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
EDWARD GALMON, SR., CIARA HART, NORRIS HENDERSON, TRAMELLE HOWARD, *Plaintiffs*, v. KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana. *Defendant*.	Civil Action No. 3:22-cv-00214-SDD-RLB

***ROBINSON* PLAINTIFFS' RESPONSE TO LEGISLATIVE INTERVENORS' MOTION FOR EXTENSION OF TIME TO ENACT PLAN**

Plaintiffs in the *Robinson* case submit this response to the motion by the Legislative Intervenors seeking a ten-day extension of time to enact a remedial plan. ECF No. 188.

Plaintiffs take the Legislative Intervenors at their word that "the Legislature intends to make a good-faith effort . . . to enact a plan that satisfies the principles the Court articulated." ECF No. 188-1 at 2. In light of that representation —and subject to any testimony from the Legislative Intervenors at the scheduled conference tomorrow—plaintiffs do not at this time oppose the Legislative Intervenor's request. Plaintiffs also note the Court's prior statement that it would "favorably consider a Motion to extend the time to allow the Legislature to complete its work," ECF No. 182 at 3 (emphasis omitted). Plaintiffs have serious concerns, however, about the Legislature's willingness to enact a redistricting plan that complies with the Court's injunction, and about the consequences of holding up the judicial process while the Legislature deliberates. Accordingly, plaintiffs request that, if the Court grants the Legislative Intervenor's motion for additional time, it should at the same time establish a mechanism and schedule for the Parties to propose remedial plans, in the event the Legislature is unable or unwilling to undertake its task, so that the Court is in a position to adopt a remedial map sufficiently in advance of November's election to avoid any confusion.

To be clear, plaintiffs appreciate the Legislative Intervenor's statement that the Legislature will make a good-faith effort to enact a lawful remedial map. The Legislative Intervenors assert in their motion that the additional time they request is needed for members of the Legislature "to consider, provide input on, and negotiate a new plan" and to consult with "local community leaders; for the submission of bills and proposed amendments; for members of

the public to provide input; for committee hearings, and for potentially 'lengthy debate.'" *Id.* at 3–5. In asking the Court to extend by ten days the deadline in its Ruling and Order for the Legislature to enact a remedial plan, plaintiffs understand the Legislative Intervenors to represent to the Court, consistent with their obligations under Fed. R. Civ. P. 11(b)(1), that the motion is not being made for the purpose of delay; that there is a reasonable prospect that the Legislature will be able to enact such a plan by June 30, the requested deadline; and that the requested extension would not impede the State's ability to prepare for and conduct the November election in accordance with such a plan.

Plaintiffs nevertheless have serious concerns about the Legislative Intervenor's motion.

First, the timing of the motion is troubling. Neither the Legislative Intervenors nor any other party requested an extension of time in the eight days between the Court's Ruling and Order entered on June 6, 2022, and the eve of the Extraordinary Session scheduled to begin today, June 15, 2022. Only after both this Court and a panel of the Fifth Circuit denied Intervenors' and Defendants' requests for a stay pending appeal did the Legislative Intervenors make such a request. Nor was the asserted need for more time a surprise or the result of later developments. On the contrary, as the Court is aware, in their motion for a stay pending appeal, filed the same day as the Court's Ruling and Order, the Legislative Intervenors contended that a stay was appropriate and the Court's schedule was allegedly "unworkable" for substantially the same reasons they now urge in support of the present motion, ECF No. 177-1, at 11—an argument the Court fairly concluded was "insincere and not persuasive." ECF No. 182 at 3. The Legislative Intervenors likewise unsuccessfully urged the Fifth Circuit to stay this Court's

injunction pending appeal on the ground that, among other things, this Court, in establishing the schedule it did, "set the Legislature up to fail." Leg. Int. Emergency Mot. at 18. The Legislative Intervenors offer no justification for not having sought an extension sooner.[1]

Second, beyond the timeframe in which the additional time is requested, the Legislative Intervenors' proffered explanations for their asserted need for additional time to enact a remedial plan are unpersuasive and at the very least raise serious questions about whether the requested additional time is necessary. The Legislative Intervenors emphasize the need for "public input on a new plan." ECF No. 188-1 at 5. But the Legislature has already held three months of road shows at which members of the public expressed their views about congressional redistricting. As Defendant and Intervenors noted in their post-hearing proposed findings of fact and conclusions of law, "[f]rom October 2021 to January 2022, the Legislature held public hearings across the State to present information and solicit public feedback." ECF No. 159 at 4. The evidence at the preliminary injunction hearing showed that the public input during that process focused specifically on the very issue the Legislature is now called upon to consider—namely, a second congressional district in which Black voters have an opportunity to elect their candidates of choice. Hearing Op. at 74, 77. As witnesses testified at the hearing, the Legislature ignored testimony from Black leaders, community members, and legislators at roadshows and committee

