

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF LOUISIANA

3  
4 RONALD CHISOM, ET AL

5  
6 VERSUS

CIVIL ACTION  
NO. 86-4075  
SECTION "E"(1)  
MARCH 24, 2022

7 JOHN BEL EDWARDS, ET AL

8  
9 TRANSCRIPT OF MOTIONS PROCEEDINGS  
10 HEARD BEFORE THE HONORABLE SUSIE MORGAN  
11 UNITED STATES DISTRICT JUDGE

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1 **P-R-O-C-E-E-D-I-N-G-S**

2 **(MARCH 24, 2022)**

3 **(MOTIONS PROCEEDINGS)**

4  
5 (The Court was called to order.)

6 **THE COURT:** Be seated, please. Good afternoon,  
7 everyone.

8 **DEPUTY CLERK:** Calling Civil Action 86-4075, *Chisom,*  
9 *et al, versus Edwards, et al.*

10 If counsel could make their appearance for the  
11 record.

12 **MR. QUIGLEY:** Bill Quigley for the plaintiffs since  
13 1986.

14 **MS. ADEN:** Good afternoon, Leah Aden from Legal  
15 Defense Fund also for the Chisom plaintiffs.

16 **MS. GIGLIO:** Good afternoon, Amanda Giglio of Cozen  
17 O'Connor also for Chisom plaintiffs and joined by my colleagues  
18 Michael de Leeuw and Andrew Linz.

19 **MR. WILLIAMS:** Good afternoon, Your Honor. James  
20 Williams on behalf of plaintiff intervenor Retired Chief  
21 Justice Bernette Joshua Johnson, along with Clarence Roby and  
22 Alanah Hebert.

23 **MS. RYAN:** Good afternoon, Your Honor. My name is  
24 Elizabeth Ryan. I represent the United States. I'm here with  
25 my two colleagues Emily Brailey and Peter Mansfield from the

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1 U.S. Attorney's Office.

2 **THE COURT:** Anybody else? All right.

3 **MS. SUDDUTH:** Lauryn Sudduth on behalf of the State.

4 **MR. JONES:** Carey Jones, Your Honor, for the State.

5 **MS. MURRILL:** Liz Murrill for the State.

6 **MR. MCPHEE:** Shae McPhee for the State.

7 **THE COURT:** All right, okay. Well, good, it's nice to  
8 see all of you here today. We've got two motions pending. The  
9 first one is Document 312, the State's motion to dissolve the  
10 Consent Decree, and the second is Document 278, the Chisom  
11 plaintiffs' motion to add and drop parties.

12 Since the State has -- I thought I'd take the motion  
13 to dissolve the Consent Decree first. And since the State has  
14 the burden of proof, I would like for them to go first.

15 **MR. JONES:** Good afternoon, Your Honor. By way of  
16 evidence, I would like to adopt the exhibits that were attached  
17 to the motion to dissolve. They were all, I think, paper  
18 exhibits; and to discharge our burden of proof, I think the  
19 exhibits accomplish that purpose.

20 **THE COURT:** Remind me what the exhibits were.

21 **MR. JONES:** There are a number of exhibits. The  
22 principal exhibits really are the election exhibits, the  
23 records from the Secretary of State that reflect election  
24 dates, terms of service, etcetera, for the Louisiana Supreme  
25 Court.

1           **THE COURT:** I'm looking at, I believe it looks like  
2 it's the motion to dissolve and the memo, the *Allen* case,  
3 Exhibit B, Louisiana Legislature Joint Governmental Affairs  
4 Committee Meeting, and that's the only...

5           All right, so.

6           **MR. JONES:** Thank you.

7           I think the place to begin the discussion for this  
8 afternoon, Your Honor, is probably with the scope of this  
9 Court's jurisdiction. As you obviously know, we filed a  
10 jurisdictional exception in a related case in the Middle  
11 District called the *Allen* case. That prompted --

12           **THE COURT:** I got it right here.

13           **MR. JONES:** We all have it. That prompted both the  
14 Middle District Judge deGravelles, and subsequently on appeal,  
15 the Fifth Circuit, to conduct a comparative analysis of the  
16 Middle District's jurisdiction in the *Allen* case.

17           **THE COURT:** I don't think you should spend a lot of  
18 time on that. I read it, and my understanding of the case is  
19 that the Fifth Circuit said that the fact that I had  
20 jurisdiction over the 7<sup>th</sup> District case did not affect the  
21 Middle District's jurisdiction over the 5<sup>th</sup> District case.

22           So I think we all understand that.

23           **MR. JONES:** Okay. Well, let me go then directly to  
24 the Consent Decree and 60(b)(5). 60(b)(5) provides for relief  
25 in three circumstances. First, it's where the judgment is

1 satisfied or discharged. That's just one of the disjunctives  
2 and one of the grounds through which you can consider the  
3 dismissal of a Consent Decree.

4           And then the second is the provision where the law  
5 changes dramatically, and I don't think that provision comes  
6 into play here.

7           And then the third is that circumstantial provision  
8 where it's no longer equitable to apply the Consent Decree  
9 prospectively.

10           **THE COURT:** Do you think that applies here?

11           **MR. JONES:** I do. I think the primary provision is  
12 the first one. And the Fifth Circuit commented pretty clearly  
13 on that, that the Consent Decree has been accomplished. The  
14 objective has been --

15           **THE COURT:** Don't go down that road. In *Allen*?  
16 That's not the way I read *Allen*. They said they're not  
17 commenting one way or another. They weren't called upon to  
18 decide it. "We express no opinion on the merits of plaintiffs'  
19 suit or on any other matter pending before the district court,"  
20 which they're talking about the Middle District. But I also  
21 think they didn't decide that this Consent Decree had been,  
22 that the purpose had been satisfied.

23           **MR. JONES:** And maybe I misspoke in that regard, Your  
24 Honor. I don't think they decided anything with respect to  
25 this Court. This Court, no ruling by this Court was not

1 subject to the appeal.

