22-30320

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

RONALD CHISOM; MARIE BOOKMAN,
ALSO KNOWN AS GOVERNOR; URBAN LEAGUE OF LOUISIANA,

Plaintiffs-Appellees,

UNITED STATES OF AMERICA; BERNETTE J. JOHNSON,

Intervenor Plaintiffs-Appellees,

—v.—

STATE OF LOUISIANA, EX REL, JEFF LANDRY, ATTORNEY GENERAL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION FOR LEAVE TO FILE CORRECTED BRIEF FOR *AMICI CURIAE* THE NEW ORLEANS MARTINET LEGAL FOUNDATION, INC., LOUISIANA STATE UNIVERSITY BLACK LAW STUDENTS ASSOCIATION, LOYOLA UNIVERSITY NEW ORLEANS COLLEGE OF LAW BLACK LAW STUDENTS ASSOCIATION, SOUTHERN UNIVERSITY LAW CENTER BLACK LAW STUDENTS ASSOCIATION, TULANE LAW SCHOOL BLACK LAW STUDENTS ASSOCIATION, AND SOUTHERN UNIVERSITY LAW CENTER LOUIS A. BERRY CIVIL RIGHTS AND JUSTICE INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLEES

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MOTION FOR LEAVE TO FILE CORRECTED BRIEF OF *AMICI CURIAE* NEW ORLEANS MARTINET LEGAL FOUNDATION, INC., *ET AL.*, IN SUPPORT OF PLAINTIFFS-APPELLEES

COMES NOW Kathleen R. Hartnett, Counsel for *amici curiae* the New Orleans Martinet Legal Foundation, Inc., *et al.*, in support of Plaintiffs-Appellees, and moves the court for permission to file a corrected *amicus* brief in both electronic and hard-copy form, with the only change being the removal of the Dillard University Center for Racial Justice as one of the *amici*.

Amici timely moved for leave to file the *amicus* brief on April 5, 2024, and the *amicus* brief was electronically filed on April 12, 2024. Paper copies were required to be filed by April 17, 2024. However, before the deadline for paper copies, it came to the attention of undersigned counsel that one of the parties listed on *amici*'s April 5, 2024 filings—the Dillard University Center for Racial Justice—requested removal from the *amicus* brief, in light of certain internal institutional processes.

elected from single-member districts, a multi-parish, multi-member district in the New Orleans area elected two justices. *See id.* at 384. Accordingly, no Louisiana Supreme Court justice had ever been elected by a majority-Black district because of the dilution of Black voters' voting strength via a multi-member district—a textbook violation of Section 2 of the Voting Rights Act of 1965.[43] In contrast, since the *Chisom* Decree has been in place, there have been three Black justices that have joined the Louisiana Supreme Court bench. Prior to the *Chisom* Decree, there was not a single Black justice elected to the Louisiana Supreme Court. The *Chisom* Decree was a necessity in 1991 and continuing threats to fair representation in violation of federal law make a durable remedy under the *Chisom* Decree a continued necessity today. Indeed, courts have recently recognized that voting systems in Louisiana continue to violate the voting rights of Black voters. *See, e.g.*, *Robinson*, 605 F. Supp. 3d at

[43] *See Statutes Enforced By The Voting Section*, U.S. Dept. of Justice, Civil Rights Division ("Section 2 of the VRA is a nationwide prohibition against voting practices and procedures (including redistricting plans and at-large election systems and voter registration procedures) that discriminate on the basis of race"). Section 2 does not prohibit only "election-related practices that are intended to be racially discriminatory, but also those that are shown to have a racially discriminatory result." *Id.*

830 (noting that plaintiffs' expert's opinions that "voting in recent elections in Louisiana is starkly racially polarized" was undisputed).