[1] In contrast to the eight days the Legislative Intervenors took to seek an extension of the Court's deadline, the Legislative Intervenors and the other defendants have shown the ability to act with expedition in seeking delay. As noted, the Defendants' joint motion for a stay pending appeal, supported by a 12-page brief, was filed the same day as the Court's June 6 Ruling and Order. ECF No. 177. Likewise, when the Court denied their motion on June 9, the Legislative Intervenors and the Attorney General filed motions with the Fifth Circuit seeking the same relief the same day, in each case supported by a brief of 20 or more pages. The Secretary of State filed a similar motion early the next morning. *See* Stay Motion, Dkt. 00516351167, *Robinson* v. *Ardoin*, 22-30333 (5th Cir., June 9, 2022) ("Emergency Motion"). The Legislative Intervenors filed a further ten-page reply in support of the same motion on June 10, just hours after plaintiffs filed their responses. *See* Reply, Dkt. 00516353506, *Robinson* v. *Ardoin*, 22-30333 (5th Cir., June 10, 2022).

hearings calling for such a district. *Id.* (citing testimony from Michael McClanahan and Ashley Shelton); *see also* PR-86 at 22-23 (citing testimony from roadshow hearings). While plaintiffs in no way minimize the importance of public input, the Legislative Intervenors make no mention of the extensive public input they have already received or explain why an entirely new public input process is necessary.

Likewise, the Legislative Intervenors assert that any bill must be debated sequentially in the House and the Senate. But they do not explain why they cannot enact two bills that are debated in both houses in parallel—as occurred when the enacted (and now enjoined) plan was approved in HB1 and SB5. Nor do the Legislative Intervenors address any options they or the Legislature have to waive or suspend rules they cite, or whether in other circumstances they have been able to act more expeditiously to enact bills implementing their legislative priorities.

Third, the Legislative Intervenors do not explain in their motion how they intend to use a ten-day extension of the Court's deadline to overcome the challenges they have identified or to address other timing concerns, and—so far as the public record shows, they have failed to take actions within their power to address those concerns. The Legislative Intervenors' inaction calls into question their representation to the Court about their willingness to make a good faith effort to enact a remedial plan or the asserted need for ten additional days to do so. To take just two examples:

The Legislative Intervenors have failed to take steps to convene a post-June 20 extraordinary legislative session. Under the Louisiana Constitution, an extraordinary session to consider redistricting after June 20 may be convened only upon seven days notice. As the

Legislative Intervenors note, the Louisiana Constitution requires such notice "prior to convening the legislature in extraordinary session." La. Const. art. 3, § 2(B) (quoted in ECF No. 188-1 at 2). The Constitution provides that an extraordinary session is "limited to the number of days stated" in the proclamation convening the session. *Id.* As the Legislative Intervenors note, on June 7, 2022—one day after this Court issued its Ruling and Order on plaintiffs' preliminary injunction motion—Governor Edwards issued a proclamation to convene an extraordinary legislative session to begin on June 15 and to last until June 20, the Court's deadline. Thus, a new extraordinary session after that date would require a new convening proclamation to be issued at least seven days before that session can commence.

Convening a post-June 20 extraordinary session is within the power of the Legislature. The constitution provides that an extraordinary session may be convened by the Governor (as occurred on June 7) or by the presiding officers of both houses—that is, the Legislative Intervenors themselves—"upon written petition of a majority of the elected members of each house." La. Const. art. 3, § 2(B). As noted, any such proclamation must be issued at least seven days before the session can begin. *Id*.

Although, as their submissions to this Court make clear, the Legislative Intervenors are well aware of these requirements, the Legislature has not issued a proclamation convening a post-June 20 extraordinary session. Nor, so far as the public record reveals, have the Legislative Intervenors called for such a session, urged the Governor to call such a session, or encouraged members to submit a petition that would empower the Legislative Intervenors to issue a proclamation starting the seven-day clock. The Legislative Intervenors' failure to take these (or,

to plaintiffs' knowledge, any other) steps to enable the legislature to convene in extraordinary session after June 20—and their failure to explain in their motion how they intend to do so—raises serious question about the Legislature's stated willingness to make a good faith effort to enact a new plan in the time they request.

The Legislature's failure to take other steps to prepare for consideration of a remedial plan. The Legislative Intervenors assert that additional time is needed for bills to be introduced, reviewed by and reported out of committee, reviewed and reported by the legislature bureau for technical corrections, and debated on the floor, and that that process must be repeated in each house of the Legislature. ECF No. 188-1 at 3–4; *see also* ECF No. 188-2 (Declaration of Patrick Page Cortez) ¶¶ 5–12.

