-existing subdistrict seats.[5] Specifically, House Bill 76 provides that henceforth two judges will be elected from City Court Section One (Divisions "B" and "D"), two judges will be elected from the City Court Section Two (Divisions "A" and "E"), and the fifth judge ("Division C") will be elected citywide.[6] Under the1993 Plan, Division C was elected from the City Court Section Two subdistrict. (*See* Ex. J-25. Bates No. 001358). The fact that three Divisions were assigned to Section Two under the 1993 Plan was the gravamen of Plaintiffs' claim. House Bill 76 was sent to the Governor on June 11, 2015, and was signed into law as Act 374 on July 1, 2015, to be effective immediately.[7]

4. A special election primary is scheduled for October 22, 2015, to fill the vacancy for the Division C seat resulting from Judge Alex "Brick" Wall's mid-term retirement.[8] The circumstances concerning the special election were set forth in Plaintiffs' Motion for Preliminary Injunction and Memorandum in Support thereof, and are reincorporated here by reference. (Doc. 559).

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[5] H.B. 76 ENROLLED, 2015 Reg. Legis. Sess. (La. 2015) (amending and reenacting La. R.S. 13:1952(4)), *available at* https://www.legis.la.gov/legis/ViewDocument.aspx?d=959313. The relevant timeline for the passage of House Bill 76, now codified as Act 374, is available via the Louisiana Legislature's website, *available at* http://www.legis.la.gov/legis/BillSearch.aspx?sid=15RS.

[6] House Bill 76 as introduced was amended prior to its enactment. As introduced House Bill 76 would have revised the boundaries of Sections One and Two, and allocated three Divisions to Section One (which would remain majority-black) and Two Divisions to Section Two. *See* H.B. 76 ORIGINAL, 2015 Reg. Legis. Sess. (La. 2015), *available at* https://www.legis.la.gov/legis/ViewDocument.aspx?d=927660.

[7] The timeline of the enactment of H.B. 76 and codification of Act 374 is provided via the Louisiana Legislature's website, *available at* http://www.legis.la.gov/legis/BillSearch.aspx?sid=15RS; *see also* THE CITY COURT OF BATON ROUGE, 2015 La. Sess. Law Serv. Act 374 (H.B. 76) (West).

[8] *See* State of Louisiana Executive Department, PROCLAMATION NO. 21 BJ 2015, SPECIAL ELECTION – JUDGE – CITY COURT – CITY OF BATON ROUGE, *available at* http://www.gov.state.la.us/assets/docs/21%20BJ%202015%20Special%20Election%20-%20Judge%20-%20City%20Court-%20City%20of%20Baton%20Rouge.pdf. The next scheduled election for the remaining four seats is 2018 when the judges' six-year terms expire. Pre-Trial Order (Doc. 359) at ¶ 211.

II. ARGUMENT

When Act 374 (2015) went into effect on July 1, 2015, upon the Governor's signature, it mooted Plaintiffs' challenge to the 1993 Plan by extinguishing the live case and controversy required to sustain this lawsuit. Accordingly, this Court is required to vacate its June 9, 2015 Ruling, Order, and Judgment (Doc. 562) because the Defendants' unilateral actions, and other circumstances beyond Plaintiffs' control, have deprived Plaintiffs of their right to appeal or seek modification of that judgment.

Federal courts consistently vacate their judgments when, as here, the case becomes moot post-judgment while the case is pending appeal; to do otherwise would inequitably preclude the losing party from challenging an unfavorable judgment. Precisely such inequities are present in the instant case: due to events wholly outside of Plaintiffs' control, nonjusticiability forecloses Plaintiffs' ability either to move this Court for relief under Fed. R. Civ. P. Rule 59, or to appeal to the Fifth Circuit on the merits of their claim. Under these circumstances this Court is required to vacate its June 9 Final Judgment and dismiss the case.

a. Plaintiffs' Claims Against the 1993 Plan Have Been Mooted by Actions and Circumstances Beyond Their Control

The existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction which must subsist through all stages of federal judicial proceedings. *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)); *see also City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000). "[A] suit becomes moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Chafin*, 133 S. Ct. at 1023 (internal quotation marks and citation omitted).

In practical terms, a case becomes moot when it is impossible for a court to grant any

effectual relief whatever to the prevailing party. *Eerie v. Pap's A.M.,* 539 U.S. at 287 (internal quotation marks and citations omitted). The defendants' voluntary conduct will moot a case seeking prospective relief if it can be reasonably expected that the offending action will not recur. *See United States v. W.T. Grant Co.* 345 U.S. 629, 633 (1953) ("The necessary determination is [whether] there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.").