Both the Panel Dissent and the State contend that the Decree may be dissolved because Plaintiffs have the prospective remedy of filing a new lawsuit under Section 2 of the VRA. *See* Panel Op. at 52, ECF 95-1 ("[T[he VRA itself is enduring, and as strong a prospective relief possible if [the State] violates the law in the future"); State's En Banc Supp. Brief 41 ("[A]ny purported violation could be rapidly challenged under Section 2."). This position ignores the reality of Section 2 litigation. Plaintiffs who litigate Section 2 claims in federal courts are likely to continue enduring the alleged impediments to their voting rights while their Section 2 claims are pending. Moreover, litigating Section 2 claims involves a massive expense of resources and time, and plaintiffs may not be able to obtain *any* relief for years.[44]

For example, in 2013, several plaintiffs brought Section 2 challenges to Texas's Senate Bill 14 ("SB14"), a voter ID law enacted by

[44] *See* U.S. Comm'n on Civil Rights, *An Assessment of Minority Voting Rights Obstacles in the United States: 2018 Statutory Report*, 224-35 (2018), https://www.usccr.gov/reports/2018/assessment-minority-voting-rights-access-united-states (examining quantitative and qualitative data regarding the monetary and time costs associated with Section 2 litigation).

the Texas legislature in 2011. *See, e.g.*, *United States v. Texas*, No. 2:13-cv-00263 (S.D. Tex. Aug. 22, 2013), ECF 1; *Ortiz v. Texas*, No. 2:13-cv-00348 (S.D. Tex. Nov. 5, 2013), ECF 1. After the cases were consolidated, the district court ruled in favor of the plaintiffs on their Section 2 claims. *See Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014). But the plaintiffs did not get an actual remedy from the court until 2016 (i.e., three years later), following this Court's instructions on remand.[45] *See Veasey v. Perry*, No. 2:13-cv-00193, ECF 895 (S.D. Tex. Aug. 10, 2016) (memorializing the parties' agreed upon remedies prior to the November 8, 2016 general election).

The Section 2 litigation involving Texas' SB14 demonstrates why bringing a new Section 2 claim is a patently insufficient outlet for the *Chisom* Plaintiffs. Were the *Chisom* Decree dissolved and were Louisiana then to violate the voting rights of the Black voters in Orleans Parish, those voters would likely have to wait *years* for litigation to play out, during which time their constitutional and statutory rights would

[45] The SB14 case would remain in the courts for another two years as the parties litigated whether Texas's revisions to SB14, Senate Bill 5, also violated Section 2 of the VRA. *See Veasey v. Perry*, No. 2:13-cv-00193 (S.D. Tex. Sept. 17, 2018), ECF 1125 (entering final judgment on plaintiffs' claims following this Court's *third* decision on the plaintiffs' claims).

continue to be violated. This is exactly what the *Chisom* Decree and Rule 60's burden of proof are meant to guard against. The remedy for the dilution of Black New Orleans voting strength in Supreme Court elections—the *Chisom* Decree—must remain in effect until the State can show that Louisiana Supreme Court elections will be non-dilutive for Black voters in Orleans Parish and in compliance with Section 2 of the VRA.

CONCLUSION

The *en banc* Court should affirm the Panel's opinion.

April 19, 2024

Respectfully Submitted,
By: */s/ Kathleen R. Hartnett*

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a) and 29(a) because it contains 4885 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) and Fifth Circuit Local Rule 32 because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point (above the line) and 12-point (footnotes) Century Schoolbook font.

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Local Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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IDENTITY AND INTERESTS OF *AMICI CURIAE*[1]

Amicus curiae the New Orleans Martinet Legal Foundation, Inc. is the charitable arm of The Greater New Orleans Chapter of the Louis A. Martinet Legal Society ("Chapter"), a volunteer bar association whose members are Black lawyers and judges in the New Orleans area. Founded in 1957, the Louis A. Martinet Legal Society ("Martinet Society") was named for Louis André Martinet, a Black pioneer in the legal profession who was a key strategist for orchestrating Homer Adolph Plessy's arrest, ultimately resulting in the landmark test case of *Plessy v. Ferguson*, 163 U.S. 537 (1896). The Martinet Society was formed as a direct response to racial injustices and inequalities in the Jim Crow era. The Martinet Society's founders were Black lawyers and judges who faced significant adversity and racial discrimination both in and out of their professional fields, including redlining, voter disenfranchisement, and attacks on Black members of the bar.

