

STATE OF LOUISIANA LITIGATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

In *State of Louisiana v. EPA et al.* (W.D. LA., No. 2:23-cv-00692), filed on May 23, 2023, Louisiana challenged EPA's and DOJ's¹ disparate-impact regulations of Title VI of the Civil Rights Act of 1964. On January 23, 2024, the District Court issued a preliminary injunction barring EPA and DOJ from imposing or enforcing any disparate-impact-based requirements under Title VI and any other Title VI-based requirements that were not both ratified by the President, as required by 42 U.S.C. § 2000d-1, and found within the four corners of EPA's disparate-impact regulations, 40 C.F.R. § 7.35(b), (c).

On August 22, 2024, the court issued its final judgment permanently enjoining EPA and DOJ from:

- (1) enforcing our disparate-impact regulations (40 CFR § 7.35(b) and (c) and 28 C.F.R. § 42.104(b)(2)) within the State of Louisiana or requiring compliance with those sections as a condition of past, existing, or future awards of financial assistance to any entity in the State of Louisiana, and
- (2) enforcing against any entity in the State of Louisiana any EPA disparate-impact requirement under Title VI or cumulative-impact-analysis requirement under Title VI that has not been ratified by the President pursuant to 42 U.S.C. § 2000d-1 and is not contained in the EPA regulations implementing Title VI within 40 C.F.R. Part 7.

Louisiana filed a motion to amend the judgment on September 19, 2024, seeking nationwide vacatur of EPA and DOJ's disparate-impact regulations. The motion has been fully briefed, and we await the court's decision. Once the court rules, each party has 60 days to file a notice of appeal.

KEY POINTS:

Basis for suit: The State of Louisiana's seven-count District Court complaint arose out of two administrative Title VI complaints. Those administrative complaints involved the Louisiana Department of Environmental Quality (LDEQ) and Louisiana Department of Health (LDH) and their activities involving the Denka Performance Elastomer LLC (Denka) facility and LDEQ's issuance of permits for the proposed Formosa facility, which allegedly created discriminatory impacts on Black residents of St. James Parish and the Industrial Corridor. The two administrative complaints were administratively closed on June 27, 2023.

Complaint: The lawsuit alleged that:

- (1) EPA violated the private non-delegation doctrine and the Administrative Procedure Act (APA) by delegating sovereign governmental powers to "private special interest groups," i.e., the complainants, by "allowing them to veto continuation of informal resolution discussion that last more than 180 days" (Counts I & II);
- (2) the Federal government disparate-impact regulations violate Title VI, the Spending Clause of the Constitution, and the authority that the Executive possesses under Title VI by imposing disparate-impact-based liability under Title VI (Counts III, IV, and V);

¹ The United States, to include all departments and agencies, are named defendants in the case. However, the final judgment only impacts EPA and DOJ.

- (3) EPA has imposed new “extra-regulatory requirements” (e.g., cumulative-impacts assessment) without compliance with APA rulemaking requirements (Count VI); and
- (4) EPA violates its own Title VI regulations asserted under the APA when it pursues informal resolution concurrently with the compliance processes of § 7.115 on a “parallel track” (Count VII).

Plaintiffs requested the following relief:

- (1) declaratory relief determining that:
 - EPA’s delegation of governmental power to the private special-interest groups is unconstitutional and/or arbitrary and capricious;
 - EPA’s and DOJ’s disparate impact regulations are unlawful; and
 - EPA’s attempt to impose extra-regulatory requirements under Title VI is unlawful.
- (2) vacatur of the challenged actions and disparate-impact regulations;
- (3) preliminary and permanent injunctions enjoining the challenged actions and disparate-impact regulations; and
- (4) imposition of fees and any other relief the court finds appropriate.

