

Suing for Succession: Bernette Joshua Johnson, the Louisiana Supreme Court, and Jim Crow's Legacy

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Abstract: State supreme courts are the primary interpreters of state law, and the chief justice has a great influence over what cases are heard. Many legal researchers argue that citizens should elect candidates to their state supreme court not only for their judicial acumen but also to maintain a proportional representation of minority constituents on the bench. However, for states whose histories and laws are rooted in white supremacist ideas, certain voting processes make proportional representation on the bench less attainable. In the case of Bernette Joshua Johnson and the Louisiana Supreme Court, Johnson maneuvered her way up the judicial ladder but faced adversity along her journey. When a vacancy opened for the seat of chief justice on the Louisiana Supreme Court, Johnson had to choose whether to acquiesce to her colleagues and allow a white male co-justice to ascend in her place or to uphold the importance of a representative bench and fight for her succession as Louisiana Supreme Court chief justice.

Introduction

“As a Black person, you never think you’ll get justice at any judicial level, state or federal. You always had all-white everything: white judges, white this, white that, white police officers. To get any judicial help at a state level, you needed somebody who at least looked like you.”

Ronald Chisom, New Orleans Activist, Author, and Co-founder of The People's Institute for Survival and Beyond

Former Louisiana Supreme Court Chief Justice Bernette Joshua Johnson is a woman of many firsts. In addition to being one of the first Black women to attend and graduate from Louisiana State University (LSU) Law School, she was also the first Black woman to sit on the Louisiana Supreme Court, the first female judge elected to Orleans Parish Civil District Court, and the first Black woman—or Black person in general—to hold the seat of chief justice in 2013 (Louisiana State Bar Association 2013). However, these positions did not come without a price, or at least a hard-fought battle in the courtroom. Challenging the racial bias that still permeated Louisiana’s courts in the late 1980s, New Orleans activist Ronald Chisom paved the way for Johnson’s upward mobility in her judicial career by taking the state to court (Green 2021). Despite his efforts and ten years of legal battles, Johnson faced hardships as she grappled with the court system’s consistent barriers for women of color throughout the 1990s and 2000s. Unsurprisingly, the same judicial system Chisom faced sought to obstruct her from rising up the judicial ranks less

than thirty years later. Johnson had a choice: she could hold her tongue to placate her colleagues, or she could fight back against them in an effort to legitimize her seat on the Supreme Court.

The Succession in Question

On the morning of Sunday, January 10, 2010, Louisiana Supreme Court Chief Justice Catherine “Kitty” Kimball’s husband rushed her to the hospital for a stroke after the chief justice awoke and found that she could not walk in a straight line (Green 2021). Catherine Kimball, the first woman elected to the Louisiana Supreme Court, was sworn in as chief just a year prior to her hospitalization (Green 2021). Surgeons removed a clot from her brain, and the Baton Rouge hospital released Kimball only a month later (Green 2021). Upon her return, Kimball told reporters she was experiencing severe vision issues in her right eye and could not resume her administrative or judicial duties (Green 2021). Kimball planned to participate in conferences from home and return to the court later that year (Green 2021).

Kimball, a democrat and mother, used her position on the Louisiana Supreme Court to advocate for abused and neglected children through juvenile justice reform, cementing her legacy as a “mother to a lot more than just her family,” according to current Louisiana Supreme Court Chief Justice John Weimer (Bizette 2021). However, in April of 2012, after briefly returning to the court and learning that she could not work anywhere near her previous capacity, Kimball announced her retirement six years before the end of her term (Green 2021). Her retirement would take effect on January 31, 2013, and meanwhile Justice Johnson, one of two women associate justices on the court and second-most senior after Kimball, graciously “picked up the slack” in Kimball’s absence regarding administrative duties (Green 2021, n.p.).

Whoever holds the seat of chief justice has significant influence in the selection of cases for review and leads case discussion among the justices. As a district court judge, Johnson used to “sign [her] name and make something happen” independently (Louisiana State Bar Association 2013, 384). Serving as chief justice, Johnson could have the same agency she possessed as a district judge because the position would allow her to determine which cases the Court would review (Louisiana State Bar Association 2013). State supreme courts are especially important because they generally handle the appeal in criminal cases, which may be the first time that someone is establishing whether the punishment is excessive or not (Green 2021). According to Johnson, laws like the habitual offender statute created excessive sentences for Black people and were the “modern manifestation” of post-Reconstruction era “pig laws,” which utilized harsh sentences and excessive fines to unfairly penalize poor Black people as felons for misdemeanor crimes (Green 2021, n.p.). If voted chief justice, Johnson could achieve greater agency to ‘make something happen’ by influencing case selection and changing the unjust criminalization of people of color in the state.