In the decades since its founding, the Martinet Society has advocated for a diverse legal profession, including by encouraging

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no person or entity, other than amici, their members, or their counsel, paid for or otherwise contributed to the preparation or submission of this brief.

interchange of ideas, promoting legal scholarship, advancing the science of jurisprudence, promoting the administration of justice, upholding the order and ethics of the courts and the profession of law, and promoting the welfare of the legal profession in Louisiana consistent with the vision of the Martinet Society's founders.

As the Black bar association in the New Orleans area, the Chapter and its members are impacted by the *Chisom v. Roemer* Consent Decree ("*Chisom* Decree") not only as voters seeking fair representation on the State's highest court, but also as prospective justices on the court. Indeed, all three Black justices who have served on the Louisiana Supreme Court since the *Chisom* Decree have been instrumental in the development of Black lawyers in Louisiana through their involvement with the Martinet Society. Justice Revius Ortique Jr. was a Martinet Society founder, and Justices Johnson and Griffin are active members of the Chapter today. The Chapter urges this Court to decline the State's invitation to dissolve the *Chisom* Decree, as dissolution may undermine the political participation of Black voters in Orleans Parish in their ability to elect a candidate of choice in the election of the State's highest court. As discussed further below, this political participation has been

instrumental in supporting and elevating Black lawyers and judges and improving Black representation in the legal profession.

Amici Louisiana State University Black Law Students Association, Loyola University New Orleans College of Law Black Law Students Association, Southern University Law Center Black Law Students Association, and Tulane Law School Black Law Students Association (collectively, the "BLSA *Amici*") promote the needs and goals of Black law students at their respective law schools. BLSA *Amici* actively work to recruit and maintain the enrollment of Black law students and connect members to academic, professional, and social activities in the legal community. BLSA *Amici* have an interest in this case because they are dedicated to enhancing and supporting the professional aspirations of their members (many of whom are voters in Orleans Parish) and to ensuring a justice system that reflects the diversity of the communities that they serve.

Amicus Curiae Southern University Law Center Louis A. Berry Civil Rights and Justice Institute ("Civil Rights Institute") is dedicated to the advancement of civil and human rights with a focus on Louisiana and the South. The Civil Rights Institute uses research, advocacy, and

education to promote equal rights and justice. The Civil Rights Institute has an interest in this case given the implications for the voting rights of Black voters in Louisiana.

SUMMARY OF ARGUMENT

The *en banc* Court should affirm the Panel opinion, which correctly affirmed the District Court's conclusion that the State has failed to meet its burden to terminate the *Chisom* Decree. In particular, the Panel correctly concluded that the Decree includes a prospective remedy—compliance with Section 2 of the Voting Rights Act in an Orleans Parish-based district. The State's request to the *en banc* Court to terminate the *Chisom* Decree is particularly troubling because of the grave stakes that are present here. As with other state courts, the Louisiana Supreme Court resolves matters that affect the everyday lives of Black Louisianans, including those in Orleans Parish. The three Black justices elected to the Louisiana Supreme Court since the *Chisom* Decree—Justices Ortique, Johnson, and Griffin—each have exemplified the importance of having judges on the bench that share the experiences of the electorate. Justices Ortique, Johnson, and Griffin demonstrate the

importance of the *Chisom* Decree and why the Court must reject the State's request to dissolve it.

Like consent decrees issued in other federal civil rights litigation around the country, the *Chisom* Decree is a joint agreement between the parties. As exemplified by the election and service of Justices Ortique, Johnson, and Griffin, the *Chisom* Decree in particular remains critical for protecting the voting rights of Black voters in Orleans Parish. Since its entry in 1992, the *Chisom* Decree has required Louisiana Supreme Court elections to take place in an Orleans Parish-based district.

