

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TEDDY BILLIOT, ET AL.

CIVIL ACTION

VERSUS

NO: 21-1144

TERREBONNE PARISH SCHOOL
BOARD, ET AL.

SECTION: "J"(2)

ORDER & REASONS

Before the Court is a *Motion for Temporary Restraining Order* (**Rec. Doc. 11**) filed by Plaintiffs and an opposition (Rec. Doc. 19) filed by Defendants. On July 9, 2021, the Court held a status conference where the Court orally denied Plaintiffs' motion. (Rec. Doc. 26). The Court now provides additional reasons for its denial of the temporary restraining order.

FACTS AND PROCEDURAL BACKGROUND

This action arises from the Terrebonne Parish School Board's ("TPSB") decision on April 13, 2021 to close Pointe-aux-Chênes Elementary School ("PAC"), a school attended solely by Louisiana Native Americans and Louisiana Cajuns whose parents' first or second language is either Native American or other Louisiana French. Specifically, PAC is being merged with Montegut Elementary, which is approximately four miles away from PAC's campus. TPSB made this decision due to declining enrollment in PAC, after receiving three separate recommendations to pursue this course of action. (Rec. Docs. 24-1, 24-2, 24-3). Before TPSB's decision to close PAC, the school had an estimated enrollment of 75 students for the 2021-2022

school year. Notably, both PAC and Montegut Elementary operate as feeder schools to Montegut Middle School.

In response to TPSB's decision to close PAC, Plaintiffs, who are parents of students that attended PAC, filed the instant suit in an attempt to enjoin the school's closure, and filed a motion for a temporary restraining order to that effect. Specifically, Plaintiffs raise the following grounds to enjoin TPSB from closing the school: (1) violations of federal statutory and constitutional law, including, discrimination in education based on race, color, or national origin under color of law in violation of Title VI of the Civil Rights Act of 1964 and 42 U.S.C. § 1983; (2) violations of Louisiana Constitutional Law, including constitutional protections against racial, ethnic, and linguistic discrimination, and the public trust doctrine; and (3) violations of the Native American Languages Act of 1990 and the Durbin Feeling Native American Languages Act of 2021.

LEGAL STANDARD

A district court may grant a temporary restraining order if the movant establishes: (1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that immediate and irreparable harm will result if the TRO is not granted; (3) the threatened injury to the movant outweighs the threatened harm to the defendant; and (4) granting the TRO will not disserve the public interest. *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985); *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). A temporary restraining order is an extraordinary remedy which may only be granted if the

movant has clearly carried its burden of persuasion on all four requirements. *PCI Transp., Inc. v. Fort Worth & W. R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005).

DISCUSSION

I. Alleged Violation of Title VI and 42 U.S.C. 1983

Title VI of the Civil Rights Act of 1964 provides in relevant part that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000(d). “Private individuals can bring suit ‘to enforce [section] 601 of Title VI.’” *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015). (quoting *Alexander v. Sandoval*, 532 U.S. 275, 279-80 (2001)). Because Title VI “prohibits only intentional discrimination,” a Title VI plaintiff must prove discriminatory intent in order to recover compensatory damages. *Id.*

In order to prevail under the Equal Protection Clause and § 1983, Plaintiffs must prove that (1) they “received treatment different from that received by similarly situated individuals” and (2) “the unequal treatment stemmed from a discriminatory intent.” *Priester v. Lowndes Cty.*, 354 F.3d 414, 424 (5th Cir. 2004) (cleaned up). Thus, both Title VI and the Equal Protection Clause are violated only when the alleged conduct was “animated by an intent to discriminate and not by conduct which, although benignly motivated, has a differential impact on persons of different [protected classes].” *Castaneda v. Pickard*, 648 F.2d 989, 1007 (5th Cir. 1981).

Without direct evidence of discriminatory rationale, it is incredibly difficult to prove intentional discrimination. *Smith v. Henderson*, 54 F. Supp. 3d 58, 68-69 (D.D.C. 2014). In order to establish discriminatory intent, a plaintiff must show “that the decision maker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effect on an identifiable group.” *Castaneda*, 648 F.2d at 1007.

Defendants assert that TPSB did not decide to close PAC due to discriminatory intent, but instead, based on a dwindling student body. This argument is bolstered by the fact that PAC, which educated students between kindergarten and fourth grade, had an estimated enrollment of 75 students for the 2021-2022 school year. Given this small and allegedly declining student body, this appears to be a rational and neutral reason to combine the schools. Plaintiffs have submitted no argument to rebut this rationale for the merger.

