UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., *Plaintiffs,* v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Civil Action No. 3:22-cv-00211-SDD-SDJ Chief Judge Shelly D. Dick Magistrate Judge Scott D. Johnson
EDWARD GALMON, SR., et al., *Plaintiffs,* v. R. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana, *Defendant.*	Consolidated with Civil Action No. 3:22-cv-00214-SDD-SDJ

PROPOSED LEGISLATIVE INTERVENORS' MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE, *INSTANTER*

The Speaker of the Louisiana House of Representatives, Clay Schexnayder, and President of the Louisiana Senate, Patrick Page Cortez, in their official capacities (collectively, the "Proposed Legislative Intervenors"), by counsel, respectfully move this Court pursuant to Local Rule of Civil Procedure 7(F) for leave of Court to file a reply in further support of their Motions to Intervene in these consolidated actions. A copy of the proposed reply is attached as **Exhibit A**. For cause, Proposed Legislative Intervenors respectfully represent as follows:

On April 6, 2022, Proposed Legislative Intervenors filed motions to intervene in these cases (Dkt. 10 in *Robinson*, Dkt. 5 in *Galmon*) (the "Motions to Intervene"). On April 13, 2022, this Court ordered that Plaintiffs respond to the Motions to Intervene. On April 14, 2022, these cases

were consolidated. (Dkt. 34). On April 14, 2022, the *Galmon* Plaintiffs opposed the Motion to Intervene (Dkt. 36), and the *Robinson* Plaintiffs indicated they do not oppose the Motion to Intervene (Dkt. 37).

Proposed Legislative Intervenors seek to file a short reply to *Galmon* Plaintiffs' Opposition focused on narrow areas of misstatement of fact or mischaracterization of law. Good cause exists to grant this Motion for Leave to File a Reply because this Court should be fully informed of issues related to the proposed intervention before it rules on the Motion to Intervene.

CONCLUSION

The Court should grant the Motion for Leave to File a Reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 15, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

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EXHIBIT A

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PROPOSED LEGISLATIVE INTERVENORS' REPLY IN SUPPORT OF MOTION TO INTERVENE

The *Galmon* Plaintiffs have no right to limit the defense of this action to suit their preferences. The *Robinson* Plaintiffs do not oppose Proposed Legislative Intervenors' participation as defendants, and their implied concession that, at a minimum, there would be no harm in intervention exposes the *Galmon* Plaintiffs' opposition as opportunistic. This is a consolidated matter brought by two sets of plaintiffs represented by no fewer than *eight* distinct law firms and 28 lawyers from across the United States. Yet the *Galmon* Plaintiffs insist that it is Proposed Legislative Intervenors who would create a "procedural mess." *Galmon* Opp. (Dkt. 36) at 2 (citation omitted). But intervention would create *parity*, and our adversarial system depends on it, especially in cases of such profound public importance as this one. Moreover, even the *Galmon*

Plaintiffs concede that the legislature would play a necessary and priority role in any court-ordered remedy. Opp. at 6. The *Galmon* Plaintiffs' efforts to create a one-sided action without the participation of all parties implicated in their sweeping Complaint speaks for itself. So too does their bewildering logic that (1) Proposed Legislative Intervenors' interests are represented by the Attorney General and (2) the Attorney General should himself be excluded from this case. The Court should have little trouble rejecting that contortion, and Proposed Legislative Intervenors' motion should be granted.

1. As Proposed Legislative Intervenors' motion explains (at 4–14), the two Complaints threaten multiple unique and distinct interests of Proposed Intervenors' that are not adequately represented by the sole Defendant named in each Complaint. The *Galmon* Plaintiffs do not deny that Proposed Legislative Intervenors are real parties-in-interest and have each and every one of these interests. *See Galmon* Opp. 5–8. Instead, they argue solely that "the Attorney General intends to provide a full defense of the enacted congressional map." *Id.* at 5. This falls short of the mark.

To begin, neither set of Plaintiffs sued the Attorney General, and both are actively resisting his participation in this case. Further, both sets of Plaintiffs insist that the Attorney General's sole legitimate role in this case is to defend the Secretary of State's interests. But the Secretary of State's interests are more limited than Proposed Legislative Intervenors', neither set of Plaintiffs provides the Court any reason to believe otherwise, and the *Robinson* Plaintiffs effectively concede the point by declining to oppose Proposed Legislative Intervenors' motion (Doc. 37 at 2 n.1).

2. In any event, the *Galmon* Plaintiffs fail to meaningfully address the legal standard or Proposed Legislative Intervenors' many interests.