2           What I was referring to was some of the comments that  
3 the Court made that the State needs to get off its behind and  
4 bring this motion to the Court.

5           **THE COURT:** Well, I think if you thought it was  
6 important, I don't think they said you need to -- you  
7 apparently don't need to do it for the Middle District case. I  
8 don't think they're expressing any opinion about that either.

9           But in any event, we're here. I'm going to have to  
10 decide this.

11           **MR. JONES:** And back to 60(b)(5) and the judgment  
12 being satisfied and discharged.

13           **THE COURT:** And I know what you're going to say. I  
14 know that Justice Johnson was elected. Let me ask you some  
15 questions, and maybe we can get to what I'm concerned about.

16           One thing that you-all talked about a lot is what has  
17 changed, factually or legally. So what in your opinion has  
18 changed?

19           **MR. JONES:** Since the decree was issued?

20           **THE COURT:** Yes.

21           **MR. JONES:** 30-some years of electing African-American  
22 judges to the Supreme Court: Judge Ortique, then Justice  
23 Johnson who served through her retirement, and now Justice  
24 Piper Griffin who was elected to the Court and is not up for  
25 re-election for seven or eight years. That's changed.



1           The other thing that's changed is reapportionment  
2 time has come, and reapportionment bills are pending in this  
3 session of the legislature. That's new. That's significant,  
4 and that's directly impacted, I think, by this Consent Decree.

5           **THE COURT:** But there have been others since this,  
6 cycles when the State has tried to reapportion the Supreme  
7 Court, and they haven't come here to ask that the Consent  
8 Decree be terminated.

9           **MR. JONES:** That's happened and probably shouldn't  
10 have. That was probably the State not giving enough attention  
11 to whether or not the Consent Decree needed to be lifted.

12           **THE COURT:** Let me ask you a question. In your  
13 complaint, in the prayer, let me see if I can find that. Do I  
14 have that?

15           So I'm looking at Document 257-1. Actually, it's not  
16 the prayer. It's your prayer in connection with this motion  
17 that I was reading. It's Document 257-1 at page 12. And what  
18 you ask is that, B, the Consent Decree, here that I declare  
19 that the Consent Decree entered herein is no longer binding on  
20 the State of Louisiana.

21           So I guess does that mean that if I terminate the  
22 Consent Decree that the State is no longer required to have a,  
23 "single-member district that is majority black in voting age  
24 population that includes Orleans Parish in its entirety"? I'm  
25 reading that from the Consent Decree itself which is Document

1 257-4 in one place. That's on page 6.

2           So I guess, you know, I was thinking, well, what does  
3 it mean to terminate this Consent Decree. And I was thinking,  
4 okay, does that mean that the State is free to not have a  
5 district in New Orleans where an African-American can be  
6 elected? And instead, if the State comes up with a  
7 reapportionment plan that splits Orleans Parish up into other  
8 districts so that there's no possibility for an  
9 African-American to be elected, the plaintiffs, or anybody else  
10 who disagree with that, have to start all over. They would  
11 start from scratch.

12           They couldn't say, "Oh, look, we already -- we dealt  
13 with this in this Consent Decree," because the obligation  
14 created in this Consent Decree would be gone.

15           Is that the State's position?

16           **MR. JONES:** It is the State's position, Your Honor.  
17 If you dissolve an injunction, that injunction is no longer  
18 binding on whoever the defendants may have been.

19           **THE COURT:** You know, we did this in the form of a  
20 Consent Decree like a judgment.

21           **MR. JONES:** Well, a Consent Decree is both contract  
22 and judgment I think, certainly enforceable by the Court.

23           But if the legislature did reapportion in a manner  
24 that violates Section 2, yes, suit would be filed. Facts would  
25 have to be alleged, and the case would go forward and be tried.

1           But I don't think if the legislature is going to  
2 truly reapportion the districts that they can be bound or  
3 committed to making any one parish any particular kind of  
4 district. The reapportionment rules don't require that and  
5 don't mandate that.

6           So if the legislature goes forward with  
7 reapportionment and this case is dissolved, then the result  
8 that Your Honor described is the result.

9           **THE COURT:** What about the provisions of Act 776 that  
10 say that there can be future reapportionment, just so Orleans  
11 Parish is preserved as a single district where an  
12 African-American has a chance to be elected? I know that's not  
13 the exact legal phrase, but that's the concept.

14           So it's built into the Consent Decree now. And in  
15 fact, at the time of Act 776, there were some changes made, but  
16 the parties agreed that it complied with Section 2. And so  
17 they came together to the Court and said, "We want you to amend  
18 the Consent Decree."

19           Doesn't that indicate that there can be  
20 reapportionment without terminating the Consent Decree?

21           **MR. JONES:** I didn't read it that way, Your Honor.  
22 Act 776 is a statute. As a statute, it allows reapportionment  
23 without limitation. The statute was incorporated into the  
24 agreement, and that agreement was made by all parties with that  
25 provision that the legislature can reapportion after census.

1 I did not read that as perpetuating New Orleans  
2 Supreme Court district.

3 **THE COURT:** Well, the plaintiffs may disagree with you  
4 on that.

5 Do you believe that -- is it the State's position  
6 that the need for the Consent Decree has abated?

7 **MR. JONES:** I'm sorry?

8 **THE COURT:** Is it your position, the State's position  
9 that the need for the Consent Decree has abated?

10 **MR. JONES:** I think that's true. If the legislature  
11 is now going to reapportion, then the Consent Decree really  
12 doesn't protect anything. The legislature can reapportion  
13 under the applicable constitutional provisions in the statutes,  
14 and I don't think the Consent Decree has a great deal of impact  
15 on that.

16 The Consent Decree was for one purpose, and that was  
17 to solve a problem with the First District that included  
18 Orleans Parish and three other parishes and elected two Supreme  
19 Court justices. And the allegation was that violates Section 2  
20 because it's a device effectively designed to prevent the  
21 election of an African-American judge in Orleans Parish. That  
22 was the problem brought to the Court to solve.

