No. 23A282

In the Supreme Court of the United States

EDWARD GALMON, et al.
Applicants

v.

KYLE ARDOIN, LOUISIANA SECRETARY OF STATE, et al.
Respondents.

RESPONSE TO EMERGENCY APPLICATION FOR STAY OF WRIT OF MANDAMUS

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case is manifestly *not* about "ordinary docket management." Appl. of Robinson Pls. at 1; Appl. of Galmon Pls. at 3. If the Fifth Circuit had not granted mandamus relief, then (1) the State would have been deprived of the opportunity to fully and fairly defend itself against Plaintiffs' Section 2 claims, (2) the Louisiana Legislature would have lost the opportunity to draw a new map in the first instance that conformed to the district court's order, and (3) the case would have devlolved into procedural chaos, making it impossible to resolve the Plaintiffs' claims before the approaching congressional election cycle. Since the Fifth Circuit issued the writ, this case is now in fact proceeding—as this Court commanded—"in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). So long as the district court heeds the warning of the Fifth Circuit, it remains possible that the Plaintiffs' Section 2 claims will be fully resolved before another congressional election cycle. It could not be so without the Fifth Circuit's intervention.

The Court should reject Plaintiffs' Application, as well as their request to treat their Application as a writ of certiorari. Plaintiffs will suffer no injury whatsoever (irreparable or otherwise) if they are forced to *actually* prove their Section 2 claims in a fulsome trial on the merits.[1] Nor will an injury arise if they are denied their request to strip away the legislature's right to draw a remedial map in the first

[1] The appeal on the merits of the preliminary injunction was heard by a three-judge panel of the United States Court of Appeals for the Fifth Circuit on October 6, 2023. *Robinson v. Ardoin*, No. 22039333. The merits panel is well aware of both this mandamus proceeding and the calendar issues involved with resolving the mase on the merits.

instance. And in any event, their arguments are manifestly wrong. This Court's unbroken pronouncements establish that their *preliminary* win via a rushed *preliminary*-injunction hearing is no substitute for a *final* trial on the merits. The Plaintiffs' attempt to skirt the normal litigation process demonstrates that the equities weigh decidedly in the State's favor.[2]

STATEMENT OF THE CASE

The Plaintiffs' recistation of the proceedings remains skewed; additional context is warranted. Start with the 2022 preliminary-injunction proceedings. The district court, over the State's objection, forced the State to defend its legislatively created maps without giving it enough time to do so effectively, affording it, for instance, only two weeks to prepare expert reports. After the preliminary-injunction hearing, one in which the State had to pick and choose which evidence it had the time to present, the district court took no action for twenty-four days. Then—on the last day of the State's legislative session—the district court issued its injunction and memorandum opinion, which invalidated the Congressional map because the map did not include a second majority-Black district.

What happened next is critical to understanding the Fifth Circuit's mandamus opinion. The district court ordered the Lousiana legislature to enact a remedial plan, even though the legislative session had ended. Despite this impediment, the district

[2] This case stands on stark contrast to *Allen v. Milligan*, 599 U. S. 1 (2023), where this Court stayed the lower court remedy proceedings pending the outcome of appellate review of the merits of the preliminary injunction. In this case, the district court was proceeding ahead with remedial proceedings as the appeals court is in the process of reviewing the merits of the preliminary liability findings.

court ordered the legislature to give the court new maps in fourteen days (seven of which fell inside the Louisiana constitution's notice requirement for calling a special legislative session) to enact a new plan before the district court would create one itself. Given the requirements of the Louisiana constitution, the legislature had four actual days to create new maps.

Although the district court indicated it would "favorably consider a Motion to extend the time to allow the legislature to complete its work," when the Legislative Defendants moved for an extension of time, the court ordered the Speaker and Senate President to "appear **IN PERSON** to offer testimony in support of the" motion, which occured on the morning of the second legislative day of the six allotted to the legislature to redistrict. App. 1 (emphasis in original). During that hearing, the district court suggested that it had the authority to suspend the notice provision of the state constitution. App. 11. It threatened the Speaker with contempt. App. 78–79. And it demanded the legislature dispense with its regular rules and procedures. App. 88–89. The district court ultimately denied the motion from the bench and announced its intent to "hammer out a remedial process" immediately. App. 91–92. Ultimate relief came only through this Court's 2022 stay pending its decision in *Allen v. Milligan*, 599 U. S. 1 (2023).

Next came the subsequent remedial proceedings. In light of this Court's reactivation of this case, the district court conducted a status conference on July 12, 2023. On July 17, 2023, it issued an order stating that "the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted,

be and is hereby reset to October 3–5, 2023." App. 102. The trial court showed no interest in considering the import of this Court's decision in *Allen* or *Students for Fair Admission, Inc. v. President & Fellows of Harvard College*, 600 U. S. 181 (2023), on the merits of the Plaintiffs' Section 2 claims. In fact, the import of those cases have yet to have been briefed before the district court.

The parties submitted competing scheduling orders. The Plaintiffs proposed a schedule that would allow "for any party . . . to submit a new or amended map along with supporting expert evidence," App. 129, while the State explained why doing so on an expedited basis would not work, since new plans meant redoing all the expert analyses required to litigate those plans, App. 103–10. No scheduling order was entered for 48 days. App. 156–57.

To avoid congressional-election chaos, the State, on August 25, 2023, filed an emergency motion to cancel the hearing on remedy and to instead enter a scheduling order for trial. App. 134–35. Among other things, the motion reminded the district court that it would be impossible to prepare for a three-day fact-intensive remedial map hearing in six weeks without a scheduling order, briefing, new maps, or exchange of expert material. App. 141–44. The district court denied the motion on August 29, 2023, in an order that addressed none of the objections that the State raised. App. 154–55. Instead, the court merely asserted that the "case has been extensively litigated" and that there was "adequate time to update the discovery needed in advance of the hearing." *Id.*

The State remained aware that (1) it could not take an interlocutory appeal of the district court's denial of its motion, (2) even though the appeal from the 2022 preliminary-injunction order remained pending at the Fifth Circuit, the Fifth Circuit has no jurisdiction to consider arguments related to proceedings that occurred *after* that appeal was perfected in June 2022, (3) appealing to the Fifth Circuit from the forthcoming remedial order would mean two separate Fifth Circuit *preliminary*-injunction opinions, and (4) all of this guaranteed that this case would not conclude before the 2024 election cycle descended into pandamonium. In other words, the State had no other choice but to petition for a writ of mandamus. It did so, the Fifth Circuit agreed, and now this case has some hope of (finally) proceeding with a semblance of normalcy; i.e., "in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Robinson*, 143 S. Ct., at 2654.

ARGUMENT

The Court should deny Plaintiffs' Emergency Application for Stay of Writ of Mandamus. None of this Court's traditional stay factors weigh in Plaintiffs' favor. First, Plaintiffs cannot demonstrate "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction" or "a fair prospect that a majority of the Court will conclude that the decision below was erroneous." *See Ind. State Police Pension Trust v. Chrysler LLC*, 556 U. S. 960, 960 (2009) (per curiam) (quoting *Conkright v. Fommert*, 556 U. S. 1401 (2009) (Ginsburg, J., in chambers)). In other words, Plaintiffs fail to establish likelihood of success on the merits. Second, Plaintiffs will suffer no harm, let alone

irreparable harm, if their Application is denied. *See id.* And third, the balance of the equities weigh decidedly in the State's favor. *See id.* ("[I]n a close case it may be appropriate to balance the equities,' to asses the relative harms to the parties, 'as well as the interests of the public at large.'" (quoting *Ind. State Police Pension Trust*, 556 U. S., at 960).

I. THE PLAINTIFFS CANNOT SHOW ANY LIKELIHOOD OF SUCCESS ON THEIR ARGUMENT THAT THE FIFTH CIRCUIT ERRED BY ISSUING A WRIT OF MANDAMUS.

The Fifth Circuit committed no error when it issued the State's petition for a mandamus. Specifically, (1) the State had a clear and indisputable right to it, (2) it had no other adequate means of relief, and (3) issuance was plainly appropriate under the circumstances." *In re Gee*, 941 F.3d 153, 157 (CA5 2019) (per curiam); *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (CA5 2008) (en banc). The Plaintiffs have not, and cannot, show that the the Fifth Circuit mistakenly applied any of these prongs.

A. At this stage in the proceedings, the State has a clear and indisputable right to be free from the imposition of a court-drawn remedial map.

1. While the district court's hasty preliminary-injunction proceedings *might* have been justified in early summer 2022 (given the imminence of the fall 2022 congressional elections), perpetuating those flawed findings cannot be jusfied *now* that the 2024 elections are more than a year away and candidate qualifying is approximately nine months away. *See* La. Stat. Ann. § 18:467(2). The State asked the district court to allow it its day in court—i.e., dispense with a preliminary-injunction remedial hearing and instead set a full trial on the merits while there remained time

to do so. The district court refused. And that refusal denied the State a legal right to which it was manifestly entitled.

Preliminary injunction proceedings are just that—*preliminary*. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties *until a trial on the merits can be held*." *Univ. of Tex. v. Camenisch*, 451 U. S. 390, 395 (1981) (emphasis added). "Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Id.*

Most critically, "[a] party . . . is *not required to prove his case in full* at a preliminary-injunction hearing, . . . and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Id.* (emphasis added). And, for more than a century, this Court has enshrined the notion that every litigant must be afforded "an opportunity to present" its defense *and then* to have a "question" *actually* "decided" against it before a remedy may issue. *Fayerweather v. Ritch*, 195 U. S. 276, 299 (1904).

Simply put, deciding that a claim is "likely to succeed" is not the same as "actually litigat[ing] and resolv[ing]" a claim. *Taylor v. Sturgell*, 553 U. S. 880, 892 (2008). And providing a remedy for a claim that has not yet been "actually litigated and resolved" offends every notion of fundamental fairness. *Id.*; *see also Fayerweather*, 195 U. S., at 299. This is even more true in the Section 2 context, where courts "must 'conduct an intensely local appraisal' of the electoral mechanism at

issue, as well as a 'searching practical evaluation of the 'past and present reality.'" *Allen*, 599 U. S., at 19 (quoting *Thornburg v. Gingles*, 478 U. S. 30, 79 (1986)). That means mountains of expert and fact discovery. And both the *quantity* and *quality* of the evidentiary presentation matters, especially as a court weighs "the most difficult task a legislative body ever undertakes." *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D. N.C. 2016) (three-judge court), *aff'd*, 137 S. Ct. 2211 (2017).

At no point in either the Plaintiffs' twin applications for an emergency stay (or in the brief of their Amici) are any of these points discussed. And for good reason. They have no defensible *legal* argument for short-circuiting the normal litigation process. The only argument they have is the one they can't make in good faith to this Court: they like their *preliminary* win, which came under the auspices of relaxed evidentiary rules and the fog of an impending *Purcell* fight, but they aren't confident that it will persist if they are forced to adjudicate their claims fully, fairly, finally and with an adequate time for the State to mount a defense in a trial on the merits and after fulsome appellate review.

This is particularly true given this Court's recent *Allen* and *Students for Fair Admission* opinions. In *Allen*, the Court addressed Section 2 for the first time in fourteen years and clarified how the *Gingles* preconditions apply. Relevant to this case, the Court elucidated "how traditional districting criteria limit[] any tendency of the VRA to compel proportionality," *Allen*, 599 U. S., at 28, which means that the district court's reliance (in part) on proportionality as a legitimate goal is no longer tenable and must be revisited. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D.

La. 2022). *Allen* also emphasized the centrality of communities of interest in the Section 2 analysis, which has featured prominently at every stage of this case. *See* 599 U. S., at 21. And Justice Kavanaugh's concurring opinion in *Allen* stressed that it is the compactness of the minority community—not solely the compactness of the proposed districts—that must be evaluated. *Id.* at 43 (Kavanaugh, J., concurring).

It is of no moment that this Court affirmed the preliminary-injunction in *Allen*. Factually, Alabama and Louisiana are different in particularly relevant ways, none of which have ever been subject to the adjudicatory crucible. And because nearly all of the Plaintiffs' illustrative maps in this case divide Louisiana's urban areas such as Monroe, Lafayette, Alexandria, and East Baton Rouge along racial lines, the only way to construct a second majority black district in Louisiana is to link disparate minority communities separated by hundreds of miles.[3] Just as a basic factual distinction, Alabama has 11 majority black counties that all border each other, while Louisisana has only 7 majority black parishes, and only three of them border each other (and contain a total of under 30,000 residents). To put it another way, there is no "Black belt" equivalent in Louisiana.

This means that *Students for Fair Admission*, which fundamentally changed the way in which States may consider race when taking state action, also must be considered. In that case, the Court stressed that as race-based legislative acts reach their intended ends, they become obsolete and less likely to survive Equal Protection

[3] In *Allen*, the remedy proceeding did not move forward until the appeals court (this Court in that case) reviewed the merits of the liability finding. In this case, a merits panel of the Fifth Circuit heard the appeal on the merits of the preliminary injunction proceeding's liability finding on October 6, 2023, and a decision is currently pending.

scrutiny. *Students for Fair Admission*, 600 U. S., at 206–08. This principle followed the Court's decision in *Shelby County v. Holder*, which struck as unconstitutional a different Voting Rights Act provision because "[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." 570 U. S. 529, 557 (2013).

This changing legal landscape directly affects the issues presented in this case. The Fifth Circuit correctly recognized the profound injustice that would plague the State if the district court were allowed to issue a remedy. The Plaintiffs have not, and cannot, demonstrate any likelihood that the Fifth Circuit got this wrong.

2. The Fifth Circuit also correctly held that the district court manifestly abused its discretion by taking the map-drawing responsibility away from the State legislature. For decades, *see Reynolds v. Sims*, 377 U.S. 533, 586 (1964), this Court has "repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the courts should make every effort not to preempt." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). "[I]t is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Id.*

The district court hasn't ever afforded the legislature with a meaningful opportunity to do this. At best it gave lip service to this approach back in Summer 2022. But when the legislature asked for an additional ten-days (on top of the *four*

that the district court gave it to complete its task), the district court suggested that the Speaker should be held in contempt and offered to start suspending provisions of the Louisiana Constitution that structure how the State passes its laws. And now, that the 2024 congressional elections are still a year away, it has never suggested that this quintessentially legislative, political function should be returned to the branch most directly connected to the Louisiana electorate.

It is no answer, as Plaintiffs seem to believe, that the State asked for a remedy beyond that which the Fifth Circuit eventually granted. The State asked for cancellation of the remedial hearing and instructions to set a trial. The Fifth Circuit gave them the former but not the latter. Not one case of which the undersigned is aware suggests that granting partial relief to a mandamus petitioner constitutes reversible error, and for their part, the Plaintiffs have cited none.

The Plaintiffs' argument that the legislature has not yet taken it upon itself to create a remedial map provides no support for the argument that the Fifth Circuit erred. The legislature is currently defending its *enacted* map via a merits appeal from the 2022 preliminary-injunction liability finding (oral argument was held in that proceeding on Friday, October 6, 2023). It makes no sense for the Louisiana legislature to effect a remedy against itself while seeking to demonstrate that the district court was wrong to conclude that the Plaintiffs' are entitled to a remedy. The Plaintiffs' argument, then, is little more than another misguided suggestion that the State should be faulted for availing itself of its day in court. The Court should reject this notion.

B. The State had no other way to secure relief except for a petition for a writ of mandamus.

Plaintiffs' contentions that the State had another meaningful way to secure the relief it sought are specious. As an initial matter, there is no rule, statute, or doctrine for which the undersigned is aware that would have let the State appeal immediately from the district court's denial of the State's emergency motion to cancel the remedial hearing. The Plaintiffs' suggestion that it could have demonstrates either an ignorance with how appellate jurisdiction works or possibly desperation. *See* Appl. of Robinson Pls. at 4; Appl. of Galmon Pls. at 3.

The Plaintiffs' argument that the State should have raised these issues to the Fifth Circuit panel adjudicating the merits of the preliminary-injunction order is similarly flawed. The district court set its remedial hearing more than a year *after* the State noticed its appeal from the preliminary-injunction order. The merits panel addressing that portion of this case does not have appellate jurisdiction to address any of the irreparable injuries that have been, or will be, inflicted after the summer 2022 order giving rise to that appeal. All those errors, including the ones alleged via the State's mandamus petition, merge into the final judgment or another interlocutory appeal of the remedial map for purposes of this Court's jurisdiction.[4] And the nail in the coffin of this argument is Judge Ho's observation that "[h]ad the" preliminary-injunction panel "requested transfer of th[e] mandamus proceeding to its

[4] *See* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3905.1 ("[T]he general rule [is] that an appeal from final judgment opens the record and permits review of all rulings that led up to the judgment."); *id.* § 2962 ("Upon an appeal from the final decree every interlocutory order affecting the rights of the parties is subject to review in the appellate court."); *see also Satanic Temple, Inc. v. Texas Health & Hum. Serv. Comm'n*, No. 22-20459, 2023 WL 5316718, at *2 (CA5 Aug. 18, 2023).

current docket," he "imagine[s] [he] would've agreed[,] . . . [*b*]*ut no such request was made*." App. 170 n.2 (emphasis added).

Finally, it makes no sense to insist that the case proceed along the course set by the district court, only to take an appeal after this case has sorted itself out in a final judgment that the district court seems wholly disinclined to reach. As of the date of this filing, the district court has still not set a trial date.[5] Allowing entry of a court-drawn remedial map, appealing from *that* order, *then* proceeding to a full trial on the merits, *then* appealing from *that* judgment, means that there will be no resolution of these issues until well after the 2024 congressional elections. In other words, the error "will have worked irreversible damage and prejudice" on the State "by the time of final judgment," *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 289 (CA5 2015), because another congressional election will have come and gone under the shadow of unresolved Section 2 litigation. The State doesn't want that; the Plaintiffs shouldn't either.

The Fifth Circuit's mandamus order avoided an "embarrass[ment]" to "the federal judiciary" and a trouncing of "rational procedures." App. 162. Reversing the Fifth Circuit's mandamus would subject the State to two tracks of proceedings—one for the merits and one for the rushed remedial plan. The State had no choice but to seek relief through a petition for a writ of mandamus. And the Fifth Circuit was right to agree.

[5] The District Court did set an in-person status conference for October 17, 2023 shortly after this Court issued its call for response to this application.

C. The tremendous importance of this case justified mandamus relief.

Again, what this case is about should be lost on no one. At issue are the constitutional and statutory voting rights of hundreds of thousands (maybe millions) of Louisiana citizens when they cast their ballots during the 2024 congressional elections. It is, of course, "always in the public interest to prevent the violation of a party's constitutional rights," *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (CA5 2014), which in and of itself counsels in favor rejecting the Application. Additionally, the district court's preliminary-injunction order that will guide any remedial determination requires the State to consider race in redistricting, and the more that the State does so, the more it offends the fundamental Equal Protection Rights enshrined in the Fourteenth Amendment. *See Students for Fair Admission*, 600 U. S., at 206–08. Because "race-based sorting of voters" may be allowed only if doing so "serves a 'compelling interest' and is 'narrowly tailored' to that end," *Cooper v. Harris*, 581 U. S. 285, 292 (2017), this Court should reject the Application to make sure the State has the opportunity to defend against the race-based sorting that the Plaintiffs request.

"The traditional use" of the writ of mandamus "has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *Cheney v. U.S. Dist. Ct.*, 542 U. S. 367, 380 (2004) (cleaned up) (quoting *Roche v. Evaporated Milk Ass'n*, 319 U. S. 21, 26 (1943)). That's exactly what the Fifth Circuit did here. And Plaintiffs fail to show why the district court's act of barreling toward a remedial hearing to force the state to adopt Plaintiffs' preferred maps, while forgoing a trial on the merits, does not warrant the writ.

II. THE PLAINTIFFS WILL SUFFER NO INJURY WHATSOEVER BY THE FIFTH CIRCUIT'S MANDAMUS ORDER.

Notably absent from either of the Plaintiffs' applications is a credible argument that the Fifth Circuit's mandamus order will cause them any injury whatsoever. Their argument that *reversing* the mandamus order will somehow provide certainty before the 2024 congressional elections belies logic. The State petitioned for the writ as an attempt to get *final* resolution of the Plaintiffs' Section 2 claims in time for the 2024 congressional elections, which, as noted above, cannot occur under the way in which the district court had set its hearing schedule. The only reason why the Plaintiffs would not want the same final resolution is a desire to drag out their *preliminary* win and avoid the burden of having to *actually* demonstrate that their claims succeed (rather than merely checking the lesser *likelihood* of success box).

It is October 2023. There are no congressional elections until November 2024. The State could have *no* voting-district map as of the day of this filing, and the Plaintiffs would suffer no injury for the better part of a year. As the State recently informed the Fifth Circuit at oral argument, as long as there is final resolution on liability and a map is in place by late May 2024, then an orderly election can take place. The Fifth Circuit has done nothing that could conceivably change this. Instead, the Fifth Circuit has merely ensured that a flawed, and ultimately wasteful, remedial hearing will not slow down an immensely complicated litigation that needs to be *fully* resolved expeditiously. Accordingly, the Plaintiffs have not satisfied this prong of the stay analysis.

III. THE BALANCE OF THE EQUITIES TILT HEAVILY IN FAVOR OF ALLOWING THE MANDAMUS ORDER TO REMAIN IN EFFECT.

Finally, the balance of the equities weighs heavily in the State's favor. The State wants the Plaintiffs' Section 2 claims fully, fairly, and *finally* adjudicated. The Louisiana electorate deserves no less than what the State wants. This includes individual Plaintiffs that want to see a second majority-Black district. The district court's remedial hearing, which relied on a year-old preliminary-injunction order (which, in turn, relied on caselaw that is no longer state-of-the-art), would hamper the full and final resolution of the Plaintiffs' claims. The Fifth Circuit recognized this, so the Fifth Circuit dispensed with the remedial hearing.

The only ones who want to jump past a full and fair resolution of these Section 2 issues are the Plaintiffs themselves. The reason is obvious. They eeked out a likelihood-of-success win through expedited and sloppy proceedings; their case (as recognized by the Fifth Circuit's motions panel in 2022) suffers from potentially fatal weaknesses; and the caselaw has changed. If they can sneak a court-drawn remedial map into Louisiana for the 2024 congressional elections, they can call that a win. In fact, since Congressional elections cannot be "re-run" after the fact, a "temporary" win is, in effect, a final judgment as to that election with out all of the rules that ensure fairness before a Court can issue a final judgment.

Their gamesmanship cannot, nor will it ever, be said to serve the public interest. The State wants their claims fully litigated, and finally resolved, so that the Louisiana electorate can cast their ballots with the confidence that they are doing so under the auspices of congressional voting boundaries that comply with *both* Section

2 of the Voting Rights Act *and* the Equal Protection Clause of the Fourteenth Amendment. This confidence, standing alone, tips the balance of equities in favor of the State's position. And because the chance for this confidence is why the Fifth Circuit granted the State's petition for a writ of mandamus, the Plaintiffs cannot show that this Court should stay that order.

Plaintiffs' reasons for why the equities balance in their favor fall flat. While it may be true that "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury," Appl. of Robinson Pls. at 29 (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (CA4 2014)), the next congressional election is roughly thirteen-months away. In all the cases cited by Plaintiffs in support of this point, an election was imminent. *See, e.g.*, *League of Women Voters of N.C.*, 769 F.3d at 237 (partially affirming preliminary injunction "as to *this November's election*" in October (emphasis added)); *Obama for Am. v. Husted*, 697 F.3d 423, 425 (CA6 2012) (affirming preliminary injunction for November 2012 election in October 2012). While any injury to Plaintiffs will not occur until November 2024 at the earliest, the State's harm will be immediate if this Court permits Plaintiffs to foist the State's congressional maps into a perpetual state of legal limbo with two tracks of proceedings.

The State agrees with Plaintiffs that "once the election occurs, there can be no do-over and no redress" for voters whose rights are violated. Appl. of Robinson Pls. at 29 (quoting *League of Women Voters of N.C.*, 769 F.3d, at 247). That is why the State

wants these issues resolved fully, fairly, and finally. The rights of all Louisianans are at stake, and granting the Application would place those rights in jeopardy.

IV. THIS COURT SHOULD NOT CONSTRUE PLAINTIFF'S APPLICATION AS A PETITION FOR WRIT OF CERTIORARI.

If the Court rejects Plaintiffs' Application for a Stay, then it should also reject Plaintiffs' invitation to construe its Application as a petition for writ of certiorari and summarily reverse. As discussed above, the issuance of the writ of mandamus was proper. True, mandamus is reserved for extraordinary cases, but this is an extraordinary case. Mandamus is the only appropriate remedy where, as here, a district court skips critical steps on the way to crafting its own remedy, including denying the State legislature its right to draw its maps.

The district court has interfered with "the most difficult task a legislative body ever undertakes." *Covington*, 316 F.R.D., at 125. The State's petition for a writ of mandamus, and the Fifth Circuit's order granting it, have one effect—to bring critically needed order to the adjudication of the Plaintiffs' Section 2 claims. Given that effect, there is no conceivable reason for this Court to grant certiorari before judgment, which would accomplish nothing except additional litigation and (eventually) electoral chaos.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Emergency Application for Stay of Writ of Mandamus.

