

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

_____)	
RONALD CHISOM, <i>et al.</i> ,)	
Plaintiffs,)	
UNITED STATES OF AMERICA,)	CIVIL NO. 86-4075
Plaintiff-Intervenor,)	
BERNETTE J. JOHNSON,)	SECTION "E"
Plaintiff-Intervenor,)	
v.)	The Honorable Susie Morgan
PIYUSH (BOBBY) JINDAL, <i>et al.</i> ,)	
Defendants.)	
_____)	

**UNITED STATES MEMORANDUM IN SUPPORT OF MOTIONS TO INCLUDE
CHISOM SERVICE TOWARD ANY CALCULATION OF TENURE ON THE
LOUISIANA SUPREME COURT**

The Plaintiffs Ronald Chisom *et al.*, and Plaintiff-Intervenor Bernette Johnson have filed motions with this Court seeking enforcement of the consent judgment entered in this case on August 21, 1992 (Docket #120) and amended on January 3, 2000 (Docket #135). Pursuant to the July 23, 2012 Order of the Court (Docket #166), plaintiff-intervenor United States of America submits this memorandum urging this Court: to determine subject-matter jurisdiction exists to decide the pending motions; to exercise its discretion to adjudicate those motions; and to hold that service in the seat created by the *Chisom* order should count toward any calculation of tenure on the Louisiana Supreme Court. The entry of declaratory relief to this effect should

resolve the matter; however, if needed, this Court can enter injunctive relief to enforce the consent judgment.

I. Background

On September 19, 1986, the *Chisom* plaintiffs filed this federal lawsuit against Louisiana officials, alleging that the method of electing members of the Louisiana Supreme Court violated both the Constitution and Section 2 of the Voting Rights Act. Specifically, the plaintiffs alleged that the use of a multi-county multi-member district in the New Orleans area to elect two justices when the remaining justices on the Louisiana Supreme Court were elected from single-member districts diluted African-American voting strength. This Court granted the United States' motion to intervene as a plaintiff on August 8, 1988 (Docket #58).

Following the Supreme Court's determination in *Chisom v. Roemer*, 501 U.S. 380 (1991) that judicial elections were subject to Section 2 of the Voting Rights Act and remand of this case, the parties presented a proposed consent judgment designed to resolve the claims of the *Chisom* plaintiffs and the United States. The consent judgment created a temporary eighth seat on the Louisiana Supreme Court from 1992 until 2000, for a new judge elected from a temporary new seat on the Fourth Circuit Court of Appeal in Orleans Parish and immediately assigned to the Louisiana Supreme Court. In 2000, when the state could elect each justice from a single-member district without affecting the tenure of any sitting member of the court, the Louisiana Supreme Court reverted from eight members to seven. This Court approved the consent judgment on August 21, 1992. (Docket #120).

This Court's 1992 consent judgment took significant steps to ensure the eighth justice, known as the *Chisom* justice, was an equal member of the Louisiana Supreme Court by requiring

that the *Chisom* justice should receive the same “compensation, benefits, expenses, and emoluments of offices as now or hereafter are provided by law for a justice of the Louisiana Supreme Court”, “shall participate and share equally in the cases, duties, and powers of the Louisiana Supreme Court,” and “shall participate fully and share equally in all other duties and powers of the Supreme Court, including, but not limited to, those powers set forth by the Louisiana Constitution, the laws of Louisiana, and the Louisiana Rules of Court.” (Docket #120, Clause C.).

In 1997, the Louisiana legislature enacted Act 776. That act provided, among other things, “[a]ny tenure on the supreme court gained by [the *Chisom* justice] while so assigned to the supreme court shall be credited to such judge.” Louisiana Acts 1997, No. 776. On December 27, 1999, all parties entered a joint motion to amend the Consent Decree to include “Act 776 (1997) as an addendum to the Consent Judgment...” (Docket 135, Joint Motion to Amend Consent Judgment). The motion stated that the amendment “meets the intent of all parties to this litigation for final resolution of the matter.” *Id.* On January 3, 2000, this Court granted the motion to amend and ordered that Act 776 “be and is hereby added as an addendum to the Consent Judgment...” (Docket 135, Order).

Bernette Johnson was elected to the temporary *Chisom* seat and took office on October 3, 1994. This Court granted her motion to intervene as a plaintiff in this case on October 3, 1997. (Docket #130). Pursuant to the terms of the consent judgment in this case, the tenure she gained in the *Chisom* seat counts towards her total tenure on the Supreme Court. This Court can and should resolve this question as an issue of federal law under the consent judgment in this case.

II. Discussion

This Court retains the subject-matter jurisdiction to adjudicate the pending motions of the Chisom plaintiffs and plaintiff-intervenor Johnson and should exercise its discretion to interpret and to enforce its own consent judgment, which makes clear that *Chisom* service should count toward any calculation of Louisiana Supreme Court tenure.