Applied to the legislative context, the near categorical rule is that the repeal, expiration, or significant amendment to challenged legislation ends the ongoing controversy and renders moot a plaintiff's request for declaratory and injunctive relief.[9] The legislative revision need not wholly repeal the offending provisions or guarantee the plaintiffs all relief sought. *See Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 404 U.S. 412, 413-14 (1972) (per curiam) (declaring relief was moot even though the revised statute did not guarantee plaintiffs all relief sought); *see also Ne. Florida Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla*., 508 U.S. 656, 662, 673 n.3 (1993). Rather, the legislative revisions will moot

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[9] *See, e.g., Lewis v. Continental Bank Corp*., 494 U.S. 472, 474 (1990) (amendments to banking statutes rendered moot a Commerce Clause challenge); *Mass. v. Oakes*, 491 U.S. 576, 582–84 (1989) (overbreadth challenge to a child pornography law rendered moot by statutory amendment); *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (per curiam) (challenge to university regulation moot following substantial amendment); *Kremens v. Bartley*, 431 U.S. 119, 128–29 (1977) (constitutional challenge moot following replacement with a different involuntary commitment statute); *Diffenderfer v. Cent. Baptist Church*, 404 U.S. 412, 415 (1972) (per curiam) (holding moot a challenge to a Florida tax exemption for church property when the law had been repealed and replaced by a substantially changed law). The Fifth Circuit has also held that repeals and revisions of statutes generally moot a claim. *See McCorvey v. Hill*, 385 F.3d 846, 849 (5th Cir. 2004) ("[s]uits regarding the constitutionality of statutes become moot once the statute is repealed."); *Fantasy Ranch Inc. v. City of Arlington, Tex.*, 459 F.3d 546, 564 (5th Cir. 2006) (recognizing that statutory changes that discontinue a challenged practice are usually enough to render a case moot) (internal quotation marks and citations omitted); *Houston Chronicle Pub. Co. v. City of League City, Tex.*, 488 F.3d 613, 619 (5th Cir. 2007) (noting that "disputes concerning repealed legislation are generally moot"); *AT&T Communications of the Sw. Inc. v. City of Austin*, 235 F.3d 241, 243 (5th Cir. 2000) (case mooted when state legislature passed ordinance which pre-empted the local ordinance challenged by the lawsuit); *Habetz v. Louisiana High Sch. Athletic Ass'n*, 842 F.2d 136, 137 (5th Cir. 1988) (a female high school student's challenge of a rule prohibiting girls from competing on boys' teams was moot when the high school association altered its rules to allow her to try out for the team); *Davis v. Abbott*, 781 F.3d 207, 217 (5th Cir. 2015) (affirming plaintiffs' Section 2 claims were mooted by the state legislature's enactment of the interim redistricting plan established by district court).

a case if the replacement legislation has "changed substantially" or "significantly revised" the challenged law so the statutory scheme differs in a "fundamental way" from the initial case and controversy. *Ne. Florida,* 508 U.S. at 662, 673 n.3 (1993).

The Supreme Court and the Fifth Circuit have recognized two exceptions to the general rule that a revision to the offending statute will moot a case, neither of which applies here. The first exception is a corollary to the general rule: the controversy will not be mooted if the revisions are trivial so that the offending action in the original statute persists in the revised statute. *Id*. However, the mere potential for a new constitutional challenge to the replacement statute is no bar to mootness. *See Diffenderfer*, 404 U.S. at 415.

The second exception denies mootness when there is evidence that the legislature will reenact "precisely the same provision" once litigation ends. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). However, the mere power to reenact the offending provisions will not defeat mootness, but rather there should be some showing that the legislature acted in bad faith or is likely to return to the challenged practice. *See McCorvey v. Hill,* 385 F.3d 846, 849 n.3 (5th Cir. 2004); *Habetz v. Louisiana High Sch. Athletic Ass'n*, 842 F.2d 136, 137 (5th Cir. 1988).

The circumstances presented by this case compel a finding that the controversy is no longer live, thereby rendering this case moot. The offensive conduct at issue in this case is the districting structure enacted by Act 609, which assigned three single-member divisions to the majority-white Section Two and two single member divisions to the majority-black Section One, even though African Americans comprised a majority of the city-wide population. This controversy over the allocation of single-member divisions is no longer "live" because the Legislature has voluntary repealed the lopsided allocation of divisions which was the subject of

this lawsuit, and enacted a new districting scheme which fundamentally differs from the 1993 Plan challenged in this lawsuit.

First, the new plan converts one of the five seats into an at-large seat, which materially changes the electoral method. Plaintiffs submitted neither pleadings nor evidence as to whether at-large districting schemes dilute the voting strength of African Americans in Baton Rouge. Furthermore, the new districting scheme significantly alters the allocation of City Court judgeships between the City's majority-black Section One and the majority-white Section Two. The new legislation replaces the imbalanced allocation of seats with an equal apportionment, assigning two divisions to each Section. These changes constitute the type of "substantial," "significant," and "fundamental" changes which rendered a case moot under *Diffenderfer* and its progeny, since the offending statutory provisions challenged by the lawsuit no longer exist. None of the recognized exceptions applies to these circumstances; the 92-1 margin of approval in the House for the final version of House Bill 76 indicates that the legislature is highly unlikely to reenact the offending provisions challenged by this lawsuit.[10]

