

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
PLAINTIFFS' MOTION TO VACATE JUDGMENT**

MAY IT PLEASE THE COURT:

Defendant, Tom Schedler, in his official capacity as the Louisiana Secretary of State ("the Secretary of State"), files this Memorandum in Opposition to the Motion to Vacate Judgment (Rec. Doc. 563) filed by Plaintiff, Kenneth Hall, and Intervenor, Byron Sharper (hereinafter "Plaintiffs"). For the reasons set forth hereinbelow, the Court should deny Plaintiffs' Motion to Vacate Judgment to the extent that such *vacatur* would extend to Plaintiffs' claims that do not arise out of Section 2 of the Voting Rights Act of 1965 ("VRA"), 52 U.S.C. § 1031.

I. RELEVANT PROCEDURAL BACKGROUND

On July 30, 2014, the Court issued a Ruling and Order (Rec. Doc. 474) on Defendants' Motion for Summary Judgment (Rec. Doc. 290) dismissing Plaintiffs' claims of violations of the First Amendment and vote dilution under the Fourteenth and Fifteenth Amendments. In

addition, on March 31, 2015, the Court issued a Ruling and Order (Rec. Doc. 558) dismissing Plaintiffs' claims against the Secretary of State of (1) denial of due process under the Fourteenth Amendment, (2) abridgement of the right to vote under the Fourteenth Amendment, and (3) deprivation of their civil rights under 42 U.S.C. § 1983. Finally, on June 9, 2015, this Court issued a Ruling, Order, and Judgment (Rec. Doc. 562) entering judgment in favor of all Defendants in regards to all remaining claims, thereby dismissing Plaintiffs' sole remaining claim against the Secretary of State of violations of Section 2 of the VRA.

As noted by Plaintiffs in their Memorandum in Support of their Motion to Vacate, on June 12, 2015, the Louisiana Legislature enacted House Bill 76, which changed the current Baton Rouge City Court judicial districts by substituting an at-large seat for one of the pre-existing subdistrict seats. (Rec. Doc. 563-1, p. 3). The Governor signed the bill on July 1, 2015, and it was signed into law as Act 374 and became effective immediately. (Rec. Doc. 563-1, p. 3).

On July 7, 2015, Plaintiffs filed a Motion to Vacate Judgment in which they contend this Court should vacate its June 9, 2015 Judgment (Rec. Doc. 562) pursuant to Fed. R. Civ. P. 60(b)(6) on the grounds that "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." (Rec. Doc. 563-1, p. 1). Therefore, Plaintiffs contend that they "no longer have an opportunity to seek modification or appellate review of the Court's June 9 judgment," and thus, "*vacatur* of the June 9 judgment is required." (Rec. Doc. 563-1, p. 1).

II. LAW AND ARGUMENT

A. If the Court finds that *Vacatur* of the July 9, 2015 Judgment Is Appropriate, the *Vacatur* Should Apply Solely to the Plaintiffs' Claims under Section 2 of the VRA.

To the extent the Court finds merit in Plaintiffs' Motion to Vacate pursuant to Fed. R. Civ. P. 60(b)(6), such *vacatur* should apply only to Plaintiffs' remaining claims against Defendants that arise out of Section 2 of the VRA. The United States Supreme Court has held that, "When a claim is rendered moot while awaiting review by this Court, the judgment below should be vacated with directions to the District Court to dismiss the *relevant* portion of the complaint." (Emphasis added). *Deakins v. Monaghan*, 484 U.S. 193, 200, 108 S. Ct. 523, 528, 98 L.Ed. 2d 529 (1988). In *Deakins*, the Court explained, "Our conclusion that the issue concerning respondents' equitable claims is now moot does not prevent our consideration of the propriety of the District Court's dismissal of respondents' claims for monetary relief." The Court's July 30, 2014 and March 31, 2015 Rulings (Rec. Docs. 474, 578) dismissing all of Plaintiffs' remaining claims against the Secretary of State were not rendered moot by the Legislature's passage of Act 374 for the reasons set forth hereinbelow.

1. *The Court's July 30, 2014 Ruling and Order regarding the Secretary of State's Motion for Summary Judgment*

In its July 30, 2014 Ruling and Order (Rec. Doc. 474) on Defendants' Motion for Summary Judgment (Rec. Doc. 290), the Court dismissed Plaintiffs' claims accusing the Secretary of State of violating Plaintiffs' First Amendment rights, Fourteenth Amendment rights to equal protection in regards to vote dilution, and Fifteenth Amendment rights in regards to vote dilution. The Court dismissed Plaintiffs' First Amendment claim on the grounds that Plaintiffs "fail[ed] to direct the Court's attention to specific evidence in the record which demonstrates that [Plaintiffs] can satisfy the fact finder that he is entitled to a verdict in [their] favor." (Rec. Doc. 474, p. 11) Thus, Plaintiffs failed to provide any evidence that their First Amendment claim was in any way related to their claims arising under Section 2 of the VRA, which are based on the

racial makeup of the City Court judicial divisions. Therefore, the Legislature enactment of Act 374 did not moot this Court's Ruling on Plaintiffs' First Amendment claim.