Respectfully submitted,

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Appendix to Response to Emergency Application
For Stay of Writ of Mandamus

Exhibits:

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, *et al*

versus

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

CIVIL ACTION

22-211-SDD-SDJ

consolidated with

EDWARD GALMON, SR., *et al*

versus

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

CIVIL ACTION

22-214-SDD-SDJ

ORDER

Considering the Legislative Intervenors' *Motion for Extension of Time to Enact Plan*,[1] the Court hereby **ORDERS** that a hearing shall be held on the *Motion* on Thursday, June 16, 2022, at 9:00 a.m. in Courtroom 3. The Court further **ORDERS** that Speaker of the Louisiana House of Representatives Clay Schexnayder and Louisiana Senate President Page Cortez appear **IN PERSON** to offer testimony in support of the *Motion*.

IT IS SO ORDERED.

Signed this 14th day of June, 2022, in Baton Rouge Louisiana.

SHELLY D. DICK
CHIEF DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

[1] Rec. Doc. No. 188.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, ET AL : CIVIL ACTION

VERSUS : NO. 22-211-SDD

KYLE ARDOIN, ET AL : CONSOLIDATED WITH

EDWARD GALMON SR., ET AL : NO. 22-214-SDD

VERSUS :

KYLE ARDOIN, ET AL, : JUNE 16, 2022

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CONTINUED MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE SHELLY D. DICK
UNITED STATES CHIEF DISTRICT JUDGE

A P P E A R A N C E S

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY USING COMPUTER-AIDED TRANSCRIPTION SOFTWARE

I N D E X

PROCEEDINGS

(CALL TO THE ORDER OF COURT.)

THE COURT: GOOD MORNING. BE SEATED.

CALL THE CASE, PLEASE.

THE COURTROOM DEPUTY: THIS IS CIVIL ACTION NO. 22-11 PRESS ROBINSON AND OTHERS VERSUS KYLE ARDOIN AND OTHERS; AND 22-214, EDWARD GALMON, SR., AND OTHERS VERSUS KYLE ARDOIN, ET AL.

THE COURT: OKAY. GOOD MORNING, EVERYONE. BEFORE I ASK FOR APPEARANCES, LET ME JUST ASSURE YOU THAT WE WILL NOT BE LONG THIS MORNING. THE COURT IS MINDFUL OF THE IMPORTANT WORK OF THE LEGISLATURE, SO THE COURT INTENDS TO KEEP THIS AS SHORT AND AS DIRECT AS POSSIBLE. BUT THE COURT IS INTERESTED IN HEARING FROM HOUSE SPEAKER SCHEXNAYDER AND SENATE PRESIDENT CORTEZ REGARDING THE MOTION FOR EXTENSION AND ANY ARGUMENT OF THE PARTIES.

SO WITH THAT, THE PARTIES CAN MAKE THEIR APPEARANCES, PLEASE.

MR. PAPILLION: GOOD MORNING, YOUR HONOR. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS, ALONG WITH JENNIFER MOROUX.

THE COURT: GOOD MORNING.

MR. ADCOCK: GOOD MORNING, YOUR HONOR. JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS.

THE COURT: GOOD MORNING.

MS. WASHINGTON: GOOD MORNING, YOUR HONOR. TRACIE WASHINGTON ON BEHALF OF THE ROBINSON PLAINTIFFS.

THE COURT: GOOD MORNING.

MR. IRVING: GOOD MORNING, YOUR HONOR. STEVE IRVING ON BEHALF OF THE LEGISLATIVE BLACK CAUCUS INTERVENOR.

THE COURT: GOOD MORNING.

MR. JOHNSON: GOOD MORNING, YOUR HONOR. ERNEST JOHNSON ALONG WITH STEVE IRVING REPRESENTING THE LOUISIANA LEGISLATIVE BLACK CAUCUS.

THE COURT: GOOD MORNING, SIR.

COUNSEL?

MS. MCKNIGHT: GOOD MORNING, YOUR HONOR. KATE MCKNIGHT FOR LEGISLATIVE INTERVENORS. ALONG WITH ME ARE MARK BRADEN AND MICHAEL MENGIS.

THE COURT: GOOD MORNING.

MR. FREEL: GOOD MORNING, YOUR HONOR. ANGELIQUE FREEL AND CAREY TOM JONES HERE FOR INTERVENOR STATE OF LOUISIANA THROUGH ATTORNEY GENERAL JEFF LANDRY.

THE COURT: THERE IS NO MOTION FROM THE INTERVENORS. I APPRECIATE YOU BEING HERE, BUT THE COURT WILL NOT REQUIRE ANYTHING FROM YOU SINCE WE

DON'T -- YOU DON'T REALLY NECESSARILY HAVE A -- WELL, YOU DON'T HAVE A MOTION BEFORE THE COURT. BUT I APPRECIATE YOU BEING HERE ON BEHALF OF THE ATTORNEY GENERAL.

OKAY. THE PLAINTIFF MAY CALL THEIR FIRST WITNESS. I'M SORRY. THE MOVANT. MY APOLOGIES, MS. MCKNIGHT.

MS. MCKNIGHT: YOUR HONOR, THANK YOU.

WE INTEND TO REST PRIMARILY ON THE ARGUMENTS IN OUR MOTION. WE MAY HAVE A FEW RESPONSES TO WHAT PLAINTIFFS HAVE FILED LAST NIGHT WITH THE COURT.

I NEED TO RAISE A PROCEDURAL ISSUE THAT HAS COME TO OUR ATTENTION SINCE MONDAY WHEN WE FILED OUR MOTION FOR EXTENSION. THAT PROCEDURAL ISSUE IS THAT IF THIS COURT ALLOWS EXTRA TIME, A NEW EXTRAORDINARY SESSION WILL NEED TO BE CALLED. THAT NEW SESSION REQUIRES SEVEN-DAY NOTICE. AND PARDON ME, YOUR HONOR, YOU MAY ALREADY BE AWARE OF THIS. BUT I WANTED TO MAKE SURE IT WAS CLEAR --

THE COURT: I READ THE BRIEFS, BUT GO AHEAD. I'D LIKE TO HEAR ABOUT IT. BUT I READ THE BRIEFS. I'M AWARE OF IT.

MS. MCKNIGHT: OKAY. SO JUST WHAT WOULD HAPPEN IF THIS COURT, LET'S SAY, ALLOWS MORE TIME,

THE LEGISLATURE WOULD NEED TO HAVE EITHER THE GOVERNOR ISSUE A NEW EXTRAORDINARY SESSION NOTICE --

THE COURT: OR THEY CAN DO IT THEMSELVES WITH MAJORITY RULE. CORRECT?

MS. MCKNIGHT: THAT IS CORRECT, YOUR HONOR. THE ONLY REASON I DIDN'T RAISE THAT FIRST, YOUR HONOR, IS THAT TAKES MORE TIME, AND WE UNDERSTAND THIS COURT IS INTERESTED IN AN EXPEDITED PROCESS.

THE COURT: WHY DOES IT TAKE MORE TIME?

MS. MCKNIGHT: TO GATHER SIGNATURES. IT TAKES MORE TIME TO GATHER SIGNATURES THAN IT DOES FOR THE GOVERNOR.

THE COURT: IT'S SIGNATURES, OR YOU CAN'T JUST DO IT ON THE FLOOR?

MS. MCKNIGHT: WELL, YOUR HONOR, THAT'S BEYOND MY KEN AT THIS POINT. I UNDERSTOOD --

THE COURT: I'D LIKE TO HEAR FROM YOUR CLIENTS REGARDING THAT.

MS. MCKNIGHT: OKAY. I'LL MAKE SURE --

THE COURT: GO AHEAD.

MS. MCKNIGHT: SO I JUST WANTED TO MAKE SURE IT WAS CLEAR FOR THE COURT HOW THIS WOULD -- HOW IT WOULD PLAY OUT SO THE COURT ISN'T SURPRISED BY THE FACT THAT IF ADDITIONAL TIME IS ALLOWED, THERE IS NO WAY TO AMEND THE EXISTING NOTICE FROM THE GOVERNOR

FOR THE CURRENT EXTRAORDINARY SESSION. THAT MEANS THAT EVEN IF THIS COURT ALLOWS MORE TIME, THE GOVERNOR COULD NOT SAY *I'M GOING TO AMEND MY NOTICE TO EXTEND THE DATE TO CONFORM WITH WHAT THE JUDGE HAS ALLOWED*.

INSTEAD WE UNDERSTAND WHAT MUST HAPPEN IS THE CURRENT EXTRAORDINARY SESSION WILL END ON JUNE 20TH, THEN ANY ADDITIONAL TIME WOULD NEED TO BE IN ANOTHER EXTRAORDINARY SESSION, AND IT WOULD NEED SEVEN DAYS' ADVANCE NOTICE. SO I JUST WANT TO GIVE YOU A GAME ABOUT -- IF, LET'S SAY, THE GOVERNOR TOMORROW ISSUES A NOTICE FOR AN EXTRAORDINARY SESSION, THE EARLIEST THAT EXTRAORDINARY SESSION COULD BEGIN WOULD BE NEXT FRIDAY, JUNE 24.

THE COURT: WHY CAN THIS COURT NOT UNDER ITS INHERENT POWER WAIVE THAT SEVEN-DAY NOTICE OR ORDER THAT SEVEN-DAY NOTICE BE SUSPENDED?

MS. MCKNIGHT: YOUR HONOR, I HAVE NOT LOOKED AT THAT QUESTION. AND THERE ARE LAWYERS WHO ARE MORE KNOWLEDGEABLE ABOUT THAT THAN I AM.

THE COURT: WHAT IS THE PURPOSE OF THE SEVEN-DAY NOTICE?

MS. MCKNIGHT: I BELIEVE IT'S TO ENSURE THAT THERE IS SUFFICIENT TIME FOR MEMBERS FROM ALL OVER --

THE COURT: TO GET HERE.

MS. MCKNIGHT: -- THE STATE TO TRAVEL.

THE COURT: AND THEY'RE HERE.

MS. MCKNIGHT: THERE MAY BE OTHER ISSUES, BUT THAT'S THE ONE IN MY MIND.

THE COURT: I'VE THOUGHT ABOUT THIS AND I'VE WONDERED ABOUT WHAT THE WORK-AROUND, IF THERE IS ANY, AND WHAT IS THE PURPOSE OF THE SEVEN-DAY NOTICE. AND IT WOULD SEEM TO THE COURT THAT THE PURPOSE OF THE SEVEN-DAY NOTICE IS TO ALLOW MEMBERS OF THE LEGISLATURE TO TRAVEL FROM THEIR RESPECTIVE DISTRICTS, THEIR RESPECTIVE HOME SITES TO ATTEND A SPECIAL SESSION OR A REGULAR SESSION. THAT MAKES SENSE TO ME. AND I DON'T KNOW HOW LONG AGO THOSE RULES WERE PASSED. THEY MAY HAVE BEEN PASSED BACK IN THE DAY WHEN THERE WAS HORSE AND BUGGY, FOR ALL I KNOW. BUT BE THAT AS IT MAY, IT IS THE RULES THAT WE OPERATE UNDER, BUT THEY ARE HERE.

AND SO THE QUESTION IN TERMS OF IS THERE SOME IMPAIRMENT OF FAIRNESS OR SOME -- YEAH, THAT'S THE BEST I CAN COME UP WITH. THAT IF THE COURT ORDERS THAT THE SEVEN-DAY NOTICE PERIOD BE SUSPENDED AND THAT THERE BE A CONTINUATION OF THE LEGISLATIVE PROCESS IMMEDIATELY FOLLOWING THIS DETERMINATION OF THIS PARTICULAR EXTRAORDINARY SESSION.

MS. MCKNIGHT: I BELIEVE I HEAR -- I HEAR WHAT YOUR HONOR IS SAYING. I THINK IN ADDITION TO TRAVEL IT WOULD JUST SIMPLY BE SCHEDULES, YOU KNOW, ALLOWING MEMBERS TIME TO -- THIS IS A PART-TIME LEGISLATURE WHERE MANY OF THESE MEMBERS HAVE PROFESSIONS OUTSIDE OF THE LEGISLATURE AND MAKE PLANS BASED ON EXTRAORDINARY SESSION NOTICES. THERE MAY BE OTHER ISSUES. BUT I WANTED TO MAKE SURE YOU KNEW THAT I DON'T THINK IT'S LIMITED TO TRAVEL. WE CAN --

THE COURT: LET'S HEAR FROM -- I'M ASSUMING YOUR CLIENTS ARE INTIMATELY FAMILIAR WITH THE RULES MORE SO THAN AM I, AND I'M SURE YOU'RE PROBABLY A LITTLE MORE APPRISED OF THE NUANCES OF THE PROCEDURAL RULES.

WHILE YOU'RE HERE, THOUGH, CAN YOU ADDRESS THE INVITATION THAT THE PLAINTIFFS HAVE PROVIDED, FRANKLY, TO ADDRESS THE DELAY AND YOUR *PURCELL* ARGUMENTS?

MS. MCKNIGHT: I SEE. IS THAT -- ARE YOU ASKING ABOUT WHETHER LEGISLATIVE INTERVENORS ARE WILLING TO WAIVE THEIR *PURCELL* ARGUMENT?

THE COURT: I'M ASKING IF YOU'RE GOING TO ADVANCE THESE DELAYS AS ADDITIONAL *PURCELL* ARGUMENTS. I'M NOT ASKING YOU TO WAIVE ANYTHING. I'M ASKING YOU IF YOU'RE GOING TO USE THIS IN CONTRAVENTION OF

FEDERAL RULE OF CIVIL PROCEDURE 16 TO ADVANCE *PURCELL* ARGUMENTS THAT THERE ARE -- THAT THESE DELAYS HAVE NOW BROUGHT US TOO CLOSE TO THE ELECTION.

MS. MCKNIGHT: YOUR HONOR, TO BE CLEAR, OUR POSITION HAS BEEN CONSISTENT THAT *PURCELL* ALREADY APPLIES, IT'S ALREADY TOO LATE. ONE OF THE REASONS WHY IT IS ALREADY --

THE COURT: THEN WHY ARE YOU ASKING FOR MORE TIME?

MS. MCKNIGHT: TO COMPLY WITH YOUR ORDER. YOUR ORDER ALLOWS AND RECOGNIZES THE LEGISLATURE'S RIGHT TO HAVE A FIRST BITE AT THE REMEDIAL APPLE.

THE COURT: AND I'M TRYING TO GIVE THEM THAT. AND YESTERDAY THEY MET FOR 90 MINUTES.

MS. MCKNIGHT: PARDON ME?

THE COURT: YESTERDAY THEY MET FOR 90 MINUTES.

MS. MCKNIGHT: YOU'RE RIGHT, YOUR HONOR. THEY BEGAN THE LEGISLATIVE PROCESS. AND I BELIEVE YOU'LL HEAR TESTIMONY THAT THEY HAVE SUSPENDED RULES, WHERE IT WAS POSSIBLE TO SUSPEND RULES, TO ADVANCE BILLS.

THE COURT: I'M AWARE, AND THAT SHOWS GOOD FAITH.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE *PURCELL* ARGUMENT IS THAT IT'S -- AND BEAR WITH ME, YOUR HONOR. WE APPRECIATE, RESPECTFULLY, THAT THIS DOES NOT -- THIS IS NOT CONSISTENT WITH WHAT YOUR COURT HAS ORDERED.

THE *PURCELL* ARGUMENT APPLIES PRIMARILY BECAUSE THERE IS NOT ENOUGH TIME TO ALLOW THIS PIECE OF LITIGATION TO MAKE ITS WAY THROUGH THE ENTIRE PROCESS OF LITIGATION. THAT INCLUDES REMEDIAL PLAN; IT INCLUDES ALLOWING THE LEGISLATURE TIME TO HAVE A MEANINGFUL LEGISLATIVE DELIBERATIVE PROCESS TO PROVIDE A REMEDY. AND ALSO, *PURCELL* ALLOWS TIME FOR AN APPEAL.

WE DO NOT BELIEVE THIS COURT HAS TIME TO DO THAT. THAT'S WHAT -- THAT IS OUR CONSISTENT POSITION. IF THIS COURT ALLOWS ADDITIONAL TIME NOW, THE REASON WE'RE ASKING FOR IT IS WE'VE MADE IT CLEAR THAT IT'S NOT ENOUGH TIME TO HAVE A MEANINGFUL DELIBERATIVE PROCESS TO PREPARE A REMEDIAL PLAN, PERIOD. SIX DAYS IS NOT, AND I THINK YOU'LL HEAR TESTIMONY FROM THE LEGISLATORS ON THAT POINT. YOU'VE ALREADY SEEN IT IN THEIR DECLARATION.

THESE REDISTRICTING BILLS, AS YOU KNOW, ARE VERY COMPLEX. THEY INVOLVE A NUMBER OF PRECINCTS. THE DETAIL IN THESE LAWS ARE EXTRAORDINARY COMPARED TO OTHER BILLS. IT TAKES TIME

TO MOVE THEM THROUGH THE PROCESS. THAT'S WHY WE'RE MOVING FOR ADDITIONAL TIME. WE'VE MADE NOTE THAT IT'S NOT ENOUGH TIME TO DO IT, AND THAT'S WHY WE MADE THE MOTION BASED ON YOUR COURT -- YOUR INVITATION AND A REFERENCE BY THE FIFTH CIRCUIT AS WELL: THAT IF THERE WAS NOT ENOUGH TIME, WE SHOULD ASK FOR MORE.

THE COURT: OKAY. THANK YOU. I DON'T WANT TO CUT YOU OFF. IS THERE ANYTHING ELSE THAT YOU WANT TO ADD BEFORE YOU CALL YOUR WITNESSES?

MS. MCKNIGHT: THE ONLY OTHER THING I'D LIKE TO ADD, YOUR HONOR, THERE WAS SOME -- THERE WAS A POINT RAISED BY PLAINTIFFS ABOUT THE REMEDIAL PROCESS AND THE TIMING OF IT. AND I DON'T KNOW IF YOUR HONOR WOULD LIKE ME TO TALK ABOUT THAT NOW OR LATER. WE BELIEVE THE COURT NEEDS MORE INFORMATION ABOUT WHAT OTHER COURTS HAVE SAID THAT REMEDIAL PROCESS SHOULD LOOK LIKE, INCLUDING GOVERNING LAW THAT REQUIRES THIS COURT ALLOW TIME FOR THINGS LIKE DISCOVERY.

THE COURT: WELL, IN THE INTEREST OF GETTING THESE NICE PEOPLE BACK TO THEIR JOBS -- AND FRANKLY, I'M IN THE MIDDLE OF A TWO-WEEK TRIAL MYSELF. SO IN ORDER TO GET THE COURT BACK ON TO ITS SCHEDULE, LET'S STICK WITH THE MOTION AT HAND, WHICH IS THE MOTION FOR EXTENSION OF TIME.

THE COURT IS PREPARED TO ADDRESS THE

REMEDIAL PHASE. AND PERHAPS WE CAN DO THAT AT THE CLOSE OF THE TESTIMONY IN A FACTUAL MATTER THAT'S AT HAND AND DEAL WITH THAT. THAT'S MORE OF A LEGAL ISSUE THAT WE CAN CERTAINLY HAMMER OUT AS LAWYERS. SO LET'S DO IT THAT WAY.

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE COURT: YOU'RE WELCOME.

MS. MCKNIGHT: WE WOULD LIKE TO CALL PRESIDENT PATRICK PAGE CORTEZ TO THE STAND.

(WHEREUPON, PRESIDENT PATRICK PAGE CORTEZ, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

THE COURT: GOOD MORNING, SIR.

THE COURTROOM DEPUTY: IF YOU WOULD, PLEASE STATE YOUR NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: MY FULL NAME IS PATRICK PAGE CORTEZ. P-A-T-R-I-C-K P-A-G-E C-O-R-T-E-Z.

THE COURT: GO AHEAD, MS. MCKNIGHT.

MS. MCKNIGHT: THANK YOU.

DIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. PRESIDENT, COULD YOU EXPLAIN YOUR ROLE IN THE LEGISLATURE.

A I SERVE SENATE DISTRICT 23 AS THE STATE SENATOR. I WAS ELECTED BY THE BODY OF THE SENATE TO BE THE PRESIDING OFFICER. I SERVE AS THE PRESIDENT.

Q AND NOW WE ARE HERE TODAY TO DISCUSS A MOTION FOR EXTENSION OF TIME TO ENACT A PLAN.

YOU SUBMITTED A DECLARATION RELATED TO THAT MOTION. IS THAT RIGHT?

A THAT'S CORRECT.

Q I DON'T WANT TO GO THROUGH AND REPEAT WHAT'S IN THAT DECLARATION. YOUR HONOR ALREADY HAS THAT IN

THE RECORD. I WOULD LIKE TO ASK YOU TO EXPLAIN IN GENERAL WHAT THAT DECLARATION PROVIDES THE COURT.

A SO THE DECLARATION BASICALLY LAYS OUT THE PROCESS -- THE LEGISLATIVE PROCESS THAT IS REQUIRED BY THE CONSTITUTION; AND THAT IS THAT ALL BILLS SUBMITTED FOR DISCUSSION SHALL GET THREE READINGS IN EACH CHAMBER AND BE -- REQUIRE A HEARING IN A COMMITTEE ROOM IN EACH CHAMBER. THOSE -- SOME OF THAT PROCESS CAN BE SUSPENDED BY RULE.

BUT THE PROCESS IN GENERAL IS ABOUT A TEN-DAY PROCESS WITHOUT SUSPENSIONS OF RULES.

Q AND I KNOW --

A MINIMUM.

Q PARDON ME?

A MINIMUM, WITHOUT A CONFERENCE. IT COULD BE LONGER.

Q NOW, I UNDERSTOOD YOU TO JUST DESCRIBE THE MINIMUM OF THE PROCESS IN GENERAL. COULD I ASK YOU SPECIFICALLY ABOUT PASSING A REDISTRICTING PLAN IN THE LEGISLATURE.

WHAT WOULD BE A REASONABLE AMOUNT OF TIME TO PASS A REDISTRICTING PLAN IN THE LEGISLATURE?

A THERE ARE SOME -- ALMOST 4,000 PRECINCTS. AND EACH REDISTRICTING BILL IS WRITTEN WITH EACH OF THOSE PRECINCTS BEING REQUIRED TO BE PLACED INTO A

CONGRESSIONAL DISTRICT. THE LAW REQUIRES THAT EACH CONGRESSIONAL DISTRICT BE AS CLOSE TO EQUAL IN POPULATION WITH THE OTHERS.

ANY BILL THAT IS FILED AND ANY BILL THAT IS AMENDED IS SUBJECT TO MUCH LOCAL INPUT AS WELL AS MEMBER INPUT OF THE LEGISLATURE. AMENDMENTS CAN BE OFFERED IN COMMITTEE -- AND OFTEN ARE -- TO CHANGE THE MAKEUP OF DISTRICTS. BECAUSE OF CONCERNS FROM THEIR DISTRICT BACK HOME, THEIR LOCALS, THEIR CONSTITUENTS, WE HAVE MADE IT OUR PROCESS TO BE TRANSPARENT. AND WHEN A CHANGE OCCURS, THERE IS A RIPPLE EFFECT AMONGST ALL PRECINCTS, AND SO WE ALLOW THE BILLS IN COMMITTEE TO LIE OVER IF AN AMENDMENT HAS BEEN ADDED SUCH THAT THE PUBLIC COULD UNDERSTAND AND THE MEMBERS COULD UNDERSTAND WHAT THE CHANGE EFFECTIVELY DID TO THE BILL.

Q IN YOUR VIEW, ARE REDISTRICTING BILLS SIMPLE BILLS TO GET THROUGH THE LEGISLATURE?

A PROBABLY THE MOST DIFFICULT BILL OF THE TENURE -- AS A TENURED LEGISLATOR I'VE BEEN -- 15 YEARS IN THE LEGISLATURE, I'VE BEEN THROUGH TWO REDISTRICTING SESSIONS. AND THEY ARE THE MOST DIFFICULT BILLS, INCLUDING THE BUDGET BILLS. THEY'RE MORE DIFFICULT BECAUSE THEY'RE MORE EMOTIONAL, THEY'RE VERY PERSONAL, AND YOUR DISTRICTS WILL FIGHT

VERY HARD -- YOUR CONSTITUENTS WILL FIGHT VERY HARD TO HAVE YOU COMPLY WITH WHAT THEY WANT. AND SO IT'S VERY PAROCHIAL.

Q NOW, YOU SUBMITTED THIS DECLARATION ON MONDAY. SINCE THAT DATE, HAS THE LEGISLATURE GONE INTO EXTRAORDINARY SESSION?

A YES.

Q AND HAS THE LEGISLATURE MADE ANY EFFORT -- AND LET ME FOCUS SPECIFICALLY ON THE SENATE -- MADE ANY EFFORT TO EXPEDITE ITS PROCEEDINGS?

A YES.

Q IN WHAT WAY?

A THE FIRST READING REQUIRED BY THE CONSTITUTION IS AN INTRODUCTORY READING. THE BILL THEN LIES OVER FOR THE SECOND DAY TO GET A SECOND READING AND A REFERRAL TO COMMITTEE.

QUITE OFTEN WHAT WE DO IS WE SUSPEND THE RULE TO ALLOW THE FIRST AND SECOND READINGS TO BE HELD ON THE FIRST DAY AND THE REFERRAL TO COMMITTEE TO OCCUR ON THE FIRST DAY. YESTERDAY WE DID DO THAT.

Q NOW, AS YOU SIT HERE TODAY, CAN YOU SPEAK FOR ANY OTHER MEMBERS OF THE LEGISLATURE?

A NO.

Q AS YOU SIT HERE TODAY, CAN YOU PROMISE THE COURT A CERTAIN OUTCOME OF THIS DELIBERATIVE PROCESS?

