

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

**KENNETH HALL,**  
*Plaintiff*

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

**and**

**CHIEF JUDGE BRIAN A. JACKSON**

**BYRON SHARPER,**  
*Intervenor-Plaintiff*

**MAGISTRATE JUDGE RICHARD  
BOURGOIS**

**Versus**

**STATE OF LOUISIANA, ET.AL.**  
*Defendants*

**CITY-PARISH DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' MOTION TO VACATE JUDGMENT**

**MAY IT PLEASE THE COURT:**

This Memorandum in Opposition to Plaintiffs' Motion to Vacate Judgment is submitted on behalf of 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 referred to as the "City-Parish"). Plaintiff Kenneth Hall and Plaintiff-Intervenor Byron Sharper (hereafter collectively referred to as the "Plaintiffs") have filed a Motion to Vacate the Court's June 9, 2015 Ruling, Order, and Judgment (Doc. 562) under Fed. R. Civ. P. 60(b)(6). The Plaintiffs allege that the actions of the Defendants, together with other circumstances beyond the control of the Plaintiffs, have deprived the Plaintiffs' of "an

opportunity to seek modification or appellate review of the Court's June 9 judgment." Memorandum in Support of Plaintiffs' Motion for Relief from Judgment, p.1 (Rec. Doc.563-1).<sup>1</sup> The Plaintiffs' contend that when the Louisiana Legislature enacted House Bill 76, which changed the method of electing judges for the City Court, it mooted the Plaintiffs' challenge to Act 609 of 1993, which was the focus of the Plaintiffs' Section 2 claim which resulted in the Court's June 9 Ruling, Order and Judgment.

### **VACATUR UNDER RULE 60(b)(6) IS AN EXTRAORDINARY REMEDY**

Fed. R. Civ. P. 60(b) provides for relief from a Judgment or Order for the following reasons:

**(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.**

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously caused intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Rule 60(b)(6) is a "catchall" category which is reserved for extraordinary circumstances and can only be applied if no other subsection of Rule 60(b) is applicable. Relief under Rule 60(b)(6) is

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<sup>1</sup> The Plaintiffs' filed a Motion to Vacate Judgment (Rec. Doc. 563); however, their Memorandum in Support incorrectly refers to the Motion as a "Motion for Relief from Judgment."

“exceedingly rare,”<sup>2</sup> and requires a showing of actual injury and the presence of circumstances beyond the movant’s control. The rule is intended to provide justice in those unusual cases where substantial justice has been denied. Vacatur is an “extraordinary” and equitable remedy, “to be determined on a case-by-case basis, governed by facts and not inflexible rules.” *Houston Chronicle Pub. Co. v. City of League City, Tex.*, 488 F.3d 613, 620 (5th Cir. 2007). “The burden is on the party seeking relief from the status quo; that party must demonstrate equitable entitlement to the extraordinary writ of vacatur” *Id.*

In the present case, the Plaintiffs contend that their case is moot due to the subsequent passage of House Bill 76, which modified the 1993 Judicial Election Plan created by Act 609 of 1993. In support of their Motion, the Plaintiffs narrowly characterize the claims brought before this Court as seeking declaratory and injunction relief under Section 2 of the Voting Rights Act with regard to the 1993 Judicial Election Plan; however, their numerous Complaints sought relief far beyond declaratory and injunctive relief under Section 2. See Rec. Docs. 1, 13, 74, 76. In their voluminous filings, Plaintiffs asked that the Court remedy, enjoin, find and declare violations of the following provisions of the United States Constitution: the First Amendment (Rec. Doc. 74, p. 1, ¶ 1); the Fourteenth Amendment (Rec. Doc. 1, p. 1, ¶¶ 1; Rec. Doc. 74, p. 1, ¶ 1); the Fifteenth Amendment (Rec. Doc. 1, p. 1, ¶¶ 1; Rec. Doc. 74, p. 1, ¶ 1); the United States Constitution’s majority rule principle (Rec. Doc. 74, p. 1, ¶ 1). The Plaintiffs sought class action status. (Rec. Doc. 1, p. 22, ¶ 88.) Additionally, the Plaintiffs asked that the Court make a determination that the Plaintiffs’ procedural and substantive due process rights were violated due to the failure to incorporate regular intervals for redistricting/reapportionment of the Baton Rouge City Court. (Rec. Doc. 1, p. 25, ¶ f.)

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<sup>2</sup> See *In Re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, 496 F.3d 863, 868 (8<sup>th</sup> Cir. 2007). See also *Kramer v. Gates*, 481 F.3d 788,791-92 (D.C. 2007).

The Plaintiffs also characterized this as an action to find liability under 1871 of the Civil Rights Act, as amended, 42 U.S.C. §1983 and 1986. (Rec. Doc. 76, p. 2, ¶ 4). Finally, the Plaintiffs prayed that the Court “bail-in” the entire State of Louisiana under Section 3(c) of the Voting Rights Act of 1965, 42 U.S.C. § 1973a(c).

The Plaintiffs prayed for a declaration that the Judicial Election Plan, as enforced in City Court elections held in 2006 and in 2012 violated the Fifteenth Amendment’s Right to Vote, Equal Protection Clause of the Fourteenth Amendment, Due Process Clause of the Fourteenth Amendment and Privileges and Immunities Clause of the Fourteenth Amendment; the Bill of Rights and/or the Due Process Clause of the Constitution of the United States. (Rec. Doc. 128, pp. 22-23, ¶¶ 91(1)-(6).) The Plaintiffs also prayed for an injunction enjoining and directing Defendants to ensure that all future elections for City Court comply in all respects with the “one person, one vote” principle of the Fourteenth Amendment. (Rec. Doc. 128, p. 23, ¶ 91(10)). In addition to seeking a declaration that the Judicial Election Plan, as enforced in City Court elections in 2006 and 2012, violated Section 2 of the 1965 Voting Rights Act, (Rec. Doc. 128, p. 23, ¶ 91(7), the Plaintiffs also asked for an order enjoining and directing that Defendants reapportion the City Court for all Divisions of the City Court to occur no less than once post the decennial census. (Rec. Doc. 128, p. 24, ¶ 91(12)). The Plaintiffs prayed for attorneys’ fees, costs and expenses to include expert fees and other reasonable litigation expense in bringing this action. (Rec. Doc. 128, p. 25, ¶ 91(14)).