By the summer of 2012, two justices had their eyes on the coveted chief seat and were willing to do what was necessary to secure their position as the next chief (Green 2021). The two justices in question were Johnson and Jeffrey P. Victory, a Republican from Shreveport, Louisiana (Green 2021). Victory was elected and sworn into the Louisiana Supreme Court nearly two months after Johnson (Green 2021). However, Johnson was uniquely appointed to the Fourth Circuit in 1994 under a quasi-affirmative action settlement to the federal Voting Rights Act lawsuit *Chisom v. Roemer* (1991) (Green 2021). Much to Justice Victory’s chagrin, the wording in the Louisiana Constitution of 1974 was unambiguous: “[T]he judge oldest in point of service on the supreme court shall be chief justice” (La. Const. art. V, § 6, 18). The matter was plain and simple—whoever was presently the most senior judge in service would become the next chief justice, and Johnson

had almost two more months of service than Victory. However, Victory, a social conservative, and his white colleagues on the Supreme Court would raise an issue: “[D]oes time spent *appointed*, as opposed to elected to the court, count toward seniority in determining which justice is ‘oldest in point of service’?” (*In re Office of Chief Justice* 2012, n.p.).

Just a decade prior, according to minutes of an administrative meeting in 1995, Victory argued his seniority but never raised his concerns with Johnson’s tenure, assuming the vote for the next chief would occur far in the future (Grace 2012). In that meeting, the majority of the justices, excluding Johnson, also agreed that point-of-service begins at election to a permanent seat, not assignment by consent decree, which is how Johnson became associate justice (Grace 2012). However, the justices did not take a formal vote and still credited Johnson with most years served on the court for mundane purposes, such as giving her the biggest office. However, the meeting record specified that the decision to credit Johnson as the longest serving justice “is to be given no precedential weight whatsoever in that prospective future controversy [of selecting chief justice]” (Grace 2012, n.p.). The record also illuminated Johnson and Victory’s personal connections with this seventeen-year dispute: “Justices Johnson and Victory did not concur in the...disposition of these two issues, since both believe they are senior to the other for all purposes” (Grace 2012, n.p.). After the two disagreed on seniority in 1995, the vote for the next chief justice came around 18 years later in 2012, and their disagreement resurfaced with higher stakes and clandestine hostility.

On June 12, 2012, two months after Kimball’s announcement of her upcoming retirement, Johnson notified her colleagues that a “transition team” would start preparing her succession (Green 2021, n.p.). Within hours of Johnson’s announcement, Victory quickly organized to meet with the other justices to discuss an alternative (Green 2021). However, local and national news sources and the public believed the sole purpose of the meeting was to conspire against Johnson for the chief justice seat (Grace 2012). Although most of the justices refused to speak on the matter, former Justice Greg Guidry, now a federal judge appointed by former President Donald Trump to Louisiana’s Eastern District, disputed this statement: “I have no knowledge of any such meeting, and if it did occur, I was not present” (Green 2021, n.p.).

According to Johnson, Kimball approached her later that day with a compromise. Kimball suggested that Johnson could serve as chief after Justice Victory and Justice Jeannette Knoll, who took office in 1997, because Johnson was not officially elected to the court until she began her second term in 2001 (Green 2021). Once the two justices retired at the age of 70, then Johnson could serve as chief justice five years later in 2017 (Green 2021). Johnson rejected Kimball’s offer, prompting Kimball to draft a memorandum the following day to the justices concerning their opinion on seniority (Campbell-Rock 2019). Kimball framed the memo as a matter of personal belief rather than law, debating the two candidates’ eligibility: “Any sitting justice interested in a legal determination of this matter may file with the Clerk of Court” (*In re Office of Chief Justice* 2012, n.p.). Kimball’s memo signaled to the other justices that the law placing Johnson on the court in 1994 was ambiguous, giving Victory the opportunity to argue seniority on a technicality. Unless Johnson acted fast, her colleagues would vote against her to delegitimize her position as associate justice and the rightful future chief. Therefore, Johnson’s next steps forward required careful handling and haste to maintain her professional status for the career she had worked years to build. If she could not convince her colleagues, then she needed the law to vouch for her if she was to successfully fight for the chief seat.

Growing Up in Jim Crow: Johnson's Early Legal Interests

Born in Donaldsonville, Louisiana in 1943, during the late segregationist era of Jim Crow, Johnson's work emphasized civil rights and legal assistance for poor Louisianians throughout her academic and professional career (Green 2021). In 1961, Johnson attended Spelman College, a historically Black women's college in Atlanta, during the height of the civil rights movement (Green 2021). Johnson, a political science major, viewed the law as a potential instrument for justice and equality, so she ingratiated herself with attorneys during her years of attending protests and "mass meetings" at Spelman (Green 2021, n.p.). Johnson worked for the NAACP Legal Defense and Educational Fund on desegregation cases in the South after graduation, where she learned that enforcing cases like *Brown v. Board of Education* (1954) required filing multiple lawsuits across Louisiana. Her work in the legal field at a young age ultimately convinced her to pursue law school: "I had a chance to see these civil rights lawyers at work, and I decided that this was a way to be a change agent" (Louisiana State Bar Association 2013, 384).