Court’s Ruling on Defendant’s Motion to Dismiss or for Summary Judgment: On January 23, 2024, the District Court Judge issued a 77-page memorandum, in which:

- (1) On the threshold question of jurisdiction, the court denied Defendants’ Motion to Dismiss. Defendants asserted a lack of standing; mootness; the existence of alternative paths for judicial review; and the absence of final agency action under the APA (Counts I – VII).
- (2) Defendants also moved to dismiss for failure to state a claim and, alternatively, moved for summary judgment. The court dismissed the non-delegation claims and denied the motions as to the other claims.
 - a. Counts III, IV, & V: in denying the motion to dismiss, the court ruled that *Guardians Ass’n v. Civil Serv. Comm’n* (U.S. 1983) has no precedential effect as to the validity of disparate-impact regulations under Title VI because the Supreme Court in that case did not evaluate Section 602 under the unambiguous-clarity standard that the Spending Clause doctrine requires. Further, the court agreed with Plaintiff that the major questions doctrine is applicable as to whether Title VI imposes liability for disparate impact.
 - b. Count VI: The court found that the “mandates” of cumulative-impact analyses are “more than mere negotiating proposals or suggestions....” It appeared to the court that EPA imposes these requirements on recipients as conditions for grants and with regard to issuing permits. Therefore, there was a real threat of enforcement, and EPA’s “guidance” is actually binding.

Preliminary Injunction: On January 23, 2024, the District Court Judge entered a preliminary injunction enjoining EPA and DOJ from enforcing its disparate-impact regulations under Title VI or imposing any requirements on the State of Louisiana or its agencies not ratified by the President and not found within the four corners of EPA’s disparate-impact regulations.

Court’s ruling on final judgment pleadings and Permanent Injunction: The parties agreed that there were only legal issues remaining and jointly asked the court to allow briefing on what the final judgment should be. The identified areas of dispute were whether DOJ’s and EPA’s disparate-impact regulations should be vacated and whether a permanent injunction should enjoin action involving Louisiana state agencies only or all entities within the State of Louisiana. The court determined that Defendants failed to overcome the presumption that a vacatur without limit is warranted, but the court exercised its discretion under the APA to provide a more limited remedy intended to address the injury experienced by the State. The court further held that the scope of the injunction should be statewide to remedy the

State’s sovereign injury and avoid violation of State’s non-discrimination laws. The permanent injunction, detailed above, expanded the scope of the preliminary injunction by applying it to any entity in the State of Louisiana.

LA’s Motion to Amend the Judgment: On September 19, 2024, Louisiana filed a Motion to Amend the Judgment, seeking vacatur of the disparate-impact regulations on the grounds that (1) intervening authority, i.e. a Fifth Circuit case issued the day after this judgment, “eliminates discretion” of the District Court to withhold vacatur; (2) new evidence, i.e. an agreement between the State of Michigan and complainant groups in Michigan under which Michigan agreed to do cumulative-impact analyses, puts LA at a competitive disadvantage for grants; and, (3) the court misunderstood the State’s initial request for nationwide vacatur.

DOJ and EPA filed a response opposing this motion on October 3, 2024, arguing that the State failed to meet the criteria for a motion to amend because they were not relying on new law or new evidence but, rather, repeating arguments made in its prior filings. We also argued that the court’s August ruling made clear that it knew the State was seeking vacatur.

We are awaiting the court’s ruling on this motion. Once it is received, each party has 60-days to file a notice of appeal.

ONGOING/UPCOMING REVIEWS FOR FY2025:

N/A

KEY EXTERNAL STAKEHOLDERS:

- ☐ Congress
- ☐ Industry
- ☒ States
- ☒ Tribes
- ☐ Media
- ☒ Other Federal Agency
- ☒ NGO
- ☒ Local Governments
- ☒ Public

MOVING FORWARD:

After the court rules on the Motion to Amend, DOJ and EPA will decide whether to recommend that the Solicitor General appeal or cross-appeal.

LEAD OFFICE/REGION: OGC

OTHER KEY OFFICES/REGIONS: ALL REGIONS, ALL PROGRAMS

Lead Office – OGC CRFLO

Other Key Offices/Regions: Office of Environmental Justice and External Civil Rights (OEJECR); Region 6.