23 The Consent Decree solved that problem, and the  
24 recitals in the Consent Decree say that if these five or six  
25 things are done by the State, that solves the issue that was

1 brought to the Court.

2 **THE COURT:** If you don't need the Consent Decree  
3 terminated, why are you here?

4 **MR. JONES:** There's several reasons, Judge. But the  
5 principal reason is if you're a legislator, you don't know if  
6 you're bound by this Consent Decree or not. We can advise them  
7 all day, but I can assure you, they don't listen to our advice  
8 all that often. So the legislature needs a clean slate if  
9 they're going to reapportion.

10 **THE COURT:** You know, one of the things that the  
11 people on the other side of the courtroom have mentioned is why  
12 didn't the State, why don't you formulate a plan as a  
13 legislature, adopt a plan, and then come and say -- similar to  
14 what happened in Act 776 -- that we'd like the Consent Decree  
15 amended to incorporate this new plan which preserves the  
16 purpose of the Consent Decree with respect to this district?

17 **MR. JONES:** Well, for one thing, that would require a  
18 new Consent Decree.

19 **THE COURT:** I'm sorry?

20 **MR. JONES:** That would require extending the Consent  
21 Decree and would require a new decree.

22 This decree has been done. It's been accomplished.  
23 All of the steps that were prescribed in this Consent Decree  
24 have been taken. It's done. To do something more in the  
25 Consent Decree would require a new agreement.

1           **THE COURT:** No, I think it could be done the same as  
2 Act 776. You could amend what's in place right now.

3           And I think if the legislature did preserve the  
4 electability of an African-American candidate in this district  
5 that the parties would agree to that. I don't think that they  
6 expected that none of the other districts would ever change.  
7 That's not the concern. It's that this district continue to  
8 comply with the purpose of the Consent Decree.

9           **MR. JONES:** Well, let me refer you to the bills that  
10 are presently pending which you can take judicial notice of  
11 because they're on the legislative website. It's HB 738,  
12 SB 288, SB 307, SB 308, and SB 309. Those are the bills that  
13 have been introduced to reapportion.

14           All of those bills preserve New Orleans in a minority  
15 district. Some of the bills include Orleans Parish with parts  
16 of St. James and parts of St. Charles. Others include, I  
17 think, just Orleans Parish, and others have a little bit  
18 different configuration. But Orleans Parish is in a minority  
19 district in all of these bills.

20           So there's no move afoot to do away with Orleans  
21 Parish as a majority minority district. There's no threat.  
22 I've personally heard no discussion of it and probably would  
23 have.

24           But part of the issue is trying to keep a federal  
25 finger on the legislature because all of the laws say that you

1 should return control to the State because that's the  
2 appropriate thing to do, and this Consent Decree is no  
3 different. Control can be returned to the State because  
4 everything in this Consent Decree has been done and  
5 accomplished, and there's no reason to try to influence the  
6 legislature to enact any particular district.

7           The legislature is bound by Section 2, Article 14 and  
8 by article -- the 14<sup>th</sup> Amendment, rather, and the 15<sup>th</sup>  
9 Amendment. They have to comply with those things. If they do,  
10 the judge has no jurisdiction to consider what they've done.  
11 And that's what the legislature is doing. They're doing their  
12 job. They're carrying out their purpose.

13           And so far as I know, nobody's threatening to change  
14 the New Orleans district dramatically except to include part of  
15 St. Charles, part of St. James, and maybe there's a little  
16 sliver of Jefferson Parish in one of them. But it doesn't  
17 change the composition of the district.

18           So that's why I think the Consent Decree needs to be  
19 dissolved because the legislature doesn't need to be looking  
20 over their shoulder thinking, you know, "We got to satisfy that  
21 judge in New Orleans. She wants us to include a particular  
22 district. We better do it." That's not really what the  
23 federal-state relationship is. The State has the authority,  
24 the responsibility, and they have to follow the law, state and  
25 federal. So that's 15 minutes.

1           **THE COURT:** Yes. All right, thank you.

2           Who is next?

3           **MS. ADEN:** Good afternoon, Your Honor. Again, I'm  
4 Leah Aden with the Legal Defense Fund for the Chisom  
5 plaintiffs.

6           Your Honor, this is an institutional reform case  
7 brought to effectuate structural change to the electoral method  
8 for the manner of electing justices of the Louisiana Supreme  
9 Court and to ensure that black voters have an equal opportunity  
10 to elect their preferred justices in a functional single-member  
11 district.

12           This restructuring remains necessary to provide  
13 voters with that ability to elect given the presence of certain  
14 realities. Key among them, the differing electoral preferences  
15 of black and white voters in Louisiana known as racially  
16 polarized voting. The State has not put on any evidence in the  
17 record that those circumstances which is the key to why this  
18 *Chisom* decree was necessary, they've put on no evidence that  
19 those circumstances have changed.

20           Prior to this structural reform, no black justice had  
21 ever served on the Louisiana Supreme Court; and frankly, to  
22 this day, no other black justice serves on the Supreme Court  
23 outside of the New Orleans based district brought about by this  
24 Consent Decree.

25           All of a sudden, the attorney general seeks to end



1 this landmark decree, but his paltry effort, including, the  
2 lack of any record to do so, comes nowhere close to the burden  
3 that he must satisfy in order to dissolve the Consent Decree  
4 under the Supreme Court precedent of moving for a 60(b) motion,  
5 and that's *Rufo*. The Fifth Circuit in the *Boerne* case also  
6 makes that very clear.

7           The attorney general, you hear, purports to want to  
8 end the Consent Decree because he contends that the  
9 legislature's hands are tied and they can't correct for  
10 population imbalance among the legislative districts. But that  
11 is simply not so.

12           The Consent Decree as amended contemplates, expressly  
13 contemplates the ability to reapportion so long as the purpose  
14 of the Consent Decree, to ensure the ability to elect of black  
15 voters in the New Orleans area where those conditions are  
16 necessary, so long as that is maintained.

