UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE,

Plaintiffs,

v.

KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana.

Defendant.

Civil Action No. 3:22-cv-00211-SDD-RLB

OPPOSITION TO MOTION TO INTERVENE OF THE STATE OF LOUISIANA BY ATTORNEY GENERAL JEFF LANDRY

Proposed intervenor the State of Louisiana, through Attorney General Jeff Landry, is not entitled under Federal Rule of Civil Procedure 24 to intervene as of right. The Attorney General cannot demonstrate a legally sufficient interest, and he has not shown that whatever interest he may have is not adequately represented by Defendant Ardoin, the Secretary of State. The Attorney General indeed could represent the Secretary of State in this action, as the Attorney General has done in other redistricting cases. La. R.S. § 49:257; *Louisiana NAACP* v. *Ardoin*, No. C-71683725 (19th J.D.C. La. Mar. 15 2022). The Attorney General's stated interest in defending H.B. 1 is already represented by the Secretary, who has made it abundantly clear that he intends to defend the statute implementing H.B. 1 and to oppose vigorously the relief Plaintiffs seek.

Permissive intervention should also be denied here. Allowing the Attorney General to intervene would invite delay in resolving Plaintiffs' application for a preliminary injunction by allowing an additional party representing the same interest and taking identical positions to submit evidence and examine witnesses, without any showing that he has any independent interests that is not already adequately represented. The Attorney General purports to speak for the State of Louisiana, yet the Louisiana Constitution sets out that the "governor shall be the chief executive of the state" and designates the Attorney General only as a member of the state's executive body. La. Const. art. 4, §§ 1, 5. Here, Governor Edwards vetoed H.B. 1, the map Attorney General Landry is proposing (redundantly) to defend, saying that plan was "not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act." Office of the Governor, La., Veto of House Bill 1 of the 2022 First Extraordinary Session (Mar. 9, 2022), https://gov.louisiana.gov/assets/docs/Letters/Schexnayder Ltr20220309VetoHB1.pdf. For these reasons, and those described more fully below, intervention by the State of Louisiana through Attorney General Jeff Landry should be denied. [1]

BACKGROUND

Louisiana's 2022 congressional map, passed by the Louisiana legislature as H.B. 1, and adopted into Louisiana law over the veto of Governor John Bel Edwards, continues a long tradition in the state of maximizing political power for white Louisianans by disenfranchising and discriminating against Black Louisianans. The 2022 congressional map dilutes Black voting strength in violation of the Voting Rights Act of 1965 ("VRA") by "packing" large numbers of Black voters into a single majority-Black congressional district, and "cracking" the state's

[1] Plaintiffs take no position on the Motion for Intervention by the Presiding Officers of the Louisiana Legislature.

remaining Black voters among the other five districts, where they constitute an ineffective minority unable to participate equally in the electoral process.

Believing the legislature had failed to adopt a VRA-compliant congressional map creating two majority-Black congressional districts, Governor Edwards vetoed H.B. 1 on March 9, 2022, saying that plan "violates Section 2 of the Voting Rights Act" and "is not in line with the principle of fundamental fairness that should have driven [the redistricting] process." Office of the Governor, La., Veto of House Bill 1 of the 2022 First Extraordinary Session (Mar. 9, 2022), https://gov.louisiana.gov/assets/docs/Letters/SchexnayderLtr20220309VetoHB1.pdf. Governor Edwards' veto statement explained that in failing to enact a congressional map that complies with the Voting Rights Act, the Legislature "disregarded the shifting demographics of the state." *Id.* On March 29, 2022, the Legislature entered into a veto session and, in a vote that broke down along racial lines, each house voted to override the Governor's veto of H.B. 1. H.B. 1 is now Louisiana's enacted congressional districting plan.

ARGUMENT

Intervention as a matter of right is governed by Federal Rule of Civil Procedure 24(a). The party seeking intervention bears the burden of establishing her right to intervene. *Texas* v. *U.S.*, 805 F.3d 653, 657 (5th Cir. 2015); *Brumfield* v. *Dodd*, 749 F.3d 339, 341 (5th Cir. 2014). To intervene as of right, the prospective intervenor either must be entitled to intervention by an "an unconditional right to intervene [granted] by a federal statute," *see* Fed. R. Civ. P. 24(a)(1), or must meet each of the four requirements of Rule 24(a)(2): (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action

may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

I. The Attorney General Has Not Demonstrated a Right to Intervene Under Federal Rule 24(a).

Attorney General Jeff Landry is not entitled under Federal Rule of Civil Procedure 24(a) to intervene as of right because no statute grants the Attorney General a right to intervene, he cannot demonstrate a legally sufficient interest in this case, much less one that may be impaired by any possible disposition of this litigation, and he has not shown that whatever interest he may have is inadequately represented by the Secretary.