A. This Court retained subject-matter jurisdiction to adjudicate the motion.

As a threshold matter, this Court must assure itself of its own subject-matter jurisdiction to resolve this dispute. The pending motions have asked whether this Court's consent judgment was intended to include *Chisom* service toward any calculation of tenure on the Supreme Court. This Court possesses the jurisdiction to answer this question.

The law is well-settled that a federal court has the inherent subject-matter jurisdiction to interpret or modify its own consent decree. *Alberti v. Klevenhagen*, 46 F.3d 1347, 1365 (5th Cir. 1995) (“There is little question that the district court has wide discretion to interpret and modify a forward-looking consent decree. . .”). Further, the mere closure of a case does not rob this Court of jurisdiction to interpret or modify a consent judgment. *League of United Latin American Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 435-37 (5th Cir. 2011). In fact, federal courts retain jurisdiction to enter injunctions as a means to enforce prior judgments. *Test Masters Educ. Services, Inc. v. Singh*, 428 F.3d 559, 577-78 (5th Cir. 2005); *United States v. Alcoa, Inc.*, 533 F.3d 278, 288 (5th Cir. 2008).

This Court's subject-matter jurisdiction originally vested to resolve alleged violations of the Constitution and the Voting Rights Act. To remedy those alleged violations, this Court entered a consent judgment creating the *Chisom* seat. The pending motions seek an affirmation

that this Court intended to include *Chisom* service toward any calculation of tenure on the Louisiana Supreme Court. Because such an action requires an interpretation of this Court's existing consent judgment, this Court possesses the subject-matter jurisdiction to adjudicate the merits of the pending motions.

B. This Court should exercise its discretion to interpret the Consent Decree.

The federal court “and not a party before it, is the principal and proper arbiter with the responsibility to interpret the decree and oversee the litigation.” *Nehmer v. U.S. Dept. of Veterans Affairs*, 494 F.3d 846, 860 (9th Cir. 2007). “Although a party may ask the district court to issue an order clarifying, enforcing, or modifying a decree and suggest a favored interpretation, a party -- whether a private or public entity -- cannot dictate the meaning of the decree to the court or relieve itself of its obligations under the decree without the district court's approval.” *Id.*

Accordingly, this Court should exercise its discretion and resolve whether its consent judgment intended to include *Chisom* service toward any calculation of tenure on the Supreme Court.

C. The Consent Judgment intended to include *Chisom* service toward tenure on the Louisiana Supreme Court

“Consent decrees have elements of both contracts and judicial decrees.” *United States v. City of Jackson*, 359 F.3d 727, 732 (5th Cir. 2004). “A consent decree embodies an agreement of the parties and is also an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees.” *Id.*

“When interpreting a consent decree, general principles of contract interpretation govern.” *Dean v. City of Shreveport*, 438 F.3d 448, 461 (5th Cir. 2006). “We begin by looking to the four corners of the decree. We will then look to extrinsic evidence if the decree is ambiguous. A decree is ambiguous when it is reasonably susceptible to more than one meaning, in light of surrounding circumstances and established rules of construction.” *Id.* (Internal citation and quotations omitted).

The initial 1992 consent judgment in this case clearly intended to make the *Chisom* justice a full and equal member of the Louisiana Supreme Court from that time forward. As a full and equal member of that court, the accrual of tenure is one of the benefits to be gained by virtue of time served in that capacity. Although clear on the face of the 1992 consent judgment, the amended 2000 consent judgment incorporating Act 776 specifically clarified that *Chisom* service counted toward any calculation of tenure.

D. This Court Should Enter Relief

The 1992 consent judgment and the 2000 amendment thereto make clear that tenure in the *Chisom* seat counts towards service on the Louisiana Supreme Court. Entry of declaratory relief to this effect, as a matter of federal law in interpreting this Court’s consent judgment, should resolve the issues before the Court. The All Writs Act, 28 U.S.C. § 1651(a), specifically authorizes this court “to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued . . .” *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172-73 (1977).

If need be, this Court can enter an appropriate injunction to enforce that consent judgment. This is true whether the members of the Louisiana Supreme Court become parties to this case by virtue or intervention or joinder, or whether they are non-parties, since they can be reached as parties in privity with the state defendants or under the All Writs Act.

III. CONCLUSION

For the foregoing reasons, this Court should determine, under the consent judgment in this case, that service in the *Chisom* seat counts towards service on the Louisiana Supreme Court.

Respectfully submitted

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Date: July 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2012, I served a true and correct copy of the foregoing on counsel of record via the Court's ECF system.

/s/ Steven Wright
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