A NO. NO, NOT ON ANY BILL, EVER.
Q AND DO YOU SIT HERE TODAY TO SPEAK FOR THE SECRETARY OF STATE?
A NO.
MS. MCKNIGHT: THANK YOU, YOUR HONOR. THOSE ARE THE ONLY QUESTIONS I HAVE.
THE COURT: DO THE PLAINTIFFS HAVE ANY CROSS?
MR. ADCOCK: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MR. ADCOCK:
Q HOW WOULD YOU LIKE ME TO REFER TO YOU? AS MR. PRESIDENT?
A YOU CAN CALL ME PAGE.
Q PAGE. OKAY, PAGE.
THE COURT: MR. ADCOCK, WHY DON'T YOU INTRODUCE YOURSELF.
MR. ADCOCK: JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS. THANK YOU, JUDGE.
THE COURT: THANK YOU, SIR.
BY MR. ADCOCK:
Q NOW, YOU MENTIONED SUSPENDING THE RULES TO SEND A BILL TO COMMITTEE. CORRECT?
A YES.
Q AND THAT'S FOR THE COMMITTEE TO CONSIDER A

REDISTRICTING BILL IN THIS CASE. CORRECT?

A TO CONSIDER ANY BILLS REFERRED TO THAT COMMITTEE.

Q RIGHT. BUT IN THIS CASE THESE ARE REDISTRICTING BILLS?

A THIS IS -- THE CALL IS LIMITED TO THE REDISTRICTING.

Q RIGHT. SO THEY'RE ONLY GOING TO BE CONSIDERING REDISTRICTING BILLS, THIS SPECIAL SESSION?

A CORRECT.

Q NOW, YOU -- NOW, COMMITTEES CAN HOLD HEARINGS BEFORE THE SESSION. CORRECT?

A THEY CAN HOLD INTERIM MEETINGS. BUT NONE OF THE INTERIM MEETINGS HAVE THE ABILITY TO DO ANYTHING WITH REGARDS TO TAKING ACTION.

Q BUT COMMITTEES CAN HOLD HEARINGS OUTSIDE THE SESSION. CORRECT?

A TRADITIONALLY COMMITTEE HEARINGS HAVE BEEN HELD IN THE INTERIM, WHICH WOULD BE OUTSIDE OF SESSION, YES.

Q RIGHT. AND THEY CAN DO THAT ANY TIME THEY WANT. CORRECT?

A WITH THE REQUEST OF THE PRESIDING OFFICER AND APPROVAL OF THE PRESIDING OFFICER. THE CHAIRMAN

OF THE COMMITTEE CAN REQUEST TO HAVE AN INTERIM MEETING, BECAUSE THAT DOES REQUIRE PER DIEMS AND TRAVEL EXPENSES FOR THE -- I'M GOING TO SPEAK ON BEHALF OF THE SENATE -- FOR THE SENATE TO AFFORD.

AND SO THE TOPIC OF THE INTERIM MEETING WOULD BE SUBMITTED TO THE PRESIDING OFFICER FOR APPROVAL.

Q AND THEY CAN TAKE EVIDENCE, HEAR WITNESSES AT THOSE HEARINGS OUTSIDE OF SESSION. CORRECT?

A THEY CAN DO WHATEVER THE PRESIDING OFFICER ALLOWS THEM TO DO UNDER THE REQUEST.

Q AND THIS MOTION WAS FILED ON JUNE 14. CORRECT?

A THIS COURT ORDER? THIS --

Q NO. NO. THE MOTION YOU FILED THAT WE'RE HERE ON WAS ON -- TWO DAYS AGO FILED. CORRECT?

A THANK YOU FOR CLARIFYING. YES.

Q AND THE LAST SESSION ENDED ON JUNE 6. CORRECT?

A YES.

Q OKAY. BETWEEN JUNE 6 AND JUNE 14, NO COMMITTEES HELD A HEARING ON THESE CONGRESSIONAL MAPS. CORRECT?

A NOT THAT I'M AWARE OF, NO.

Q BETWEEN JUNE 6 AND JUNE 14, NO COMMITTEES

SCHEDULED A HEARING ON THESE CONGRESSIONAL MAPS. CORRECT?

A THAT'S CORRECT.

Q NOW, WHETHER IT'S A REGULAR SESSION OR A SPECIAL SESSION, YOU NORMALLY ALLOW MEMBERS TO PREFILE BILLS. CORRECT?

A CORRECT.

Q AND THAT CAN BE DONE FOR A SPECIAL SESSION SEVERAL DAYS OR A WEEK IN ADVANCE. CORRECT?

A WELL, THE SPECIAL SESSION, THE CONSTITUTION REQUIRES THAT A SEVEN-DAY PRIOR NOTICE BE GIVEN TO THE CALL OF THE LEGISLATURE. THAT'S -- SO NO ONE CAN FILE A BILL UNTIL SUCH TIME THAT THE CALL HAS BEEN GIVEN. OTHERWISE THEY WOULDN'T KNOW WHAT'S WITHIN THE CALL AND WHAT CAN BE LEGISLATED TO.

SO UPON THE CALL OF THE SESSION, THE ANSWER WOULD BE YES. AT THAT POINT THE PRESIDING OFFICERS GENERALLY DETERMINE WHETHER PREFILING WILL BE ALLOWED OR NOT.

Q RIGHT. AND SO IT CAN BE ALLOWED RIGHT AFTER THE CALL IS MADE. CORRECT?

A CORRECT.

Q AND THE CALL FOR THIS SPECIAL SESSION WAS DONE SEVEN DAYS PRIOR TO THE SESSION BEGINNING. CORRECT?

A CORRECT.
Q AND SO THE BILLS WEREN'T ALLOWED TO BE PREFILED UNTIL THE DAY BEFORE THIS SESSION BEGAN. CORRECT?
A I BELIEVE THAT'S CORRECT.
Q SO THAT COULD HAVE BEEN --
A IN THE SENATE. I CAN'T SPEAK FOR THE HOUSE.
Q SURE. BUT THAT COULD HAVE BEEN DONE A WEEK PRIOR. CORRECT?
A THERE WAS NO REQUEST MADE OF ME PRIOR TO THAT. THE FIRST REQUEST WAS MADE THE DAY BEFORE BY THE SECRETARY OF THE SENATE: *WOULD YOU ALLOW FOR PREFILING?* AND I SAID, *YES*.
Q SO NO ONE ASKED YOU TO DO -- TO PREFILE ANY BILLS BEFORE --
A NO, SIR.
Q -- THE DAY BEFORE THE SESSION STARTED --
A NO, SIR.
Q -- JUNE 14?
NO ONE WAS CALLING SENATE STAFF OR YOUR OFFICE ASKING TO PREFILE BILLS. IS THAT CORRECT?
A I CAN'T SPEAK TO WHAT OTHER MEMBERS WERE DOING. EACH MEMBER IS AN INDEPENDENT ELECTED OFFICIAL, AND THE STAFF IS -- THEY HAVE ACCESS TO THE STAFF. EVERY MEMBER HAS ACCESS TO THE STAFF. AND

THAT'S LEGISLATIVE PRIVILEGE WHAT THEY DISCUSS WITH THE STAFF, SO I WOULDN'T KNOW WHO WAS CALLING OR NOT CALLING, OTHER THAN ME.

Q SO YOU DON'T KNOW IF LEGISLATORS WERE CONTACTING YOUR STAFF TO -- LET ME FINISH -- CONTACTING YOUR STAFF INQUIRING ABOUT THE ABILITY TO PREFILE BILLS BEFORE JUNE 14? THAT'S YOUR TESTIMONY?

A I WOULD NOT BE AWARE OF THAT, NO.

Q EVEN IF THEY WERE CALLING YOUR STAFF?

A WHEN YOU SAY *YOUR STAFF,* YOU'RE ASSUMING THAT THE STAFF ALL WORKS FOR ME. THEY WORK FOR THE MEMBERS. THEY DON'T WORK JUST FOR ME. SO THE SENATE STAFF WOULD BE PROBABLY A BETTER TERM.

BUT QUITE FRANKLY, IT HAS BEEN SOMEWHAT THE PRACTICE THAT SOMETIMES HOUSE MEMBERS CALL SENATE STAFF AND SOMETIMES SENATE MEMBERS CALL HOUSE STAFF. BUT IN THIS CONTEXT -- I BELIEVE WHAT YOU'RE ASKING IS WOULD I BE AWARE OF A SENATOR FROM A DIFFERENT DISTRICT CONTACTING A STAFF ATTORNEY ABOUT A REDISTRICTING BILL PRIOR TO THIS SESSION. I WOULD NEVER BE AWARE OF THAT. NOR WOULD THEY BE AWARE IF I HAD CONTACTED THE STAFF IN A REQUEST -- WHAT THEY CALL A BILL REQUEST -- TO GET A BILL REQUEST PUT IN PLACE.

Q YOU AGREE THAT ASKING TO PREFILE BILLS FROM

ANOTHER MEMBER IS AN IMPORTANT REQUEST. CORRECT?

A DO I THINK THAT'S IMPORTANT?

Q YES.

A SURE.

Q OKAY. AND WHEN PEOPLE CAN PREFILE BILLS BEFORE THE LEGISLATIVE SESSION STARTS, THAT ALLOWS FOR MEMBERS AND CONSTITUENTS TO COME AND TALK TO THAT MEMBER ABOUT THE BILL THEY PREFILE. CORRECT?

A I GUESS IT WOULD BE, YEAH.

Q TO RAISE CONCERNS ABOUT THAT BILL AND ALLOW THEM TO OFFER AMENDMENTS ABOUT THAT BILL BEFORE THE SESSION STARTS. CORRECT?

MS. MCKNIGHT: OBJECTION, YOUR HONOR. HE'S PUTTING WORDS IN HIS MOUTH. THE PRESIDENT IS ABLE TO EXPLAIN THE VALUE OF THESE BILLS. WE'D LIKE TO GIVE HIM A CHANCE TO RESPOND, BUT I THINK IT'S OBJECTIONABLE TO PUT WORDS IN HIS MOUTH.

THE COURT: OKAY. MAKE AN OBJECTION UNDER THE RULES OF EVIDENCE AND STAND WHEN YOU ADDRESS THE COURT AND DON'T GIVE SPEAKING OBJECTIONS.

YOUR OBJECTION SHOULD SAY WHATEVER IT SAYS, BUT IT SHOULD BE A RULE-OF-EVIDENCE OBJECTION.

MR. ADCOCK, DO YOU WISH TO RESPOND TO THE OBJECTION?

MR. ADCOCK: I'LL MOVE ON, JUDGE. THANK

YOU.

BY MR. ADCOCK:

Q NOW, YESTERDAY THERE WERE NO BILLS ENTERED ON THE SENATE SIDE OF THE LEGISLATURE. CORRECT?

A THERE WERE TWO BILLS.

Q THERE WERE TWO BILLS ENTERED ON THE SENATE SIDE. AND WHEN WILL THEY BE CONSIDERED IN COMMITTEE?

A MY UNDERSTANDING IS THEY'RE BEING CONSIDERED THIS MORNING.

Q AND THEY PROPOSE CERTAIN MAPS FOR CONGRESSIONAL DISTRICTS. CORRECT?

A CORRECT.

Q OKAY. AND IT'S POSSIBLE FOR BILLS TO BE SUBMITTED IN EACH HOUSE SIMULTANEOUSLY. CORRECT?

A CORRECT.

Q OKAY. AND FOR EACH HOUSE TO CONSIDER THEM SIMULTANEOUSLY. CORRECT?

A EACH CHAMBER IS A SEPARATE ENTITY. I LIKE TO SAY A DIFFERENT CORPORATION. AND SO THE SENATE BUSINESS IS TAKEN UP IN THE SENATE. AND ONLY WHEN THEY CONCLUDE THE BUSINESS DO THEY SEND IT OVER TO THE HOUSE FOR THE HOUSE TO TAKE UP THE SENATE BILLS; AND CONVERSELY, ONLY WHEN THE HOUSE FORWARDS A BILL TO THE SENATE DOES THE SENATE TAKE UP A HOUSE BILL.

Q BUT BOTH HOUSES CAN CONSIDER ESSENTIALLY THE

SAME IDENTICAL BILL AT THE SAME TIME?

A OH, SURE. YEAH.

Q AND THAT'S NOT BEING DONE IN THIS CASE?

A WELL, I CAN'T SPEAK TO THAT.

Q YOU'RE THE PRESIDENT OF THE SENATE, SIR.

A I APPRECIATE THAT. I'M AWARE OF THAT.

Q YOU CAN'T SPEAK TO WHAT'S BEEN PENDING IN EACH HOUSE?

A SO --

MS. MCKNIGHT: OBJECTION, YOUR HONOR. PARDON ME, MR. PRESIDENT.

HE'S TALKING -- MR. ADCOCK IS SPEAKING OVER THE PRESIDENT. I'D ASK THAT HE'S ALLOWED TO FINISH HIS ANSWER.

THE COURT: I'M GOING TO GIVE HIM SOME LATITUDE. HE HAS HIM ON CROSS. JUST PAUSE AND LET HIM ANSWER.

AND, SIR, YOU DO THE SAME, AND WE'LL -- THAT WAY WE'LL ALL BE ABLE TO HEAR EACH OTHER.

MR. ADCOCK: I'M SORRY, JUDGE.

BY THE WITNESS:

A YES, SIR. THANK YOU FOR THE QUESTION. I WOULD LIKE TO ANSWER IT.

EACH OF THESE BILLS THAT HAVE BEEN FILED -- I DON'T KNOW THE NUMBER OF PAGES, BUT I'M GOING TO

SUGGEST THEY'RE 50 OR SO PAGES -- PRIMARILY ARE FILLED WITH A BUNCH OF PRECINCTS. AND THE PRECINCTS ARE DEDICATED TO PARTICULAR CONGRESSIONAL DISTRICTS. THEY DO HAVE MAPS IN THEM AS ILLUSTRATION OF WHAT THE INTENDED PRECINCTS WOULD APPLY TO ON A MAP. THEY ALSO HAVE REGIONAL MAPS, BECAUSE IN A REGULAR LEGAL PAPER YOU CAN'T DRILL DOWN TO THE CITY PRECINCT LEVEL ON A MAP. GENERALLY IT'S MUCH BETTER TO DO IT ON A BIG SCREEN WHERE YOU CAN ACTUALLY BACK OUT OF IT OR, I SHOULD SAY, MAGNIFY IT SUCH THAT YOU CAN SEE IF A PRECINCT ON THE NORTH SIDE OF THE STREET IS INCLUDED IN THE DISTRICT VERSUS THE ONE ON THE SOUTH SIDE. YOU WOULD NOT KNOW THAT FROM JUST THE REGULAR LEGAL SHEET OF PAPER THAT IT'S ON.

SO TO ANSWER YOUR QUESTION, I HAVE NOT READ THE BILLS IN THE HOUSE BECAUSE THEY'RE OF NO IMPORTANCE TO ME AT THIS POINT BECAUSE I SERVE IN THE SENATE. I WOULD PROBABLY THINK THAT IF I'M ON -- THIS IS A PERSONAL NOTE, YOUR HONOR, IF I COULD. AS A LEGISLATOR, I GENERALLY BRIEFED MOST OF THE BILLS, BUT I READ THE BILLS THAT WERE COMING BEFORE THE COMMITTEES I SERVED ON BECAUSE THOSE ARE THE ONES I NEEDED TO HAVE THE MOST INTIMATE KNOWLEDGE OF BECAUSE THOSE ARE THE ONES I WAS GOING TO BE ASKED TO TAKE ACTION ON FIRST.

IF I WASN'T ON THE PARTICULAR COMMITTEE, I WOULD WAIT TILL THE COMMITTEE DID ITS JOB TO SEE WHAT THE FINAL PRODUCT WOULD BE OUT OF COMMITTEE AFTER AMENDMENTS WERE ADOPTED, AND IT WOULD -- COULD HAVE CHANGED DRAMATICALLY BEFORE IT GETS TO THE FULL CHAMBER FOR A VOTE.

SO I WANT TO ANSWER YOUR QUESTION, AND I'M -- I DON'T THINK I SHOULD -- I COULD KNOW EXACTLY WHAT'S GOING ON IN THE HOUSE WHEN I WAS PRESIDING OVER THE SENATE YESTERDAY AND TRYING TO GET TWO BILLS IN THE SENATE REFERRED TO THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEE. AND I HOPE THAT ANSWERS YOUR QUESTION.

Q NOW, YOU SAID YOU NEED TO HEAR FROM -- THESE TWO BILLS YOU SAID IN THE SENATE, HAVE THEY BEEN READ?

A WELL, THE READING IS THE READING OF THE TITLE.

Q HAS IT BEEN READ?

A IT WAS READ ON ITS FIRST AND SECOND READING YESTERDAY AND REFERRED TO THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEE FOR SCHEDULING.

Q NOW, YOU WENT THROUGH IN YOUR AFFIDAVIT, YOUR DECLARATION TO THIS COURT, THAT IT'S IMPORTANT FOR LEGISLATORS TO HEAR FROM CONSTITUENTS ABOUT

WHAT'S IN THESE REDISTRICTING BILLS AND GET INPUT FROM CONSTITUENTS. CORRECT?

A THAT'S CORRECT.

Q BUT YOU HAD THREE MONTHS OF ROADSHOWS TO HEAR FROM LOUISIANA CITIZENS ABOUT WHAT KIND OF CONGRESSIONAL MAP THEY WOULD LIKE TO HAVE. CORRECT?

A THAT'S CORRECT.

Q AND THAT WAS ALL OVER THE STATE?

A THAT'S CORRECT. BUT JUST TO BE CLEAR, THAT WAS THE ROADSHOW THAT WAS PUT ON BY BOTH THE HOUSE & GOVERNMENTAL AFFAIRS AND THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEES JOINTLY. MEMBERS OF EACH REGIONAL DELEGATION DID SHOW UP WHILE THEY WERE IN THAT AREA OF THE STATE.

SO I WOULD NOT CATEGORIZE IT AS EVERY MEMBER OF THE LEGISLATURE WAS AT EVERY ROADSHOW MEETING. AND THERE WERE DIFFERENT COMMENTS MADE RELATIVE TO THE DIFFERENT REGIONS AT THE DIFFERENT SHOWS.

Q RIGHT. BUT THEY WERE OPEN TO THE PUBLIC?

A OH, ABSOLUTELY.

Q AND YOU COULD ACCESS WHAT WAS SAID AND --

A ABSOLUTELY.

Q -- TESTIFIED TO AT THOSE HEARINGS?

A YEAH. THERE WAS PUBLIC TESTIMONY, YES.

Q IF A MEMBER WANTED TO, ABOUT THE MAPS THAT

ARE UNDER CONSIDERATION?

A COULD YOU RESTATE YOUR QUESTION?

Q YOU COULD REFERENCE THE TESTIMONY GIVEN AT THESE HEARINGS ABOUT THE MAPS UNDER CONSIDERATION IF ONE WANTED TO. CORRECT?

A I DON'T THINK SO, BECAUSE THE MAPS -- AT LEAST IN THE SENATE, ONE OF THE MAPS WAS A PREVIOUSLY FILED MAP, ONE OF THEM IS NOT. SO THERE WOULD BE NO WAY TO KNOW IF THE -- WITHIN THE CONTEXT OF THE STATEMENT MADE AT A REGIONAL MEETING WHERE NO MAPS WERE BEING PRESENTED, IF THAT STATEMENT WOULD HOLD TRUE AFTER THIS MAP HAS BEEN PRESENTED.

Q AT THESE MEETINGS PEOPLE WERE TALKING ABOUT WHAT KIND OF CONGRESSIONAL MAP THEY WANT. CORRECT?

A GENERALITIES.

Q YES. AND SPECIFICALLY PEOPLE WERE SAYING THAT THEY WANT A CONGRESSIONAL MAP WITH TWO DISTRICTS THAT COULD ELECT AN AFRICAN-AMERICAN REPRESENTATIVE TO CONGRESS. CORRECT?

MS. MCKNIGHT: YOUR HONOR, OBJECTION TO THE EXTENT IT MISSTATES THE RECORD.

MR. ADCOCK: WELL, HE CAN TELL ME WHETHER THAT'S HIS UNDERSTANDING.

THE COURT: OVERRULED.

BY THE WITNESS:

A YEAH, I THINK THERE WERE MANY STATEMENTS MADE ABOUT ALL KINDS OF DIFFERENT DISTRICTS. I WOULD SAY THAT YOU'RE ASKING ABOUT ONE PARTICULAR STATEMENT THAT WAS MADE. I'M SURE IT WAS MADE, BUT THERE WERE OTHER STATEMENTS MADE RELATIVE TO OTHER DISTRICTS. SO I DON'T THINK THAT IT'S A "ONE SIZE FITS ALL" THAT THAT'S THE ONLY STATEMENT THAT WAS EVER MADE AT A REGIONAL MEETING.

Q AND DURING THE FIRST EXTRAORDINARY SESSION THIS YEAR WHERE YOU DEALT WITH REDISTRICTING, THERE WERE COMMITTEE HEARINGS DURING THAT SESSION, TOO?

A PLENTY, YES. WE REDISTRICTED A MULTITUDE OF MAPS, EVERYTHING FROM THE LOUISIANA STATE SENATE, THE HOUSE OF REPRESENTATIVES, THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, THE PUBLIC SERVICE COMMISSION. SO WE DEALT WITH MULTIPLE MAPS, WITH MULTIPLE PRECINCTS BEING MOVED AROUND, AND MULTIPLE AMENDMENTS ON BOTH THE HOUSE AND THE SENATE SIDE.

Q AND THERE WAS TESTIMONY ABOUT THE BILL THAT WAS PASSED INTO LAW AT THAT SESSION, TOO. CORRECT?

A YOU'RE TALKING ABOUT THE CONGRESSIONAL MAP?

Q YES, SIR.

A THERE WAS PLENTY OF TESTIMONY ON ALL THE MAPS IN COMMITTEE.

Q INCLUDING THAT MAP THAT WAS PASSED?

A THAT'S CORRECT.
Q AND SO THIS LEGISLATURE DURING THIS SPECIAL SESSION COULD REFERENCE THE ROADSHOWS AND THE COMMITTEE HEARINGS FROM THAT PREVIOUS SESSION. CORRECT?
A I GUESS SOME COULD CHOOSE TO. I CAN'T SPEAK TO WHAT LEGISLATORS WOULD DO.
Q I'M SAYING THEY COULD DO THAT IF THEY WANTED TO.
A IS IT POSSIBLE? YES, IT'S POSSIBLE. IS IT LIKELY? I WOULD SAY, IN MY OPINION, YOUR HONOR, IT'S NOT LIKELY BECAUSE EVERY MAP IS A NEW BILL AND YOU WOULDN'T REFERENCE AN OLD BILL WHEN YOU'RE SPEAKING ABOUT A NEW BILL.
Q IN FACT, THE LEGISLATURE OFTEN REFERS TO TESTIMONY OR EVIDENCE PRESENTED AT COMMITTEES FROM PREVIOUS SESSIONS. CORRECT?
A I'M SORRY?
MS. MCKNIGHT: OBJECT. PARDON ME. GO AHEAD.
A I WANTED TO SEE IF YOU COULD RESTATE IT. I DIDN'T QUITE HEAR WHAT --
Q SURE. IN FACT, THE LEGISLATURE OFTEN REFERS TO TESTIMONY OR EVIDENCE PRESENTED AT COMMITTEES FROM PREVIOUS SESSIONS?

A I DON'T KNOW THAT *OFTEN* WOULD BE A GOOD CHARACTERIZATION. BUT I WOULD SAY THAT CERTAINLY IN COMMITTEES YOU REFER TO BILLS THAT WERE PASSED DECADES AGO; YOU REFER TO DEBATES THAT WERE HEARD. SOMETIMES MEMBERS WILL SAY *I WASN'T HERE WHEN THAT DEBATE WAS HAD. I'M NEW NEWLY ELECTED*. I'M SURE YOU CAN REFERENCE THINGS IN COMMITTEE. WE PROBABLY HAVE DONE THAT.

Q NOW, BEAR WITH ME ON THIS. SO THE CURRENT SESSION RUNS TO JUNE 20. YOU'RE AWARE YOUR MOTION REQUESTS THAT THIS COURT EXTEND THE TIMELINE FOR YOU TO PASS A BILL FROM JUNE 20 TO JUNE 30. CORRECT?

A THAT'S CORRECT.

Q OKAY. NOW, THAT WOULD MEAN HAVING A SPECIAL SESSION FROM JUNE 21 TO JUNE 30. CORRECT?

A I'M NOT SURE THAT THAT WOULD BE POSSIBLE.

Q I'M NOT ASKING IF IT'S POSSIBLE. I'M JUST SAYING THAT WOULD MEAN YOU WOULD HAVE TO EXTEND THE SESSION TO JUNE 30 OR CALL AN ADDITIONAL SESSION. THAT'S ALL I'M ASKING.

MS. MCKNIGHT: OBJECTION; IT'S A COMPLEX QUESTION. I'D ASK HIM TO BREAK IT UP.

MR. ADCOCK: I THINK HE CAN HANDLE HIMSELF, JUDGE. IT'S A PRETTY SIMPLE QUESTION.

THE COURT: OVERRULED.

BY THE WITNESS:

A I'M GOING TO START WITH A LITTLE BIT OF BACKGROUND. THE CONSTITUTION REQUIRES A SEVEN-DAY PRIOR NOTICE TO THE CALL OF A SESSION. THE CONSTITUTION ALSO SAYS THAT YOU CANNOT AMEND THE TERMINUS DATE, THE ENDING DATE OF A SESSION. THE CONSTITUTION ALSO SAYS THAT YOU CANNOT CALL AN EXTRAORDINARY SESSION ON TOP OF AN EXTRAORDINARY SESSION.