While the *Chisom* Decree is not perpetual, it was the State's burden under Federal Rule of Civil Procedure 60(b)(5) to show compliance with all provisions of the Decree before the District Court could terminate it. The State failed to meet this burden, as both the District Court and Panel correctly concluded. Indeed, the State did not offer a single piece of evidence demonstrating that Louisiana Supreme Court elections will continue to take place without vote dilution for Black voters in Orleans Parish absent the *Chisom* Decree. Far more is required for the State to meet its burden under Rule 60 and the Decree itself, and the Court

should affirm the Panel's finding that the State failed to show compliance with the *Chisom* Decree's prospective remedy.

ARGUMENT

I. Dissolving the *Chisom* Decree Risks Eroding Fairness and Confidence in the Justice System and Obstructing a Pathway for Black Justices to Contribute Sorely Needed Perspectives

In the United States, state courts hear 95 percent of all cases filed.[2] As these cases work their way through state court systems, eventually state Supreme Courts typically provide the binding interpretation of state law concerning many key areas of life including employment, housing, education, and criminal justice. These are the same areas of life in which the Martinet Society's founders faced significant racial discrimination during the Jim Crow era. And decades later, Black Louisianans (including other Amici), still bear the effects of discrimination in these areas of life.[3]

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[2] Brennan Ctr. for Just., *State Supreme Court Diversity* 1 (2019), https://www.brennancenter.org/our-work/research-reports/state-supreme-court-diversity.

[3] *See, e.g.*, *Follow the Line: Redlining's Effects Are Still Felt Today in New Orleans*, 4WWL (Feb. 24, 2023, 10:41 AM), https://www.wwltv.com/article/news/local/orleans/follow-the-line-redlining-origins-in-new-orleans/289-f06f7b8e-a212-4711-87a2-a4fc49e63a8d (exploring how the housing segregation that was legal before the Fair Housing Act of 1968 still impacts New Orleans today); Charisse Gibson, *Follow the Line: Years of Discrimination Could Yield Deadly Results*, 4WWL (Nov. 13, 2023, 11:18 PM),

As Black people are "disproportionately involved with the judicial system,"[4] state court judges have a "direct and irrevocable impact" in the lives of Black people.[5] Yet Black voters are "much less likely than White or Hispanic voters to believe the courts are fair and impartial, [or] providing equal justice to all."[6] According to the National Center for State Courts' 2023 State of the State Courts Survey, "50% of Black voters 'disagree that state courts are unbiased in their case decisions,'" and "Black voters are also considerably less likely to say the courts are protecting rights and treating people with dignity and respect than White or Hispanic voters."[7] These troubling statistics likely reflect Black voters both experiencing racial discrimination in many areas of life and having

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https://www.wwltv.com/article/news/local/orleans/follow-the-line-years-of-discrimination-yield-deadly-results/289-ae8addb2-8db3-4ff7-9aae-4343a73815e1 (exploring the connection between racial discrimination in New Orleans and the disproportionate rate of covid-19 infections and death among the city's Black residents); The Data Ctr., *Potential Economic Impact of Increasing Income for Black New Orleanians* (Sept. 2023), https://www.datacenterresearch.org/reports_analysis/potential-economic-impact-of-increasing-income-for-black-new-orleanians/ ("One local consequence of widening household income inequality is that 51 percent of all Black children in New Orleans live in poverty, compared to only 5 percent of White children.").

[4] Sherrilyn A. Ifill, *Racial Diversity on the Bench: Role Models and Public Confidence*, 57 Wash. & Lee L. Rev. 405, 408 (2000).

[5] *Id.* at 407.

[6] C. Shannon Bacon et al., *State of the State Courts // 2023 Poll* 3 (Nat'l Council for State Cts., 2023), https://www.ncsc.org/__data/assets/pdf_file/0038/96878/SSC_2023_Presentation.pdf.

[7] *Id.* at 4.

to engage with a judicial system where there are so few (if any) judges who themselves may have been exposed to similar experiences with racial discrimination.