In September of 1965, Johnson and Gammie Poindexter-Gray became the first Black female LSU Law School students, only ten years after the first Black male student graduated (Louisiana State Bar Association 2013). Congress had just passed the Civil Rights Act earlier that year, and both Black and female students were still rarities at the law school (Louisiana State Bar Association 2013). Although the two women faced hostility for their gender and race, the pair went to Washington, D.C. the summer of their third year, where Johnson worked for the Justice Department and began planning for her career after graduation (Green 2021). When Poindexter asked Johnson about moving to Washington long-term, Johnson replied, "Gammie, we've done that. That's what you do when you're 22. Now we need to go back home and start our work," which is exactly what she did (Green 2021, n.p.).

Home Is Where the Heart Is: Johnson's Judicial Start in Louisiana

When Johnson returned to Louisiana in 1969, she served as the managing attorney at the New Orleans Legal Assistance Corporation, focusing on consumer protection in the Lower Ninth Ward, one of New Orleans' majority-Black, working-class neighborhoods. A typical case might involve contractor fraud and the exploitation of unsophisticated homeowners:

You had folk who owned this little house, they owned this little piece of land...Someone passes by one day, knocks on the door, and asks, 'Wouldn't it really look nice if you put some aluminum siding up?' Then, all of a sudden, you miss a payment and there is a horrendous interest rate and now you've lost your house (Webster 2019, n.p.).

Starting in 1974, Johnson then focused on federal, state district, and juvenile court cases before becoming New Orleans deputy city attorney in 1981 for Ernest "Dutch" Morial, the city's first Black mayor and first Black LSU Law School graduate (Green 2021). As deputy city attorney, she represented the city in cases ranging from private property disputes to police brutality (Green 2021).

Johnson left the mayor's office after a few years when she announced her plans to run for a seat on the Orleans Parish Civil District Court. However, a month after her announcement, Johnson's 13-year-old son Mark died of heatstroke during a high school football practice due to the coach's negligence, who forced Mark to keep running in the heat and humidity even after he complained of feeling ill (Green 2021). Subsequently, Johnson sued the school and coach for damages, which later amounted to \$516,000 (Green 2021). In the wake of her child's death and a

painful lawsuit, Johnson served as the Orleans Parish Civil District Court's first female judge after voters elected her to the position in 1984 (Childs 2017).

White Supremacist Roots: Louisiana's Judicial Districts

Johnson's election to the judgeship in 1984 was a monumental moment in Louisiana's political and judicial history. The legacies of post-Reconstruction and Jim Crow era laws maintained an all-white legal profession prior to integration, so Black lawyers and judges were few and far between in Louisiana at the time of Johnson's election (*Clark v. Edwards* 1988). While integration and civil rights legislation opened up educational and career opportunities for Black people, racial discrimination remained evident in the state through contemporary racial segregation, economic and social inequality between the races, and the persistence of racism in ordinances and statutes (Ellis 2000). Only six years prior to Johnson's election, the Louisiana Supreme Court appointed the first Black judge Revius Ortique Jr. to the Orleans Parish Civil District Court in 1978 (Green 2021). While less than a handful of Black judges served across the state after Revius' appointment, voters had never elected a Black justice to the Louisiana Supreme Court since the institution's emergence in 1813 (Green 2021).

Throughout its history, the state's Supreme Court maintained its racial homogeneity by barring Black Louisianians from their right to vote. In 1898 during the post-Reconstruction era, state lawmakers undermined the 14th and 15th Amendments by enacting voting requirements and other measures, such as literacy tests and property provisions, which continued through Jim Crow (Green 2021). Johnson remembered going to City Hall to vote at the age of twenty-one: "I filled out the form and [was] told I didn't pass the test. This was in 1964. This was recent, in our lifetime. We had to struggle to vote" (Campbell-Rock 2019, n.p.). Even as a college student preparing for law school, the overqualified Johnson was unable to pass the test, just as the lawmakers intended. According to William Quigley, professor of law and director of the Loyola University Law Clinic, "Even once the Voting Rights Act [of 1965] began opening up voting rights in registration and in legislative races, there was a presumption that the judiciary was 'above politics,' so the VRA would not, and could not, apply to judicial races" (Green 2021, n.p.). As New Orleans evolved into a majority-black city, the state redrew the lines for the Supreme Court seat in 1974, augmenting the state's resistance against people of color gaining representation in their own judicial system (Stole 2019).

The Louisiana Constitution mandated seven seats for seven justices on the Louisiana Supreme Court, and after the state redrew the judicial district lines in 1974, voters would elect the seven justices from six geographical judicial districts in the state (Augustine 2006). Five of the six districts elected one justice apiece (Augustine 2006). However, the First District, which included Orleans, Plaquemines, Jefferson, and St. Bernard Parishes, elected two (Augustine 2006). Unsurprisingly, by the late 1980s, the population of Orleans Parish, the most populous city in the state, was majority-Black, but the population of the four parishes included in the First District was 63% white (Green 2021). The new district lines ensured that the Black residents of Orleans Parish would remain the minority in the First District and would not elect a Black justice to the Supreme Court. Had state officials given Orleans Parish its own district when redrawing district lines, the district would have served as a majority-minority district, preventing voter dilution for the Black residents of the parish.