SO THE ONLY SOLUTION POSSIBLE IS THE GOVERNOR CANNOT CALL ANOTHER SPECIAL SESSION BECAUSE HIS CALL IS IN PLACE. THE LEGISLATURE COULD CALL THEMSELVES INTO A SPECIAL SESSION AT A FUTURE DATE WITH A SEVEN-DAY PRIOR NOTICE. SO TODAY IS THE 16TH. AND I DON'T KNOW -- I DON'T WANT TO BE MISQUOTED, BUT IF I COUNTED SEVEN DAYS FROM TODAY, IT WOULD BE THE 23RD.

SO TO SUGGEST THAT WE COULD GO INTO SESSION ON THE 21ST, WHICH WAS YOUR QUESTION, WOULD BE AN ERRONEOUS QUESTION. IT WOULD -- WE CANNOT UNDER THE CONSTITUTION, SO LONG AS WE FOLLOW THE CONSTITUTION. I DON'T KNOW ANYBODY IN THE LEGISLATURE WHO SWORE TO UPHOLD THE CONSTITUTION THAT WOULD BE WILLING TO VIOLATE IT.

SO WITH THAT, I'M GOING TO TELL YOU THAT IN

MY -- AND I DON'T WANT TO BE QUOTED AS THE PARTICULAR DATE. BUT IT WOULD BE A SEVEN-DAY -- FROM THE TIMELINE OF GETTING 20 SENATORS AND 53 HOUSE MEMBERS TO AGREE TO A CALL, IT WOULD BE SEVEN DAYS PRIOR, WHICH I THINK IS THE 23RD OF JUNE. AND THEN YOU COULD CALL IT FOR -- YOU COULD PUT AN END DATE WHENEVER YOU WANT. THAT'S PART OF -- AND THEN YOU WOULD LIST WHAT IS INCLUDED IN THE CALL.

Q NOW, WHEN THE SESSION ENDED ON JUNE 6, YOU WERE AWARE THAT THIS JUDGE WAS CONSIDERING WHETHER THE MAP PASSED BY THE LEGISLATURE VIOLATED THE VOTING RIGHTS ACT. CORRECT?

A I KNEW THAT THERE WAS A COURT CASE THAT WAS BEING DELIBERATED. AND I WAS NOTIFIED ACTUALLY BY THE GOVERNOR. HE ASKED ME TO COME UP TO HIS OFFICE WHEN WE CONCLUDED THE SESSION.

MR. ADCOCK: YOUR HONOR, CAN I OBJECT? THIS IS NON-RESPONSIVE. I'M TRYING TO GET THROUGH HERE. I THINK YOU WANTED TO FINISH BY 10:30.

THE COURT: LET HIM FINISH HIS RESPONSE, AND THEN LET'S TRY TO MOVE ON AFTER THAT.

BY THE WITNESS:

A SO THE ANSWER IS I FOUND OUT FROM THE GOVERNOR HIMSELF WHEN I WENT UP TO HIS OFFICE THAT THE ORDER HAD BEEN -- AND HE WAS --

THE COURT: ON JUNE 6TH.

MR. ADCOCK: YEAH.

BY THE WITNESS:

A AT THE VERY END OF SESSION IT GETS VERY BUSY. WE HAVE A LOT OF CONFERENCE COMMITTEE REPORTS. I WAS BEHIND THE DAIS AND I DID NOT GET NOTIFICATION UNTIL THE GOVERNOR CALLED ME AND SAID, *CAN YOU COME UP AS SOON AS IT'S OVER WITH? I'D LIKE TO TALK TO YOU.*

Q THAT'S NOT MY QUESTION.

SO YOU WERE AWARE ON JUNE 6 THAT THE COURT WAS CONSIDERING --

A THE COURT WAS -- YES. YES, I WAS AWARE THAT THE COURT WAS DELIBERATING THIS, YES.

Q YOU'RE A PARTY TO THIS CASE. CORRECT?

A YES.

Q SO YOU COULD HAVE -- THE LEGISLATURE COULD HAVE CALLED A SPECIAL SESSION ON JUNE 6. CORRECT?

A NO. YOU MEAN ENTERED A CALL?

Q YOU COULD HAVE CALLED --

A SUBMITTED A CALL?

Q -- SPECIAL SESSION ON JUNE 6. YOU COULD HAVE CALLED IT FOR JUNE 14 TO JULY 12 OR JULY 13, 30 DAYS. THE CONSTITUTION ALLOWS YOU TO DO THAT. CORRECT?

A WE -- YES, THE CONSTITUTION DID ALLOW -- WOULD HAVE ALLOWED US TO DO THAT.

Q SO YOU COULD HAVE DONE THAT ON JUNE 6. RIGHT? AND WE COULD HAVE STARTED, YOU KNOW, JUNE 14 OR SOMETHING.

A ROUGHLY, YES.

Q INSTEAD OF JUNE 23RD?

A YES. BUT --

Q NOW, IF ANYONE --

A BUT IF YOU'LL ALLOW ME TO ANSWER THAT COMPLETELY. YES, I COULD HAVE, BUT WHEN I LEFT THE DAIS AND WENT UP TO THE GOVERNOR'S OFFICE, HE NOTIFIED ME THAT HE WAS CALLING A SPECIAL SESSION AND SAID *YOU'LL BE RECEIVING IT SHORTLY*.

SO FROM A PURE TIMING PERSPECTIVE, FOR ME TO HAVE SAID *GOVERNOR, DON'T DO THAT. I'M GOING TO GO DOWN AND GET 20 SIGNATURES*, I WOULD HAVE HAD TO THEN WALK ACROSS TO THE SPEAKER AND SAY *YOU HAVE TO GO GET 53 SIGNATURES*. AND EVERYBODY WAS PACKING UP TO GO HOME.

I THINK FROM A PRACTICAL PERSPECTIVE IT WAS MUCH EASIER FOR THE GOVERNOR TO CALL IT, BECAUSE IT TAKES ONE SIGNATURE VERSUS THE 73 SIGNATURES THAT WE WOULD HAVE HAD TO ACQUIRE WHILE EVERYBODY WAS LEAVING UPON WHAT WE CALL FINAL ADJOURNMENT OR *SINE DIE*.

Q YOU'RE TELLING THE COURT HERE TODAY THAT FIVE DAYS IS NOT ENOUGH TIME TO PASS A CONGRESSIONAL BILL. CORRECT?

A I'M NOT SAYING IT'S NOT ENOUGH TIME. I'M SAYING IT'S UNLIKELY. IT'S VERY, VERY, VERY UNLIKELY.

Q DID YOU TELL THE GOVERNOR THAT WHEN HE TOLD YOU HE WAS GOING TO CALL A SPECIAL SESSION FROM JUNE 15 TO JUNE 20?

A WE HAD A SHORT CONVERSATION. I WILL TELL YOU PART OF THE CONVERSATION WAS THAT --

MR. ADCOCK: YOUR HONOR, I'M TRYING TO GET THE COURT OUT OF HERE. THIS IS NON-RESPONSIVE ANSWERS.

THE COURT: RESTATE YOUR QUESTION AGAIN, SIR. TRY TO ANSWER HIS QUESTIONS, PLEASE.

MR. ADCOCK: YES. THANK YOU, JUDGE.

BY MR. ADCOCK:

Q DID YOU TELL THE -- DID YOU TELL THE GOVERNOR THAT FIVE DAYS WAS NOT ENOUGH TO PASS A REDISTRICTING BILL?

A I CAN'T RECALL EXACTLY. BUT I WOULD SAY I SUGGESTED THAT THAT WAS A VERY SHORT PERIOD OF TIME TO DO SOMETHING AS BIG AS PASS IT. SO DID I TELL HIM EXACTLY THOSE WORDS? I CAN'T RECALL. BUT IN THE

CONTEXT OF OUR MEETING, WHICH WAS VERY SHORT, I SAID, *I DON'T KNOW HOW WE'RE GOING TO GET THAT DONE.*

Q IN THE LEGISLATIVE SESSION YOU KNEW THE JUDGE WAS CONSIDERING THESE MAPS AND MAY -- MAY REQUEST THE LEGISLATURE TO DRAW ANOTHER MAP. CORRECT? AS A POSSIBILITY?

A YES. YES.

Q FROM MAY 15 TO MAY -- OR JUNE 1ST TO JUNE 6TH, YOU COULD HAVE CORRALLED VOTES AND SIGNATURES TO CALL A SPECIAL SESSION IN THE EVENT THE COURT WANTED TO DO THAT. CORRECT? IF YOU WANTED TO?

A I THINK THAT THERE IS PROBABLY A LACK OF UNDERSTANDING OF WHAT GOES ON IN THE LEGISLATURE AT THE LAST WEEK OF THE LEGISLATURE. AND SO TO SUGGEST THAT I WOULD HAVE BEEN SPENDING TIME TRYING TO GET VOTES ON A PROCLAMATION WHEN I WAS TRYING TO GET CONFERENCE COMMITTEE REPORTS FINALIZED SO WE COULD TAKE THEM UP ON FINAL ADOPTION AND TRYING TO GET BILLS PASSED IN THE OTHER HOUSE -- AND I WILL SAY THIS JUST AS A BACKDROP: THERE WERE A LARGE NUMBER OF BILLS THAT WERE HUNG UP ON THE HOUSE CALENDAR THAT WERE SENATE BILLS AND HOUSE BILLS THAT WERE TRYING TO GET FINAL PASSAGE IN THE LAST HOUR THAT DIDN'T EVEN GET A VOTE BECAUSE OF THE AMOUNT OF RUSH OVER THE LAST THREE TO FOUR DAYS OF THE SESSION.

THE COURT: PRESIDENT CORTEZ, I'M GOING TO ASK THAT YOU PLEASE ANSWER THE QUESTIONS. I UNDERSTAND THAT IT'S -- THAT THERE ARE SOME NUANCES TO THE LEGISLATIVE PROCESS AND IT'S IMPORTANT THAT WE UNDERSTAND IT. HOWEVER, I'D LIKE TO GET YOU BACK TO YOUR JOBS, AND SO I'M GOING TO ASK THAT YOU ANSWER THE QUESTIONS THAT ARE POSED TO YOU. AND I'M CERTAIN THAT, QUITE FRANKLY, YOU PROBABLY DON'T WANT TO LOOK DEFENSIVE, SO MAYBE JUST ANSWER THE QUESTIONS.

THE WITNESS: THANK YOU, YOUR HONOR.

MR. ADCOCK: THANK YOU, JUDGE.

BY MR. ADCOCK:

Q BUT YOU CHOSE NOT TO TRY TO DO THAT. CORRECT?

A I DIDN'T MAKE A CHOICE ONE WAY OR THE OTHER. IT JUST WASN'T ON MY RADAR.

Q YOU DIDN'T TRY TO DO THAT?

A I DIDN'T DO IT. BUT I DIDN'T TRY NOT TO DO IT. I JUST DIDN'T DO IT.

Q NOW, THE LEGISLATURE PASSED A BILL OUT OF THE FIRST SESSION EARLIER THIS YEAR; A REDISTRICTING BILL. CORRECT?

A CORRECT.

Q AND THAT WAS THE BILL THAT WAS STRUCK DOWN BY THIS COURT?

A CORRECT.

Q AND TWO-THIRDS OF THE LEGISLATURE VOTED IN FAVOR OF THAT BILL. CORRECT?

A CORRECT.

Q NOW -- AND THEN WHEN THE LEGISLATURE OVERRODE THE VETO, THE LEGISLATIVE VETO OF THAT MAP, THERE WAS ALSO REQUIRED TWO-THIRDS OF THE VOTES. CORRECT?

A THAT'S CORRECT.

Q NOW, DO YOU AGREE THAT MEMBERS WILL NOT VOTE IN FAVOR OF ANOTHER MAP THAT COMPLIES WITH SECTION 2 OF THE VOTING RIGHTS ACT?

A I CAN'T CONTROL WHAT OTHER MEMBERS ARE GOING TO DO. NOR CAN I SPEAK TO WHAT THEY MIGHT DO.

Q WELL, YOU'RE AWARE OF --

MS. MCKNIGHT: PARDON ME, YOUR HONOR. AND, MR. ADCOCK, EXCUSE ME. THIS NEEDS TO BE ON THE RECORD.

WE NEED TO LODGE A CLEAR OBJECTION THAT ANY INQUIRIES INTO THE MINDSET OF OTHER LEGISLATORS WOULD VIOLATE LEGISLATIVE PRIVILEGE. WE'D LIKE TO MAKE THAT CLEAR.

MR. ADCOCK: THAT'S FINE, JUDGE.

BY MR. ADCOCK:

Q SO LET ME JUST ASK YOU ABOUT THIS. SO --

NOW, ARE YOU AWARE THAT ON TUESDAY REPRESENTATIVE MCFARLAND TOLD THE LAFAYETTE NEWSPAPER *MY MEMBERS ARE TELLING ME THEY AREN'T GOING TO VOTE ON ANOTHER MAP*? ARE YOU AWARE HE MADE THAT STATEMENT?

A I'M NOT.

Q NOW, HE'S THE CHAIR OF THE HOUSE CONSERVATIVE CAUCUS. CORRECT?

A I DON'T SERVE IN THE HOUSE. I'M NOT SURE THAT -- WHEN I DID SERVE IN THE HOUSE, THERE WAS NO SUCH THING AS A HOUSE CONSERVATIVE CAUCUS, SO I DON'T KNOW.

Q AND THEN THE HOUSE G.O.P. CAUCUS WHO RUNS THE REPUBLICAN CAUCUS IN THE HOUSE, BLAKE MIGUEZ, SAID IN THE SAME ARTICLE *I DON'T SEE REPUBLICANS SURRENDERING THIS EARLY IN THE PROCESS BEFORE THE LITIGATION IS FULLY ADJUDICATED*. DO YOU KNOW ABOUT THAT STATEMENT?

A I DON'T KNOW WHAT HE --

Q ARE YOU AWARE OF THAT STATEMENT?

A I THINK SOMEONE MAY HAVE SAID THAT HE SAID THAT. BUT I DIDN'T SEE THAT STATEMENT ANYWHERE. I DON'T -- I RARELY READ MUCH AND TRY TO FOCUS ON DOING WHAT I'M DOING.

Q YOU DON'T READ THE NEWSPAPERS?

A I READ THE ACADIAN ADVOCATE OCCASIONALLY.

Q AND BLAKE MIGUEZ IS THE HOUSE MAJORITY LEADER. RIGHT?

A HE'S THE HEAD OF THE -- I THINK IT'S CALLED THE HEAD OF THE REPUBLICAN DELEGATION.

Q AND HE ALSO SAID --

A OR THE CHAIRMAN. I SHOULD SAY CHAIRMAN.

Q -- IN THE NEWSPAPER *IT'S PREMATURE TO JUST GIVE UP AND START DRAWING NEW MAPS.* CORRECT?

A I'M NOT AWARE OF THAT.

Q YOU'RE NOT AWARE OF THAT. DO YOU THINK THAT'S AN IMPORTANT STATEMENT THAT THE HOUSE MAJORITY LEADER SAID THAT IN REGARDS TO THE BILLS UNDER CONSIDERATION IN THIS SPECIAL SESSION?

A I CAN'T SPEAK TO THAT. I'M DOING EVERYTHING I CAN TO ATTEMPT TO GET MAPS, BILLS INTO COMMITTEE SO THAT WE CAN DELIBERATE AS A DELIBERATIVE BODY.

Q AND YOU -- YOUR TESTIMONY TO THIS COURT IS THAT YOU WERE TRYING TO PASS A CONGRESSIONAL MAP THAT COMPLIES WITH THE VOTING RIGHTS ACT?

A THAT'S CORRECT.

Q OKAY. NOW, YOU AND SPEAKER SCHEXNAYDER ISSUED A STATEMENT ON JUNE 10. CORRECT?

A CAN YOU --

Q YOU ISSUED A STATEMENT ON JUNE 10. CORRECT?

A I DON'T KNOW. TELL ME WHAT STATEMENT IT

WAS.

Q YOU DON'T REMEMBER IF YOU ISSUED A STATEMENT?

A I DO NOT AT THIS POINT. IF YOU CAN SHARE IT WITH ME, I CAN --

Q TELL ME IF THIS IS YOUR RECOLLECTION OF WHAT THE STATEMENT SAID. QUOTE, UNTIL THE COURTS HAVE MADE A FINAL DETERMINATION ON THE CONGRESSIONAL MAPS AS THEY WERE PASSED BY A SUPER MAJORITY OF THE LEGISLATURE, WE ARE ASKING THE GOVERNOR TO RESCIND THIS SPECIAL SESSION CALL. DO YOU REMEMBER SAYING THAT?

A YES.

MS. MCKNIGHT: YOUR HONOR, I'D LIKE TO LODGE AN OBJECTION. THIS IS NOT THE PROPER WAY TO REFRESH A WITNESS'S RECOLLECTION. THE WITNESS IS ENTITLED TO SEE THE STATEMENT IN FRONT OF HIM AND REVIEW IT.

MR. ADCOCK: I'LL MOVE ON, JUDGE.

THE COURT: LET ME JUST RULE ON THE OBJECTION. IT'S OVERRULED. PLEASE MOVE ON.

BY MR. ADCOCK:

Q DO YOU REMEMBER ALSO SAYING THIS IN YOUR STATEMENT: *BEFORE THE JUDICIAL REDISTRICTING PROCESS IS COMPLETE, ANY SPECIAL SESSION WOULD BE PREMATURE AND A WASTE OF TAXPAYER MONEY*?

A I THINK IT WAS PART OF THAT SAME STATEMENT, YES.

Q AND YOU -- AND YOU STAND BY THOSE STATEMENTS IN FRONT OF THIS COURT?

A YES. I DO THINK THAT IT'S GOING TO BE VERY DIFFICULT TO PASS A REDISTRICTING PLAN CALL VERY QUICKLY WITH NOT A LOT OF OPPORTUNITY TO GET BILLS IN FRONT OF OUR COMMITTEE MEMBERS.

Q UNTIL THE COURTS --

A AND A SHORT ENDING TO IT.

Q BUT UNTIL THE COURT -- YOU WANT THE COURTS TO MAKE A FINAL DETERMINATION BEFORE YOU TRY. IS THAT WHAT YOU'RE SAYING?

A NO.

Q YOU DIDN'T SAY THAT?

A NO.

MR. ADCOCK: NO MORE QUESTIONS AT THIS TIME, JUDGE.

THE COURT: IT WAS THE COURT'S INTENT TO HAVE THE PLAINTIFFS KIND OF NOT TAG-TEAM, BUT I DID NOT SAY THAT. SO DO THE GALMON PLAINTIFFS HAVE ANY CROSS?

MR. PAPILLION: YOUR HONOR, THANK YOU. I WOULD VERY BRIEFLY. VERY BRIEFLY.

THE COURT: GO AHEAD.

MR. PAPILLION: THANK YOU FOR THAT. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS, YOUR HONOR.

WHAT I WAS HOPING TO DO WAS AT LEAST TO RESERVE THE OPPORTUNITY TO ARGUE ON THE TESTIMONY. BUT I DO HAVE A FEW QUESTIONS.

CROSS-EXAMINATION

BY MR. PAPILLION:

Q MR. CORTEZ, YOU WERE IN THE LEGISLATURE IN 2017?

A YES. OH, YES.

Q WHAT WAS YOUR CAPACITY AT THAT POINT?

A I WAS -- I WAS IN THE SENATE. I WAS THE CHAIRMAN OF THE SENATE COMMITTEE ON TRANSPORTATION, I WAS ON THE SENATE COMMERCE COMMITTEE, AND I WAS ON THE SENATE RETIREMENT COMMITTEE.

Q DO YOU RECALL THAT WE HAD AN EXTRAORDINARY SESSION IN 2017 IN THE STATE OF LOUISIANA?

A I CAN'T RECALL, BUT I'M SURE WE DID. THERE WERE MULTIPLE -- WE'VE HAD MULTIPLE SPECIAL SESSIONS IN MY TENURE.

Q WOULD IT SURPRISE YOU THAT IN 2017 WE HAD AN EXTRAORDINARY SESSION RELATIVE TO THE STATE BUDGET, OR THAT THAT WAS ONE OF THE ISSUES UNDER CONSIDERATION?

A THAT WOULD NOT -- THAT WOULD NOT SHOCK ME TO KNOW THAT. BUT YOU CAN -- BUT MY MEMORY IS -- IF I SAW IT, MAYBE I WOULD BE RECALLED. BUT RIGHT NOW I CAN'T RECALL EXACTLY, BUT I'M ASSUMING WHAT YOU'RE TELLING ME IS TRUTHFUL.

Q WOULD IT SURPRISE YOU THAT IN 2017 IN AN EXTRAORDINARY SESSION IN A MATTER OF FOUR DAYS WE PASSED A STATE BUDGET AT THE STATE; THE LEGISLATURE DID?

A IN FOUR DAYS FROM THE TIME IT WAS INTRODUCED?

Q YES.

A UNTIL -- I CAN'T RECALL THAT, BUT -- THAT WASN'T DURING THE PANDEMIC, SO IT WAS PRE-PANDEMIC. I'M TRYING TO RECALL, BUT I CAN'T REALLY RECALL THAT. BUT --

Q THERE IS A RECORD OF IT. AND THE COURT CAN TAKE JUDICIAL NOTICE OF IT.

I'M ASKING YOU AS THE PRESIDENT OF THE SENATE: WOULD IT SURPRISE YOU THAT THE SENATE AND THE HOUSE, OUR LEGISLATURE, COULD PASS AN IMPORTANT LEGISLATIVE MEASURE IN FOUR DAYS? YOU CAN'T, CAN YOU?

A IT SEEMS UNREASONABLE IN FOUR DAYS THAT YOU WOULD PASS ANY BILL.

Q *IT SEEMS UNREASONABLE*. YOU'RE HERE TODAY IN COURT. YOU UNDERSTAND YOU'RE A PARTY TO THIS LITIGATION?

A I DO.

Q IS IT -- AND YOU UNDERSTAND YOU'RE UNDER OATH?

A I'M SORRY?

Q YOU UNDERSTAND YOU'RE UNDER OATH?

A YES, SIR.

Q ARE YOU A LAWYER?

A NO, SIR.

Q YOU'VE REFERENCED THE STATE CONSTITUTION A NUMBER OF TIMES. LET ME ASK YOU THIS, SENATOR CORTEZ. DO YOU INTEND TO FOLLOW THE CONSTITUTION?

A YES, SIR.

Q IS IT YOUR UNDERSTANDING THAT THIS COURT ISSUED AN ORDER DIRECTING THE LEGISLATURE TO COMPLY WITH SECTION 2 OF THE VOTING RIGHTS ACT OF THE UNITED STATES CONSTITUTION?

MS. MCKNIGHT: OBJECTION, YOUR HONOR, TO THE EXTENT IT ASKS FOR A LEGAL CONCLUSION.

MR. PAPILLION: I'M NOT ASKING FOR A LEGAL CONCLUSION.

THE COURT: OVERRULED.

BY THE WITNESS:

A MY UNDERSTANDING WAS THE ORDER, AS I READ IT AS A NON-LAWYER, WAS TO ATTEMPT TO REMEDIATE. AND IT GOES ON TO SAY IN THE ORDER THAT IF YOU FAIL TO REMEDIATE, THEN THE COURT WOULD REMEDIATE, I THINK IS -- I'M PARAPHRASING BECAUSE I DON'T HAVE IT IN FRONT OF ME. BUT IT WAS TO GIVE THE OPPORTUNITY FOR THE LEGISLATURE TO PRODUCE A REMEDIAL PLAN, I THINK IS THE VERBIAGE, BUT -- I READ IT OVER AND OVER.

BUT AGAIN, I WANT TO SAY ON THE RECORD I'M NOT A LAWYER AND I DON'T KNOW ALL OF WHAT THAT MEANS, EXCEPT THAT IN MY WORLD IT SAYS *YOU OUGHT TO GO BACK INTO SESSION AND TRY TO FIX THIS AND DO SOMETHING DIFFERENT.*

Q YOU WOULD AGREE WITH ME THAT IF THE LEGISLATURE, THE SENATE AND THE HOUSE WERE HIGHLY MOTIVATED TO FOLLOW THIS COURT'S ORDER -- TEN DAYS HAVE GONE BY SINCE THAT ORDER WAS ISSUED -- THAT IT WOULD BE ABLE TO ACT, WHETHER IT IS THROUGH GOING OVER THE PUBLIC COMMENTS, BY PREFILING BILLS AFTER THE GOVERNOR'S CALL, THAT THAT WORK COULD BE IN PROGRESS. RIGHT?

A IT COULD, EXCEPT FOR ONE THING. THAT DURING THAT -- THOSE DAYS THAT YOU'RE REFERENCING, THERE WAS A STAY THAT WAS ISSUED AT THE FIFTH CIRCUIT, AT WHICH TIME MANY OF THE MEMBERS IN THE SENATE -- I WON'T

SPEAK FOR THE HOUSE -- SAID *I'M GOING ON VACATION. THIS IS NOT GOING TO HAPPEN*.

AND THEN A FEW DAYS LATER, WHICH I THINK WAS A SUNDAY, THAT STAY WAS REVERSED. AND THAT WAS EFFECTIVELY TWO DAYS BEFORE WE STARTED THE SESSION, AT WHICH TIME -- AND I DON'T WANT TO GO OVER. IF YOU WANT ME TO STOP ANSWERING --

Q NO, GO AHEAD. I'M LISTENING.