A. The Attorney General Does Not Have a Legally Sufficient Interest in the Action that Will Be Impaired by the Disposition of the Case.

Rule 24(a)(2) requires that intervenors "claim[ ] an interest relating to the property or transaction that is the subject of the action." Although there is no clear definition of the nature of the interest required for intervention as of right, the Fifth Circuit has previously interpreted Rule 24(a)(2) to require a "direct, substantial, legally protectable interest in the proceedings." *Edwards* v. *City of Houston*, 78 F.3d 983, 1004 (5th Cir. 1996) (internal quotations omitted). The Fifth Circuit has also held that, ultimately, the "inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way." *Texas* v. *U.S.*, 805 F.3d at 657.

Attorney General Landry argues that he can intervene because the Louisiana Constitution designates him as "the chief legal officer" of the state and specifies that he is empowered "to institute, prosecute, or intervene in any civil action or proceeding" on behalf of a right or interest of the *State of Louisiana*. Landry Mot. to Intervene, ECF No. 30 at 4–5; *see* La. Const. Art. 4 § 8. The Attorney General claims that "[t]he State has unique sovereign interests not shared by the other parties." *Id.* at 9. The state constitution does not provide the Attorney General with an

unconditional right to intervene guaranteed by "federal statute" or establish that the state has an interest in this matter. *See Hoffman* v. *Jindal*, 2021 WL 2333628, at *2 (M.D. La., Jun. 8, 2021).

Attorney General Landry goes on to argue that, "in short," the Attorney General has a right to intervene to defend the constitutionality of any state law, an interest he grounds in federal and state rules of civil procedure requiring notice to the state attorney general when a state statute is challenged. Landry Mot. to Interv. at 5-6. This articulation of the state's interest is wanting. The Attorney General's assertion of a generalized interest in defending any state statute's constitutionality is at odds with the doctrinal requirement that the intervenor's interest be more specific than merely "an undifferentiated, generalized interest in the outcome of an ongoing action," which is "too porous a foundation on which to premise intervention as of right." *Hoffman*, 2021 WL 2333628, at *2 (citing *Texas* v. *U.S.*, 805 F.3d at 658, n. 3). This statement is also at odds with the reality that law-making branches of government, that is, the Governor and the Legislature, were divided over whether H.B. 1, the state law at issue in this litigation, was in the best interests of the State.

The Attorney General grounds his argument that the Attorney General's statutory role in election administration as the legal representative of various entities, most of which are not parties to this litigation, warrants intervention as of right. Landry Mot. to Interv. at 7 (Attorney General serves as legal counsel to state and parish election boards and reviews election-related rules, regulations, and forms issued by the Secretary of State). The Attorney General fails to explain how whatever interests these statutory responsibilities confer could in any way be impaired by any possible outcome in this litigation. Moreover, these statutes at best establish an interest on the part of the *Attorney General*; they do not establish that the *state*'s interests are at risk in this litigation, and it is purportedly to protect the state's interests, not his own, that the Attorney General seeks to

intervene. It is worth noting that Plaintiffs have not challenged the *constitutionality* of H.B. 1; Plaintiffs have only claimed entitlement to relief under a federal statute, Section 2 of the Voting Rights Act.

In addition, it is not clear how being allowed to intervene in these proceedings would concretely affect the state's purported interest, since Attorney General Landry's office can already represent—and in related state court proceedings, did represent—Defendant Secretary of State Kyle Ardoin. *See Louisiana NAACP* v. *Ardoin*, No. C-71683725 (19th J.D.C. La. Mar. 15 2022); *see also Hoffman*, 2021 WL 2333628, at *3.