White Supremacist Roots Continued: *Chisom v. Edwards*, *Clark v. Edwards*, and *Chisom v. Roemer*

On September 19, 1986, while Johnson served her first term in the civil district court, New Orleans activist Ronald Chisom challenged Louisiana's judicial district lines in a lawsuit against the state (Campbell-Rock 2019). Chisom, a local community organizer, highlighted the lack of Black representation in the courts and did not trust the white judges present in the courts to uphold racial equality (Green 2021). As lead plaintiff—along with New Orleans lawyers Marie Bookman, Walter Willard, and Marc Morial—Chisom sued Governor Edwin Edwards and later Governor Charles “Buddy” Roemer for voter dilution in federal court (Campbell-Rock 2019).

Chisom's legal team, comprised of Quigley, local attorneys, and legal titans Pamela Karlan and Lani Guinier, argued that Louisiana's election system violated the 1965 Voting Rights Act, the 14th and 15th Amendments, and 42 U.S. Code § 1883, which specifically prohibits the deprivation of individual civil rights listed in the Constitution and laws (Green 2021). In their complaint, the lawyers argued that “because Orleans Parish's present population is 555,515 persons, roughly half the present First Supreme Court District, the most logical division is to have Orleans Parish elect one Supreme Court Justice and the Parishes of Jefferson, St. Bernard, and Plaquemines together elect the other Supreme Court Justice” (*Chisom v. Edwards* 1987, 184). In this way, New Orleans residents' votes could finally weigh as much as the other majority-white parishes. The lawyers also requested a class certification, which is a court determination for class action lawsuits, of approximately 135,000 Black residents of Orleans Parish (*Chisom v. Edwards* 1987). The lawyers argued that these residents allegedly suffered from the present system. Therefore, they suggested a reapportionment of the Louisiana Supreme Court in a way that fairly recognized the voting strengths of minorities in the New Orleans area and completely remedied the dilution of that minority voting strength (*Chisom v. Edwards* 1987). However, the team failed to persuade U.S. District Judge Charles Schwartz Jr. (*Chisom v. Edwards* 1987). On May 1, 1987, he granted the state's motion to dismiss the lawsuit, stating that section 2 of the Voting Rights Act did not apply to state judicial elections because elected judges are not representatives and are therefore outside the scope of the statutory language (*Chisom v. Edwards* 1987).

A year later, a few Black lawyers of Louisiana sued the state, arguing that the current judicial election system discriminated against them. Expert testimony spoke on the racially polarized voting in Louisiana for all elected seats, not just judicial (Augustine 2006). Few Black people were elected to judicial positions under the system because white people simply did not vote for Black candidates (Augustine 2006). Although Black citizens comprised about thirty percent of Louisiana's population and about fifty percent of New Orleans' population, Black lawyers held “only 5 of the 178 district court judgeships and only 1 of 48 courts of appeal judgeships” at the time of the lawsuit (*Clark v. Edwards* 1988, 299). On August 15, 1988, the district court denied the lawyers' motion for injunction modification: “There are grave problems in attempting to create sub-districts within a district court jurisdiction. Tinkering with the districts is not the answer” (*Clark v. Edwards* 1988, 307).

Finally, in 1991, Chisom, unsatisfied with the decisions of Louisiana's lower courts, petitioned the U.S. Supreme Court to review his case (*Chisom v. Roemer* 1991). The U.S. Supreme Court ruled in favor of Chisom, arguing that Congress amended the Voting Rights Act in 1982 in an express effort to broaden the Act's protections, such as in state judicial elections (*Chisom v. Roemer* 1991). The court analyzed Louisiana's districts to determine where judicial lines diluted minority votes and formulated a federal Consent Decree Judgement that established subdistricts within some judicial districts (Augustine 2006). After six years of court battles, Quigley

commented, “No one was certain we would win. All of us were certain justice was on our side” (Green 2021, n.p.).