A -- I'M JUST TRYING TO GIVE YOU CONTEXT. I HAD A NUMBER OF SENATORS CALL ME AND SAY THEY WERE IN THE BRITISH VIRGIN ISLANDS; DESTIN, FLORIDA, THE MOUNTAINS AND WHEN DO THEY NEED TO BE BACK. AND MY ANSWER WAS TO THEM: *AS QUICKLY AS POSSIBLE. WE'RE CONVENING AT NOON ON WEDNESDAY*. AND SOME OF THEM HAVE NOT RETURNED YET, BUT THEY ARE ON THEIR WAY BACK.

Q LET ME MAKE SURE. THE NEXT COUPLE OF QUESTIONS I ASK YOU, OR ANY QUESTIONS, I DON'T WANT TO ASK YOU FOR A LEGAL CONCLUSION, I DON'T WANT TO ASK YOU FOR ANY ADVICE THAT YOU GOT FROM A LAWYER.

BUT WHAT YOU'RE TELLING ME -- OR WHAT IT SOUNDS LIKE TO ME IS YOU HEARD OR LEARNED SOMEHOW THAT THE U.S. FIFTH CIRCUIT HAD ISSUED AN ADMINISTRATIVE STAY AND THAT YOU SORT OF THOUGHT, WELL, THAT MEANT THAT YOU COULD GO ON, AND THIS

COURT'S ORDER OF JUST A COUPLE OF DAYS EARLIER, IT HAD NO EFFECT ANYMORE. RIGHT? IS THAT WHAT YOU'RE SAYING?

A THAT WAS MY UNDERSTANDING, IS THAT -- THAT IT WAS STOPPED, YES.

Q AND AS THE -- AS THE PRESIDENT OF THE SENATE -- AGAIN, I DON'T -- I'M NOT ASKING YOU FOR A LEGAL OPINION, I'M NOT ASKING YOU FOR ANY ADVICE OF COUNSEL, ANYTHING OF THAT NATURE. DID YOU TRY TO MAKE A DETERMINATION AS TO WHETHER AN ADMINISTRATIVE STAY MIGHT BE QUICKLY LIFTED? YOU DIDN'T?

A I DID NOT. I WAS ASKED BY MEMBERS *WHAT DO YOU THINK?* AND I SAID, *I HAVE NO IDEA*. AND THEN IF THEY'D SAY, *WELL, CAN I GO ON MY VACATION?* I'D SAY, *THAT'S YOUR DECISION*. BUT I DID TELL MANY OF THEM, *I WOULD GET INSURANCE IF YOU'RE TAKING A FLIGHT SO THAT YOU DON'T LOSE YOUR MONEY.*

Q DIDN'T YOU TELL THE LEGISLATURE YESTERDAY NOT TO GO ON VACATION?

A YESTERDAY?

Q YEAH. DID YOU MAKE A STATEMENT SAYING THAT NO ONE SHOULD GO ON VACATION?

A I'M SORRY?

Q DID YOU MAKE A STATEMENT YESTERDAY THAT NO ONE SHOULD GO ON VACATION?

A I DON'T RECALL I DID.

Q LET ME ASK YOU THIS.

A I DON'T RECALL IT. I DON'T KNOW WHAT CONTEXT IT MAY HAVE BEEN IN.

Q I DON'T WANT TO -- YOU HAVE TO GO AND DO SOME WORK, AND SO I DON'T WANT TO HAGGLE WITH YOU ABOUT TOO MANY THINGS. I WANT TO LET THE COURT DEAL WITH THE ISSUES THAT WE HAVE TO DEAL WITH.

BUT IT IS A FAIR POINT, IS IT NOT, THAT IF A MAJORITY OR A TWO-THIRDS MAJORITY OF OUR LEGISLATURE IS OF MIND TO FOLLOW THIS COURT'S ORDER, THAT THAT CAN ABSOLUTELY BE DONE IN THE TIME THAT'S ALLOTTED IN THE PRESENT SESSION. CORRECT?

A ONLY IF YOU SUSPEND THE RULES AT EVERY STEP, NO. 1; AND, NO. 2, REDUCE THE TRANSPARENCY OF AMENDMENTS BEING PRESENTED TO THE PUBLIC. IF YOU'RE WILLING TO REDUCE THE TRANSPARENCY IN THE PROCESS AND YOU'RE WILLING TO SUSPEND EVERY RULE, IT CAN BE DONE. I WOULD NOT SIT HERE AND TELL YOU IT CANNOT BE DONE.

WHAT I WOULD TELL YOU IS THAT I PERSONALLY WOULD NEVER ASK ANY LEGISLATOR TO SUSPEND A RULE IF THEY THOUGHT IT WOULD BRING LESS -- SHINE LESS LIGHT ON A SUBJECT MATTER BUT, MORE SPECIFICALLY, ON A SUBJECT MATTER OF SUCH IMPORTANCE AS CONGRESSIONAL REDISTRICTING.

Q SO IN FAIRNESS, YOUR ANSWER TO MY LAST QUESTION IS: *YES, BUT* AND EVERYTHING YOU JUST SAID. CORRECT?

A THANK YOU. YES. I BELIEVE THAT'S CORRECT.

Q ALL RIGHT. AND, SENATOR, I THINK THOSE ARE ALL THE QUESTIONS I HAVE.

A THANK YOU.

THE COURT: DO YOU HAVE ANY REDIRECT?

MS. MCKNIGHT: BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. PRESIDENT, I HEARD PLAINTIFFS' COUNSEL ASK YOU A NUMBER OF QUESTIONS RELATED TO THE TIMING OF WORK AND WHAT YOU COULD HAVE DONE AND WHEN, SO I'D LIKE TO ASK YOU A FEW QUESTIONS RELATED TO THAT.

WHAT IS YOUR -- WHEN DID YOU FIRST LEARN THAT THIS COURT HAD ISSUED ITS PRELIMINARY INJUNCTION AS RELATES TO THE SESSION THAT YOU WERE IN ON JUNE 6?

A IT WAS, THE BEST I CAN RECALL, AT THE END OF THE SESSION SOMEONE -- THE GOVERNOR CALLED ME AND SAID, *I'D LIKE TO TALK TO YOU. I DON'T KNOW IF YOU'RE AWARE THAT THE DISTRICT COURT HAS MADE A RULING. CAN YOU COME UP TO MY OFFICE?* AND I SAID, *YES, AS SOON AS WE ADJOURN, I WILL COME ON UP.*

Q AND WE ON YOUR BEHALF IN THIS CASE FILED A

MOTION TO STAY THAT ORDER THAT NIGHT. IS THAT RIGHT?

A THAT'S CORRECT.

Q AND IS IT MY UNDERSTANDING THAT YOU UNDERSTOOD THIS COURT'S ORDER WAS STAYED UNTIL SUNDAY EVENING, FOUR DAYS AGO?

A THAT'S CORRECT.

MS. MCKNIGHT: THANK YOU, YOUR HONOR. THOSE ARE ALL THE QUESTIONS I HAVE.

THE COURT: THE COURT HAS JUST A COUPLE, SIR, JUST SO THAT THE COURT CAN BETTER UNDERSTAND THE PROCESS THAT YOU'RE FACING.

COUNSEL ASKED YOU IS THERE ENOUGH TIME TO PASS THE MAPS UNDER THE CURRENT SESSION AND THE EXPIRATION OF THE CURRENT SESSION, WHICH IS MONDAY, JUNE 20TH. AND YOU SAID, *YES, IF -- SUSPEND THE RULES* AND *YES, IF REDUCED TRANSPARENCY CAN BE DONE*.

SO WITH RESPECT TO SUSPENDING THE RULES, THAT'S SOMETHING THAT THE HOUSE AND THE SENATE LEADERSHIP UNDERTAKE. IS THAT CORRECT?

THE WITNESS: ANY MEMBER CAN MOVE -- MAKE A MOTION TO SUSPEND. THE HOUSE IS DIFFERENT FROM THE SENATE ONLY BECAUSE I SERVE THERE. THE SENATE, WE SUSPEND RULES WITH A MAJORITY VOTE. THE HOUSE SUSPENDS RULES WITH A TWO-THIRDS MAJORITY VOTE, SO THERE IS A LITTLE NUANCE THERE.

THE COURT: SO EITHER YOU AS THE PRESIDING OFFICER OF THE SENATE OR ANY SENATOR CAN MOVE TO SUSPEND THE RULES?

THE WITNESS: ANY SENATOR, YES.

THE COURT: YOU'VE ALREADY SUSPENDED THE READING REQUIREMENT AND REFERRED AT LEAST -- AND I JUST WANT TO -- I'M NOT -- I'M ASKING JUST ABOUT THE SENATE SIDE. YOU'VE ALREADY DONE THAT WITH RESPECT TO THE READING OF THE BILLS THAT ARE IN THE SENATE AND REFERRED BACK TO COMMITTEE. SO SOME OF THOSE RULES HAVE BEEN SUSPENDED?

THE WITNESS: THAT'S CORRECT.

THE COURT: DO I HAVE YOUR COMMITMENT THAT YOU WILL MOVE TO SUSPEND THE RULES NECESSARY TO ACCOMPLISH THE TASK BEFORE YOU?

THE WITNESS: I AM COMMITTED TO ATTEMPTING TO DO THIS. WHAT I HAVE TO TELL YOU IS I AM ONE OF 38 MEMBERS OF THE SENATE.

THE COURT: I UNDERSTAND YOU HAVE TO HAVE --

THE WITNESS: AND THE MAJORITY -- IT'S A DELIBERATIVE BODY. AND THE MAJORITY WILL DETERMINE HOW QUICKLY WE MOVE. UNLIKE THE HOUSE, THE MAJORITY OF THE SENATE WILL DETERMINE HOW QUICKLY WE MOVE.

AND IN FAIRNESS TO YOU -- AND I WANT TO BE HONEST -- I DON'T THINK THERE IS A WILL BY MANY OF

THE MEMBERS TO REDUCE THE TRANSPARENCY. AND SUSPENDING THE RULES WOULD REDUCE THE TRANSPARENCY TO THE PUBLIC.

THE COURT: OKAY. SO MY QUESTION, THOUGH -- AND I DON'T WANT YOU TO TELL ME WHAT YOU -- I MEAN, YOU DON'T KNOW WHAT YOUR COLLEAGUES ARE GOING TO DO OR NOT DO; YOUR COLLEAGUES IN THE SENATE. I UNDERSTAND THAT AND I APPRECIATE THAT. AND I'M NOT ASKING YOU TO MAKE A COMMITMENT ON THEIR BEHALF.

I'M ASKING YOU IF I HAVE YOUR COMMITMENT AS THE PRESIDENT OF THE SENATE TO DO WHAT YOU CAN TO MOVE TO SUSPEND THE RULE SO THAT THIS CAN BE ACCOMPLISHED.

THE WITNESS: I'M DOING EVERYTHING I CAN.

THE COURT: NOW, WITH RESPECT TO REDUCING TRANSPARENCY, MY UNDERSTANDING IS, IS THAT WHAT THE PROCESS IS LOOKING TO ACCOMPLISH IS TO ALLOW MEMBERS OF THE PUBLIC AND CONSTITUENTS OF YOURS AND YOUR COLLEAGUES TO COMMENT AND GIVE YOU FEEDBACK ON PENDING LEGISLATION. THAT'S THE TRANSPARENCY WE'RE TALKING ABOUT?

THE WITNESS: THAT'S CORRECT.

THE COURT: SO THAT'S THAT PUBLIC COMMENT TRANSPARENCY. RIGHT?

THE WITNESS: THAT'S CORRECT, YES.

THE COURT: SO WHAT ARE YOU DOING RIGHT NOW? MY UNDERSTANDING IS YOU MET YESTERDAY. YOU'RE NOT IN SESSION, OBVIOUSLY, NOW. YOU'VE REFERRED TWO SENATE BILLS TO COMMITTEE.

SO WHAT IS HAPPENING RIGHT NOW THAT IS ENABLING THIS PUBLIC PROCESS?

THE WITNESS: THE SENATE & GOVERNMENTAL AFFAIRS CONVENED A MEETING AT NINE A.M. THIS MORNING. THEY ARE DELIBERATING ON THE TWO BILLS AS WE SPEAK.

THE COURT: SO THE PUBLIC CAN COMMENT?

THE WITNESS: THE PUBLIC IS THERE. I'VE HAD A NUMBER OF MAYORS CONTACT ME SAYING THEY WERE PLANNING ON ATTENDING TO GIVE THEIR PUBLIC TESTIMONY. SO WE HAVE NINE MEMBERS OF THE SENATE & GOVERNMENTAL AFFAIRS COMMITTEE OF THE SENATE. SO WHILE I'M EX OFFICIO, I'M NOT THERE SITTING AT THE DAIS. I WOULD BE IF I WEREN'T HERE. BUT I CAN ASK QUESTIONS, I CAN'T VOTE OR MAKE MOTIONS.

THE COURT: SO THAT PROCESS IS CONTINUING AND THE PUBLIC IS ENGAGED AND THERE IS SOME TRANSPAREN- -- OR THERE IS TRANSPARENCY IN THAT PROCESS?

THE WITNESS: THAT'S CORRECT. HERE'S THE -- WHAT I'M -- IF I COULD ELABORATE ON WHAT I MEAN BY *TRANSPARENCY*. I SAID THIS EARLIER. THERE IS I THINK

3700 -- ROUGHLY 3700 PRECINCTS. THE BILLS THAT ARE FILED HAVE GONE TO COMMITTEE. THEY CAN OFFER AMENDMENTS IN COMMITTEE TO CHANGE THAT BILL TO FIX -- I'M JUST GOING TO USE MY LITTLE CITY, LAFAYETTE. AND ONE OF THE BILLS IS COMPLETELY SPLIT IN TWO: THE CITY OF LAFAYETTE AND THE PARISH OF LAFAYETTE.

THERE IS A CONCERN THAT THE PARISH OF LAFAYETTE SHOULD BE IN THE SAME CONGRESSIONAL DISTRICT. SO I'VE GOT A LOT OF PHONE CALLS ABOUT NOT WANTING THAT TO BE SPLIT UP. IF SOMEONE ON THE COMMITTEE WERE TO OFFER AN AMENDMENT TO FIX THAT, THAT WOULD HAVE A RIPPLE EFFECT THROUGHOUT, BECAUSE THE CONGRESSIONAL DISTRICTS HAVE TO BE ALL EQUAL IN POPULATION. IT WOULD CHANGE PRECINCTS IN EVERY OTHER CORNER OF THE STATE.

WHEN THAT HAPPENS, IT'S INCUMBENT UPON US TO THEN ALLOW THE REST OF THE STATE TO COME LOOK AND SEE WHAT IT AFFECTED IN THEIR DISTRICTS. IT'S A COMPLICATED PROCESS. AND IT'S NOT AS SIMPLE AS PASSING -- MEMORIALIZING MOTHER'S DAY OR SOMETHING LIKE THAT WHERE IT DOESN'T CHANGE WITH A LOT OF AMENDMENTS. THIS ONE LITTLE AMENDMENT LITERALLY RIPPLES THE WHOLE STATE.

THE COURT: WITH RESPECT TO -- YOU SAID -- IN ONE OF YOUR EARLIER STATEMENTS YOU TALKED ABOUT

WASTE OF TAXPAYER DOLLARS ON A SPECIAL SESSION, AND THEN YOU ALSO MENTIONED -- I WANT TO GET AT SOME -- WELL, YOU ALSO MENTIONED THAT YOU CAN HAVE INTERIM MEETINGS OF COMMITTEES WITH THE PRESIDING OFFICERS' AUTHORITY AND THAT ONE OF THE THINGS THAT YOU LOOK AT WHEN YOU'RE DECIDING WHETHER OR NOT TO GIVE PERMISSION TO HAVE THESE INTERIM MEETINGS, THESE KIND OF PREFILING MEETINGS OF COMMITTEES, THAT YOU LOOK AT WHAT IS THE COST TO TAXPAYERS OF THAT.

HAVE YOU LOOKED AT -- WELL, LET ME JUST PAUSE THERE. OBVIOUSLY AS ONE OF THE LEADERS OF THE TWO BODIES OF GOVERNMENT, YOU'RE KEENLY AWARE OF THE PUBLIC FISK AND THE COST TO TAXPAYERS. WOULD YOU AGREE WITH THAT?

THE WITNESS: ABSOLUTELY.

THE COURT: SO HAVE YOU CONSIDERED AND CAN YOU OFFER WHAT IS IT GOING TO COST THE TAXPAYERS OF THIS STATE IF YOUR EXTENSION IS GRANTED? WHAT DOES IT COST FOR ANOTHER FIVE DAYS? HAVE YOU CONSIDERED THAT?

THE WITNESS: I HAVE NOT. I USED TO KNOW THIS, YOUR HONOR. I APOLOGIZE. BUT THERE IS A CERTAIN AMOUNT THAT IT COST FOR EACH DAY THAT WE'RE IN SESSION. BUT I JUST DON'T HAPPEN TO HAVE THAT IN ONE OF MY HARD DRIVES.

THE COURT: IT'S NOT ONE OF YOUR CONSIDERATIONS IN ASKING FOR THE EXTENSION?

THE WITNESS: MY CONSIDERATION WAS NOT SO MUCH ABOUT THE ADDITIONAL DOLLARS THAT IT WOULD COST. IT WAS THE FACT THAT WE ARE SPENDING MONEY RIGHT NOW, AND I DON'T BELIEVE WE'RE GOING TO ACHIEVE THE GOAL BECAUSE OF THE TIME IT REQUIRES TO ACHIEVE THE GOAL.

THE COURT: ALL RIGHT. AND THEN LASTLY, I READ -- AND THANK YOU FOR YOUR DECLARATION THAT YOU FILED. I READ -- IN YOUR DECLARATION YOU STATE: *I UNDERSTAND THAT THE COURT HAS ORDERED THE LEGISLATURE TO DRAW A NEW CONGRESSIONAL PLAN WITH TWO MAJORITY BLACK DISTRICTS*. IS THAT YOUR UNDERSTANDING OF THIS COURT'S RULING?

THE WITNESS: ABSOLUTELY.

THE COURT: AND HAVE YOU COMMUNICATED YOUR UNDERSTANDING OF THE COURT'S RULING WITH YOUR COLLEAGUES?

THE WITNESS: I HAVE.

THE COURT: AND HAVE YOU DISCUSSED YOUR UNDERSTANDING OF THE COURT'S RULING WITH HOUSE SPEAKER SCHEXNAYDER?

THE WITNESS: WE HAVE DISCUSSED THE CALL, WHICH IS EFFECTIVELY YOUR ORDER. THE CALL IS THE ORDER.

THE COURT: OKAY. THAT S ALL THAT I HAVE. THANK YOU VERY MUCH.

THE WITNESS: THANK YOU.

THE COURT: YOU MAY STEP DOWN.

AND MISTER -- PRESIDENT CORTEZ IS RELEASED. IF HE WANTS TO RETURN -- YOU MAY CERTAINLY REMAIN. I DON'T THINK WE'LL BE HERE A LOT LONGER, SIR. BUT IF YOU NEED TO GET BACK TO WORK, THE COURT UNDERSTANDS.

NEXT WITNESS, PLEASE.

MS. MCKNIGHT: YOUR HONOR ASKED SPEAKER SCHEXNAYDER TO BE AVAILABLE, AND WE CAN CALL HIM IF THE COURT WOULD LIKE TO HEAR FROM HIM. BUT WE BELIEVE THE COURT HAS SUFFICIENT INFORMATION ON THE MOTION AND IN THE DECLARATION AND FROM MR. CORTEZ'S TESTIMONY THIS MORNING.

THE COURT: I THINK IT'S IMPORTANT FOR THE COURT TO UNDERSTAND WHAT'S HAPPENING ON THE HOUSE SIDE, GIVEN THAT THERE HAS BEEN A REQUEST FOR EXTENSION OF TIME. SO THE COURT WOULD LIKE TO HEAR TESTIMONY.

MS. MCKNIGHT: THANK YOU, YOUR HONOR. WE WOULD LIKE TO CALL THE SPEAKER, MR. CLAY SCHEXNAYDER.

(WHEREUPON, SPEAKER CLAY SCHEXNAYDER, BEING DULY SWORN, TESTIFIED AS FOLLOWS.)

THE COURT: GOOD MORNING, MR. SPEAKER.

THE WITNESS: GOOD MORNING.

THE COURT: YOU MAY PROCEED, MS. MCKNIGHT.

MS. MCKNIGHT: THANK YOU.

DIRECT EXAMINATION

BY MS. MCKNIGHT:

Q GOOD MORNING, MR. SPEAKER. COULD YOU DESCRIBE YOUR ROLE IN THE LEGISLATURE.

A I AM THE STATE REPRESENTATIVE FOR HOUSE DISTRICT 81, AND I WAS ELECTED BY MY COLLEAGUES TO BE SPEAKER OF THE HOUSE.

Q AND HAVE YOU -- HAVE YOU READ A DECLARATION SUBMITTED IN THIS MATTER BY MISTER -- BY THE PRESIDENT CORTEZ?

A I HAVE.

Q AND DO YOU AGREE WITH HOW HE DESCRIBED THE LEGISLATIVE PROCESS IN THAT DECLARATION?

A YES, MA'AM.

Q DID YOU DISAGREE WITH ANYTHING IN THAT DECLARATION?

A NO, MA'AM.

Q NOW, SINCE MONDAY, THE DATE THAT DECLARATION WAS FILED, HAS THE HOUSE GONE INTO EXTRAORDINARY SESSION?

A WE HAVE.

Q NOW, AS YOU'RE SITTING HERE TODAY, CAN YOU SPEAK FOR ANY OTHER LEGISLATORS?

A I CANNOT.

Q AND AS YOU SIT HERE TODAY, CAN YOU PROMISE THE COURT ANY CERTAIN OUTCOME FROM THE HOUSE'S DELIBERATIVE PROCESS?

A I CANNOT.

Q FINALLY, CAN YOU SPEAK FOR THE SECRETARY OF STATE OR ANY OF THE ELECTION ADMINISTRATIVE ISSUES HE HANDLES HERE TODAY?

A NO, MA'AM.

MS. MCKNIGHT: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: CROSS.

CROSS-EXAMINATION

BY MR. ADCOCK:

Q MR. SPEAKER, JOHN ADCOCK ON BEHALF OF THE ROBINSON PLAINTIFFS AGAIN.

MR. SPEAKER, WE TALKED A LOT ABOUT TIMING THIS MORNING, HOW MUCH TIME TO PASS THE BILL. DO YOU RECALL OR DO YOU KNOW THAT IN 1994 THE LOUISIANA LEGISLATURE PASSED A REDISTRICTING BILL IN SIX DAYS?

A I DO NOT. THAT WAS BEFORE MY TIME.

Q OKAY. NOW, IS THE HOUSE HOLDING ANY -- THE HOUSE OF REPRESENTATIVES HOLDING ANY COMMITTEE

HEARINGS TODAY?

A THEY ARE NOT.

Q THEY ARE HOLDING COMMITTEE HEARINGS TOMORROW?

A YES, SIR.

Q WHICH COMMITTEE IS THAT?

A HOUSE & GOVERNMENTAL.

Q AND IT WENT INTO SESSION YESTERDAY?

A YES, SIR.

Q YOU'RE NOT HOLDING HEARINGS TODAY?

A WE ARE NOT.

Q NOW, YOU INTRODUCED A BILL FOR THIS SESSION. CORRECT?

A YES, SIR.

Q NOW, FORGIVE ME FOR THE QUALITY OF THESE COPIES, BUT I'M NOT TRYING TO TRICK YOU HERE. THIS IS --

MR. ADCOCK: MAY I HAND THIS TO THE WITNESS, JUDGE?

THE COURT: YOU MAY APPROACH.

MR. ADCOCK: THANK YOU, JUDGE.

THE COURT: GIVE ONE TO YOUR OPPOSING COUNSEL. HAVE YOU GOT ONE?

MR. ADCOCK: I'VE GIVEN A COPY TO OPPOSING COUNSEL BEFORE THIS HEARING THIS MORNING, SO...

THE COURT: OKAY. YOU CAN USE THE ELMO IF YOU NEED TO.

MR. ADCOCK: THANK YOU, JUDGE.

BY MR. ADCOCK:

Q NOW, MR. SPEAKER, DO YOU RECOGNIZE THAT DOCUMENT?

A I DO.

Q NOW, I'M SHOWING YOU WHAT I'M GOING TO MARK AS EXHIBIT 1; ROBINSON EXHIBIT 1. CAN YOU DESCRIBE WHAT THAT DOCUMENT IS?

A IT IS HOUSE BILL 2. IT IS A CONGRESSIONAL REDISTRICTING MAP OF BILL.

Q AND WHICH SESSION WAS THAT BILL INTRODUCED FOR?

A THIS WAS A BILL THAT WAS FILED IN OUR FIRST REDISTRICTING SESSION AND IN THIS ONE.

Q SO IT'S THE BILL FILED ON TUESDAY OF THIS WEEK?

A YES.

Q AND IT WAS THE BILL FILED IN THE FIRST EXTRAORDINARY SESSION. CORRECT?

A IT IS.

Q SO THEY'RE BASICALLY THE SAME BILL?

A YES, SIR.

Q OKAY. BASICALLY THE SAME MAP?