Instead of disputing TPSB’s rationale for the merger, Plaintiffs argue that TPSB made their decision with discriminatory intent against French-speakers, citing TPSB’s refusal to establish a French Immersion program, despite receiving two petitions to establish such a program from parents of PAC students. La. R.S. 17:273.3 states that a local school board shall establish a foreign language program, if:

- (i) The parent or legal guardian of each student commits, **in writing, that the student will participate in the program.**
- (ii) The requisite number of written requests are submitted to the local school board **not later than January thirty-first prior to the school year in which the program is to be established.**
- (iii) The minimum foundation program formula provides funding to local school systems employing foreign language teachers to provide salary supplements for such teachers at a level equal to or greater than the

level of funding provided for this purpose through such formula for the 2011-2012 fiscal year.

(iv) A sufficient number of foreign language teachers with the required credentials as prescribed by the State Board of Elementary and Secondary Education are available through programs administered by the Department of Education and the Council for the Development of French in Louisiana to establish the program.

(v) There is no existing foreign language immersion program offered by the local school board, in the same foreign language being proposed, that has been certified by the State Board of Elementary and Secondary Education pursuant to R.S. 17:273.2.

La. Rev. Stat. § 17:273.3 (emphasis added). Although parents of students at PAC submitted petitions to establish a French Immersion program in 2018 and 2020, neither of these petitions met the deadline requirement. (Rec. Docs. 24-5, 24-6). Further, the parents of the students did not commit to sending their children to these programs in writing. (*Id.*). Thus, because the petitions did not comply with the statutory requirements of La. R.S. 17:273.3, TPSB's decision not to create a French Immersion program is insufficient to show discriminatory intent against French-speaking students or their parents.

Alternatively, Plaintiffs argue that TPSB's decision was motivated by its historical animus against French speakers, asserting that a case from nearly 60 years ago is proof of historical discrimination. (Rec. Doc. 20-4). Although TPSB may have discriminated against French speakers in the distant past, Plaintiffs have provided no evidence showing that such discriminatory intent is present today or that the decision that led to PAC's closure was related to any historical discriminatory policy. *See Smith*, 54 F. Supp. 3d at 70 (holding that no reasonable jury could find any rational connection between an allegedly discriminatory school closing and

discriminatory policies that were in effect forty years prior). Thus, Plaintiffs have failed to demonstrate how TPSB's discrimination against French speakers almost 60 years ago had any influence on its decision to merge PAC with Montegut Elementary and close PAC's campus.

Because Plaintiffs have provided insufficient evidence that TPSB was motivated by discriminatory intent, the Court finds that Plaintiffs have failed to establish a substantial likelihood of success on the merits of their § 1983 and Title VI claims.

II. Alleged Violation of the Louisiana Constitution

Plaintiffs raise numerous alleged violations under the Louisiana Constitution; however, each argument fails for separate reasons.

Article I, Section 3 provides, "no person shall be denied the equal protection of the laws." La. Const. art. I, § 3. In general, the Louisiana Constitution's "guarantee of equal protection requires that state laws affect alike all persons and interests similarly situated." *State v. Fleury*, 799 So. 2d 468, 472 (La. 2001) (emphasis added). Thus, when evaluating an equal protection claim under the Louisiana Constitution, the court must determine whether an individual law "abridges an individual's right to equality, and to determine [the law's] constitutionality." *Expunged Record (No.) 249,044*, 881 So. 2d at 109. If a plaintiff fails to challenge the constitutionality of a state law, then the complaint fails to state an equal protection claim. *Winn v. New Orleans City*, 919 F. Supp. 2d 743, 751 (E.D. La. 2013). In this case, Plaintiffs do not challenge any Louisiana law, but instead, challenge TPSB's decision to close PAC.

Since Plaintiffs failed to challenge the constitutionality of any Louisiana laws, they have failed to state a claim under Article I, Section 3 of the Louisiana Constitution.

Article XII, Section 4 establishes, “[t]he right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized.” La. Const. art. XII, § 4. Plaintiffs have failed to elaborate on how this constitutional provision applies to their case or provide any authority regarding its application.

Article IX, Section 1 states, “[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. art. IX, § 1. Plaintiffs argue that this provision also applies to people but provide no authority or explanation for this argument.

III. Alleged Violation of the Native American Languages Act of 1990 and the Durbin Feeling Native American Languages Act of 2021

The Native American Languages Act of 1990 provides, “[t]he right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs.” 25 U.S.C. § 2904. Plaintiffs have not alleged how this statute applies to the instant case, especially considering that, “[n]othing in this chapter shall be construed as precluding the use of Federal funds to teach English to Native Americans.” 25 U.S.C. § 2906.

The Durbin Feeling Native American Languages Act of 2021 has not been signed into law, and thus, is not relevant to these proceedings.

Because the Court finds that Plaintiffs have failed to carry their burden of showing a substantial likelihood of success on any of their claims, it need not address the remaining temporary restraining order prongs.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' *Motion for Temporary Restraining Order (Rec. Doc. 11)* is **DENIED**.

New Orleans, Louisiana, this 13th day of July, 2021.



CARL J. BARBIER
UNITED STATES DISTRICT JUDGE