Furthermore, in the July 30 Ruling, the Court dismissed Plaintiffs' claim of vote dilution under the Equal Protection Clause of the Fourteenth Amendment, finding that Plaintiffs "wholly failed to make a showing sufficient to establish the existence of an element essential to Plaintiffs' case and on which Plaintiffs will bear the burden of proof at trial." (Rec. Doc. 474, p. 16). The essential element to which the Court refers in its Ruling is the requirement that in order for a plaintiff to succeed on a vote dilution claim, he must "prove that the purpose and operative effect" of the challenged election scheme "is to dilute the voting strength of [minority] citizens." (Rec. Doc. 474, p. 13). That is, the plaintiff must prove that the defendant acted with a discriminatory purpose. (Rec. Doc. 474, p. 14). The Court determined that "Plaintiffs fail[ed] to address whether the Louisiana Secretary of State's office acted with a discriminatory purpose," (Rec. Doc. 474, p. 14) and thus, their equal protection argument was "unavailing and insufficient to establish a genuine issue of material fact." (Rec. Doc. 474, p. 16). Plaintiffs' equal protection claim was not mooted by the Legislature's enactment of Act 374 because the fact that the Legislature has approved the redrawing of the City Court judicial divisions has no effect on this Court's finding that Plaintiffs failed to prove they would be able to carry their burden at trial of showing that the Secretary of State acted with a discriminatory purpose. The Court applied the same analysis and arrived at the same result when considering Plaintiffs' Fifteenth Amendment claim. (Rec. Doc. 474, 16-17). As such, *vactur* of the Court's June, 2015 Ruling, Order, and Judgment (Rec. Doc. 562) would not be proper insofar as it would disturb this Court's rulings on Plaintiffs' First Amendment, Fourteenth Amendment equal protection, and Fifteenth Amendment claims.

2. *The Court's March 31, 2015 Ruling and Order regarding the Secretary of State's Motion for Summary Judgment*

In addition, on March 31, 2015, the Court issued a Ruling and Order (Rec. Doc. 558) dismissing Plaintiffs' claims against the Secretary of State of (1) denial of due process under the Fourteenth Amendment, (2) abridgement of the right to vote under the Fourteenth Amendment, and (3) deprivation of their civil rights under 42 U.S.C. § 1983. The Court dismissed Plaintiffs' due process claim on the grounds that Plaintiffs failed to establish certain requisite elements; that is, Plaintiffs failed to make a showing of discriminatory intent and failed to establish that any action taken by the Secretary of State was "shown to 'seriously undermine the fundamental fairness of the electoral process.'" (Rec. Doc. 558, p. 5). As with Plaintiffs' equal protection claims, the Court thus determined that Plaintiffs could not establish their due process claims. The Court's findings were not dependent upon the racial makeup of the Baton Rouge City Court judicial districts, and thus, were not mooted by the Legislature's enactment of Act 374.

Additionally, the Court found that "the evidence adduced at trial has confirmed that Plaintiffs' right-to-vote claim is identical to their previously dismissed vote-dilution claims," and thus, the Court dismissed Plaintiffs' Fourteenth Amendment right-to-vote claim accordingly. As stated hereinabove, Plaintiffs' vote-dilution claims under the Fourteenth Amendment Equal Protection Clause and the Fifteenth Amendment were not mooted by the Legislature's enactment of Act 374, and thus, Plaintiffs' right-to-vote claim was not rendered moot by the change in legislation.

Finally, in regards to the Plaintiffs' Section 1983 claims, the Court found that because Plaintiffs were not able to establish any of their constitutional claims, they were likewise unable to set forth a claim under U.S.C. 42 § 1983. (Rec. Doc. 558, p. 7). Therefore, the Court's findings regarding Plaintiffs' constitutional claims were unrelated to the racial makeup of the

Baton Rouge City Court judicial districts. Accordingly, the Legislature's enactment of Act 374 had no bearing on this Court's ruling dismissing Plaintiffs' Section 1983 claims. Because none of the determinations made by this Court in its March 31, 2015 Ruling and Order were based on the racial composition of the Baton Rouge City Court districts, this Court should refrain from vacating its dismissal of Plaintiffs' claims.

B. The Secretary of State Played No Role in the Drafting or Passage of Act 374.

Plaintiffs have set forth in their Motion to Vacate that "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." (Rec. Doc. 563-1, p. 1). However, the Secretary of State played absolutely no role in the drafting, passage, and enactment of Act 374. As maintained by the Secretary of State throughout this litigation, the Secretary of State's duties are purely ministerial and non-discretionary, and the Office of the Secretary of State will abide by any order entered by this Court. Given the ministerial and politically-neutral involvement of the Secretary of State in all matters related to the election of the Baton Rouge City Court judges, the Secretary of State respectfully submits that Plaintiffs' suggestion that the Secretary of State played any role in the change in legislation in regards to the judicial districts is wholly without merit.

III. CONCLUSION

WHEREFORE, Defendant, Tom Schedler, in his official capacity as the Louisiana Secretary of State, prays that an Order be issued by this denying Plaintiffs' Motion to Vacate Judgment (Rec. Doc. 563) to the extent that such *vacatur* would extend to Plaintiffs' claims that do not arise out of Section 2 of the VRA.

Respectfully Submitted:

SHOWS, CALI & WALSH, LLP

/s/ Grant J. Guillot

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **28th** day of **July, 2015**, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, and notice will be sent to counsel for Plaintiffs, **KENNETH HALL** and **BYRON SHARPER**, and all other counsel of record by operation of the court's electronic filing system.

/s/ Grant J. Guillot

GRANT J. GUILLOT