17           And that is consistent with Supreme Court law, *Wells*  
18 *versus Edwards*, which says that it is not mandatory for  
19 judicial districts to be redistricted. They may, but they may  
20 not. But no matter what, that law must be read alongside the  
21 Consent Decree and the need for the ability of black voters to  
22 elect their candidate of choice in the New Orleans based  
23 district.

24           **THE COURT:** How do you respond to the argument of the  
25 State that the purpose has been accomplished because this

1 district was established and we have had African-Americans  
2 elected to the Supreme Court over a long period of time?

3 **MS. ADEN:** That is an achievement that marks that the  
4 Consent Decree is necessary, but I think *Boerne* and if you look  
5 at what the Court -- in order to comply with the State's  
6 obligation to dissolve the Consent Decree, I think *Boerne* makes  
7 clear, *Rufo* makes clear, the *Thomasville* case makes clear that  
8 they have the burden to come back to court and show that there  
9 are changed factual circumstances.

10 And as a practical matter, you can look to *Boerne*.  
11 You can look to *Thomasville*. And that means they have to show  
12 whether there is a map that contains a sufficiently large,  
13 geographically compact black district. They have to tell us  
14 whether or not there is racially polarized voting and whether  
15 or not that has been remedied. They have to tell us all of the  
16 other elements of the vote dilution claim whether those exist  
17 or not.

18 And I think *Boerne* makes that very clear, *Thomasville*  
19 makes that clear, and there is nothing in the record to suggest  
20 that they have come close to that. They could do that.

21 **THE COURT:** So wait. For example, there hasn't been  
22 any evidence or any argument, to my knowledge, that there's no  
23 longer racially polarized voting in Louisiana.

24 **MS. ADEN:** And the burden is on the State to come  
25 forth and show, "We don't need this district anymore because

1 there is sufficient white crossover voting, because there is a  
2 map in place that will continue to allow black voters to elect  
3 their candidate of choice." That is their burden, and they  
4 have to satisfy that before it can be dissolved. And until  
5 that time happens, the Consent Decree does remain in place.

6           The fact that there are black elected is because of  
7 the district, but we don't know what it will look like in the  
8 absence of this Consent Decree. And they have to show that the  
9 circumstances no longer warrant it, and there is nothing in the  
10 record, including, the exhibits that they seek to move into  
11 evidence today, that comes nowhere close to what courts have  
12 been compelled to delineate and specific findings of fact.  
13 *Boerne* shows us that. The *Thomasville* case shows us that as  
14 well.

15           To the extent the Court disagrees that their motion  
16 should be denied as legally insufficient on its own, which we  
17 would urge this Court to do, we think that, once again, if the  
18 Court is compelled to consider their motion based upon their  
19 having moved to do so that there needs to be more put into the  
20 record. And that could include additional briefing. That  
21 could include -- so let me be clear. The Court can legally  
22 deny the motion based upon what has been shown today.

23           But if the Court is not inclined to do that, more  
24 needs to be put into the record, additional briefing,  
25 potentially discovery, potentially hearings, in order to be

1 able to specifically delineate that the purpose of the Consent  
2 Decree has or has not been met.

3           We have ideas about what that might look like, and if  
4 the Court is compelled to do that, we are happy to propose a  
5 schedule. We are happy to have a status conference and talk  
6 about the scope of what that might look like. But ultimately,  
7 the burden is on the State under Rule 60(b), under *Rufo*, under  
8 *Boerne*, and under *Thomasville*; and they have not satisfied that  
9 burden today.

10           **THE COURT:** It seems like there's a difference whether  
11 it has been accomplished for now and whether that's enough, and  
12 the decree is terminated in the sense of the obligation's no  
13 longer, there's no obligation.

14           You know, I thought, well, if you terminate the  
15 Consent Decree, but the obligation remains in place, okay,  
16 that's okay.

17           But that's not what the State is proposing. They're  
18 proposing that it be terminated in the sense of no obligation  
19 would remain. And so that makes me think, well, is the purpose  
20 of the Consent Decree, if it's satisfied at one moment in time,  
21 does that mean that it's satisfied, and the decree, the  
22 obligations should be terminated.

23           **MS. ADEN:** Absolutely not. Again, this is  
24 institutional reform litigation. The language of the Consent  
25 Decree requires that there be a restructuring, that the system

1 be changed. And the system was the operation of an electoral  
2 method, alongside these racially polarized voting patterns, and  
3 totality of evidence of inequality of opportunity of black  
4 voters in the New Orleans area. That is the purpose and the  
5 system that the Consent Decree was meant to address.

6           It was not -- it's not something that can be  
7 immediately addressed. It's not something that can be  
8 immediately resolved by the election of one black candidate or  
9 even multiple black candidates. In institutional reform  
10 litigation like this, it often times takes years to rid the  
11 system of the harm, and that's what we're seeing here.

12           Now if the State comes forward with a new map that  
13 satisfies their interests in reapportioning and also satisfies  
14 the agreed upon terms that there be an ability to elect  
15 district where the condition is necessitated, maybe we all go  
16 home. I don't know. But we are nowhere close to that because  
17 there has been no showing, and the showing is what is required  
18 under Supreme Court precedent, Fifth Circuit precedent, and  
19 they have not. They can't get around that.

20           Section 2 exists. Section 2 is a backstop, but that  
21 is far down the road. They have an obligation right now under  
22 this Consent Decree, and it is clear as day that in order to  
23 get out of it, they have to satisfy a burden. They had  
24 indicated that there are all these bills. There's all these  
25 bills that include single-member districts, but they have not

1 introduced those before today into evidence. Plaintiffs have  
2 not had an opportunity to scrutinize those bills.

3           And in all of the cases that Your Honor can look to,  
4 whether it's *Boerne*, whether it's *Thomasville*, the parties have  
5 had -- even when they've jointly come to the court and asked to  
6 propose an alternative or to propose a change, the court has  
7 had to scrutinize that. And the court has had to look at  
8 whether or not that change, that modification, fulfills the  
9 purpose of the Consent Decree. And that is what we are asking  
10 the State to do here.