A YES, SIR.
Q OKAY. NOW, I'M GOING TO --
MR. ADCOCK: MAY I APPROACH THE WITNESS, JUDGE?
THE COURT: YOU MAY.
MR. ADCOCK: I'M GOING TO SHOW THE WITNESS WHAT I'M MARKING AS ROBINSON EXHIBIT 2 THAT I'VE PREVIOUSLY GIVEN TO COUNSEL.
MS. MCKNIGHT: MR. ADCOCK, PARDON ME. COULD YOU JUST BE CLEAR WHICH ONE, WHETHER IT'S HOUSE BILL NO. 2 OR HOUSE BILL NO. 1?
MR. ADCOCK: SURE.
BY MR. ADCOCK:
Q CAN YOU IDENTIFY THAT DOCUMENT?
A IT'S THE -- LOOKS LIKE THE BILL FROM THE FIRST REDISTRICTING SESSION.
Q SO ROBINSON 1 IS THE BILL THAT WAS INTRODUCED FOR THIS SESSION?
A ROBINSON 2 WAS THE ONE.
Q NO, NO. I'M SORRY. I'M CONFUSING. I APOLOGIZE.
THE FIRST THING I SHOWED YOU IS ROBINSON 1. THAT WAS THE BILL THAT WAS INTRODUCED ON TUESDAY.
A YOU HANDED ME 2 FIRST. AND THAT'S THE ONE THAT IS FILED FOR THIS SESSION.

Q CORRECT.

A YES.

Q AND THE ONE I JUST HANDED YOU, WHICH IS EXHIBIT -- ROBINSON EXHIBIT 2, WAS THE BILL THAT WAS FILED AND PASSED IN THE FIRST EXTRAORDINARY SESSION?

A YES, SIR.

MR. ADCOCK: IS THAT GOOD, COUNSEL?

MS. MCKNIGHT: MR. ADCOCK, BRIEFLY COULD YOU JUST -- IS THIS ROBINSON 1 AND THIS IS ROBINSON 2?

MR. ADCOCK: THIS IS ROBINSON 1.

MS. MCKNIGHT: OKAY. THAT'S 2. THANK YOU.

MR. ADCOCK: I APOLOGIZE, JUDGE. DOING THIS ON THE FLY. YOU CAN TELL I HAVE YOUNG KIDS. I'M JOKING.

BY MR. ADCOCK:

Q SO BASED ON YOUR TESTIMONY, THESE ARE ESSENTIALLY THE SAME MAP, SO -- AND THEY'RE THE SAME DEMOGRAPHIC TOTALS, BASICALLY THE SAME BILL. CORRECT?

A YES.

Q NOW, MY QUESTION IS: WHAT ANALYSIS, IF ANY, DID YOU DO PRIOR TO INTRODUCING THESE BILLS, WRITING THESE BILLS -- DID YOU DO WITH THESE BILLS TO SEE HOW THEY WOULD PERFORM?

A SO THE ONE WE DID IN THE FIRST EXTRAORDINARY

SESSION WE HAD PUBLIC TESTIMONY, WE HAD PUBLIC INPUT, WE HAD EVERYTHING THAT TRAVELING THE STATE THAT THE COMMITTEES HAD DONE. SO WE HAD INPUT FROM MULTIPLE SOURCES.

Q OKAY. DID YOU DO ANY -- DID YOU HAVE ANYONE ANALYZE ROBINSON 1 OR ROBINSON 2 FOR COMPLIANCE WITH THE VOTING RIGHTS ACT?

A I THINK THE FIRST ONE THAT WE PASSED IN THE FIRST SESSION, REDISTRICTING SESSION, OUR STAFF AND OUR LEGAL STAFF IS THE ONES WHO PUT IT IN THE POSTURE THAT IT NEEDS TO BE IN TO BE LEGAL.

Q OKAY. I UNDERSTAND. WHEN YOU MEAN YOUR LEGAL STAFF, WHO ARE YOU TALKING ABOUT?

A OUR STAFF.

Q YOUR STAFF?

A WE HAVE STAFF AT THE CAPITOL THAT WORK ON OUR BILLS AND SO FORTH.

Q OKAY. AND WHO ARE WE TALKING ABOUT? ARE WE TALKING ABOUT LAWYERS? WE'RE TALKING ABOUT YOUR OFFICE STAFF? WE'RE TALKING ABOUT --

A SOME ARE LAWYERS, SOME ARE OFFICE STAFF, DEMOGRAPHERS, SO FORTH.

Q OKAY. WHAT WERE THE NAMES OF THE DEMOGRAPHERS THAT YOU HAD ANALYZE THIS BILL?

A THE HOUSE STAFF WAS TRISH LOWREY. SHE'S

DONE BILLS IN THE HOUSE FOR FOUR REDISTRICTING SESSIONS. SHE'S BEEN THERE 30-SOMETHING YEARS, I WOULD THINK.

Q IS SHE A DEMOGRAPHER?

A I'M NOT SURE.

Q OKAY. FORGIVE ME. I THOUGHT I HEARD IN YOUR TESTIMONY YOU SAID YOU HAD A DEMOGRAPHER LOOK AT THIS BILL.

A WELL -- AND HER -- I WOULD THINK SHE WOULD BE. BUT TO SAY THAT SHE IS A CERTIFIED DEMOGRAPHER, I COULD NOT TESTIFY TO THAT.

Q BUT WHAT YOU'RE SAYING IS SHE HAS EXPERIENCE IN LOOKING AT --

A ABSOLUTELY.

Q -- AND ANALYZING REDISTRICTING BILLS?

A ABSOLUTELY.

Q FOR HOW LONG HAS SHE DONE THAT, APPROXIMATELY?

A ROUGH 30 YEARS.

Q ROUGHLY 30 YEARS, OKAY.

DID YOU HAVE AN OFFICIAL DEMOGRAPHER OR AN ACADEMIC OR ANYONE LOOK AT THE BILL YOU SUBMITTED IN THE FIRST SESSION OR THE ONE YOU SUBMITTED ON TUESDAY TO SEE IF IT COMPLIES WITH THE VOTING RIGHTS ACT?

A I HAVE NOT.

Q OTHER THAN THIS PERSON YOU JUST MENTIONED?
A THAT'S RIGHT.
Q AND YOUR OFFICE STAFF. CORRECT?
A THE OFFICE STAFF REALLY DOESN'T -- MY OFFICE STAFF DOESN'T REALLY LOOK AT BILLS IN LEGISLATION.
Q I'M JUST TRYING TO GET AT WHAT STAFF WE'RE TALKING ABOUT. ARE WE TALKING ABOUT COMMITTEE STAFF, OR --
A WE'RE TALKING ABOUT HOUSE STAFF.
Q HOUSE STAFF.
A HOUSE AND COMMITTEE STAFF ARE THE SAME.
Q OKAY. NOW, DID YOU GET ANY INPUT FROM ANYONE THAT ANALYZED YOUR BILL IN THE FIRST SESSION, OR YOUR BILL THAT WAS INTRODUCED ON TUESDAY, ABOUT WHETHER THE MAPS THAT WOULD BE GENERATED FROM THOSE BILLS WOULD ELECT OR COULD ELECT TWO AFRICAN AMERICAN -- HAVE TWO DISTRICTS TO ELECT TWO AFRICAN-AMERICAN CONGRESSPERSONS?
A ON THE BILL I FILED YESTERDAY?
Q YES.
A YES. NO, I DID NOT.
Q WHAT ABOUT ON THE BILL YOU FILED AND PASSED IN THE FIRST SESSION?
A I DID NOT.
Q YOU DID NOT HAVE ANYONE GIVE YOU INPUT THAT

IT WOULD RESULT IN THE ELECTION OF TWO AFRICAN-AMERICAN CONGRESSPEOPLE?

A I DID NOT.

Q OKAY. NOW, DO YOU KNOW IF THE -- I'LL MOVE ON.

SO -- BUT YOUR TESTIMONY TO THIS JUDGE IS THAT IN -- THE MAP THAT YOU PASSED IN THE FIRST SESSION IS THE ONE THAT WAS STRUCK DOWN BY THIS COURT. CORRECT?

A YES, SIR.

Q AND THAT YOU SUBMITTED SUBSTANTIALLY THE SAME ONE FOR THIS SESSION. CORRECT?

A YES, SIR.

MR. ADCOCK: ALL RIGHT. NO MORE QUESTIONS, JUDGE.

THE COURT: MR. PAPILLION, DO YOU HAVE ANYTHING?

MR. PAPILLION: NO, YOUR HONOR. THANK YOU.

THE COURT: MR. SCHEXNAYDER, I HAVE A FEW -- OR -- I'M SORRY -- SPEAKER SCHEXNAYDER. MY APOLOGIES.

PUBLIC OPINION, YOU INDICATED -- OR PUBLIC DEBATE AND COMMENT ON THE BILLS IS SOMETHING THAT YOU AND YOUR COLLEAGUE, PRESIDENT CORTEZ, FIND MEANINGFUL AND, IN FACT, IT'S REQUIRED AS PART OF THE

PROCESS?

THE WITNESS: YES, MA'AM.

THE COURT: WHAT HAVE YOU DONE TO ENSURE OR TO ENABLE THE PUBLIC TO MAKE COMMENTS SINCE CONVENING THE HOUSE OF REPRESENTATIVES YESTERDAY?

THE WITNESS: SO WHAT WE HAVE DONE NOW, ALL OF THE LEGISLATION IS UPLOADED ON TO OUR WEBSITE. THE PUBLIC CAN OBTAIN THOSE COPIES AND THOSE MAPS AND GO THROUGH THEM AND THEN BE PREPARED TO COME TO COMMITTEE TOMORROW TO BE ABLE TO DISCUSS THEM.

THE COURT: YOU -- AM I CORRECT THAT YOU ALL WERE IN SESSION YESTERDAY -- THE HOUSE SIDE WAS IN SESSION YESTERDAY ABOUT 90 MINUTES?

THE WITNESS: ROUGHLY, I WOULD GUESS, YES, MA'AM.

THE COURT: AND SO YOU ADJOURNED AT AROUND -- I DON'T KNOW -- ONE OR TWO O'CLOCK --

THE WITNESS: YES, MA'AM.

THE COURT: -- EARLY AFTERNOON YESTERDAY?

WAS THERE ANY MEANS MADE AVAILABLE TO THE PUBLIC AFTER ONE O'CLOCK YESTERDAY TO MAKE PUBLIC COMMENT ON THE BILLS THAT YOU ADVANCED TO COMMITTEE?

THE WITNESS: ANY MEETINGS?

THE COURT: WAS THERE ANY MEETINGS ADVANCED?

THE WITNESS: NO, MA'AM.

THE COURT: WAS THERE ANY PROCESS PUT IN PLACE TO ALLOW THE PUBLIC TO ENGAGE, AS YOU'VE INDICATED THAT YOU WISHED FOR THEM TO ENGAGE?

THE WITNESS: SO PUTTING THEM UP ON THE WEBSITE AND HAVING THEM THERE WOULD BE OUR NORMAL PROCEDURE AT THAT TIME FOR PUBLIC TO LOOK AT THEM AND BE PREPARED TO COME TO COMMITTEE, SO...

THE COURT: YOU COULD HAVE REFERRED THOSE OUT TO COMMITTEE AND COMMITTEE COULD HAVE MET YESTERDAY. CORRECT?

THE WITNESS: YES, MA'AM.

THE COURT: AND THE COMMITTEE COULD HAVE MET ANY TIME TODAY AND, IN FACT, ALL DAY TODAY?

THE WITNESS: YES, MA'AM.

THE COURT: AND WHAT YOU'VE CALLED FOR IS FOR THE COMMITTEE TO CONVENE TOMORROW, I THINK AT ELEVEN?

THE WITNESS: YES, MA'AM.

THE COURT: AND SO WHAT ARE YOU DOING TO ENABLE THE PUBLIC TO BECOME ENGAGED FROM TWO O'CLOCK YESTERDAY UNTIL ELEVEN TOMORROW?

THE WITNESS: SO ALLOWING THEM TO ACCESS THE COMPUTER WEBSITE -- THE WEBSITE THAT WE HAVE, TO ACCESS THE MAPS AND TO DISSECT THEM, I GUESS YOU WOULD SAY. THAT WOULD GET THEM PREPARED TO BE ABLE

TO COME AND GIVE TESTIMONY ON -- BASICALLY I THINK THERE WAS FOUR MAPS FILED ON THE HOUSE SIDE. THREE OF THEM ARE TOTALLY DIFFERENT MAPS THAN ANY THAT WE HAD DURING REGULAR SESSION. THE ONLY ONE THAT'S THE SAME WOULD BE MINE. SO THEY WOULD NEED TO HAVE TIME TO LOOK AT THESE MAPS AND ANALYZE THEM.

THE COURT: AND THAT BRINGS ME TO YOUR MAP; AND THAT'S HOUSE BILL 2 THAT YOU ADVANCED. IS THAT CORRECT?

THE WITNESS: YES, MA'AM.

THE COURT: AND THAT'S NOW IN EVIDENCE AS ROBINSON EXHIBIT 1.

MS. MCKNIGHT ASKED YOU IF YOU DISAGREE WITH ANYTHING IN PRESIDENT CORTEZ'S DECLARATION THAT WAS FILED IN SUPPORT OF THE MOTION FOR EXTENSION, AND YOU SAID YOU DID NOT.

THE WITNESS: I DO NOT.

THE COURT: ONE OF THE THINGS THAT PRESIDENT CORTEZ -- AND I ASKED HIM ABOUT AND YOU WERE HERE. HE STATED IN HIS DECLARATION HIS UNDERSTANDING OF THIS COURT'S RULING; AND HIS UNDERSTANDING WAS -- AND I QUOTE -- I UNDERSTAND THE COURT HAS ORDERED THE LEGISLATURE TO DRAW A NEW CONGRESSIONAL PLAN WITH TWO MAJORITY-BLACK DISTRICTS, CLOSE QUOTES.

IS THAT YOUR UNDERSTANDING AS WELL OF

THE COURT'S ORDER?

THE WITNESS: YES, MA'AM.

THE COURT: AND YOU'VE HAD THAT UNDERSTANDING OF THE COURT'S ORDER ALL ALONG; THAT THAT'S WHAT THE COURT ORDERED THE LEGISLATURE TO DO?

THE WITNESS: YES, MA'AM.

THE COURT: HOUSE BILL 2, THE MAP THAT YOU OFFERED YESTERDAY, DOES IT CONTAIN TWO MAJORITY-BLACK DISTRICTS?

THE WITNESS: IT DOES NOT. BUT I WOULD LIKE TO RESPOND TO --

THE COURT: WELL, HOW MANY MAJORITY-BLACK DISTRICTS DOES THE MAP THAT YOU OFFERED HAVE?

THE WITNESS: IT HAS ONE.

THE COURT: I'M GOING TO -- I WANT TO GIVE YOU -- WELL, LET ME SAY THIS. SECTION 401 OF THE UNITED STATES CODE -- TITLE 18 OF THE UNITED STATES CODE PROVIDES THAT A COURT OF THE UNITED STATES SHALL HAVE THE POWER TO PUNISH, BY FINE OR IMPRISONMENT OR BOTH, ANY PERSON WHO IS IN CONTEMPT OF COURT BY DISOBEDIENCE OR LAWFUL RESISTANCE -- OR UNLAWFUL RESISTANCE TO A LAWFUL COURT ORDER.

WHY, SIR, ARE YOU NOT IN DISOBEDIENCE OR IN RESISTANCE TO A LAWFUL ORDER OF THIS COURT?

THE WITNESS: WHY AM I NOT?

THE COURT: YES, SIR.

THE WITNESS: SO HAVING DISCUSSIONS YESTERDAY WITH LEADERSHIP AND THE LEADERSHIP OF THE DEMOCRATIC CAUCUS, I EXPLAINED TO THEM THAT IN THE PROCESS THAT WE NORMALLY HAVE, WE ALSO FILE BILLS THAT ARE PLACEHOLDER BILLS. THIS BILL WAS FILED AS A PLACEHOLDER BILL; IN CASE SOMETHING WERE TO HAPPEN WITH ANY OF THE OTHER BILLS THAT WE HAVE OUT THERE, WE COULD GO IN AND WE COULD AMEND THIS TO HAVE TWO BLACK-MAJORITY DISTRICTS, ONLY TO HAVE IT SITTING THERE AS A PLACEHOLDER. THAT WAY IT'S ALREADY MOVING THROUGH THE PROCESS, IT'S SITTING THERE IN COMMITTEE, AND WE CAN GO IN AND ADD AN AMENDMENT TO IT AND WORK ON IT. THEY DID AGREE TO THAT.

THE COURT: DOES ANYBODY HAVE ANY FURTHER QUESTIONS FOR HOUSE SPEAKER SCHEXNAYDER?

MS. MCKNIGHT: THANK YOU, YOUR HONOR. I HAVE A BRIEF REDIRECT.

THE COURT: YOU MAY.

REDIRECT EXAMINATION

BY MS. MCKNIGHT:

Q MR. SPEAKER, I HEARD PLAINTIFFS' COUNSEL ASK YOU A SERIES OF QUESTIONS ABOUT WHAT AND WHETHER YOU HAVE CONSIDERED COMPLIANCE WITH THE LAW WHEN PREPARING THE TWO BILLS BEFORE YOU. DO YOU RECALL

THAT LINE OF QUESTIONING?

A I DO.

Q OKAY. MR. SPEAKER, ARE YOU A LAWYER?

A NO, MA'AM.

Q HAVE YOU RELIED ON LEGAL COUNSEL TO ANALYZE COMPLIANCE WITH THE VOTING RIGHTS ACT AND THE CONSTITUTION AS FAR AS THOSE TWO BILLS ARE CONSIDERED?

A I HAVE.

Q IS IT YOUR POSITION THAT YOU HAVE NOT CONSIDERED COMPLIANCE WITH THE VOTING RIGHTS ACT OR THE CONSTITUTION AT ALL WITH REGARDS TO THOSE TWO BILLS?

A NO, MA'AM.

Q I HEARD SOME QUESTIONS ABOUT PUBLIC PARTICIPATION FROM YOUR HONOR. WHAT IS THE PURPOSE OF POSTING A BILL ONLINE AND ALLOWING IT TO LIE OVER?

A THE REASON WE POST BILLS ONLINE AND GIVE COMMITTEE NOTICES OF COMMITTEE MEETINGS IS TO ALLOW THE PUBLIC TO BE ABLE TO OBTAIN THAT INFORMATION AND TO BE ABLE TO BE PREPARED TO BE ABLE TO COME TO COMMITTEE AND TESTIFY ON THE SUBSTANCE OF THE BILL.

Q AND HAVE YOU HAD EXPERIENCE WITH PUBLIC COMING AND TESTIFYING IN COMMITTEE AFTER A BILL IS POSTED ONLINE?

A YES.

Q AND DO YOU EXPECT THAT TO HAPPEN HERE IN THIS SESSION?

A YES, MA'AM.

Q AND ASIDE FROM JUST COMING -- YOU KNOW, THE MEMBERS OF THE PUBLIC COMING TO THE CAPITOL, CAN MEMBERS OF THE PUBLIC ALSO EMAIL THEIR REPRESENTATIVES?

A ABSOLUTELY. YES, MA'AM.

Q CAN THEY ALSO CALL THEIR REPRESENTATIVES?

A YES, MA'AM.

MS. MCKNIGHT: THANK YOU, YOUR HONOR. I HAVE NO FURTHER QUESTIONS.

MR. ADCOCK: YOUR HONOR, MAY I?

THE COURT: YOU MAY.

MR. ADCOCK, AS A MATTER OF HOUSEKEEPING, EXHIBITS 1 AND 2 ARE NOT IN EVIDENCE.

MR. ADCOCK: OKAY. MAY I OFFER AND FILE THEM INTO EVIDENCE?

THE COURT: IS THERE ANY OBJECTION?

MS. MCKNIGHT: NO, YOUR HONOR.

THE COURT: ADMITTED.

MR. ADCOCK: THANK YOU, JUDGE.

RECROSS-EXAMINATION

BY MR. ADCOCK:

Q MR. SPEAKER, YOU REFERENCED THE BILLS THAT YOU ENTERED INTO THIS LEGISLATIVE SESSION AS A PLACEHOLDER BILL. CORRECT?

A YES.

Q THEY COULD BE AMENDED TO CHANGE THE MAP TO ELECT HAVE TWO MAJORITY-MINORITY DISTRICTS. CORRECT?

A YES, SIR.

Q THAT COULD BE DONE IN COMMITTEE. CORRECT?

A YES, SIR.

Q THAT'S NOT HAPPENING TODAY. CORRECT?

A YES, SIR.

Q SO YOU SAY THAT YOU'RE IN COMPLIANCE WITH THIS COURT'S ORDER BECAUSE THAT COULD BE AMENDED. CORRECT?

A YES, SIR.

Q OKAY. AND SO THAT'S YOUR POSITION IN FRONT OF THIS COURT?

A IT IS.

Q THAT'S WHAT YOU'RE TELLING THIS COURT? YOUR INTENTION IS TO PASS A BILL WITH TWO MAJORITY-MINORITY DISTRICTS?

A MY INTENTION IS TO HAVE A BILL THERE; THAT IF WE NEED IT TO BE ABLE TO HAVE TWO MAJOR DISTRICTS IN IT, THAT I HAVE A MECHANISM, A VESSEL TO BE ABLE TO MOVE FORWARD WITH THAT.

Q WE JUST HAD A DISCUSSION ABOUT THE RIPPLE EFFECTS OF AMENDING BILLS AND MESSING UP MAPS. RIGHT? AND SO ISN'T IT TRUE THAT THERE IS ALREADY A MAP WITH TWO MAJORITY-MINORITY DISTRICTS FROM SENATOR FIELDS IN THE LEGISLATURE?

A THERE ARE.

Q SENATOR DUPLESSIS -- EXCUSE ME. REPRESENTATIVE DUPLESSIS?

A THERE ARE.

Q AND MR. IVEY. CORRECT?

A THERE ARE.

Q SO YOU WOULDN'T NEED TO AMEND YOUR BILL. YOU COULD JUST PASS THOSE. CORRECT?

A OR THOSE BILLS COULD -- DEPENDING ON THE COMMITTEE AND WHAT HAPPENS IN COMMITTEE, THOSE BILLS COULD DIE IN COMMITTEE, THEY COULD BE VOTED DOWN; AND WE WOULD NEED ANOTHER BILL TO AMEND TO BE ABLE TO MOVE. THAT'S WHY THIS BILL IS THERE.

Q OR YOU COULD TRY TO PASS A BILL THAT WAS PREVIOUSLY STRUCK DOWN BY THIS COURT, COULDN'T YOU?

MS. MCKNIGHT: OBJECTION, YOUR HONOR, TO THE EXTENT HE'S EXTRACTING TESTIMONY ABOUT OTHER LEGISLATORS. WE'VE ALREADY NOTED THE LEGISLATIVE PRIVILEGE. OBJECTION.

MR. ADCOCK: I'VE MOVED ON FROM THAT.

THE COURT: OVERRULED.

BY MR. ADCOCK:

Q OR YOU COULD DO THAT. RIGHT?

A COULD YOU REPEAT THAT?

Q YOU COULD ALSO TRY TO PASS A BILL THAT'S BEEN PREVIOUSLY STRUCK DOWN BY THIS COURT. RIGHT?

A COULD WE MOVE A BILL, THIS BILL?

Q YES.

A YOU'RE TALKING ABOUT THIS ONE?

Q YES. YOU COULD TRY TO DO THAT?

A COULD WE MOVE IT? ABSOLUTELY WE COULD MOVE IT. BUT -- BUT THAT BILL WAS NOT PUT THERE TO BE MOVED. IT WAS PUT THERE TO BE A PLACEHOLDER TO BE ABLE TO HAVE IT AS A VESSEL IN CASE WE NEEDED IT. THAT'S WHAT THAT BILL WAS FOR. WE DO THAT IN REGULAR SESSION AND IN OTHER SESSION TO BE ABLE TO HAVE A VESSEL THAT IS ALREADY MOVING THROUGH THE PROCESS SITTING THERE. THIS BILL WAS SITTING IN COMMITTEE. AND IF WE DON'T NEED IT, IT DOESN'T MOVE.

Q AND SO LET ME ASK YOU THIS. ON THE HOUSE FLOOR YESTERDAY, DID YOU SAY -- AND I QUOTE -- *AS I'VE SAID, THIS SPECIAL SESSION IS UNNECESSARY AND PREMATURE UNTIL THE LEGAL PROCESS IS PLAYED OUT IN THE COURT SYSTEMS*?

A YES.

Q YOU DID SAY THAT?

A I DID.

Q YOU'RE FINE SAYING THAT TO THIS COURT?

A I THINK -- I THINK WE HAVE THREE BRANCHES OF GOVERNMENT FOR A REASON, AND I THINK THE COURT HAS ITS PLACE TO BE ABLE TO DO WHAT IT NEEDS TO DO.

Q AND YOU'RE ASKING THIS COURT FOR MORE TIME TO PASS A VOTING RIGHTS ACT COMPLIANT MAP. CORRECT?

A I AM.

Q AND YOU ALSO SAID MEMBERS -- ON THE HOUSE FLOOR MEMBERS, *THE MAPS WE PASSED AFTER ALL THE HARD WORK ARE FAIR AND CONSTITUTIONAL. IT CONCERNS ME THAT WE ARE NOW BEING ASKED TO REDO THESE MAPS IN FIVE DAYS*. IS THAT WHAT YOU SAID?

A I DID.

Q *SOMETHING THAT WAS PASSED OVERWHELMINGLY BY 2/3 OF BOTH BODIES AFTER A LONG YEAR'S WORK*. DID YOU SAY THAT?