At the time of the *Chisom* decision and federal consent decree, Justices Pascal Calogero and Walter Marcus Jr. both represented Orleans Parish (Green 2021). Therefore, the Louisiana Legislative Black Caucus had to delicately craft a compromise when implementing the federal consent decree. If Louisiana officials immediately redrew the judicial district lines, one of the justices would likely lose his seat in the next election. The caucus did not want to step on either of the presiding justices’ toes, so in 1992, they reached a settlement named Act 512 (Campbell-Rock 2019). Act 512 called for the number of justices on the Louisiana Supreme Court to temporarily increase to eight and sit in panels of seven, similar to how appellate courts usually sit in randomly assigned panels of three to hear cases (Green 2021). According to the consent decree, the temporary eighth justice, or “Chisom seat,” would (1) be picked from the court of appeals, (2) be from New Orleans, and (3) would participate and share equally in the cases, duties, and powers of the Louisiana Supreme Court, including, but not limited to, those powers set forth by the Louisiana Constitution (Green 2021). The settlement and subsequent Chisom seat would remain effective until 2000. That way, once justices Calogero and Marcus retired, the Supreme Court would revert to seven seats, and state officials could finally redraw the district lines to make Orleans Parish a majority-minority Supreme Court judicial district. As a result of the Act 512 compromise, voters elected Revius Ortique to the Fourth Circuit Court of Appeal that year, making him Louisiana’s first Black Supreme Court justice (Green 2021).

The Beginnings of Affirmative Action Delegitimization: *Perschall v. Louisiana*

Voters reelected Johnson to district court in 1990, and by 1994, she filled the position of chief judge in the district court (Childs 2017). The same year, Louisiana Supreme Court Justices Pike Hall Jr. and Ortique retired, leaving two open seats (Green 2021). Johnson immediately announced her plan to run for the Fourth Circuit Court of Appeals (Green 2021). Under the Chisom settlement, whoever won the Fourth Circuit Court of Appeals seat, previously held by Ortique, would be appointed to the temporary eighth Supreme Court seat. Fourth Circuit Judge Charles Jones, a Black man, and Miriram Waltzer, a white, Jewish woman, also ran for the Orleans Parish seat that year (Green 2021). Waltzer had been a long-time civil rights advocate and won most of her elections with strong black support in New Orleans (The Washington Post). However, Johnson and Jones publicly opposed Waltzer’s campaign as hypocritical. Johnson told reporters, “If someone says they agree with us on civil rights, but they’re opposed to us [being a Supreme Court justice], then their whole life has been a lie,” while Jones was candid: “The race is about race” (Green 2021, n.p.).

Nonetheless, Waltzer believed in the voters’ choice and argued that her running did not hurt Jones or Johnson following the state’s recent redistricting: “Now that the playing field is leveled, I think I can play on it just like anybody else” (Green 2021, n.p.). In early October of 1994, Johnson’s campaign efforts were unsuccessful in securing the seat in the nonpartisan blanket primary, a two-round election system in which all candidates, regardless of party, run against each other at once for the same office (Green 2021). Both a primary and a general election must be held, regardless of a majority vote in the primary, and two candidates will usually progress into the general election (FindLaw 2020). Waltzer won 49% of the primary vote while Johnson garnered only 42% of votes (Green 2021). Still, the two women received enough votes to secure their spots in the general election. However, a week after the primary election, Waltzer and her family began receiving anonymous threats of violence. Fearing a runoff would be harmful to the city following

the Chisom settlement, Waltzer withdrew: “This judicial race ... has the potential to permanently scar this city, and its people, by racial division. I will not allow this to happen” (The Washington Post, n.p.). Whether Waltzer’s change of heart resulted from the violent threats or her own moral compass, she handed the position to Johnson by withdrawing from the race.

In November of 1994, Mayor Marc Morial swore Johnson in as associate justice, but it did not take long for adversaries to attack Johnson’s legitimacy on the court (Green 2021). Clement Perschall Jr., a white attorney from Metairie, an Orleans Jefferson Parish suburb, filed suit in district court challenging the Chisom seat legislation and its constitutionality (Green 2021). Perschall argued that Act 512 and the Chisom seat violated the state and federal constitutions regarding special laws and the number of justices (*Perschall v. Louisiana* 1997). He painted himself as an aggrieved attorney, complaining that the creation of the Chisom seat negated his votes previously cast for justices (*Perschall v. Louisiana* 1997). According to Perschall, as long as the Chisom seat existed, the legislature failed to follow constitutional provisions, constituting a denial of due process, equal protection, and his ability to practice his trade (*Perschall v. Louisiana* 1997). He asked the court to strike down the settlement and void all Supreme Court decisions rendered since the Chisom seat’s creation (Green 2021). Perschall found this form of affirmative action unjust and improper; he believed Johnson’s presence on the Supreme Court meant that he could not trust the law or do his job accordingly.

In November 1996, the Louisiana Supreme Court agreed to bypass the lower courts and hear Perschall’s argument the following year, though Johnson recused herself as a conflict of interest (Green 2021). While Perschall asked the very court that Johnson served on to invalidate the settlement that put her on the bench, state attorneys argued that the Louisiana Supreme Court could not determine constitutionality: “[Perschall is asking you] to do the unthinkable—having Louisiana law invalidate federal law” (Green 2021, n.p.). Ultimately, in July 1997, the Louisiana Supreme Court ruled that the Chisom settlement violated the state’s constitution (*Perschall v. Louisiana* 1997). However, the legislature created the seat, so the court felt it had no power to undo the settlement (Green 2021). Therefore, the Chisom seat remained.