Research shows that a judiciary that reflects the diversity of the communities who are involved in the judicial system "enriches judicial decision-making, promotes public confidence in the judiciary, and establishes role models across demographic groups."[8] This research is profoundly exemplified by the journeys of Louisiana Supreme Court Justices Ortique, Johnson, and Griffin.

Justice Revius O. Ortique, Jr

Justice Revius O. Ortique, Jr. was the first Black justice to serve on the Louisiana Supreme Court; he served from 1992 to 1994. Prior to serving on the state's highest court, Justice Ortique was appointed by the Louisiana Supreme Court to the Orleans Parish Civil District Court in 1978. The following year, he was the first Black person elected to the Orleans Parish Civil District Court and he later became the first Black chief judge of that court in 1984.[9]

[8] Brennan Ctr. for Justice, *supra*, at 2 (2019).
[9] *Retired Louisiana Supreme Court Justice Revius Ortique Jr.*, La. Sup. Ct., https://www.lasc.org/In_Memoriam?p=Ortique_Revius.

A veteran of World War II, Justice Ortique graduated from law school in 1956 and one year later, he, along with sixteen other Black attorneys, founded the Martinet Society.[10] He started his own legal practice, which eventually became one of the largest estate practices in Louisiana.[11] He also served as co-counsel in several landmark civil rights cases.[12]

Justice Ortique was a leader in the profession and in his community on the national, state, and local levels. He served multiple terms as President of the Urban League of Greater New Orleans and as President of the National Bar Association.[13] Justice Ortique also served as President of the National Legal Aid and Defender Association,[14] and the Martinet Society credits his work with the Louisiana State Bar Association's Legal Aid Committee as having provided a model for pro bono legal work.[15]

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[10] *See Founders*, The Greater New Orleans Louis A. Martinet Legal Soc'y, Inc., https://gnomartinet.com/founders/.
[11] *The Honorable Revius Oliver Ortique, Jr.*, The Hist. Makers, https://www.thehistorymakers.org/biography/honorable-revius-oliver-ortique-jr.
[12] *Portrait Unveiling of retired Justice Revius O. Ortique, Jr.*, La. Sup. Ct. (Feb. 28, 2007), https://www.lasc.org/Press_Release?p=2007-03.
[13] *Portrait Unveiling*, *supra*.
[14] Johnson, *supra*, at 10.
[15] *The Honorable Revius Oliver Ortique Jr.*, The Greater New Orleans Louis A. Martinet Legal Soc'y, Inc., https://gnomartinet.com/the-honorable-revius-oliver-ortique-jr/.

Justice Ortique paved the way for many Black attorneys.[16] In the words of former–Attorney General Eric Holder: "[W]hen he became the first African American to serve on the Louisiana Supreme Court, Justice Ortique set an example, and opened the door of opportunity, for the generations of lawyers who followed him. Lawyers like me."[17] Assistant Attorney General Kristen Clarke attributed the Department of Justice and Civil Rights Division's privilege of "addressing the most pressing civil rights issues of our time" to carrying on the legacy of Justice Ortique and other leaders.[18]

During his term on the Louisiana Supreme Court, Justice Ortique was a "strong voice for fundamental fairness and equal protection of the law."[19] Notably, his voice for fundamental fairness existed long before he

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[16] *See* Bernette J. Johnson, *Justice Revius O. Ortique, Jr: A Man for All Seasons*, 36 S.U. L. Rev. 1, 10 (2008).

[17] *Attorney General Eric Holder Speaks at the Inaugural Justice Revius O. Ortique Jr. Lecture on Law and Society at Dillard University*, Off. Pub. Affs. (Nov. 11, 2010), https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-inaugural-justice-revius-o-ortique-jr-lecture-law-and; *see, e.g.*, *Assistant Attorney General Kristen Clarke Delivers Remarks at Dillard University's 10th Annual Justice Revius O. Ortique Jr. Lecture on Law and Society*, Off. Pub. Affs. (Nov. 18, 2021), https://justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-delivers-remarks-dillard-university-s-10th ("[W]ithout the work of Justice Ortique, I would not be here today as the first Senate-confirmed Black woman to lead the Civil Rights Division."); Johnson, *supra*, at 10 ("Justice Ortique paved the way for many, including my [judicial] service.").