11           If it legitimately is concerned with reapportionment,  
12 it has the ability to do that under the act and under the terms  
13 of the Consent Decree as amended. And if they want to -- and  
14 when they do that and if they want to sincerely do that, they  
15 must do that alongside of protecting the New Orleans based  
16 district to the extent that the underlying conditions still  
17 necessitate that. And they need to show us that.

18           **THE COURT:** I wonder if the language of the Consent  
19 Decree that says the reapportionment will provide for a  
20 single-member district that's majority black in voting age  
21 population that includes Orleans Parish in its entirety, does  
22 that agreement by the State to reapportion, but comply with  
23 that obligation, does that change what the State has to show to  
24 terminate the Consent Decree?

25           You know, this is their expression of their intent,

1 for this obligation to continue into the future.

2           **MS. ADEN:** I think the devil's in the details, and I  
3 think we would have to see what that map looks like and whether  
4 it actually does reapportion and does still comply with the  
5 purpose of the Consent Decree and the ability to elect. And  
6 that is very fact dependent, and I think it requires them to  
7 show us frankly and to show the Court, so.

8           Ultimately, Your Honor, the motion that the State has  
9 proposed is legally insufficient. If Your Honor is inclined to  
10 give the State another opportunity to put more information into  
11 the record to comply with Rule 60(b), they need to do what is  
12 expressed because of *Boerne* and because of *Thomasville* which is  
13 to make a showing under *Thornburg versus Gingles* that those  
14 conditions have changed and are no longer necessary.

15           We cannot go back to the way things were 35 years  
16 ago, and that is the point of this Consent Decree. And it is  
17 expressed that they have obligations under Rule 60(b), and that  
18 is expressed in light of *Boerne* that this Court has an  
19 obligation to make detailed factual findings. As it exists  
20 today, there is a record that is completely lacking in order  
21 for the Court to also fulfill its obligations.

22           If Your Honor has no further questions.

23           **THE COURT:** Why don't you keep a few minutes in case  
24 you want to respond?

25           **MS. ADEN:** Thank you. And I believe the DOJ would

1 like to speak.

2 **MS. RYAN:** Good afternoon, Your Honor. My name is  
3 Elizabeth Ryan. I represent the United States. We oppose the  
4 State's motion to dissolve.

5 You've already heard a lot of argument this  
6 afternoon, and you have our brief which states our position,  
7 our argument. I'm not going to repeat all of that; although  
8 I'm, of course, happy to answer any of your questions.

9 I wanted to use my time this afternoon to highlight  
10 just a few points. The first of which is to point out the  
11 timing of the State's motion. As you know, Louisiana adopted  
12 this remedial structure in 1997, and then they didn't touch the  
13 plan for 25 years. And now, apparently, the legislature is  
14 poised to redistrict the Supreme Court for the first time, and  
15 it's at this moment that the State wants to remove the  
16 protections of the Consent Decree.

17 Our main concern here is really that it appears the  
18 State may be poised to abandoned the remedial system if freed  
19 from the Consent Decree, and there are several concrete reasons  
20 that we have that concern. It's clear from the State's  
21 briefing that they want to be released from the decree so that  
22 the legislature is free to redraw District 7, and at the same  
23 time, they're insisting that nothing in the constitution or the  
24 Voting Rights Act requires the legislature to maintain a  
25 majority black district in Orleans Parish.



1           This is consistent with the State's -- the position  
2 the State has taken in the *Allen* case in the Middle District  
3 where they continue to argue that Section 2 does not apply to  
4 judicial elections at all which was one of the legal issues  
5 decided in this case by the Supreme Court back in 1991. And  
6 it's consistent with recent activity in the legislature which  
7 last year rejected an amendment that would have required it to  
8 comply with Section 2 when drawing districts.

9           So all of these things are signals to us that if  
10 freed from the Consent Decree, the State may abandon the  
11 remedial system. And, of course, this matters because the  
12 State is asking the Court to dissolve the decree without  
13 showing that the remedial structure is no longer necessary, as  
14 you were alluding to earlier, and without providing any  
15 assurance that a new structure would continue to comply with  
16 Section 2 and provide black voters that equal opportunity.

17           So given this factual context and the State's burden  
18 under Rule 60(b), what we are really looking for is for the  
19 State to provide that assurance. We think that the *City of*  
20 *Thomasville* case is a useful model here. And the State, sort  
21 of akin to what happened in *Thomasville*, the State could come  
22 forward with a new plan that complies with Section 2. I think  
23 there are a number of ways they could do that. It could be an  
24 enacted plan that has already been through the legislature.  
25 The parties could work on a plan together and present it

1 pre-enactment to the Court.

2           And we think there probably are other ways to resolve  
3 the matter. We're open to other ways. We think that with some  
4 assistance the parties may be able to reach an agreement that  
5 accommodates, you know, both sides' interests in moving  
6 forward, but ensuring that the system continues to comply with  
7 Section 2. A structured mediation could be helpful with that  
8 process.

9           **THE COURT:** I guess the problem, as I think the State  
10 has expressed it, is it's up to the legislature to do this  
11 reapportionment. Although I understand there are also a couple  
12 of suits pending in state court, I believe, on reapportionment.  
13 I don't know how that ties into this. But I guess at this  
14 point, the legislature is expressing its intent to try to deal  
15 with this topic.

16           And I'm glad to hear you say that you-all are willing  
17 to -- interested in talking to the State about how it might be  
18 resolved and to protect the interests of the plaintiffs as  
19 expressed in the terms of the Consent Decree that exist right  
20 now. It might be difficult because of all the things that  
21 would have to happen, but at least, I think that's, you know,  
22 the State should be aware of that and acknowledge that the  
23 plaintiffs are interested in allowing the State to do what it  
24 needs to do without sacrificing what was gained in the Consent  
25 Decree. I guess that's the way I would say it.