Still, Perschall’s argument, though unsuccessful, highlighted racial tensions in Louisiana’s legal arena. Morial and other Black leaders were enraged: “This opinion sends a very disturbing signal to the nation about Louisiana. What this does is create the prospect that compromise is replaced with conflict” (Green 2021, n.p.). While people like Morial viewed Act 512 as a hard-fought compromise, people like the ‘aggrieved’ Perschall saw the Chisom seat as a threat that needed to be eradicated, signaling to others that Louisiana’s institutions still upheld racist ideals. According to James Williams, Johnson’s clerk following the Perschall decision, “If she was angry or resentful that her colleagues ruled the seat she occupied was unconstitutional, Johnson didn’t let it show. But it was certainly a frustrating feeling” (Green 2021, n.p.). Growing up in Jim Crow and establishing her career in Louisiana’s legal field, Johnson was no stranger to resistance, and she learned how to keep a professional disposition while facing injustice. Eventually, state officials redrew the Supreme Court judicial districts in 1999, making Orleans Parish a majority-minority district. By 2001, Johnson was in her second term as associate justice, and Orleans voters finally elected her to the Supreme Court from her appointed position. Subsequently, the Chisom seat she previously occupied disappeared as voter dilution was partially remedied by the state’s redistricting (Green 2021).

Taking Legal Action: Johnson Sues Her Colleagues

In response to Kimball's memo concerning who was to be selected as the next chief justice of the Louisiana Supreme Court, Johnson sought counsel by hiring James Williams and filed a lawsuit in federal court (Green 2021). She argued that the constitutionality of her seniority was not up for debate and has been settled since 1992 under Act 512 (Green 2021). The following day, three federal judges recused themselves from the case as conflicts of interest, transferring the suit to the district court (Green 2021).

On July 25, Johnson stood before the state Senate Judiciary Committee (Green 2021). In almost a year as acting chief justice after Kimball's stroke, Johnson stated to the committee members, "I was never challenged by any other justice or staff as to my authority as acting judge" (Green 2021, n.p.). Williams then showed the committee a photograph taken early in Johnson's first term on the Supreme Court to demonstrate Johnson's seniority (Green 2021). Anonymously sent, a formal group photo of the eight justices from Johnson's first term arrived in the mail prior to the committee meeting (Green 2021). Johnson was in the photo, and Victory was not.

The following month, Governor Bobby Jindal entered the legal mix (Green 2021): his executive counsel filed a motion with the district court, arguing that the state of Louisiana should decide who would succeed Kimball as the chief justice (*Chisom v. Jindal* 2012). If the state oversaw the decision, then the Louisiana Supreme Court, including Johnson's adversaries, oversaw the decision. Kristen Clarke, president of the Lawyers' Committee for Civil Rights Under Law, understood the necessity of the lawsuit and characterized Jindal's motion as "a racially motivated effort to bar a Black woman from occupying this key role on the state's highest court" (Green 2021, n.p.). In July 2012, the Lawyers' Committee, including Clarke, along with local counsel, represented Johnson and filed a motion in federal court to reopen *Chisom v. Jindal* and affirm Johnson's qualifications to serve as the next chief justice of the Louisiana Supreme Court (Green 2021).

On August 16, 2012, the United States District Court for the Eastern District of Louisiana reopened *Chisom v. Jindal* and arguments ensued. The defendants included Kimball, Victory, Knoll, and associate justices Guidry, Marcus Clark, and John Weimer, who allegedly "colluded to prevent Johnson from being chief" according to the prosecution (Green 2021, n.p.). Judge Susie Morgan's courtroom overflowed from the crowd (Green 2021). Black judges from different parts of Louisiana sat in the jury box, as Ronald Chisom himself sat in the crowd (Green 2021). In a courtroom down the hall sat the overflow of attendees, most of whom wore big, black buttons that read "BJJ" or "CHISOM" in white lettering in support of Johnson (Green 2021, n.p.).

The ensuing arguments read as recycled issues from the Perschall case (Green 2021). Was the Chisom seat constitutionally equal to the other Supreme Court seats? If yes, then Johnson had seniority. If no, then why not? If the Chisom seat was not ruled as constitutionally equal as the other seven seats, her time serving in the seat would be declared void for seniority purposes. Subsequently, she would lose her seniority to Victory. Williams argued that the consent decree made Johnson the equal of her fellow justices as soon as she was elected to the Fourth Circuit (*Chisom v. Jindal* 2012). To further emphasize his argument and Johnson's seniority, Williams showed the court the same group photo he showed the Senate Judiciary Committee: "Obviously, Justice Victory is noticeably absent" (Green 2021, n.p.).