A I DID.

MR. ADCOCK: NO MORE QUESTIONS, JUDGE.

THE COURT: OKAY. IF THERE IS NOTHING FURTHER --

MS. MCKNIGHT: NOTHING FURTHER, YOUR HONOR.

THE COURT: -- YOU MAY STEP DOWN.

OKAY. THE COURT IS GOING TO RULE FROM THE BENCH. I'LL ENTERTAIN BRIEF ORAL ARGUMENTS IF YOU ALL WISH TO DO THAT, BUT THEY CAN BE BRIEF. I'VE HEARD A LOT, AND SO -- MS. MCKNIGHT, DO YOU WANT TO PRESENT ARGUMENT IN SUPPORT OF YOUR MOTION? YOU DON'T HAVE TO, BUT YOU MAY.

MS. MCKNIGHT: YOUR HONOR, I -- I DON'T VIEW IT AS NECESSARY AT THIS TIME. WE'VE SUBMITTED A BRIEF, A DECLARATION, AND THE LEADERS SUBMITTED THEIR TESTIMONY TODAY.

THE ONLY POINT I WOULD MAKE IS THAT WE UNDERSTAND -- SHOULD I COME TO THE --

THE ONLY POINT I WOULD MAKE, BECAUSE IT'S SOMETHING THAT PLAINTIFFS ASKED A NUMBER OF QUESTIONS ABOUT, WAS SOME SUGGESTION ABOUT THE GOOD FAITH OF THE LEGISLATURE. WE BELIEVE IN WORKING THROUGH THIS PROCESS.

THE LEGISLATURE, AS YOU KNOW, YOUR HONOR, IS ENTITLED BY RIGHT TO TRY TO PASS A REMEDIAL PLAN. THEY WERE HERE TODAY TESTIFYING ABOUT THAT THEY ARE TRYING TO DO JUST THAT. THAT IS NOT INCONSISTENT WITH THE LEGAL POSITION THAT THEY ARE TAKING IN THIS CASE AS WELL THAT THEY'VE TAKEN SINCE THE DAY THAT YOUR HONOR ISSUED YOUR ORDER ON JUNE 6; THAT THAT ORDER SHOULD BE STAYED UNDER THE *PURCELL*

PRINCIPLE. AND WE STAND BY THAT AND WE DON'T BELIEVE ANYTHING THEY'VE TESTIFIED HERE TODAY WOULD WAIVE THAT RIGHT TO MAINTAIN THAT LEGAL ARGUMENT.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

COUNSEL FOR THE PLAINTIFF?

MR. PAPILLION: YOUR HONOR, THANK YOU. DARREL PAPILLION ON BEHALF OF THE GALMON PLAINTIFFS. AND I'LL TRY TO BE VERY BRIEF.

THIS COURT, OF COURSE, CONDUCTED A MULTI-DAY HEARING, IT HEARD A LOT OF EVIDENCE AND TESTIMONY AND IT ISSUED A RULING. THE COURT HAS BEEN VERY GENEROUS IN ENTERTAINING TESTIMONY FROM THE LEGISLATIVE LEADERSHIP OF OUR STATE.

OF PARAMOUNT CONCERN TO MY CLIENTS IS SIMPLY THAT THERE ARE CONSTITUTIONALLY VALID DISTRICTS IN TIME FOR THIS FALL'S ELECTION. WE DID NOT OPPOSE THE MOTION. WE RESPONDED TO IT. IN FACT, WE WENT INTO THE ECMF AND CORRECTED A NOTICE THAT IT WAS IN OPPOSITION AND MADE ABSOLUTELY CLEAR THAT IT WAS A RESPONSE.

SO I TRUST THAT THE COURT IS GOING TO DO WHAT THE COURT BELIEVES IS THE BEST THING TO DO. BUT THE GALMON PLAINTIFFS -- AND I SUSPECT I SPEAK FOR THE ROBINSON PLAINTIFFS AS WELL. WE WOULD KINDLY

ASK THAT THE LEGISLATIVE PROCESS, WHICH IS TO BE GIVEN RESPECT, THAT THE COURT NOT STOP ITS OWN PROCESS IN THE EVENT THIS LEGISLATURE FAILS TO COME UP WITH AND PASS CONSTITUTIONALLY VALID DISTRICTS.

AND SO, YOUR HONOR, WE WOULD ASK THAT ANY REQUEST FOR AN EXTENSION OF TIME, WHETHER THE COURT GRANTS IT OR NOT, IT SHOULD NOT BE USED AS A BASIS FOR A *PURCELL* ARGUMENT IN THE FUTURE AND THAT YOUR PROCESS SHOULD PROCEED CONCURRENTLY WITH ANY EXTENSION OF TIME. BECAUSE WHILE WE CAN ONLY ASSUME THEY ARE IN GOOD FAITH AND THAT EVERYTHING THEY HAVE SAID IS TRUE, A LOT OF IT APPEARS SUSPICIOUS AND QUESTIONABLE. AND THEY HAVE HAD A LOT OF TIME TO PASS CONSTITUTIONALLY VALID DISTRICTS. THEY HAVE BEEN PUT ON NOTICE BY GUBERNATORIAL VETO AND OTHERWISE, AND THEY HAVE NOT DONE SO. AND SO, YOUR HONOR, WE LOOK TO YOU, SO THANK YOU.

THE COURT: THANK YOU.

MR. ADCOCK, DO YOU WISH TO ADD ANYTHING?

MR. ADCOCK: NONE, JUDGE.

THE COURT: THE COURT IS PREPARED TO RULE.

THE COURT HAS HEARD TESTIMONY THIS MORNING BOTH FROM PRESIDENT PAGE CORTEZ -- OR SENATE PRESIDENT PAGE CORTEZ AND HOUSE LEADER

MR. SCHEXNAYDER AND HAS LIKEWISE CONSIDERED BOTH THE BRIEFS, THE DECLARATION AND THE RESPONSE BRIEFS BY BOTH THE GALMON AND THE ROBINSON PLAINTIFFS AS WELL AS THE ARGUMENTS OF COUNSEL HERE TODAY.

THE COURT CONSIDERS THE TESTIMONY OF PRESIDENT -- SENATE PRESIDENT CORTEZ. IMPORTANTLY, HE WAS VERY CANDID IN HIS TESTIMONY THAT THERE IS TIME TO ENACT REMEDIAL MAPS THAT ARE COMPLIANT WITH THE VOTING RIGHTS ACT, PROVIDED THAT THERE IS A SUSPENSION OF RULES, WHICH HAS THUS FAR TAKEN PLACE. AND THE COURT HAS AT LEAST SENATOR -- SENATE PRESIDENT CORTEZ'S COMMITMENT THAT HE WILL DO WHAT HE CAN TO FURTHER SUSPEND RULES TO ALLOW THIS PROCESS TO MOVE EXPEDITIOUSLY.

THE OTHER CAVEAT TO HAVING SIGNIFICANT TIME, AS PRESIDENT CORTEZ CANDIDLY TESTIFIED, WAS TO ENSURE TRANSPARENCY. THE COURT IS -- THE COURT TAKES NOTICE OF PRESIDENT CORTEZ'S, AGAIN, CANDID STATEMENT TO THE COURT IN HIS TESTIMONY THAT IT -- WHILE HE DIDN'T SAY IT HAPPENS OFTEN, HE SAID IT DOES HAPPEN WHERE COMMITTEES REFER TO PRIOR TESTIMONY AND EVIDENCE FROM PRIOR SESSIONS, EVEN IN HIS WORDS, DECADES BEFORE.

WE HAVE THE PRIVILEGE OF HAVING A VERY AMPLE RECORD -- LEGISLATIVE RECORD THAT THIS COURT

CONSIDERED IN ITS PRELIMINARY INJUNCTION DECISION AND THAT IS CERTAINLY AVAILABLE TO BOTH HOUSES, THE SENATE AND THE HOUSE OF REPRESENTATIVES, THAT INCLUDES A GREAT DEAL OF PUBLIC COMMENT ON THESE MAPS.

THE MAPS THAT HAVE BEEN ADVANCED ARE NOT DIFFERENT FROM MAPS THAT HAVE BEEN PREVIOUSLY CONSIDERED. THE IVEY MAPS WERE PUT FORWARD IN THE EARLIER REDISTRICTING SESSION AS WELL AS THE BLACK LEGISLATIVE CAUCUS MAP AND SENATOR FIELDS' MAPS. ALL OF THOSE MAPS HAVE BEEN DEBATED.

SO THE COURT -- WHILE THE COURT APPRECIATES THE NEED FOR TIME FOR PUBLIC COMMENT AND OPINION, GIVEN THE TESTIMONY THAT IT IS NOT UNUSUAL TO REVIEW PRIOR DEBATE, THE COURT FINDS THAT THAT PARTICULAR CONSIDERATION IS NOT AN OVERRIDING CONSIDERATION IN THIS MOTION-FOR-EXTENSION CONTEXT.

ADDITIONALLY, THE COURT IS NOT PERSUADED AND FINDS DISINGENUOUS THE ACTIVITY THAT'S HAPPENED ON THE HOUSE SIDE UNDER THE LEADERSHIP OF HOUSE SPEAKER SCHEXNAYDER. WITH FIVE DAYS TO WORK WITH, THEY MET FOR 90 MINUTES, HAVING SUSPENDED THE RULES AND -- WHICH WOULD HAVE PERMITTED AN IMMEDIATE REFERRAL TO COMMITTEE, WHICH WOULD HAVE ENABLED THE PUBLIC TO MAKE COMMENT AND TO TESTIFY IN COMMITTEE IF

THEY WERE SO RECOGNIZED, INSTEAD WAITED 48 HOURS -- OR NOT QUITE 48 HOURS -- BUT ALMOST 48 HOURS TO REFER IT TO THE COMMITTEE.

AND THE ONLY PROCESS THAT HAS BEEN MADE AVAILABLE TO THE PUBLIC TO COMMENT SINCE DIALING IN THE LEGISLATURE YESTERDAY MORNING AND FRIDAY, 48 HOURS LATER WHEN THE SENATE COMMITTEE IS GOING TO -- OR I'M SORRY -- WHEN THE HOUSE COMMITTEE IS GOING TO CONVENE IS THAT THE PUBLIC CAN PULL IT UP ON THE INTERNET. THERE HAS BEEN UTTERLY NO PROCESS PROVIDED FOR THE PUBLIC TO MAKE COMMENTS.

THE COURT FINDS THAT AT LEAST ON THE HOUSE SIDE IT'S DISINGENUOUS AND INSINCERE AND UNPERSUASIVE TO SUGGEST TO THIS COURT THAT ADDITIONAL TIME IS NEEDED TO ENABLE THIS TRANSPARENCY OF THE PROCESS.

THE COURT TAKES JUDICIAL NOTICE THAT IN 1994 THERE WAS REDISTRICTING IN SIX DAYS. THE COURT TAKES JUDICIAL NOTICE THAT IN 2017 AT A SPECIAL SESSION THE LOUISIANA LEGISLATURE PASSED A BUDGET IN FOUR DAYS. THERE ARE NO COMMITTEE MEETINGS SCHEDULED FOR TODAY ON THE HOUSE SIDE.

THE COURT FINDS THAT THE MOTION FOR EXTENSION IS DENIED FOR THOSE REASONS.

IS THERE ANYTHING FURTHER?

THE COURT WILL HEAR ARGUMENT OF COUNSEL WITH RESPECT TO THE REMEDIAL PROCESS, IF YOU'D LIKE TO REMAIN, AND WE CAN ADDRESS AND MAYBE HAMMER OUT A REMEDIAL PROCESS -- JUDICIAL PROCESS FOR REMEDIAL MAPS IN THE EVENT THAT THE LEGISLATURE IS UNABLE TO TAKE ADVANTAGE OF THE OPPORTUNITY THAT HAS BEEN PROVIDED TO IT.

LET'S HEAR FROM YOU ALL. THE COURT IS -- WANTS TO HAVE -- WILL HAVE A HEARING ON THE REMEDIAL MAPS IN THE EVENT THAT THERE IS A NEED TO HAVE A HEARING ON REMEDIAL MAPS.

WHAT THE COURT PROPOSES IS THAT EACH SIDE -- PLAINTIFFS COMBINED, CONSOLIDATED, AND THE RESPONDENT, LEGISLATORS AND ALL THE INTERVENORS -- PRESENT A SINGLE MAP TO THE COURT FOR CONSIDERATION SIMULTANEOUSLY, A MAP THAT IS A REMEDIAL MAP IN CONFORMANCE WITH THIS COURT'S PRELIMINARY INJUNCTION ORDER. THEN THE PARTIES WILL BE GIVEN SOME REQUISITE NUMBER OF DAYS -- I'M OPEN TO SUGGESTIONS FROM COUNSEL -- TO RESPOND OR OPPOSE THE OTHER PARTY'S MAP, AND THEN WE'LL HAVE A HEARING.

IS THERE ANY REASON WHY THAT PROCESS CANNOT -- WILL NOT PRODUCE A MEANINGFUL DEBATE IN THE COURT WITH RESPECT TO A REMEDIAL MAP?

MS. MCKNIGHT?

MS. MCKNIGHT: THANK YOU, YOUR HONOR.

THE COURTROOM DEPUTY: WOULD YOU COME FORWARD. PLEASE?

MS. MCKNIGHT: OF COURSE.

THE COURT: FOR PURPOSES OF THE RECORD, THIS AMPLIFIES, AND IT'S ALSO RECORDED SO THAT THE COURT REPORTER CAN MAKE SURE SHE'S GOT IT.

MS. MCKNIGHT: I UNDERSTAND. THANK YOU, YOUR HONOR.

THERE IS AT LEAST ONE ISSUE WITH THAT SUGGESTION; AND THAT IS THERE IS CASE LAW ON POINT THAT NOTES THAT DURING THIS REMEDIAL PHASE A DISTRICT COURT MUST ALLOW SUFFICIENT TIME FOR THE PARTIES TO ENGAGE IN SOME LEVEL OF DISCOVERY.

AND, YOUR HONOR, SO I CAN GIVE YOU A SENSE OF WHAT THOSE CASES SAY, SOME OF THAT GOES TO: *WELL, WHAT WAS IN THE MIND OF THE MAP DRAWER? WHY DID THEY DRAW IT THIS WAY? WHY WERE THINGS DRAWN IN THESE CERTAIN WAYS?*

THERE ARE OTHER ASPECTS TO IT. BUT I WANTED TO MAKE SURE THAT YOU WERE -- WE SAW PLAINTIFFS' REQUEST IN THEIR RESPONSE LAST NIGHT, AND WE WANTED TO MAKE SURE THAT THIS COURT WAS AWARE THAT THERE IS GOVERNING CASE LAW ABOUT WHAT THIS REMEDIAL PROCESS NEEDS TO LOOK LIKE.

THE COURT: HOW MUCH DISCOVERY?

MS. MCKNIGHT: WELL, I THINK WE'D NEED -- AND I DEFER TO THEM. BUT IN PAST CASES FOR ME IT HAS INVOLVED DISCOVERY AS TO A MAP DRAWER, AND THERE IS A POTENTIAL FOR AN EXPERT WITNESS TO COME IN AND SAY, *THIS IS WHAT THE MAP DOES.*

THE COURT: SO YOU NEED TO TAKE -- IF YOU SIMULTANEOUSLY EXCHANGE MAPS, THEN YOU EACH GET TO TAKE THE MAP DRAWER'S DEPOSITION?

MS. MCKNIGHT: A MAP DRAWER'S DEPOSITION. AND IF THERE IS ANY EXPERT REPORT THAT'S PROVIDED WITH THE MAP THAT SAYS, *THIS IS WHY THE MAP COMPLIES*; *THIS IS WHAT IT DOES*; *THESE ARE HOW THE NUMBERS WORK*, IT WOULD BE A DEPOSITION OF THAT EXPERT AS WELL.

THE COURT: OKAY, TWO DEPOSITIONS. ALL RIGHT. THANK YOU.

COUNSEL FOR THE PLAINTIFFS?

MR. PAPILLION: YOUR HONOR --

MR. ADCOCK: MR. PAPILLION, BEFORE -- SO JUST SO I UNDERSTAND, JUDGE, I THINK YOU'RE SAYING BASICALLY ONE MAP FROM EACH SIDE. RIGHT?

THE COURT: THAT'S WHAT I'M SAYING.

MR. ADCOCK: THAT'S WHAT I THOUGHT YOU WERE SAYING.

MR. PAPILLION: YOUR HONOR, WE'VE OUTLINED

SOME DATES IN THE MEMORANDA THAT WE FILED LAST NIGHT. I BELIEVE THAT THOSE DATES COULD BE ADJUSTED TO ALLOW FOR THE DISCOVERY THAT THE INTERVENOR'S ASKING FOR, AND THIS CAN ALL BE ACCOMPLISHED VERY QUICKLY. I DON'T THINK THERE WILL BE ANY SURPRISES AS TO WHO HAS DRAWN THE MAPS, IN LIGHT OF THE HEARING THAT WE HAD VERY RECENTLY. THIS CAN BE DONE VERY QUICKLY.

THE COURT: MS. MCKNIGHT, HOW QUICK CAN YOU HAVE A MAP?

MS. MCKNIGHT: YOUR HONOR, I BEG YOU PARDON, BUT I WILL NEED TO DISCUSS THAT WITH CO-COUNSEL. WE UNDERSTAND YOU WANT ONE --

THE COURT: ONE MAP.

MS. MCKNIGHT: WE UNDERSTAND THAT YOU WOULD LIKE ONE MAP. AND I NEED TO DISCUSS WITH THEM HOW QUICKLY WE THINK WE CAN GET IT DONE.

THE COURT: JUST SO THAT I MAKE -- JUST SO THAT I UNDERSTAND, YOU'VE BEEN -- I DON'T WANT YOUR LEGAL -- I DON'T WANT TO KNOW WHAT YOU TOLD YOUR CLIENTS OR I'M NOT CALLING FOR ATTORNEY-CLIENT PRIVILEGE.

YOU HAVE BEEN ENGAGED AS GIVING COUNSEL IN THIS REDISTRICTING PROCESS DURING THE ENTIRE -- ENTIRETY OF THIS PROCESS. IS THAT CORRECT?

MS. MCKNIGHT: WE HAVE BEEN ENGAGED.

THE COURT: OKAY. ALL RIGHT. I JUST WANT TO MAKE SURE THAT I'M NOT ASKING YOU TO MOVE A MOUNTAIN THAT YOU CAN'T MOVE. THAT'S THE PURPOSE OF THE QUESTION. THESE MAPS ARE CLEARLY NOT NEW. OKAY. THAT'S WHAT I WANTED TO KNOW.

WELL, CONFER AND TELL ME HOW QUICK YOU CAN GET ME A MAP. I DON'T WANT TO GIVE YOU A DEADLINE THAT YOU CAN'T COMPLY WITH.

MS. MCKNIGHT: DO YOU WANT ME TO DO IT RIGHT NOW, YOUR HONOR, OR DOES IT MAKE SENSE FOR US TO FILE SOMETHING THIS AFTERNOON AFTER YOUR HEARING?

THE COURT: NO. I WANT TO BE ABLE TO GIVE YOU A MINUTE ENTRY TODAY ABOUT WHAT THE PLAN IS GOING TO BE. HOW FAST CAN YOU ALL HAVE A MAP? YOU GO CONFER. HOW FAST CAN YOU HAVE A MAP?

MR. ADCOCK: JUDGE, THIS IS MY PROBLEM, NOT YOURS. I'M CONFERRING WITH CO-COUNSEL OVER TEXT MESSAGE. BUT I'M NOT AWARE OF THESE CASES THAT SAYS THEY REQUIRE DISCOVERY. I'D LIKE TO SEE THEM.

HOWEVER, IN THE EVENT OF TIME, IF THEY CAN AGREE TO A LIMITED DEPOSITION JUST LIMITED TO THIS MAP, NOT SOME SEVEN-HOUR THING BUT MAYBE LIKE A FOUR-HOUR THING OR A THREE-HOUR THING, WE'D PROPOSE THAT TO THE COURT IN THE INTEREST OF MOVING THIS FORWARD.

AND THEY HAD A CHANCE TO DEPOSE OUR EXPERTS AND THEY CHOSE NOT TO. BECAUSE, REMEMBER, WE PUT OFF THE PRELIMINARY INJUNCTION HEARING BY A FEW WEEKS AND THERE WAS TIME TO DEPOSE PEOPLE. THERE WAS DISCUSSION ABOUT DEPOSING EXPERTS AND THEY CHOSE NOT TO DO IT. I JUST WANT TO ADD THAT IN FOR THE RECORD.

AND --

THE COURTROOM DEPUTY: MR. ADCOCK, IF YOU WOULD, PLEASE COME TO THE PODIUM.

MS. MCKNIGHT: YOUR HONOR, I WOULD JUST BRIEFLY NOTE, MR. ADCOCK IS MAKING REPRESENTATIONS TO THE COURT WHILE WE ARE TRYING TO CONFER AND PROVIDE THE COURT DATES AS SOON AS POSSIBLE. WE CANNOT DO BOTH, BOTH DEFEND AGAINST REPRESENTATIONS THAT WE FIND INACCURATE AND ALSO CONFER TO GET YOU A DATE AS EARLY AS POSSIBLE.

THE COURT: WELL, STAND DOWN AND LISTEN TO MR. ADCOCK. I'M GOING TO GIVE YOU A MINUTE. JUST --

ALL RIGHT. GO AHEAD.

MR. ADCOCK: THAT WAS NOT MY INTENTION, JUDGE. I THOUGHT THE COURT RECOGNIZED ME AND I WAS DOING IT, BUT I APOLOGIZE. I'LL SAY THIS AGAIN.

SO BASICALLY WE THINK THAT THE DEFENDANTS HAVE HAD AN OPPORTUNITY TO DEPOSE ANY OF OUR WITNESSES OR EXPERTS THEY WANTED TO BEFORE THE

PRELIMINARY INJUNCTION HEARING. I'LL NOTE THAT THE COURT SCHEDULED A PRELIMINARY INJUNCTION HEARING POST-HASTE AND THEN WE PUT IT OFF FOR ANOTHER TWO OR THREE WEEKS TO GIVE THEM MORE TIME TO PREPARE. THERE WAS DISCUSSION ABOUT DOING DEPOSITIONS THEN. WE CHOSE NOT TO, AND WE'RE NOT COMPLAINING ABOUT IT NOW. NOW THEY WANT TO DO DEPOSITIONS AFTER THE FACT.

SO IF THE -- BUT IF THE COURT IS INCLINED TO DO THAT, WE WOULD JUST PROPOSE THAT IT BE A LIMITED DEPOSITION OF NO MORE THAN THREE HOURS JUST DEVOTED TO THE MAPS IN QUESTION AND NOT ANYTHING ELSE. OF COURSE, BEFORE FINAL JUDGMENT WE'LL HAVE A FULL DISCOVERY PERIOD AND WE CAN DO THAT. THEY CAN DEPOSE WHOEVER THEY WANT.

THE COURT: THERE IS STILL A WHOLE MERITS -- WHOLE MERITS HEARING THAT WE HAVEN'T EVEN GOTTEN TO YET. THANK YOU.

MR. ADCOCK: IF THEY COULD PUT THEIR PROPOSAL FOR WHAT THEY WANT TO DO DISCOVERY ON IN WRITING WITH THESE CASES THEY'RE TALKING ABOUT, WE'D APPRECIATE THAT. WE'RE FINE WITH THE DATES WE PROPOSE IN OUR BRIEFING AND REPRESENTATIONS THAT MR. PAPILLION MADE IN FRONT OF THE COURT JUST NOW.

THE COURT: WELL, THEN, LET'S JUST DO THIS. THERE HAS NOT BEEN -- THERE IS NO CONSENSUS ON THE

DISCOVERY, AND THE COURT HAS NOT LOOKED AT THE CASES THAT MS. MCKNIGHT CONTENDS WOULD REQUIRE DISCOVERY FOR THE REMEDIAL PHASE.

SO BY CLOSE OF BUSINESS TODAY, LET ME HAVE YOUR PROPOSALS WITH RESPECT TO HOW YOU WANT TO MOVE FORWARD ON REMEDIAL -- IN THE ENACTMENT OF REMEDIAL MAPS IN THE EVENT THAT THE LEGISLATURE IS UNABLE TO DRAW A MAP THAT'S COMPLIANT WITH THE VOTING RIGHTS ACT AND THAT IS COMPLIANT WITH THIS COURT'S ORDER.

SO BY FIVE O'CLOCK TODAY, LET ME HAVE YOUR BRIEFS AND -- OR YOUR POSITIONS ON THAT AND YOUR CITATIONS TO WHATEVER LAW THAT YOU'VE GOT THAT REQUIRE -- THAT WOULD REQUIRE DISCOVERY, AND THE COURT WILL GET A MINUTE ENTRY IN THE RECORD TOMORROW.

IS THERE ANYTHING FURTHER?

COURT'S IN RECESS.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED NUMBERED MATTER.

S:/NATALIE W. BREAUX

NATALIE W. BREAUX, RPR, CRR

OFFICIAL COURT REPORTER

(ORDER LIST: 597 U.S.)

TUESDAY, JUNE 28, 2022

CERTIORARI GRANTED

21-1596 (21A814) ARDOIN, LA SEC. OF STATE, ET AL. V. ROBINSON, PRESS, ET AL.