The Plaintiffs now contend that the action of the Louisiana Legislature in enacting House Bill 76 of 2015 has “extinguished the live case and controversy required to sustain this lawsuit.” (Rec. Doc. 563-1, p.4) Even if this were the case with respect with the Plaintiffs’ Section 2 claims (which the City-Parish denies), it certainly is not the case with respect to the Plaintiff’s

numerous constitutional claims and other statutory claims. In addition to attacking the 1993 Election Plan under Section 2 of the Voting Rights Act, the Plaintiffs also alleged and attempted to prove at trial *intentional* discrimination in the creation of Act 609 of 1993 and in the maintenance of the election system created by Act 609. Many of the fact witnesses who testified during the Plaintiffs' case-in-chief offered testimony on the Plaintiffs' claims of intentional discrimination.

When asked by the Court about the Plaintiffs' constitutional claims in closing argument, counsel for the Plaintiffs "conceded that the record in this case is 'not primarily built' in order to arrive at the conclusion that intentional discrimination exists here"<sup>3</sup>, but stated that the Plaintiffs weren't prepared to walk away from the possibility that there was intentional discrimination here.... We are not, at this time, comfortable walking away from that claim" TR. VI at 203:13-203:20). In Plaintiffs' Post-Trial Findings of Fact and Conclusions of Law, the Plaintiffs stated that "in light of the statutory violation, the Court need not decide the Plaintiffs' constitutional claims." (Rec. Doc. 546, p.31). The Plaintiffs conceded their claims under Section 3(c) of the Voting Rights Act,"<sup>4</sup> but they did not concede or abandon their constitutional claims.

The Court's July 9, 2015 Ruling recognized that the Plaintiffs had not expressed their intent to abandon their remaining constitutional claims,<sup>5</sup> and the Court's Ruling addressed each of the Plaintiffs' constitutional claims, finding in favor of the Defendants and against the Plaintiffs on each and every one of them. Rec. Doc. 562, p.45.

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<sup>3</sup> Rec. Doc. 562, p.32.

<sup>4</sup> Rec. Doc. 546, p.31, fn.18

<sup>5</sup> Rec. Doc. 562, p.27

Neither the Plaintiffs' Motion to Vacate Judgment nor their Memorandum in Support addresses how the passage of House Bill 76 moots the constitutional claims that were decided in, and dismissed by, the Court's June 9 Ruling. Additionally, the 2015 legislation contains no provision regarding any regular reapportionment of the Baton Rouge City Court, which was part of the relief the Plaintiffs sought in their Complaint and about which evidence was presented at trial. See Rec. Doc. 128, p. 24, ¶ 91(12)), and testimony of Michael Jackson, TR. I, pp. 289-296.

Furthermore, the Plaintiffs presented evidence at trial that the creation of a 2-2-1 Election Plan for Baton Rouge City Court, such as the one contained in House Bill 76, would not satisfy their claims of vote dilution under Section 2. On direct examination, Representative Alfred Williams testified that he lobbied to defeat a bill in the 2014 Legislative Session that would have created a 2-2-1 Election Plan for the Baton Rouge City Court. Representative Williams testified at trial that he opposed the 2014 legislation that would have created a 2-2-1 election plan, which was an amendment to a bill offered by Representative Erich Ponti. Williams further testified that he was not in favor of city-wide elections for Baton Rouge City Court because African-American candidates had a disadvantage in city-wide elections due to "turnout, and ability to finance a city-wide election." TR. II, 286:1-286:5. Former City Court Judge Trudy White and candidate Tiffany Foxworth testified about the inability of African American candidates to raise money. See TR. I, 257:2 – 257:22 and TR. II, 56:6 – 56:21. Additionally, former counsel of record for the Plaintiffs, Ronald R. Johnson, wrote a letter to Representative Ponti opposing the 2014 legislation to elect Baton Rouge City Court judges at-large "due to a lack of study of and 'retrogressive effect' the bill might have on the equality of African American voters inside the city of Baton Rouge." See Plaintiffs' Ex. 14. Ironically, the Plaintiffs now claim that the

passage of legislation creating an election plan which they contended at trial was insufficient to cure alleged vote dilution under Section 2 has now rendered all of their claims moot, including constitutional claims which the legislation does not address.

**CONCLUSION**

For the reasons stated above, the Plaintiffs' Motion to Vacate Judgment pursuant to Fed. R. Civ. P. 60(b)(6) should be denied.

RESPECTFULLY SUBMITTED:

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Attorneys for Defendants City of Baton Rouge,  
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Melvin "Kip" Holden, Mayor-President

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on July 28, 2015, a copy of the foregoing City-Parish Defendants' Memorandum in Opposition to Motion to Vacate Judgment was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to the following counsel of record for Plaintiff Kenneth Hall and Plaintiff-Intervenor Byron Sharper via email by operation of the court's electronic filing system:

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Baton Rouge, Louisiana this 28<sup>th</sup> day of July, 2015.

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/s/ Christina B. Peck  
CHRISTINA B. PECK