IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*,	)	
Plaintiffs,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NUMBER 3:11-cv-123-TCB
FAYETTE COUNTY BOARD OF COMMISSIONERS, *et al.*,	)	
Defendants.	)	

ORDER

This case is currently before the Court on a motion [38] by Defendants Fayette County Board of Commissioners; Herb Frady, Robert Horgan, Lee Hearn, Steve Brown and Allen McCarty, in their official capacities as members of the Fayette County Board of Commissioners; Fayette County Board of Elections and Voter Registration; and Tom Sawyer, in his official capacity as the department head of the Board of Elections and Voter Registration (collectively, the "County Defendants") for

an order vacating the consent decree and final judgment [35] entered by the Court on February 24, 2010.

I. Background

On August 9, 2011, Plaintiffs, who include the Georgia State Conference of the NAACP, the Fayette County Branch of the NAACP, and individuals who are black registered voters residing in Fayette County, brought this action against Fayette County, Georgia, the Fayette County Board of Commissioners ("BOC"), the individual members of the BOC in their official capacities, the Fayette County Board of Education ("BOE"), the individual members of the BOE in their individual capacities, the Fayette County Board of Elections and Voter Registration ("BOEVR"), and Tom Sawyer, who is the department head of the BOEVR, in his official capacity.

Plaintiffs assert that Defendants' at-large method of electing members to the BOC and BOE violates § 2 of the Voting Rights Act, 42 U.S.C. § 1973. They allege that Fayette County's total population is 71.1% white and 20.1% black with a voting-age population that is 73.6% white and 19.5% black. They further allege that voting-age black residents of Fayette County reside in substantial numbers in a geographically compact area in the northeastern part of the county. Additionally, they allege that black

residents' voting patterns are politically cohesive in elections involving candidates to the BOC and BOE, but that no black candidate has ever been elected to either body. According to Plaintiffs, Fayette County's at-large method of electing members to these boards, given the levels of racially polarized voting, guarantees that no black person will ever be elected to either board. Thus, Plaintiffs seek to enjoin the continued use of at-large voting for the BOC and BOE.

On October 11, 2011, the County Defendants filed their answer, and on December 9, 2009, the BOE and its members (collectively the "School Board Defendants") file their answer. No other substantive motions were filed in this case until February 20, 2012, when Plaintiffs and the School Board Defendants filed a "joint motion for approval of consent decree and entry of final judgment" [33].

In the consent decree, the Plaintiffs and the School Board Defendants devised a single-member district plan for the BOE. According to the consent decree, this plan "provides an equal opportunity for blacks to elect candidates of their choice to the Board of Education in District 5, in which Blacks compromise 48.68% of the total population and 46.2% of the voting age population." Additionally, the consent decree provides that its terms

are in compliance with the mandate set forth in the local constitutional amendment found in 1970 Georgia Laws 979. The parties further represent in the consent decree that "the Board of Education Defendants have the authority to settle lawsuits." Finally, according to the consent decree, "[t]he Board of Education Defendants have a substantial and compelling interest in avoiding a judicial finding of liability under Section 2 of the Voting Rights Act."

Because the decree was styled a "consent decree," the Court was of the understanding that all parties consented to its entry. However, the County Defendants did not consent to the decree. On February 24, the Court approved the proposed consent decree and entered final judgment.

On March 5, the County Defendants filed a motion to vacate the consent decree and final judgment, arguing that the remedy to which the Plaintiffs and School Board Defendants agreed is not authorized by law. Accordingly, they argue, the Court should vacate its entry of the consent decree and final judgment.

II. Analysis

A. Legal Standard

The County Defendants move under Federal Rule of Civil Procedure 60(b)(1) for the Court to vacate its entry of the consent decree and final judgment under. Rule 60(b)(1) provides "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding" under certain circumstances. These circumstances include:

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

"The purpose of the motion is to permit the trial judge to reconsider such matters so that he can correct obvious errors or injustices and so perhaps obviate the laborious process of appeal." *Fackelman v. Bell*, 564 F.2d 734, 736 (5th Cir. 1977). The broad language of Rule 60(b)(1) "seems to include mistakes of fact as well as mistakes of law." *Nisson v. Lundy*, 975 F.2d 802,

806 (11th Cir. 1992). "Motions under this rule are directed to the sound discretion of the district court." *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984).