[18] *Clarke Delivers Remarks*, *supra*.

[19] Johnson, *supra*, at 10.

joined the judiciary. For example, this voice was clear in his prior work negotiating "with the Louisiana power structure" to desegregate various public facilities.[20] He then brought his voice for fundamental fairness to the full range of cases over which the state's highest court has jurisdiction—cases impacting areas of life that concern all Louisianians.[21] There is no doubt that as the first Black justice on the Louisiana Supreme Court, and the sole Black justice during his tenure, Justice Ortique was able to "introduce traditionally excluded perspectives and values into judicial decisionmaking,"[22] thereby advancing an equitable justice system.

Justice Bernette J. Johnson

Justice Bernette J. Johnson was the first Black woman to serve on the Louisiana Supreme Court; she served from 1994 to 2020. After becoming one of the first Black women to graduate from the Paul M. Hebert Law Center at Louisiana State University, Justice Johnson served as the Managing Attorney of the New Orleans Legal Assistance Corporation, an organization that provided legal aid to low-income

[20] *Id.* at 1.
[21] *Id.* at 10 (exploring a sampling of Justice Ortique's opinions).
[22] Ifill, *supra*, at 409–10.

individuals.[23] Justice Johnson was the first woman to serve on the Civil District Court of New Orleans.[24] She worked on various initiatives concerning fairness and equity including the National Campaign on Best Practices in the area of Racial and Ethnic Fairness in the Courts and the training and certification of Limited English Proficiency Interpreters in the courts.[25]

In 2013, Justice Johnson received the prestigious Joan Dempsey Klein Award from the National Association of Women Judges (NAWJ).[26] This award is presented annually to a judge "who has assisted women judges to become more proficient in their profession, helped to solve the legal, social and ethical problems associated with the judiciary, and worked to increase the number of women serving as judges."[27] This is just one award of many honoring Justice Johnson's leadership in Louisiana and in the legal profession.[28] As a tribute to her lifelong

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[23] *The Honorable Bernette Joshua Johnson*, The Greater New Orleans Louis A. Martinet Legal Soc'y, Inc., https://gnomartinet.com/the-honorable-bernette-joshua-johnson/.
[24] *Id.*
[25] *Id.*
[26] Other recipients include U.S. Supreme Court Justices Sandra Day O'Connor, Ruth Bader Ginsburg, and Sonia Sotomayor. *See id.*
[27] *Awards Descriptions*, NAWJ, https://www.nawj.org/about-nawj/awards/awards-descriptions#:~:text=NAWJ's%20Lady%20Justice%20Award%20honors,law%20through%20strong%2C%20committed%2C%20diverse.
[28] *The Honorable Bernette Joshua Johnson*, *supra.*

commitment to the legal profession and to the citizens of the state of Louisiana, the Louisiana Supreme Court Law Museum was renamed the Chief Justice Bernette Joshua Johnson Supreme Court Museum.[29]

Much like Justice Ortique, Justice Johnson—as the sole Black justice during her tenure—promoted judicial decisionmaking that included voices from communities that have vastly different lived experiences than her colleagues on the Louisiana Supreme Court. *See* Br. of Intervenor Plaintiff-Appellee Bernette J. Johnson 40–43 (exploring Justice Johnson's dissents in which she vigorously opined on racially discriminatory conduct against Black people in several contexts, including sentencing and jury selection). Justice Johnson's commitment to ensuring that the experiences of the underrepresented are properly reflected in the judicial decisionmaking process was perhaps most powerfully demonstrated during her last year on the bench at the height of the COVID-19 pandemic. She authored a letter to her colleagues on the bench in the aftermath of the death of George Floyd. She wrote:

> "[T]he protests are the consequence of centuries of institutionalized racism that has plagued our legal system. Statistics show that the Louisiana

[29] *Bernette Joshua Johnson*, Council on Crim. Just., https://counciloncj.org/bernette-joshua-johnson/.