1           **MS. RYAN:** Absolutely. And as, you know, folks have  
2 said before me, the Consent Decree as amended allows the  
3 legislature to go ahead and reapportion consistent with the  
4 purpose of the legislature -- excuse me, of the Consent Decree  
5 to maintain an equal opportunity district around Orleans  
6 Parish.

7           And absolutely, we are ready and willing to work with  
8 the State to try to reach a resolution that satisfies, you  
9 know, both sides of this issue. And we think that that is very  
10 likely possible here.

11           **THE COURT:** All right, thank you.

12           Does the State want to make any further remarks?

13           **MR. JONES:** Just very briefly, Your Honor, if I could.

14           **THE COURT:** All right, come on up.

15           **MR. JONES:** Just a couple of things real quickly.  
16 There's been argument that this is an institutional reform  
17 case, which it is. And the instructions from the higher courts  
18 have been in an institutional reform case it's particularly  
19 important that the power be returned to the State to let the  
20 State run its own business.

21           As to whether or not there is bloc voting in this  
22 jurisdiction which is District 7, do we really have to show  
23 that there's bloc voting or not bloc voting in District 7 to  
24 get out from under the Consent Decree? If there is bloc voting  
25 in District 7, it's elected African-Americans in this district.

1 So I don't think there's any burden that we come forward and  
2 show that bloc voting occurs.

3 **THE COURT:** But I think the concern is that the bloc  
4 will be split up into several districts. And I know you've  
5 said, "Well, nothing I've seen indicates anybody is planning to  
6 do that." But you know, I guess you could understand why there  
7 might be some concern about that.

8 **MR. JONES:** I do, and I don't even say that that's  
9 impossible. But there's no guarantee that any parish in this  
10 State will be in any particular district. You can't guarantee  
11 that. Section 2 doesn't guarantee that. Nor does the 15<sup>th</sup>  
12 Amendment, nor does the 14<sup>th</sup> Amendment. That can't be a  
13 guarantee.

14 And this Consent Decree that has been completely  
15 satisfied in all respects can't hold the legislature hostage to  
16 maintain a Consent Decree in Orleans Parish to make it a  
17 minority district as a guarantee. It can't happen in  
18 perpetuity certainly, and it's been 30-some years. So that  
19 argument just doesn't make sense to me.

20 As to the circumstances, I was listing those earlier.  
21 I didn't finish. Malapportionment of the districts, and  
22 Orleans is severely malapportioned, is another circumstance  
23 that suggests that the decree ought to --

24 **THE COURT:** But is that a change? It's been that way  
25 for many, many years. I think the plaintiffs say that it was

1 more malapportioned at the time of the Consent Decree than it  
2 is now, and the legislature -- I don't know if that's true or  
3 not, but that's what their argument is.

4 I think everybody would agree there's been  
5 malapportionment for many years; so that's not really a change.  
6 And the plaintiffs argue that there's no requirement that the  
7 districts have the same number of people. So I don't know if  
8 that --

9 **MR. JONES:** With the Louisiana Supreme Court, I'm not  
10 sure that's true. Article III Section 6(B) of the Constitution  
11 gives a legislative and political function to the Supreme  
12 Court. So effectively, you are electing representatives, and  
13 one man one vote, I think, does apply pretty clearly to the  
14 Supreme Court.

15 One other case I would like to cite to the Court on  
16 the discharge under 60(b)(5) is *Peery, P-E-E-R-Y, versus City*  
17 *of Miami*. I did not include it, should have, but did not  
18 include it in the reply memorandum. That case is at 977 F.3d  
19 1061, and it does deal with the circumstance where a consent  
20 judgment had been satisfied.

21 **THE COURT:** All right, thank you.

22 **MR. JONES:** Thank you.

23 **MS. ADEN:** May I, Your Honor?

24 **THE COURT:** Yes.

25 **MS. ADEN:** This will be very brief. Simply, Your

1 Honor, Mr. Jones, respectfully, his promises to you, that is  
2 not evidence in the record that is necessary for you to rule on  
3 his motion and to comply with Rule 60(b).

4 All of the questions that you have, all of the things  
5 that he doesn't know, those can be found with evidence and with  
6 investigation. That needs to be brought before this Court in  
7 order to dissolve a landmark Consent Decree.

8 The legislature is simply not held hostage by the  
9 *Chisom* Consent Decree because of Act 776 read in conjunction  
10 with the *Chisom* Consent Decree. If they wanted to reapportion,  
11 they could under both the terms of the Consent Decree as well  
12 as Supreme Court precedent.

13 And finally, we are simply not saying that this  
14 Consent Decree must exist in perpetuity. We recognize the law,  
15 and we recognize the point of consent decrees. What we are  
16 simply asking is that it took a lot for the plaintiffs to get  
17 to the point where they are today. In order to dissolve the  
18 Consent Decree, work must be done. And a showing must be made,  
19 and the showing has not been made. And that is what the  
20 plaintiffs request from this Court.

21 We are, like the DOJ, open to conversation. We're  
22 open to seeing legislation. But none of that is in the record.  
23 None of that is before us today.

24 **THE COURT:** All right, thank you.

25 **MS. ADEN:** Thank you, Your Honor.

1           **THE COURT:** Ms. Ryan.

2           **MS. RYAN:** I don't have anything further unless you  
3 have a question.

4           **THE COURT:** No. Thank you all for your argument on  
5 that motion.

6           The other motion that's pending is the plaintiffs'  
7 motion to add and drop parties.

8           **MS. GIGLIO:** Good afternoon, Your Honor. My name is  
9 Amanda Giglio. I'm also speaking on behalf of the Chisom  
10 plaintiffs, specifically, plaintiffs Ronald Chisom and Marie  
11 Bookman.

12           As Your Honor is aware, we have moved to add the  
13 Urban League of Louisiana as a plaintiff to this case. The  
14 intention of that motion is to replace the original  
15 institutional plaintiff or the original organizational  
16 plaintiff, the Louisiana Voter Registration/Education Crusade  
17 as an organizational plaintiff because that organization no  
18 longer exists.