First, the *Galmon* Plaintiffs ask this Court to look everywhere but Fifth Circuit precedent to decide the extant motion. As the intervention motion explains (at 10), the Fifth Circuit "has not required a stronger showing of inadequacy in . . . cases where a governmental agency is a party," *Entergy Gulf States Louisiana, L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 204 n.2 (5th Cir. 2016), and the Secretary of State stands in the shoes of a government agency. The *Galmon* Plaintiffs have no response. Instead, they ask this Court to look to the law of other Circuits, *Galmon* Opp. 7–8, and law governing Article III standing, *id.* at 6, which even they concede does not apply, *see id.* All of this amounts to a concession that, under Fifth Circuit law governing intervention, the *Galmon* Plaintiffs have no meritorious argument.

Second, the *Galmon* Plaintiffs fail to meaningfully address Proposed Legislative Intervenors' interests. As the intervention motion explained (at 4–9), these interests include (1) maintaining the Legislature's constitutionally designated role in redistricting, (2) avoiding a costly second redistricting, and (3) advocating for the Legislature's policy choices both at the liability phase and any remedial phase that may be necessary. Even if it were true that the Attorney General will defend the challenged congressional plan, it does not follow that Proposed Legislative Intervenors' interests are adequately represented. The Attorney General does not have redistricting authority, would not be compelled to expend resources conducting a new redistricting process, and has no interest in ensuring that the Legislature's specific policies are implemented in any court-overseen redistricting. Indeed, the Attorney General does not even know what those policies are.

The *Galmon* Plaintiffs' responses are curt and inadequate. They fail to address the gravamen of Proposed Legislative Intervenors' interests in fulfilling their constitutional duty without federal-court intervention, and they fail to explain how the Secretary of State (or the Attorney General as his attorney) represents that interest. They assert, without citation, that "the

Legislature's redistricting authority is not at risk here," *Galmon* Opp. 6, but neglect to explain how their own Complaint, which expressly asks this Court to draw the congressional map without any opportunity for a legislative remedy, comports with that assertion—even though Proposed Legislative Intervenors prominently detail this point in their motion (at 1, 6). (*See* Dkt. 1 at 26 (Prayer for Relief).) The *Galmon* Plaintiffs also assure the Court that Proposed Legislative Intervenors need not respond to allegations of discrimination, *Galmon* Opp. 6–7, but, again, they fail to account for their own Complaint which piles allegation upon allegation concerning the redistricting process, the redistricting record, and the ultimate redistricting choices. (*See, e.g.*, Doc. 1, ¶¶ 4, 31, 34–38.) The *Galmon* Plaintiffs cannot credibly load their Complaint with invective against the Legislature and then ask this Court to deny the presiding officers the opportunity to speak to these allegations.

Importantly, in addition to interests of the Proposed Intervenors in defending against liability in this matter, the *Galmon* Plaintiffs concede that the Legislature plays a necessary role in any court-ordered remedy. (Opp. at 6) (citing *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)) (requiring "legislative remediation in the first instance"); *see also* Motion at 5-6 (citing *White v. Weiser*, 412 U.S. 783, 795 (1973)). *Galmon* Plaintiffs' position contradicts this well-established precedent stating simply that "[legislators] no longer have a legislative interest in redistricting litigation." Plaintiffs' own cited authority proves this assertion false.

3. The *Galmon* Plaintiffs' cited authorities do not make up for the lack of coherence in their arguments. Aside from failing to speak to Fifth Circuit law—which alone is reason enough to reject their position—their cases are distinguishable. *Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793 (7th Cir. 2019), did not involve redistricting legislation and did not implicate the interests Proposed Legislative Intervenors assert here. First, unlike ordinary state statutes (like

Wisconsin's abortion law), congressional redistricting statutes are passed pursuant to a federal constitutional grant of authority directly to the Legislature. Second, because the State needs a congressional districting plan to administer its congressional elections, the injunction of a congressional plan requires a remedial phase to adopt a replacement plan—no parallel requirement exists for ordinary statutes that are enjoined by a federal court. And, as set forth above, the Legislature is afforded the first opportunity to fashion such a replacement plan, with a federal court fashioning a remedial plan if the Legislature fails to do so. The *Galmon* Plaintiffs fail to explain how *Planned Parenthood* addresses any of the interests actually asserted in this case.

Meanwhile, the case that does speak to redistricting is *Wisconsin Legislature v. Wisconsin Elections Comm'n*, 142 S. Ct. 1245, 1247 (2022), which implicitly found Article III standing satisfied as to legislative intervenors in a congressional redistricting case. The *Galmon* Plaintiffs insist that *Wisconsin Legislature*—which, to repeat, concerned *redistricting*—is not as relevant as *Planned Parenthood*—which, to repeat, concerned *abortion restrictions*—because it "was an impasse case," where the state legislature failed to enact a redistricting plan, and, in this case, "the Legislators have already seen their preferred redistricting map enacted into law, and so they no longer have a legislative interest in redistricting litigation." *Galmon* Opp. 7. This is exactly backwards. Proposed Legislative Intervenors plainly have a *higher* interest where the legislative process *succeeded* in producing redistricting legislation, as compared to Wisconsin's impasse where the state legislature concededly failed to redistrict and where courts concededly had no choice but to intervene. And surely a case on redistricting, even an impasse case, is more on point than an abortion-restriction case. Besides, the *Galmon* Plaintiffs fail to address the other *redistricting* authorities Proposed Legislative Intervenors cited in their motion. *See, e.g.*, *Miss.*

State Conf. of N.A.A.C.P. v. Barbour, No. 3:11-cv-00159, 2011 WL 1327248, at *3 (S.D. Miss. Apr. 1, 2011); *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 858, 867 (E.D. Wis. 2001).