> criminal legal system disproportionately affects African Americans, who comprise 32% of our population in Louisiana, but 70% of our prison population. African American children in Louisiana are imprisoned at almost seven times the rate of White children. Our prison population did not increase fivefold from 7,200 in 1978, to 40,000 in 2012 without decisive action over many years by the legislature and by prosecutors, juries and judges around the state. We are part of the problem they protest . . . Is it any wonder why many people have little faith that our legal system is designed to serve them or protect them from harm? . . . Is it any wonder why they have taken to the streets to demand that it does?"[30]

Justice Piper D. Griffin

Justice Piper D. Griffin began her service on the Louisiana Supreme Court on January 1, 2021 and currently serves in that role.[31] She attended the University of Notre Dame, which honored her as one of the 50 most distinguished Black graduates of the university, and Louisiana State University, Paul M. Hebert Law School.[32] A lifelong resident of New Orleans, Justice Griffin has spent her legal career serving the New Orleans community. Justice Griffin was elected to

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[30] Elon Green, *The Dissenter*, The Appeal (Mar. 2, 2021), https://theappeal.org/the-dissenter/.

[31] Tiffany G. Chase & Karelia R. Stewart, *Introducing the Newest Supreme Court Justices: Justice Piper D. Griffin Sworn In on Jan. 1*, 68 La. B.J. 296, 398 (2021).

[32] *The Honorable Piper D. Griffin*, The Greater New Orleans Louis A. Martinet Legal Soc'y, Inc. (Dec. 9, 2019), https://gnomartinet.com/the-honorable-piper-d-griffin-2/.

Orleans Parish District Court and served for almost 20 years, including multiple years as chief judge.[33]

Justice Griffin's career demonstrates an unfailing commitment to public service. Before becoming a justice, she volunteered with the Juvenile Courts and with Lawyers in the Classroom.[34] She is a member of the Louisiana State Law Institute Council and is active in various professional and civic associations, including the Louisiana Judicial Council Foundation/National Bar Association and the Louisiana Association of District Court Judges.[35] And just as her predecessors on the Court, she is an active member of the Greater New Orleans Martinet Society, including having served as Treasurer and Corresponding Secretary.

Since joining the Supreme Court bench, Justice Griffin continues to dedicate time to continuing legal education, frequently speaking for both national and local programs including the Louisiana State Bar Association, the New Orleans Bar Association, and the Louisiana

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[33] *Associate Justice Piper D. Griffin*, La. Sup. Ct., https://www.lasc.org/About/Biography?p=Piper_D._Griffin.
[34] *Justice Piper D. Griffin*, La. St. Bar Ass'n, https://www.lsba.org/documents/CLE/Diversity/GriffinBP.pdf?File=c5e59f53-362a-4c11-b5a9-ba5a7855ae68.
[35] *Id.*

Judicial College.[36] She is the immediate Past President of the Louisiana Judicial Council/National Bar Association.[37] The Louisiana Supreme Court has appointed Justice Griffin as the Constitutional Law Bar Examiner for the Louisiana Bar Exam, which Justice Griffin considers "one of her crowning career achievements."[38]

In recognition of her contributions to the legal profession and society at large, Justice Griffin has received numerous awards and accolades. The Martinet Society presented Justice Griffin with its 2003 Judicial Pacesetter Award and its 2018 Lifetime Achievement Award, demonstrating her longstanding influence.[39] She has also received, among others, the American Board of Trial Advocates Thomas Jefferson Justice By the People Award, the National Bar Association Judicial Council's Sarah J. Harper Humanitarian Award, and the Alliance for Good Government Civic Award.[40]

Similar to Justice Ortique and Justice Johnson, Justice Griffin has expressed keen awareness of the impact that fair representation on the