B. County Defendants' Motion to Vacate

The County Defendants argue that the Court should vacate its order approving the consent decree because the consent decree provides a remedy that violates state law for a § 2 violation that has not been established. Specifically, they argue that (1) the remedies outlined in the consent decree cannot be imposed when there is no established violation of § 2 of the Voting Rights Act; (2) the School Board Defendants are without authority to make changes to the local constitutional amendment on its own motion; and (3) the consent decree's method of filling vacancies is contrary to state law.

1. County Defendants' Standing to Challenge the Consent Decree

As an initial matter, Plaintiffs argue that the County Defendants lack standing to challenge the Court's approval of the consent decree. Plaintiffs contend that the County Defendants have no legal right to object or otherwise interfere with the entry of the Plaintiffs and School Board

Defendants' settlement because it imposes no legal duties or obligations upon the County Defendants.

The County Defendants respond that the decree imposes upon them a number of duties because Sawyer and the BOEVR administer all elections in Fayette County and the BOC and its members are responsible for providing local government services, including funding the BOEVR. Thus, according to the County Defendants, the consent decree requires the County to allocate voters to new districts and then hold a special election for District 5, both of which involve the expenditure of resources by the County Defendants.

Both parties rely upon the Supreme Court's decision in *Local No. 93, International Association of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501 (1986), in support of their positions. Among the issues considered by the Court in *Local No. 93* was whether a court could enter a consent decree when an intervening party did not consent thereto. The Court explained, "It has never been supposed that one party—whether an original party, a party that was joined later, or an intervenor—could preclude other parties from settling their own disputes and thereby withdrawing from litigation." *Id*. at 528–29. Thus, according to the Court,

the intervenor was "entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree," but it did not "have power to block the decree merely by withholding its consent." *Id.* at 529. However, the Court further noted that "a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree." *Id.*

The Court agrees with the County Defendants that the consent decree imposes obligations upon them. Thus, according to the Supreme Court's holding in *Local No. 93*, the County Defendants are entitled to a hearing in which they may present evidence on this issue as well as their other objections to the consent decree.[1]

Plaintiffs cite *United States v. City of Miami*, Florida, 664 F.2d 435, 441 (5th Cir. 1991), for the proposition that even if the Court finds that the consent decree does affect the County Defendants, the Court was

[1] Plaintiffs argue that "Georgia courts routinely enter consent decrees over the objection of parties outside the agreement." They cite two cases in support of their contention: *United States v. DeKalb County*, No. 1:10-cv-4039-WSD, 2011 WL 6402203 (N.D. Ga. Dec. 20, 2011), and *Savannah-Chatham County Fair Housing Council v. Alvin L. Davis, Inc.*, No. 406CV018, 2007 WL 1288130 (S.D. Ga. Apr. 30, 2007). However, neither of these cases was a Voting Rights Act case. And as noted by the Court in *DeKalb County*, "In the Eleventh Circuit, the right to intervene and object to the entry of a consent decree has largely evolved from Title VII and Voting Rights Act cases." 2011 WL 6402203, at *6 n.6. This is because in Title VII and Voting Rights Act cases, the relief often affects third parties, and the courts strive to make certain that they do not impose obligations upon third parties without first allowing them the opportunity to object.

nevertheless authorized to approve the consent decree if the Court determined that it was reasonable. However, *City of Miami* cuts against Plaintiffs' argument. There, the court explained, "If the decree also affects third parties, the court must be satisfied that the effect on them is neither unreasonable nor prescribed." *Id*. at 441. Thus, because the Court finds that the consent decree will impose obligations upon the County Defendants, it must conduct a hearing to determine whether those obligations are unreasonable.