4. The Court should, in the alternative, grant permissive intervention. The *Galmon* Plaintiffs oppose this request without a single citation to Fifth Circuit authority, or even a decision of a district court within the Fifth Circuit's footprint. And, again, their arguments betray the self-interested and prejudicial goal of hamstringing the defense of the congressional plan rather than propounding sound arguments directed to the Court's wise exercise of discretion. Fifth Circuit authority (cited in the intervention motion (at 3)) holds that "[i]ntervention should generally be allowed where no one would be hurt and greater justice could be attained." *Ross v. Marshall*, 426 F.3d 745, 753 (5th Cir. 2005). Plaintiffs fail to show that they would be hurt by intervention. Rather, they show only that intervention would require them to vigorously prosecute their case.

It is rich, to put it mildly, for the *Galmon* Plaintiffs to complain that intervention "will unnecessarily duplicate the Secretary's efforts defending the new congressional map, effectively doubling or even tripling page limits and argument time and thus prejudicing Plaintiffs, who are necessarily proceeding in this matter on an expedited timeframe to ensure that the voting strength of Black Louisianians is not unlawfully diluted during the upcoming midterm elections." *Galmon* Opp. 8. There are *two sets* of Plaintiffs in this case represented by eight law firms and 28 lawyers from around the United States. Each set of Plaintiffs is entitled to its own briefing subject to default limits, its own evidentiary presentation, and the protection of its own interests in the way that it deems fit. How does doubling the page limits and evidentiary showings on the plaintiff side amount to due process, but an impermissible "mess" *Galmon* Op. 8 when it is on the defense side? Tellingly, *Galmon* Plaintiffs cite not a single episode of *actual* delay or prejudice by the

participation of intervenors in redistricting litigation, and they have pointed to no conduct by Proposed Legislative Intervenors in this case that has caused delay.

Plaintiffs sidestep the reality of *this* case by quoting an out-of-context squib from the Seventh Circuit's *Planned Parenthood* decision. But, on the topic of permissive intervention, the *Planned Parenthood* decision actually cuts against Plaintiffs by encouraging courts to grant permissive intervention to legislative intervenors. *See* 942 F.3d at 803. Indeed, one of the Seventh Circuit judges in that case sat on a three-judge district court that *did just that*—in a *redistricting* case, *Hunter v. Bostelmann*, No. 21-cv-512, 2021 WL 3856081, at *1 (W.D. Wis. Aug. 27, 2021) (panel including St. Eve, J.). And permissive intervention is yet another context where the difference between a redistricting case like this one and an abortion-regulation dispute matters. The question whether an abortion regulation places an undue burden on the constitutional right to an abortion is one of law, beginning the question of what value another state defender adds. Whether Louisiana's congressional map contravenes the effects test of Section 2 of the Voting Rights Act presents a fact-intensive question dependent on the testimony of expert witnesses and a labor-intensive factual presentation (hence, the 28 lawyers armed and ready to represent Plaintiffs). This is a case where the participation of multiple defendants (like that of multiple sets of plaintiffs) *helps* rather than *hurts*. And that is especially so where Proposed Legislative Intervenors were involved in the legislative process and can speak directly to the choices challenged in this case.

Finally, Plaintiffs fail to address Proposed Legislative Intervenors' many authorities on permissive intervention in redistricting cases. Among those authorities they overlook is *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572 (6th Cir. 2018), which reversed a lower court's denial of permissive intervention in a congressional redistricting case as an abuse of discretion,

rejecting many of the arguments the *Galmon* Plaintiffs tender here. *See id.* at 577–80. Plaintiffs invite this Court to make the mistake identified in *League of Women Voters*. The Court should decline that invitation.

CONCLUSION

For these reasons, and those stated in the intervention motion, Proposed Legislative Intervenors should be permitted to intervene as defendants in these consolidated cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 15, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

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[PROPOSED] ORDER

Upon consideration of the Proposed Legislative Intervenors' Motion for Leave to File a Reply, and considering the grounds presented, it is hereby

ORDERED that the motion is GRANTED; and further

ORDERED that the reply attached to the Motion is hereby deemed filed.

SO ORDERED.

This ____ day of _____ 2022.

_____
United States District Judge