19           The motion was prompted by the State's motion to  
20 dissolve when we realized that in the interim period that  
21 organization had disbanded, and we needed another  
22 organizational defender. Plaintiffs realized that they needed  
23 another organizational defender to stand ready, willing, and  
24 able to defend and enforce the Consent Decree.

25           The Urban League of Louisiana is an affiliate of the

1 National Urban League and has maintained offices in New Orleans  
2 since the '30s. And as laid out in our briefing, they seek to  
3 serve underserved communities by, among other things, ensuring  
4 that they enjoy shared dignity under the law. And that also  
5 includes dedication to ensure that its members, which include  
6 black voters in Louisiana and in Orleans Parish, take full  
7 advantage of their voting rights.

8           Indeed, their voter registration and mobilization  
9 efforts have been central to their work for decades and have  
10 included major voter registration efforts at high school and  
11 college campuses, canvassing, candidate forums, voter education  
12 events, and social media campaigns.

13           We're aware that the State has asserted that this  
14 motion is unduly delayed and is prejudicial to the State. It  
15 is simply not true. The State, in arguing that this motion is  
16 prejudicial, asserts that the Court will have to assess issues  
17 of organizational standing which will include discovery and  
18 other related motions. That is simply not true. Because this  
19 litigation deals only with injunctive relief, there is no need  
20 to assess the Urban League's organizational standing here  
21 because it is undisputed that plaintiffs Ronald Chisom and  
22 Marie Bookman maintain standing in this case. And in  
23 situations where the court is assessing only injunctive relief,  
24 only one plaintiff need have standing to continue on.

25           But even if this Court were to assess the standing of



1 the Urban League, its allegations in its motion make clear that  
2 it meets the standard for organizational standing because its  
3 membership would otherwise have standing in this case as its  
4 members are black voters who are residents of Louisiana.  
5 Voting rights and ensuring that its membership has the  
6 opportunity to enjoy their voting rights under the law is  
7 germane to the organization's purpose.

8           And as evidenced by the fact that this litigation was  
9 started by an organizational plaintiff in tandem with  
10 individual plaintiffs, there's no need for individual members  
11 to be the ones who pursue this case.

12           So if the Court has no questions or has no questions  
13 for me, I'm happy to stand on our papers.

14           **THE COURT:** Thank you. Anyone else?

15           **MS. GIGLIO:** Thank you.

16           **MS. RYAN:** No, Your Honor.

17           **THE COURT:** How about the State?

18           **MS. SUDDUTH:** Hello, Lauryn Sudduth on behalf of the  
19 State.

20           We do oppose this motion in its entirety because it  
21 would bring undue delay, prejudice to the resolution of this  
22 matter, and then also it's kind of unnecessary when the  
23 original plaintiffs are willing and able to proceed in the  
24 matter.

25           As to the addition of the Urban League, the Court is

1 well aware that we filed this motion to dissolve the Consent  
2 Decree, and plaintiffs did argue that our position was almost  
3 absurd that we suggest that the Court keep in place the same  
4 plaintiffs from 30 years ago, or in the alternative, that they  
5 would have had to have intervened in the off chance that we  
6 would dissolve the Consent Decree.

7           But that is exactly the point here. As the Fifth  
8 Circuit noted in that *Allen* case, a consent decree is part  
9 contract and also part judicial decree. It is a contract that  
10 the parties both agreed to in order to end litigation and is  
11 binding on those parties itself. And so the Urban League is  
12 not a party to that Consent Decree, and therefore, the timing  
13 of this motion is completely improper.

14           Class certification is complete. All litigation is  
15 complete and all appeals and everything. All we're doing now  
16 is dealing with whether the actual Consent Decree has been  
17 satisfied.

18           Further, the Urban League has been around since the  
19 inception of this litigation and has always had that same noble  
20 cause, and presumably, it would have been aware of this  
21 litigation. So it could have intervened at the trial court  
22 level back in the '80s or throughout the seven years of the  
23 litigation. However, it did not.

24           Additionally, two original plaintiffs are still in  
25 the suit, and they are, you know, minority voters in Orleans

1 Parish, the same voters that the Urban League says or the same  
2 people that the Urban League says that they would be  
3 representing. So those members are still well represented in  
4 our case.

5 And as the Court knows, as much as what the Urban  
6 League says in their motions, we do not have to take that on --  
7 just take their word for it on there. There actually has to be  
8 actual evidence produced in order to support that  
9 organizational standing.

10 **THE COURT:** Let me ask you. Do you agree with the  
11 argument that because this is injunctive relief, that only one  
12 of the parties has to have standing, and so it doesn't matter  
13 whether the Urban League has standing or not?

14 **MS. SUDDUTH:** No, Your Honor, I do not. In *Summers*  
15 *versus Earth Island Institute*, a Supreme Court case from 2009,  
16 Justice Scalia said that standing is a necessary component that  
17 we have to actually satisfy in order to move forward and that  
18 the Court is incumbent to find regardless of if it's challenged  
19 by any parties.

20 In that case, they were seeking injunctive relief  
21 against a federal action that involved the selling of timber in  
22 a burned area in California. And in that case, the Sierra Club  
23 actually tried to intervene after judgment, similar to where we  
24 are here, and Scalia wrote that we didn't have to take what  
25 they said just as fact; even though it might be true. And we

1 all know that it's true. In that case, they said that they had  
2 700,000 members who enjoyed going out into nature and what not.

3 Here, obviously, the Urban League probably does have  
4 New Orleans voters that, you know, would be of the class that,  
5 you know, are plaintiffs. But unfortunately, they haven't put  
6 forth any evidence or any affidavits that actually support that  
7 position.

8 And at this point, we're so far down the road that  
9 we're not even sure that in order to figure out those  
10 situations or see if that is true that we would need discovery,  
11 and we're not sure if we can actually get that at this point.  
12 Because also in that *Earth Island* case, Justice Scalia  
13 continued, saying and rejected the dissent's position that they  
14 should have accepted the late filed affidavits post-judgment in  
15 the district court. Saying that they could find -- he could  
16 find no cases that would allow either 15(b) or 21, Federal Rule  
17 21, that would allow the addition of those -- the  
18 supplementation of those records in order to allow a new party.