The Court finds that the County Defendants have standing to challenge the Court's order approving the consent decree. Further, because the Court entered its approval of the consent decree without first allowing the County Defendants an opportunity to be heard regarding their objections to the consent decree, the Court will vacate its February 24, 2012 order approving the consent decree.

2. Consent Decree's Remedies

The County Defendants raise multiple arguments against the Court's entry of the consent decree, including that (1) the Court cannot fashion the relief set forth in the decree because no § 2 violation has been established; (2) the School Board Defendants did not have the authority to enter into

the settlement; and (3) the consent decree's method of filling vacancies is contrary to state law. In response, Plaintiffs and the School Board Defendants argue that (1) the Court was not required to establish § 2 liability before approving the settlement; (2) there is sufficient indicia that the County's current at-large scheme violates federal law; and (3) the School Board Defendants have authority to enter into the consent decree.

In *Stovall v. City of Cocoa, Florida*, 117 F.3d 1238 (11th Cir. 1997), the Eleventh Circuit considered the district court's entry of a consent decree in a Voting Rights Act case. The parties entered into a settlement, and the Court approved the consent decree, but one of the parties then sought to withdraw its consent. Although the court found that the decree was binding on the parties, the court further instructed,

> Even though the decree is predicated on consent of the parties, the judge must not give it perfunctory approval . . . . Because the consent decree does not merely validate a compromise but, by virtue of its injunctive provisions, reaches into the future and has continuing effect, its terms require more careful scrutiny. Even when it affects only the parties, the court should, therefore, examine it carefully to ascertain not only that it is a fair settlement but also that it does not put the court's sanction on and power behind a decree that violates Constitution, statute, or jurisprudence. This requires a determination that the proposal represents a reasonable factual and legal determination based on the facts of record, whether established by evidence, affidavit, or stipulation. *If the decree also affects*

> *third parties, the court must be satisfied that the effect on them is neither unreasonable nor proscribed.*

Id. at 1242 (citing *City of Miami*, 664 F.2d at 440–41). The Eleventh Circuit found that because the district court had not conducted an evidentiary hearing regarding the constitutionality of the consent decree's proposed remedy, the record was not sufficiently developed to permit the court to conduct a meaningful review of the proposed consent order. Although the Plaintiffs argued that a full evidentiary hearing before approving the settlement "would defeat the purpose of a settlement—to 'save the time, expense, and psychological toll [and] also avert the inevitable risk of litigation[,]'" the court noted that "this [was] not an ordinary, private settlement. It [was] a districting plan which [would] change the method of electing city council members and affect the rights of all Cocoa, Florida, voters." *Id*. at 1243–44. The court thus remanded the case to the district court, instructing it to hold an evidentiary hearing "to determine whether to accept a consent decree which would impose a new method of election." *Id*. at 1244.

Based on the Eleventh Circuit's holding in *Stovall*, the Court finds it appropriate to hold an evidentiary hearing to hear evidence and argument

related to the parties positions regarding the propriety of approving the consent decree.

III. Conclusion

Accordingly, the Court VACATES its February 24, 2012 order approving the consent decree [35].

The Court will hold an evidentiary hearing on Thursday, May 3, 2012, at 2:00 p.m. in Courtroom 2106 in Atlanta, during which it will hear argument regarding: (1) whether the obligations, if any, incurred by the County Defendants under the consent decree are reasonable; (2) whether the consent decree is constitutional, including (a) whether a § 2 violation must be established before the Court may enter the consent decree, and (b) whether Plaintiffs have made out a § 2 claim under *Thornburg v. Gingles*, 478 U.S. 30 (1986), and (c) whether the consent decree's remedy complies with *Gingles* as required by *Shaw v. Hunt*, 517 U.S. 899 (1996); (3) whether the School Board Defendants have the requisite authority to enter into the settlement; and (4) whether the consent decree's method of filling vacancies is contrary to state law.

The parties shall file their briefs, with accompanying evidence, on or before Wednesday, April 25, 2012. The parties shall file response briefs on or before Tuesday, May 1, 2012.

IT IS SO ORDERED this 18th day of April, 2012.

Timothy C. Batten, Sr.
United States District Judge