Yet the Legislative Intervenors have taken no preparatory steps to expedite these processes. As far as the public record shows, between the entry of the Court's Ruling and Order on June 6 and today, the Legislature has failed to take any concrete step toward the goal of timely enacting a remedial plan. The Legislature has scheduled no committee hearings on a proposed plan. *See* https://legis.la.gov/legis/ByCmte.aspx (schedule of upcoming Committee meetings) (accessed June 15, 2022). Before the commencement of the extraordinary session today—and before the Court's order of yesterday calling for a hearing on this motion—neither of the Legislative Intervenors nor any other member of the majority party has pre-filed any bills addressing congressional redistricting or proposing a remedial plan, although the legislative minority has done so, and members of the majority party have filed such bills today. *See* https://www.legis.la.gov/legis/BillInfo.aspx?i=243802 (Senate Bills for 2022 Second

Extraordinary Session) (accessed June 15, 2022); https://legis.la.gov/legis/BillInfo.aspx?i=243803 (House Bills for 2022 Second Extraordinary Session) (accessed June 15, 2022); https://legis.la.gov/legis/ViewDocument.aspx?d=1289142 (House Bills for 2022 Second Extraordinary Session) (accessed June 15, 2022); https://legis.la.gov/legis/ViewDocument.aspx?d=1289151 ((House Bills for 2022 Second Extraordinary Session) (accessed June 15, 2022).

Fourth, press reports indicate that multiple legislative leaders have expressed the view that legislative action is inappropriate or that the Legislature will not act, at least before a resolution of defendants' pending Fifth Circuit appeal. House Conservative Caucus Chair Jack McFarland and House GOP Chair Blake Miguez are reported to have stated that they do not expect a new map to move forward and instead want the case to play out in court. *See* https://twitter.com/GregHilburn1/status/1536448451214450689. Representative Chair Miguez is reported to have said that "I don't see Republicans surrendering this early in the process before the litigation is fully adjudicated." https://twitter.com/GregHilburn1/status/1536448858640769028. Likewise, Representative McFarland has been quoted as saying, "I've already voted twice on the map—once to pass it and once to overrule @LouisianaGov veto. I'm elected to represent what I believe is best for my constituency. I'm not an appointed judge." https://twitter.com/GregHilburn1/status/1536449497198383110.

These statements by senior members of the Legislature, and the Legislative Intervenor's present motion, occur against the backdrop of repeated past efforts by Defendant and Intervenors

to delay these proceedings. In addition to Defendant and Intervenors' unsuccessful motions in this Court and in the Fifth Circuit for a stay pending appeal, this Court, as it noted in its Ruling and Order, accommodated Defendant and Intervenors' request to adjourn the preliminary injunction hearing "after they complained that the timeline was too tight." ECF No. 173 at 126 n. 350. Defendant and Intervenors then used the shortened time to argue that the State would be unable to conduct the 2022 election under a remedial plan, and complained about the time the district court needed to issue its Ruling and Order. Emergency Motion at 18–19 (arguing that the Court's stated intent to issue additional orders to enact a remedial plan "does little to mitigate the risk of meltdown" because "it took the district court 67 days from filing, and 24 days from the hearing, to issue an injunction[, and t]here is little reason to believe a remedial order will issue any more promptly.")

* * *

In light of the foregoing, plaintiffs have serious concerns that the only material consequences of granting the Legislative Intervenors the additional time they request will be to further delay the enactment of a remedial plan and give Defendant and Intervenors additional ammunition to pursue their argument that, under *Purcell*, no remedy for the Voting Rights Act violations the Court found is feasible before the coming election. *See e.g.*, ECF No. 177-1, at 9 (arguing that the preliminary injunction should be stayed because "[t]here can be no serious question that the *Purcell* principle applies in this case").

To mitigate that risk, and to expedite the Court's consideration of potential remedial plans if the Legislature fails to timely enact such a plan, plaintiffs respectfully request that, if the

Court grants the Legislative Intervenor's request for an extension, it establish at the same time a mechanism and schedule for the parties to submit proposed remedial plans and evidence supporting the plans. In particular, plaintiffs propose that (i) plaintiffs be permitted to file a proposed remedial plan and a memorandum in support thereof by no later than June 24, 2022; (ii) defendants be directed to file a response and any proposed plan by July 1, 2022, unless the Legislature has enacted a remedial plan; and (iii) plaintiffs be permitted to file any reply no later than July 5, 2022. In addition, plaintiffs reserve the right to seek additional relief prior to June 30—including a more expedited schedule for consideration of remedial plans—in the event that the Legislature does not act expeditiously toward the enactment of an appropriate remedial plan.

Filed: June 15, 2022

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