The counsel for the state disingenuously argued that the state was not taking a position on who should be the next chief: "No one has suggested that Justice Johnson should not be the next chief justice" (Green 2021, n.p.). Rather, the matter was for the Louisiana Supreme Court to decide for itself. After the hearing, Chisom told the Associated Press about his worries: "To put it under

the state – I’m nervous about that...I’m frightened about that” (Green 2021, n.p.). Considering how deliberations for the chief seat had previously been handled, Chisom’s fears were justified. If Johnson could not convince her colleagues of her seniority, how could Chisom trust those exact people to decide her fate on the same matter?

However, on September 1, 2012, Chisom's worries could be laid to rest. District Judge Morgan sided with Johnson and wrote, “The Court finds that the Consent Judgment provides for Justice Johnson’s service on the Louisiana Supreme Court ... from November 16, 1994, to October 7, 2000, to be credited to her tenure on the court for all purposes under Louisiana law” (*Chisom v. Jindal* 2012, 702). At that moment, the state of Louisiana declared Johnson’s seniority in a court of law. In response, Jindal’s lawyer asked the Fifth Circuit Court of Appeals to review the ruling, but the state later dropped its appeal after facing media criticism (*Chisom v. Jindal* 2012). As a result, the Louisiana Supreme Court, with Johnson, Victory, and Knoll recused, voted unanimously to instate Bernette Johnson as chief justice (Green 2021). According to Quigley, the law professor who served on Chisom’s legal team, “the justices listened to the wisdom of the public. They lost big in court and lost even bigger in the court of public opinion. They are smart lawyers who made a grave mistake. They realized their mistake and cut their losses” (Green 2021, n.p.). Most justices involved refused to speak on the matter to news sources for fear of further damaging their reputations as justices, cementing Johnson’s high-level professional status in the Louisiana court system.

On February 28, 2013, crowds formed in front of the Supreme Court in the French Quarter as people watched a Black woman take the oath of office as the most powerful jurist in the State of Louisiana (Green 2021). Many in attendance described the experience as overwhelming, as they watched Johnson make history as the first Black person to hold the chief justice position (Green 2021). Additionally, Johnson’s win was a resounding defeat for Governor Jindal, who was in his second term and considered one of the most “promising figures in the Republican Party” (Green 2021, n.p.). The court finally concluded that Bernette Joshua Johnson’s seniority and tenure were more important than *how* she acquired that tenure. Although she had not acquired her seat on the Supreme Court by election, the people in support of Johnson held the notion that the early Chisom settlement established her seniority long before 2012. According to Quigley, “The community activated and said, ‘We will not stand for this.’ The first lawsuit took six years; but we were able to do, this time, what we should have been able to do in the first place” (Campbell-Rock 2019, n.p.). Though her colleagues and adversaries debated her status and prestige, Johnson served as the first Black chief justice in Louisiana and the first Black woman on the Louisiana Supreme Court as both associate and chief justice (Louisiana Bar Association 2013). Had she not fought for her position, the state of Louisiana and its legal arena may have been quite different from how it presently looks and operates.

Epilogue: Johnson’s Impact and Legacy

Speaking on the challenges of her ascent to chief justice, Johnson commented on how she views her impact and legacy in the court:

I’ve been a member of the bar for 50 years and a judge for 35 years. If truth doesn’t matter, how do I decide what is the truth? I couldn’t just let people walk all over me because [Louisiana citizens] sent me. My job was not to be nice and friendly. My job was to advocate for the community, to ensure due process, and to seek justice. My job since 1994 has been to be a voice at the table and articulate the

voices of our community. I'm retiring in December 2020, but you have an opportunity to elect someone that will fight for you (Campbell-Rock 2019, n.p.).

Even in the months preceding the election to fill her seat, Johnson issued opinions and dissents that pushed Louisiana's antiquated legal doctrine toward justice, forgiveness, and progress (Green 2021). She argued for bans on habitual offender sentencing, the non-unanimous jury rule for convictions, and split-jury verdicts, all of which disproportionately affected Black defendants and jurors (Green 2021). Johnson's proponents feared that her successor would fail to address the issues and ideas that Johnson articulated throughout her career (Green 2021). Nonetheless, Johnson urged voters to elect a successor that will represent them to the fullest. Voters heeded Johnson's advice, later electing Piper Griffin, the only Black woman to currently serve on the Louisiana Supreme Court (Green 2021).

Johnson announced she was to retire at the end of 2020, a tumultuous time for politics and reformation in the criminal justice system as activists fought to abolish the lingering white supremacist sentiments Johnson had experienced throughout her career. However, before she left office, Johnson felt compelled to speak out against the racial injustices flooding media platforms at the time, such as George Floyd's death and countless other examples of police brutality and misconduct. On June 8, 2020, she wrote a letter on the role of judges and lawmakers in perpetuating a legacy of Jim Crow laws that fill state prisons disproportionately with Black people and leave them feeling like they, too, cannot breathe, in reference to Floyd (Johnson 2020). Johnson closed her letter by imploring readers to self-reflect: "I urge all of you to spend some time reflecting on the ways in which we ask others to accept injustices that we would not" (Johnson 2020, 3). She refused to accept the injustices that she faced from adversaries and institutions. In the same way, she fought against unfair biases that disproportionately affected Black people in Louisiana and called on each citizen to continue fighting against racial injustices.