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[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Justice Piper Griffin*, La. Jud. Council Nat'l Bar Ass'n, https://louisianajudgesnoir.org/judges-profiles/judge-piper-griffin/.
[40] *Justice Piper D. Griffin*, *supra.*

Louisiana Supreme Court has for Black communities. In a Constitution Day address to students at Grambling State University, an Historically Black University, Justice Griffin stated "I work in a place where we're not present, though our voice I hope can be heard."[41] And Justice Griffin was the lone dissenter in the Court's decision to decline to retroactively apply the U.S. Supreme Court ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which found non-unanimous convictions racially discriminatory and unconstitutional. In her dissent, Justice Griffin powerfully opined that "[i]ntentional racism has no place in our criminal justice system[.]" *State v. Reddick*, 351 So. 3d 273, 296 (La. 2022) (Griffin, J., dissenting). She further opined:

> The racially discriminatory nature of convictions secured by non-unanimous verdicts does not change over time. Such convictions were racially discriminatory in 1898. They were racially discriminatory in 1975. They remain racially discriminatory today. . . . We must not perpetuate something we all know to be wrong only because we fear the consequences – and costs – of being right.

[41] *Associate Justice Griffin Encourages Campus Community to Remain Vigilant About Life, Freedom, And Prosperity During Constitution Day Address*, Grambling St. News (Sept. 19, 2023), https://www.gram.edu/news/index.php/2023/09/19/associate-justice-griffin-encourages-campus-community-to-remain-vigilant-about-life-freedom-and-prosperity-during-constitution-day-address/.

Id. at 297. Justice Griffin's service on the Louisiana Supreme Court is yet another example of how fair representation can move us towards a system that preserves the rights of *all* individuals. And absent the *Chisom* Decree, her service—and that of all three Black justices on the Louisiana Supreme Court to date—likely would not have been possible.

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The election and service of Justices Ortique, Johnson, and Griffin demonstrate what is at stake here. The Court must hold the State to its Rule 60 burden to show compliance with all of the *Chisom* Decree's remedies, including its prospective remedy. Filing a new Section 2 claim against the State (if necessary) is not a viable option for Plaintiffs because litigating a new Section 2 case will take years—risking needless and irreparable re-infringement of the voting rights of Black voters in Orleans Parish.

II. The *Chisom* Decree Was and Still Is Necessary to Remedy the Lack of Fair Representation on the Louisiana Supreme Court in Violation of the Federal Civil Rights of Black Voters in Orleans Parish.

Consent decrees have been and continue to be a critical tool for protecting the civil rights of racial minority populations, including Black voters in Louisiana. *See, e.g.*, Consent Decree, *United States v. City of*

West Monroe, La, No. 3:21-cv-00988 (W.D. La. Apr. 14, 2021), ECF 4; 4-1 (ending the at-large voting system in the City of West Monroe, Louisiana that violated Section 2 of the Voting Rights Act).

Black voters in Louisiana are all too familiar with violations of their civil rights; indeed, the State of Louisiana has a thoroughly documented and judicially recognized history of official racial discrimination against Black voters. *See, e.g.*, *Nairne v. Ardoin*, No. 22-cv-178-SDD-SDJ, 2024 WL 492688, at *37 (M.D. La. Feb. 8, 2024) ("For over 40 years, Louisiana's courts have recognized the state's history of official discrimination."); *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 846–48 (M.D. La. 2022), *vacated and remanded on other grounds*, 86 F.4th 574 (5th Cir. 2023) ("The evidence of Louisiana's long and ongoing history of voting-related discrimination weighs heavily in favor of Plaintiffs."); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 439 (M.D. La. 2017), *rev'd sub nom, Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020) ("Louisiana and its subdivisions have a long history of using certain electoral systems that have the effect of diluting the black vote."); *Parnell v. Rapides Par. Sch. Bd.*, 425 F. Supp. 399, 404 (W.D. La. 1976), *aff'd in part, modified in part*, 563 F.2d 180 (5th Cir. 1977) (finding "a continuing