19 He said that if that were to be the case, then Rule  
20 60(b) would almost be completely consumed by 15, by Rule 15, if  
21 you could just like supplement the record at such a late date.

22 And so it's our position that adding a new party at  
23 this late stage at the twilight of this case is improper. It  
24 would -- we would just need to figure out the standing for the  
25 Urban League, and we're not really sure if they could even get

1 those documents into the record.

2 But at the end of the day, the parties and the  
3 interests that the Urban League would represent are well  
4 represented already by the Chisom plaintiffs.

5 **THE COURT:** What is the prejudice to the State by  
6 allowing the Urban League to -- I guess technically, it's an  
7 intervention, I think.

8 **MS. SUDDUTH:** I think the prejudice would be the  
9 delay. Like at this point, we've expressed our position that  
10 we want to allow the legislature the ability to reapportion.  
11 And so to continue the delay and all of the discovery that  
12 would be necessary to establish that standing, who knows once  
13 we open that box where that would lead. That would be a lot of  
14 motions. That would take a lot of time. And it would be a  
15 burden on us in order to actually figure out that part.

16 **THE COURT:** I think I could solve that problem. I  
17 would not allow the -- it would not affect my moving forward on  
18 the motion to terminate the Consent Decree.

19 The other parties, who are already plaintiffs, made  
20 the same arguments. And so it's not like I would have to say,  
21 "Oh, I have to decide whether the Urban League can be a  
22 plaintiff before I can decide this motion." I might at the  
23 same time, but I don't think I would have to.

24 **MS. SUDDUTH:** Of course.

25 **THE COURT:** So I just don't think it would delay. And

1 if there's going to be any discovery, it hasn't even started  
2 yet. Usually, we think of prejudice in discovery if there's  
3 been a lot of discovery done and then you want to add a party,  
4 and the prejudice is, oh, no, now we're going to have to go  
5 back and redo all those depositions and all that discovery.

6 Well, that wouldn't happen here because we haven't  
7 done any discovery. We're not about to do any discovery. So  
8 I'm just not -- I'm not sure I see the prejudice.

9 **MS. SUDDUTH:** Additionally, we would say that since a  
10 consent decree is a contract between the parties, opening this  
11 up to allow any new party who hasn't gone through, you know,  
12 all the previous litigation to piggyback on those initial  
13 plaintiffs would create kind of a bad precedent in which  
14 parties can move in and out of lawsuits at will and join in at  
15 the last minute in order to continue something in perpetuity in  
16 order to just delay the actual resolution.

17 **THE COURT:** All right. Well, thank you.

18 **MS. SUDDUTH:** Thank you.

19 **MS. GIGLIO:** May I respond?

20 **THE COURT:** Yes.

21 **MS. GIGLIO:** First and foremost, as to the State's  
22 position that this is a contract and so new parties should not  
23 be allowed to be added into the litigation at the enforcement  
24 stage, that position is frankly absurd. If we were to accept  
25 the State's position, then the State could simply wait out

1 every single plaintiffs' lack of -- loss of standing and then  
2 get out from under the Consent Decree that way.

3           Clearly, that's not the intention here in, as my  
4 colleague said, an institutional reform case which is meant to  
5 ensure that the purpose of the Consent Decree, this agreement  
6 between the parties to ensure that individual voting rights of  
7 black voters in Orleans Parish, are fully met.

8           Second, the State maintains that the addition of the  
9 Urban League is unnecessary. I would echo my first point, Your  
10 Honor. The State's position here has made it clear that now  
11 more than ever the Consent Decree needs a defender. It intends  
12 to reapportion these districts in ways that we are not clear  
13 on, in ways that very well may violate Section 2, and may  
14 violate the purpose of the Consent Decree. And so it is  
15 essential that there are plaintiffs in addition to Mr. Chisom  
16 and Ms. Bookman, who are respectfully individuals who may move,  
17 to defend the decree at this time.

18           With respect to the State's reference to the *Summers*  
19 cases I believe that that case references that plaintiffs need  
20 to demonstrate standing as to each claim being asserted, not as  
21 to each plaintiff moving forward, and doesn't change the fact  
22 that in a case where we're only dealing with injunctive relief,  
23 only one plaintiff need have standing in order for the entire  
24 case to move forward. That is Supreme Court precedent. That  
25 has been tacked on by the Fifth Circuit and accepted by

1 additional circuits, Your Honor.

2           And as a conclusion, there's no delay here. As Your  
3 Honor pointed out, Your Honor is free to move forward with the  
4 motion to dissolve without resolving the motion to add or drop  
5 parties. In addition, as I said before, there's no discovery  
6 necessary here to assess standing because there's no standing  
7 inquiry that needs to be completed before this motion is  
8 resolved.

9           If Your Honor has any additional questions, I'm happy  
10 to respond.

11           **THE COURT:** That's it.

12           **MS. GIGLIO:** Thank you, Your Honor.

13           **THE COURT:** Okay. Well, thank you. I thank you all  
14 for coming today. It's nice to see all of you in the courtroom  
15 live. I can see your faces.

16           All right, Court's adjourned. I'll take these  
17 matters under advisement.

18           **DEPUTY CLERK:** All rise.

19                   (Whereupon this concludes the proceedings.)  
20  
21  
22  
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25



**CERTIFICATE**

1  
2  
3 I, Alexis A. Vice, RPR, CRR, Official Court Reporter for  
4 the United States District Court, Eastern District of  
5 Louisiana, do hereby certify that the foregoing is a true and  
6 correct transcript, to the best of my ability and  
7 understanding, from the record of the proceedings in the  
8 above-entitled and numbered matter.  
9  
10

11 /s/Alexis A. Vice, RPR, CRR  
12 Alexis A. Vice, RPR, CRR  
13 Official Court Reporter  
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