B. The Attorney General's Interests are Adequately Represented By the Secretary.

The Attorney General's interests are adequately represented by the Secretary, the state's chief elections official, and an elected member of the Executive Branch of the State of Louisiana. In the Fifth Circuit, adequate representation is proven when "the would-be intervenor has the same ultimate objective as a party to the lawsuit." *Edwards*, 78 F.3d at 1005. Where the intervenor has the same ultimate objective as a party to the lawsuit, the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption. *Id.* (quoting *United States* v. *Franklin Parish Sch. Bd.*, 47 F.3d 755, 757 (5th Cir. 1995)).

The Attorney General's generalized interests in upholding H.B. 1 are adequately represented by Defendant Kyle Ardoin. Defendant Ardoin has represented the interests of the Secretary of State and other executive officers in other redistricting cases before courts in Louisiana. La. R.S. § 49:257; *Louisiana NAACP v. Ardoin*, No. C-71683725 (19th J.D.C. La. Mar. 15, 2022). Plaintiffs have challenged H.B. 1 on statutory, not constitutional grounds, rendering any unique interest of the Attorney General fictional at best. The Attorney General has submitted

zero evidence to demonstrate that the interests of the State will not be adequately represented by the Secretary of State. Indeed, as discussed earlier, the Attorney General could represent the Secretary of State in this action, as he has done in prior redistricting cases.

II. Attorney General Jeff Landry Should Be Denied Permissive Intervention in this Case.

The Attorney General should be denied permissive intervention. Federal Rule of Civil Procedure 24(b)(1) provides that "[o]n timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "[T]he case for permissive intervention disappears" when a proposed intervenor fails to "overcome the presumption of adequate representation by the government." *Planned Parenthood of Wisconsin* v. *Kaul*, 942 F.3d 793, 797, 804 (7th Cir. 2019) (denying intervention despite Wisconsin statute permitting legislative intervention as of right in federal court) (internal citation and quotations omitted); *Menominee Indian Tribe of Wis.* v. *Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996).

Permissive intervention is inappropriate here because the Attorney General's intervention will cause undue delay and prejudice the adjudication of the original parties' rights. Although there is time for this Court to issue an order remedying the harm Plaintiffs allege, time is of the essence as Defendants' statements at the status conference before the Court on April 14, 2022, make clear. Given the upcoming candidate qualifying period, the approaching primary election in November, and the statements of Defendants and the Attorney General before this Court, allowing the Attorney General to participate in these proceedings, including by submitting evidence and

examining witnesses, with no showing that he has any independent interests that are not already adequately represented, threatens to derail the schedule the Court has set in this case.

The Attorney General has purported to represent the "State of Louisiana," yet the Louisiana Constitution sets out that the "governor shall be the chief executive of the state" and makes the attorney general only a member of the state's executive body. La. Const. art. 4 §§ 1, 5. Here, the Secretary of State, listed before the Attorney General in the Constitution's discussion of the composition of the executive branch of the state, is named as a defendant in this action. La. Const. art. 4 § 1 ("The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executive offices, agencies, and instrumentalities of the state."). More importantly, the "chief executive officer of the state" has made clear that the Attorney General's view of the state's interests is not shared by the entirety of Louisiana's Executive Branch. La. Const. art. 4, §5; Office of the Governor, La., Veto of House Bill 1 of the 2022 First Extraordinary Session (Mar. 9, 2022), https://gov.louisiana.gov/assets/docs/Letters/SchexnayderLtr20220309VetoHB1.pdf.

For the foregoing reasons, the motion to intervene by the Attorney General should be denied.

Dated: 14 April 2022 By: */s/Kathryn C. Sadasivan*

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record.

This the 14th day of April 2022.

/s/ Kathryn C. Sadasivan

COUNSEL FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, EDGAR CAGE, DOROTHY NAIRNE, EDWIN RENE SOULE, ALICE WASHINGTON, CLEE EARNEST LOWE, DAVANTE LEWIS, MARTHA DAVIS, AMBROSE SIMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ("NAACP") LOUISIANA STATE CONFERENCE, AND POWER COALITION FOR EQUITY AND JUSTICE,
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Defendant.

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ORDER

Upon consideration of Attorney General Jeff Landry's motion to intervene, and considering the grounds presented, it is hereby ORDERED that the motion is DENIED. **SO ORDERED.**

This ____ day of _____ 2022.

_____
United States District Judge