The upcoming special election for the at-large Division C seat this October further assures that there is no remaining relief that Plaintiffs could be granted based upon the complaint before this Court, which only sought declaratory and injunctive relief with regard to the 1993 Plan. Assuming that the October special election is conducted pursuant to Act 374, as it must be, a mechanism is already in place to nullify the composition of the Court under the 1993 Plan, and there will no longer be a disproportionate ratio of judges elected from the city's two Sections. Since the new composition of the Court will not affect the Plaintiffs in the "same fundamental

[10] House Bill 76 passed with near unanimous approval, receiving favorable votes from 92 legislators, with only one legislator voting against the bill. *See* ROLL CALL, 2015 Reg. Legis. Sess. (La. June 11, 2015), *available at* https://www.legis.la.gov/legis/ViewDocument.aspx?d=959746.

way" as the prior scheme, the crux of Plaintiffs' claim—against the 1993 Plan's unequal apportionment of divisions—no longer presents a live case and controversy.[11]

Thus, if Plaintiffs challenged the unfavorable judgment through a motion for a new trial or an appeal, both this Court and the appellate court would be compelled to declare the case moot on the grounds that the controversy was no longer "live" as there is no effectual relief to be granted. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). "[T]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id*. at 39.

b. The June 9 Final Judgment Must be Vacated Due to Mootness

"A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstances, ought not in fairness be forced to acquiesce in the judgment." *Staley v. Harris Cnty., Tex.*, 485 F.3d 305, 310 (5th Cir. 2007) (quoting *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994)). "[V]acatur must be granted where mootness results from the unilateral action of the party who prevailed in the lower court." *Id.* (quoting *U.S. Bancorp*, 513 U.S. at 23).[12]

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[11] Given the substantial differences between the prior and current districting schemes, Plaintiffs' claims at issue in the June 9 judgment are moot regardless of whether a new constitutional challenge could be brought against the at-large districting scheme. *See Diffenderfer*, 404 U.S. at 415 (finding mootness and ordering *vacatur* while expressly recognizing that plaintiffs could replead an "attack [on] the new legislation").

[12] In *Staley*, the Fifth Circuit held defendants were not entitled to *vacatur* because, *inter alia*, defendants' own voluntary actions had mooted the case. 485 F.3d at 313-14. In so holding, the Fifth Circuit emphasized how defendants' situation was different from prior precedent where the losing party was entitled to *vacatur* because mootness was caused by actions beyond the losing party's control, a point the court illustrated in a footnote whose extended string cite explained: "in cases mooted by actions that were clearly unattributable to the voluntary actions of the [losing party], we have consistently vacated. *See Murphy v. Fort Worth Independent School District*, 334 F.3d 470, 471 (5th Cir. 2003) (per curiam) (vacating because the appellee's graduation was "happenstance" and not "the voluntary action of the losing party"); *AT&T Commc'ns of the Sw., Inc. v. City of Dallas, Tex.,* 243 F.3d 928, 930–31 (5th Cir. 2001) (vacating because the case was mooted by enactment of a state statute and repeal of a city ordinance, not the "voluntary action" of the appellant); *AT&T Commc'ns of the Sw., Inc. v. City of Austin,* 235 F.3d

This equitable practice applies to the current circumstances: Defendants were prevailing parties under this Court's Final Judgment and Defendants' unilateral actions, together with other circumstances beyond Plaintiffs' control, rendered this case moot through the passage of House Bill 76. Consistent with the concerns noted in *Staley* of unfairly frustrating a party, Defendants' unilateral action foreclosed Plaintiffs' ability to challenge the unfavorable judgment since their attempt to file a motion for new trial or an appeal of the judgment would likely fail on grounds of mootness. This Court is empowered and compelled to grant *vacatur* given the current circumstances of mootness, and subsequently dismiss the case pursuant to Fed. R. Civ. P. 60(b).

241, 244 (5th Cir. 2000) (vacating because the case was mooted by enactment of a state statute, not the "voluntary action" of the appellant); *Pederson v. La. State Univ.*, 213 F.3d 858, 883 (5th Cir. 2000) (vacating because the appellee university was "frustrated by the vagaries of circumstance", that is, by the appellant's graduation). Similarly, in cases mooted by the voluntary actions or inactions of a party, we have decided the *vacatur* question in favor of the party that did not cause the case to become moot. *See Goldin v. Bartholow*, 166 F.3d 710, 718–22 (5th Cir. 1999) (vacating because appellees caused the mootness by failing to substitute the proper defendant); *Sierra Club v. Glickman*, 156 F.3d 606, 620 (5th Cir. 1998) (refusing to vacate because the appellant mooted the case by voluntarily complying with the district court's judgment); *Harris*, 151 F.3d at 189–91 (vacating the district court judgment after the appellee city mooted the case by completing the proposed annexation)." *Staley*, 485 F.3d at 311 n.2.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court vacate its June 9 Final Judgment based on mootness and dismiss the case.

Respectfully submitted,

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