Bernette Joshua Johnson serves as a prime example of what Dr. Sally J. Kenney argues for in her work concerning representation in the judiciary. When justice is administered to citizens by judges who look like the communities they serve, people exhibit greater confidence in the judicial system overall (Kenney 2016). Dr. Kenney invites readers to consider moving from minority representation to parity, or representation proportional to the population (Kenney 2016). However, achieving parity may require new strategies than those used to select the first few women and minority men (Kenney 2016). We have a long way to go before the bench in Louisiana reflects the state's racial diversity. Still, like Johnson, Dr. Kenney calls on each citizen to monitor the bench:

We need to make sure, too, that women and minority men do not remain on the lower rungs of the judicial ladder while only white men ascend or enter directly at the top...Those of us committed to a diverse and representative bench and equal justice under law need to keep vigilant to ensure that we do not reverse the progress Louisiana has made. We need to organize and mobilize to draw attention to this issue. Will you join us? (Kenney 2016, 15).

References

- Augustine, Jonathan C., and Ulysses Gene Thibodeaux. 2006. "Forty Years Later: Chronicling the Voting Rights Act of 1965 and its Impact on Louisiana's Judiciary." *Louisiana Law Review* 66 (2): 454-494. (Accessed April 25, 2022).
- Bizette, Breanne. 2021. "New Roads recognizes first female La. Supreme Court Chief of Justice, Catherine Kimball with statue." <https://www.wafb.com/2021/12/30/new-roads-recognizes-first-ever-la-supreme-court-chief-justice-catherine-kimball-with-statue/> (Accessed August 29, 2022).
- Campbell-Rock, C.C. 2019, "Activists behind Chisom v. Louisiana hold reunion," *The Louisiana Weekly*, 18 November, 2019. (Accessed April 25, 2022).
- Clark v. Edwards*. 1988. 725 F. Supp. 285. (Accessed April 25, 2022).
- Childs, Miriam. 2017. "Chief Honored at SULC 70th Anniversary." *De Novo* (Newsletter of the Law Library of Louisiana) 14 (3). (Accessed April 25, 2022).
- Chisom v. Edwards*. 1987. 659 F. Supp. 183. (Accessed April 25, 2022).
- Chisom v. Jindal*. 2012. 890 F. Supp. 2d 696. (Accessed April 25, 2022).
- Chisom v. Roemer*. 1991. 501 U.S. 380. (Accessed April 25, 2022).
- Ellis, Catherine. 2000. "The Legacy of Jim Crow in Rural Louisiana." Ph.D. diss. Columbia University. (Accessed April 25, 2022).
- FindLaw. 2020. "What is a Blanket Primary?" <https://www.findlaw.com/voting/how-u-s--elections-work/what-is-a-blanket-primary-.html> (Accessed August 29, 2022).
- Grace, Stephanie. 2012, "Justice Bernette Johnson makes a strong case for herself," *The Times-Picayune*, 16 August, 2012. (Accessed April 25, 2022).
- Green, Elon. 2021. "The Dissenter." <https://theappeal.org/the-dissenter/> (Accessed April 25, 2022).
- In re Office of Chief Justice*, 98 So. 3d 264 (La. 2012). (Accessed April 25, 2022).
- Johnson, Bernette Joshua. 2020. "Justice for All in Louisiana." https://www.lasc.org/press_room/press_releases/2020/202018_Justice_for_All_in_Louisiana.pdf (Accessed April 25, 2022).
- Kenney, Sally J., and Salmon A. Shomade. 2016. "Gender and Racial Diversity of Louisiana's Judges." *Newcomb College Institute of Tulane University*. (Accessed April 25, 2022).

Louisiana Constitution. 1974. Art. V, sec. 6. (Accessed April 25, 2022).

Louisiana State Bar Association. 2013. "Louisiana Supreme Court Chief Justice Bernette Joshua Johnson." *Louisiana Bar Journal* 60 (5): 376-398. (Accessed April 25, 2022).

Perschall v. Louisiana. 1997. 697 So.2d 240. (Accessed April 25, 2022).

Stole, Bryn. 2019. "District lines for Louisiana's Supreme Court justices are under fire; here's why." *The Times-Picayune*, 22 September, 2019. (Accessed April 25, 2022).

The Washington Post. 1994. "White Candidate Drops Out, Citing Race Relations." <https://www.washingtonpost.com/archive/politics/1994/10/09/white-candidate-drops-out-citing-race-relations/093ae27b-6208-4cfa-a9df-47fac60005d6/> (Accessed August 29, 2022).

Webster, Richard A. 2019. "In Louisiana civil courts, the poor are left to defend themselves." *The Times-Picayune*, 14 March, 2019. (Accessed April 25, 2022).