The application for stay presented to Justice Alito and by him referred to the Court is granted. The district court's June 6, 2022 preliminary injunctions in No. 3:22-CV-211 and No. 3:22-CV-214 are stayed. In addition, the application for stay is treated as a petition for a writ of certiorari before judgment, and the petition is granted. The case is held in abeyance pending this Court's decision in *Merrill, AL Sec. of State, et al. v. Milligan, Evan, et al.* (No. 21-1086 and No. 21-1087) or further order of the Court. The stay shall terminate upon the sending down of the judgment of this Court.

Justice Breyer, Justice Sotomayor, and Justice Kagan would deny the application for stay and dissent from the treatment of the application as a petition for a writ of certiorari before judgment and the granting of certiorari before judgment.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, ET AL	CIVIL ACTION
VERSUS	NO. 22-211-SDD-SDJ
KYLE ARDOIN, ET AL	

CONSOLIDATED WITH

EDWARD GALMON, SR., ET AL	CIVIL ACTION
VERSUS	NO. 22-214-SDD-SDJ
KYLE ARDOIN, ET AL	

O R D E R

The Court held a telephone status conference on July 12, 2023.

The parties filed Notices of their respective positions regarding the continuation of these proceedings following the stay lifted by the United States Supreme Court.

The Court ORDERS that the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3-5, 2023, at 9:00 a.m. in Courtroom Three.

The parties shall meet and confer and jointly submit a proposed pre-hearing scheduling order on or before Friday July 21, 2023.

Signed in Baton Rouge, Louisiana, on July 17, 2023.

Shelly D. Dick

CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

DEFENDANTS' JOINT NOTICE OF PROPOSED PRE-HEARING SCHEDULE

This notice is filed in response to the Court's Order of July 17, 2023, Doc. 250, which "reset" the remedial preliminary injunction hearing in this case for October 3-5, 2023, and sets forth Defendants' proposed "pre-hearing scheduling order."[1] Defendants appreciate that the Court's Order contemplated this schedule being submitted "jointly" with Plaintiffs. Regrettably, this filing is not joint as the parties could not agree on basic principles about the upcoming hearing.

[1] Defendants opposed Plaintiffs' request to resume the remedial phase of the preliminary injunction proceedings, *see* Docs. 240 & 242, and instead urged the Court to schedule a trial on the merits before the end of 2023. *See* Doc. 243. This submission of a proposed schedule is made subject to, and without waiver of, Defendants' opposition to the resumption of remedial preliminary injunction proceedings.

Put more bluntly, Plaintiffs are attempting a bait-and-switch. During the July 12, 2023, status conference concerning the remedial phase of the preliminary injunction proceedings, Defendants expressed considerable concern about the length of time it would take to prepare for a completely restarted remedial proceeding with new proposed remedial plans. Defendants argued that the Court should instead proceed to a trial on the merits. During the conference, Plaintiffs represented to the Court that they would stand on the proposed remedial plan they jointly submitted on June 22, 2022, and that this case could proceed quickly to a preliminary remedial hearing. By making that representation, Plaintiffs set the bait. The Court granted Plaintiffs' request to resume the remedial proceedings rather than proceed to a trial, over Defendants' objections, and scheduled the hearing for October 3, 2023.

Then came the switch. Plaintiffs have now walked back their representations and seek a schedule that allows them nearly two months to develop and submit *new* remedial plans and that further deprives Defendants of an adequate opportunity to analyze and respond to those plans. For the reasons set forth in this Notice, the Court should hold Plaintiffs to their word, prohibit Plaintiffs from offering new remedial plans, and adopt Defendants' July 21, 2023, modified proposed schedule.

1. On July 12, 2023, this Court held a telephone status conference, *see* Doc. 250, in response to Plaintiffs' motion requesting the Court resume the process of establishing a remedial plan that had been stayed by the Supreme Court of the United States in June 2022. *See* Doc. 227. After that conference, this Court ordered "that the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3-5, 2023." *See* Doc. 250. The court also ordered the parties to "meet and confer and jointly submit a proposed pre-hearing scheduling order on or before Friday July 21, 2023." *Id.*

The parties met and conferred on Thursday, July 20, 2023. In advance of that meeting, counsel for Defendants sent a proposed schedule to counsel for Plaintiffs on July 19, 2023. *See* Exhibit A at 5, 07/21/2023 Email Correspondence from Counsel for Legislative Intervenors. Defendants designed their proposal around their understanding of the Court's direction to the parties, and on Plaintiffs' representations to the Court, that the remedial phase would proceed based on the proposed remedial plan that Plaintiffs jointly submitted on June 22, 2022, *see* Joint Notice of Proposed Remedial Plan and Memorandum in Support, Doc. 225, pursuant to the Court's June 17, 2022, order. *See* Doc 206.

Defendants' proposal was designed to allow both Plaintiffs and Defendants to obtain and submit additional evidence (expert and factual) concerning the proposed plan, as well as a supplemental prehearing brief. *See* Ex. A at 5. The timing of Defendants' proposal is also reasonable—it contemplates Plaintiffs' supplemental reports to be provided over five weeks after their request to the Court to resume the remedial proceedings, *see* Doc. 240, and provides Defendants' experts with five weeks to respond. The subsequent deadlines for completing depositions, submitting supplemental briefing, and exchanging exhibits and witness lists were proposed based on the understanding that the parties would "pick up where they left off" in June 2022 and would *supplement* the existing record on the existing proposed plan, not wipe the slate clean and restart the remedial phase from scratch. Counsel for Defendants made this clear to Plaintiffs' counsel, stating that under Defendants' proposal, "Plaintiffs' supplemental reports will not be permitted to include any new remedial plans, per Plaintiffs' counsel's representations to the Court during last week's status conference." *See* Ex. A at 5.

2. But Plaintiffs have refused to honor their representations to the Court of continuing with their existing joint proposed remedial plan, and have instead proposed a schedule that allows

them to submit new proposed plan(s). *See* Ex. A at 2–4. During the parties' July 20, 2023, conference, counsel for Plaintiffs asserted the right to submit new plans and claimed their prior contrary representations were expressly conditioned on this Court scheduling a hearing sooner than October, though defense counsel recalls no such caveat being made. The parties further discussed other aspects of each other's proposed schedules, including but not limited to the timing of disclosure of fact and expert lists and the amount of time Defendants would have to respond to Plaintiffs' expert submissions. (Plaintiffs had proposed giving Defendants just two weeks to respond to Plaintiffs' expert reports, which Plaintiffs had at least seven weeks—measuring from the date Plaintiffs filed their motion on June 27, 2023—to prepare, *see* Ex. A at 3–4).

In an attempt to reach a compromise, Defendants sent Plaintiffs the following modified proposed schedule on the morning of July 21, 2023:

Defendants' July 21, 2023 Modified Proposed Schedule	
Date	**Deadline**
Friday, August 4, 2023	Plaintiffs' Supplemental Expert Reports Due
Friday, ~~August 11, 2023~~ August 18, 2023	Exchange Fact ~~& Expert~~ Witness Lists
Friday, September 8, 2023	Defendants' Supplemental Expert Reports Due
Tuesday, September 12, 2023	Exchange Supplemental Fact Witness Lists
~~Friday, September 15, 2023~~ Tuesday, September 19, 2023	Deadline for Fact and Expert Depositions
~~Friday, September 22, 2023~~ Monday, September 25, 2023	Supplemental Memorandum in Support and Memorandum in Opposition of Proposed Remedial Plan Due
Friday, September 29, 2023	Exchange Final Witness Lists and Copies of Exhibits
Tuesday, October 3 to Thursday, October 5, 2023	Preliminary Injunction Hearing on Remedy

See Exhibit B at 2, 07/21/2023 Email Correspondence from Counsel for Legislative Intervenors.

While Plaintiffs also sent a modified proposed schedule, their proposal still allows Plaintiffs to submit new remedial plans. Importantly, however, Plaintiffs' counsel's clarified[2] that

[2] Plaintiffs also noted that they removed initial briefing in support of or in opposition to plans. *See* Ex. A at 2.

Plaintiffs "intend to submit no more than a single joint remedial plan." Plaintiffs' proposed modified schedule is as follows:

Plaintiffs' July 21, 2023 Modified Proposed Schedule	
Event	**Plaintiffs' Amended Dates**
Deadline for the submission of any proposed plans and supporting expert reports	August 11, 2023
Deadline for parties to exchange fact and expert witness lists	August 11, 2023
Deadline for expert reports in response to any proposed plans	September 5, 2023
Deadline for supplemental witness disclosures	September 8, 2023
Deadline for fact and expert depositions	September 19, 2023
Deadline for prehearing briefs	September 26, 2023
Deadline to exchange copies of exhibits and final witness list	September 29, 2023
Remedial hearing	October 3 to October 5, 2023

See Ex. A at 2–3.[3]

Because the parties were unable to resolve their fundamental disagreement on Plaintiffs' ability to submit a new remedial plan(s), they could not reach an agreement on a joint proposed pre-hearing schedule to file with the Court. *See* Ex. A at 2.

3. The Court should adopt Defendants' July 21, 2023, modified proposed schedule and reject Plaintiffs' attempt to start the remedial phase over from scratch. There is no reason to allow Plaintiffs to submit a new proposed remedial plan[4] when they urged the Court—over

[3] For clarity, this chart omits two columns from the one presented in Plaintiffs' email. The first removed column was the original schedule, and the second was a column Plaintiffs added for "Defendants' Proposed Deadline," because Defendants' modified proposed schedule did not contemplate the same events as Plaintiffs' proposal—among other differences, Defendants' proposal did not include deadlines "for the submission of any proposed plans and supporting expert reports" and required only the exchange of fact witness lists on August 18, 2023, and September 12, 2023.

[4] During the parties' meet and confer, the most Plaintiffs could offer as the reason for new plans was that "a lot has occurred" since they submitted their joint proposed remedial plan in June 2022.

Defendants' objections—to resume this process and to proceed rapidly based on their existing proposed remedial plan. Plaintiffs submitted that plan over a year ago, supported it with expert reports and briefing, and were ready to proceed to a hearing less than 24 hours before the Supreme Court stayed this action. *See* Doc. 225. Defendants responded (in the extremely compressed five calendar days the Court permitted) with their own evidentiary submission and briefing opposing Plaintiffs' proposed plan.

If Plaintiffs are held to their joint proposed remedial plan, as they represented they would stick to on July 12, 2023, and which is most consistent with the Court's July 17, 2023, Order "resetting" the previous preliminary injunction hearing, then both parties and their experts can be working now to supplement the record on that plan. In fact, Defendants have been preparing based on Plaintiffs' representations and the Court's direction that this case would be proceeding on Plaintiffs' existing joint proposed plan. But, as counsel for Defendants made clear during the July 12, 2023, status conference, if Plaintiffs submit new plan(s), Defendants and their experts would be required to re-do their analyses, which is a significant and time-consuming undertaking. What is more, even under Plaintiffs' modified proposal, Defendants would lose valuable time over the next three weeks while they wait for Plaintiffs' new submission on August 11, 2023, which is still over six weeks after Plaintiffs asked this Court to resume the remedial phase proceedings and time they could have—and likely have been—working on new submissions. Plaintiffs have offered no explanation for their need for this length of time to submit a new plan.

But Plaintiffs did not specify what had "occurred" that required them to scrap the remedial plan they asked the Court to impose on Louisiana just last year. To the extent Plaintiffs seek to offer analyses of 2022 election results, those analyses can be conducted of Plaintiffs' prior joint proposed plan, and cannot serve as the basis for a new plan.

While Plaintiffs' modified proposal allowed Defendants more time to respond than the two weeks in their initial proposal, Plaintiffs would still only provide Defendants and their experts just 25 calendar days (including Labor Day weekend)[5] to re-do those analyses and responses at the same time that Defendants, and potentially several of the same experts, will be working to meet the Court's deadlines in *Nairne, et al. v. Ardoin*. *See* Case No. 3:22-cv-00178, Doc. 100 (setting August 21, 2023 as the deadline for "Defendant/Intervenors' Sur-Rebuttal Expert Reports," September 1, 2023 as the deadline for "Completing Fact Discovery and Related Motions," September 29, 2023 as the deadline for "Completing Expert Discovery," etc.). There is simply no need to allow Plaintiffs to start over, or to deprive Defendants of a meaningful opportunity to respond and fully develop the record on a proposed plan, as Plaintiffs' proposed schedule demands.

4. Defendants' proposal is designed to allow the parties to focus their time and resources on supplementing the record on Plaintiffs' joint proposed plan. To be clear, Defendants' supplementation may include new fact and expert witnesses who were not offered during the very expedited remedial phase proceedings that had been scheduled in 2022 before the Supreme Court stay, which only afforded Defendants five days to analyze and respond to Plaintiffs' proposed remedial plan and prevented Defendants from submitting an appropriate expert and factual record. But Defendants' proposal grants Plaintiffs that same latitude. This type of supplementation would focus on Plaintiffs' joint proposed plan, and will allow the Court to evaluate a proposed preliminary remedy in this case based on an appropriately robust record given the enormity of the relief Plaintiffs seek.

[5] Defendants strongly object to the introduction of any new remedial plans by Plaintiffs at this stay. Without waiving that objection, if the Court is inclined to allow any new plans, then Defendants request a schedule that allows Defendants and their experts at least 28 days to analyze and respond to those plans.

Defendants respectfully ask the Court to reject Plaintiffs' proposed schedule and to adopt the July 21, 2023, modified proposed schedule set forth by Defendants above. A proposed order is enclosed herewith.

Respectfully submitted,

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**admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that on July 21, 2023, 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.

/s/ Erika Dackin Prouty
Erika Dackin Prouty (admitted pro hac vice)
BAKERHOSTETLER LLP

Counsel for Legislative Intervenors, Clay Schexnayder, in his Official Capacity as Speaker of the Louisiana House of Representatives, and of Patrick Page Cortez, in his Official Capacity as President of the Louisiana Senate

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] SCHEDULING ORDER FOR PRELIMINARY INJUNCTION HEARING

The Court, upon consideration of the proposed schedules for the forthcoming October 3-5, 2023, preliminary-injunction hearing submitted by the parties in accordance with the Court's order of July 17, 2023 (ECF No. 250), hereby adopts the following pre-hearing schedule to govern the preliminary-injunction hearing reset for October 3-5, 2023:

Date	**Deadline**
Friday, August 4, 2023	Plaintiffs' Supplemental Expert Reports/Disclosures Due
Friday, August 18, 2023	Parties to Exchange Fact Witness Lists
Friday, September 8, 2023	Defendants' Supplemental Expert Reports/Disclosures Due
Tuesday, September 12, 2023	Exchange Supplemental Fact Witness Lists
Tuesday, September 19, 2023	Deadline for Fact and Expert Depositions
Monday, September 25, 2023	Supplemental Memorandum in Support and Memorandum in Opposition of Proposed Remedial Plan Due
Friday, September 29, 2023	Parties to Exchange Final Witness Lists and Copies of Exhibits

The parties may not submit new proposed remedial plans. The Court will consider the plan submitted on June 22, 2022, in accordance with its Order of June 17, 2022 (ECF No. 206).

IT IS SO ORDERED.

_____

UNITED STATES DISTRICT JUDGE

Exhibit A

From: Lewis, Patrick T.
To: Lali Madduri; Prouty, Erika Dackin; McKnight, Katherine L.; Phil Strach; Murrill, Elizabeth; Alyssa Riggins; Freel, Angelique; Jones, Carey; Cassie Holt; Jason Torchinsky; Wale, Jeffrey M.; John Branch; Mengis, Michael W.; McPhee, Shae; Tom Farr; Braden, E. Mark; Dallin Holt; john@scwllp.com; Raile, Richard
Cc: Abha Khanna; Jacob Shelly; Jonathan Hawley; Alison (Qizhou) Ge; J. Cullens; S. Layne Lee; Andrée M. Cullens; Savitt, Adam P; Amitav Chakraborty; Jonathan Hurwitz; Leah Aden; Sarah Brannon; Stuart Naifeh; Alora Thomas; Victoria Wenger; Nora Ahmed; Sara Rohani; Sophia LIn Lakin; Jared Evans; John Adcock; tracie.washington.esq@gmail.com; Megan Keenan
Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule
Date: Friday, July 21, 2023 2:31:57 PM
Attachments: image001.png
image002.png
image003.png

Dear Counsel,

Thanks for your email. We appreciate your effort below to address some of the concerns we raised about Plaintiffs' proposed schedule. However, we continue to have a foundational disagreement over Plaintiffs' claimed right to restart the remedial phase of this case with a new plan submission, which was inconsistent with the representations Plaintiffs made to the Court on July 12, 2023, that they would stand on their 2022 remedial plan submission. Your schedule below is entirely designed around a new plan submission, and our schedule is entirely designed around additional evidence concerning Plaintiffs' existing remedial plan submission.

Because of this fundamental disagreement about approach, we will not be able to consent to your proposed schedule. Procedurally, we believe the appropriate next step is to submit our proposed schedules separately, as our differences are not of the type that lend themselves to inclusion in a joint filing. We believe that providing the Court a "joint submission" that consists of different schedules (and explanations for the schedules) would elevate form over substance.

Finally, we ask that Plaintiffs refrain from presenting the Court with the chart below as the summary of the parties' differences. While I understand why you presented the dates in that manner to us for negotiation purposes, if presented to the Court, the chart could inaccurately suggest that Defendants proposed a schedule that included a "submission of new plans" when Defendants did not.

Please let us know if you have any further questions.

Sincerely,

pl

Patrick Lewis
Partner

BakerHostetler
Key Tower
127 Public Square | Suite 2000
Cleveland, OH 44114-1214
T +1.216.861.7096

plewis@bakerlaw.com
bakerlaw.com

From: Lali Madduri <lmadduri@elias.law>
Sent: Friday, July 21, 2023 11:33 AM
To: Prouty, Erika Dackin <eprouty@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Freel, Angelique <FreelA@ag.louisiana.gov>; Lewis, Patrick T. <plewis@bakerlaw.com>; Jones, Carey <JonesCar@ag.louisiana.gov>; Cassie Holt <cassie.holt@nelsonmullins.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Wale, Jeffrey M. <WaleJ@ag.louisiana.gov>; John Branch <john.branch@nelsonmullins.com>; Mengis, Michael W. <mmengis@bakerlaw.com>; McPhee, Shae <McPheeS@ag.louisiana.gov>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Dallin Holt <dholt@holtzmanvogel.com>; john@scwllp.com; Raile, Richard <rraile@bakerlaw.com>
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

Counsel,

See below for an amended proposed schedule. Plaintiffs' updated schedule incorporates changes that reflect the points Defendants raised during yesterday's meet and confer. We've also removed initial briefing in support of in opposition to plans. Plaintiffs can also represent that we intend to submit no more than a single joint remedial plan.

Event	Defendants' Proposed Deadline	Plaintiffs' Proposed Deadline	Plaintiffs' Amended Dates
Deadline for the submission of any proposed plans and supporting expert reports	August 4, 2023	August 15, 2023	August 11, 2023
Deadline for parties to exchange fact and	August 11, 2023	September 1, 2023	August 11, 2023

expert witness lists			
Deadline for expert reports in response to any proposed plans	September 8, 2023	August 29, 2023	September 5, 2023
Deadline for supplemental witness disclosures			September 8, 2023
Deadline for fact and expert depositions	September 15, 2023	September 19, 2023	September 19, 2023
Deadline for prehearing briefs	September 22, 2023	September 26, 2023	September 26, 2023
Deadline to exchange copies of exhibits and final witness list	September 29, 2023	September 26, 2023	September 29, 2023
Remedial hearing	October 3 to October 5, 2023	October 3 to October 5, 2023	October 3 to October 5, 2023

Lali Madduri
Counsel
Elias Law Group LLP
202-968-4593

From: Lali Madduri
Sent: Thursday, July 20, 2023 12:50 PM
To: Prouty, Erika Dackin <eprouty@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Freel, Angelique <FreelA@ag.louisiana.gov>; Lewis, Patrick T. <plewis@bakerlaw.com>; Jones, Carey <JonesCar@ag.louisiana.gov>; Cassie Holt <cassie.holt@nelsonmullins.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Wale, Jeffrey M. <WaleJ@ag.louisiana.gov>; John Branch <john.branch@nelsonmullins.com>; Mengis, Michael W. <mmengis@bakerlaw.com>; McPhee, Shae <McPheeS@ag.louisiana.gov>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Dallin Holt <dholt@holtzmanvogel.com>; john@scwllp.com; Raile, Richard <rraile@bakerlaw.com>
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

Counsel,

See below for Plaintiffs' proposed schedule. Looking forward to discussing this afternoon.

Event	Defendants' Proposed Deadline	Plaintiffs' Proposed Deadline
Deadline for the submission of plaintiffs' proposed map, supporting memoranda, and expert reports	Friday, August 4, 2023	Tuesday, August 15, 2023
Deadline for defendants' responses to plaintiffs' proposed map and expert	Friday, September 8, 2023	Tuesday, August 29, 2023

reports		
Deadline for parties to exchange fact and expert witness lists	Friday, August 11, 2023	Friday, September 1, 2023
Deadline for fact and expert depositions	Friday, September 15, 2023	Tuesday, September 19, 2023
Deadline for supplemental memoranda in support of or in opposition to the proposed remedial maps	Friday, September 22, 2023	Tuesday, September 26, 2023
Deadline to exchange final witness lists and copies of exhibits	Friday, September 29, 2023	Tuesday, September 26, 2023
Remedial hearing	Tuesday, October 3 to Thursday, October 5, 2023	Tuesday, October 3 to Thursday, October 5, 2023

Lali Madduri
Counsel
Elias Law Group LLP
202-968-4593

From: Lali Madduri
Sent: Wednesday, July 19, 2023 5:37 PM
To: Prouty, Erika Dackin <eprouty@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Freel, Angelique <FreelA@ag.louisiana.gov>; Lewis, Patrick T. <plewis@bakerlaw.com>; Jones, Carey <JonesCar@ag.louisiana.gov>; Cassie Holt <cassie.holt@nelsonmullins.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Wale, Jeffrey M. <WaleJ@ag.louisiana.gov>; John Branch <john.branch@nelsonmullins.com>; Mengis, Michael W. <mmengis@bakerlaw.com>; McPhee, Shae <McPheeS@ag.louisiana.gov>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Dallin Holt <dholt@holtzmanvogel.com>; john@scwllp.com; Raile, Richard <rraile@bakerlaw.com>
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

Thanks, Erika. We'll send a Teams link for 4-5 tomorrow.

Lali Madduri
Counsel
Elias Law Group LLP
202-968-4593

From: Prouty, Erika Dackin <eprouty@bakerlaw.com>
Sent: Wednesday, July 19, 2023 4:02 PM
To: Lali Madduri <lmadduri@elias.law>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Freel, Angelique <FreelA@ag.louisiana.gov>; Lewis, Patrick T. <plewis@bakerlaw.com>; Jones, Carey <JonesCar@ag.louisiana.gov>; Cassie Holt <cassie.holt@nelsonmullins.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Wale, Jeffrey M. <WaleJ@ag.louisiana.gov>; John Branch <john.branch@nelsonmullins.com>; Mengis, Michael W. <mmengis@bakerlaw.com>; McPhee, Shae <McPheeS@ag.louisiana.gov>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Dallin Holt <dholt@holtzmanvogel.com>; john@scwllp.com; Raile, Richard <rraile@bakerlaw.com>
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

Dear Counsel,

On behalf of the Defendant/Intervenors, we are available tomorrow between 3:30pm to 5pm ET tomorrow to meet and confer to discuss a proposed pre-hearing schedule.

In preparation for that meet and confer, below is Defendant/Intervenors' proposal for the pre-hearing schedule. To be clear, Plaintiffs' supplemental expert reports will not be permitted to include any new remedial plans, per Plaintiffs' counsel's representations to the Court during last week's status conference.

Date	Deadline
Friday, August 4, 2023	Plaintiffs' Supplemental Expert Reports Due
Friday, August 11, 2023	Exchange Fact & Expert Witness Lists
Friday, September 8, 2023	Defendants' Supplemental Expert Reports Due
Friday, September 15, 2023	Deadline for Fact and Expert Depositions
Friday, September 22, 2023	Supplemental Memorandum in Support and Memorandum in Opposition of Proposed Remedial Plan Due
Friday, September 29, 2023	Exchange Final Witness Lists and Copies of Exhibits
Tuesday, October 3 to Thursday, October 5, 2023	Preliminary Injunction Hearing on Remedy

Sincerely,

Erika Prouty
Associate

BakerHostetler
200 Civic Center Drive | Suite 1200
Columbus, OH 43215-4138
T +1.614.462.4710

eprouty@bakerlaw.com
bakerlaw.com

From: Lali Madduri <lmadduri@elias.law>
Sent: Tuesday, July 18, 2023 5:16 PM
To: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Prouty, Erika Dackin <eprouty@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Freel, Angelique <FreelA@ag.louisiana.gov>; Lewis, Patrick T. <plewis@bakerlaw.com>; Jones, Carey <JonesCar@ag.louisiana.gov>; Cassie Holt <cassie.holt@nelsonmullins.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Wale, Jeffrey M. <WaleJ@ag.louisiana.gov>; John Branch <john.branch@nelsonmullins.com>; Mengis, Michael W. <mmengis@bakerlaw.com>; McPhee, Shae <McPheeS@ag.louisiana.gov>; Tom Farr <tom.farr@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Dallin Holt <dholt@holtzmanvogel.com>; john@scwllp.com; Raile, Richard <rraile@bakerlaw.com>
Cc: Abha Khanna <akhanna@elias.law>; Jacob Shelly <jshelly@elias.law>; Jonathan Hawley <jhawley@elias.law>; Alison (Qizhou) Ge <age@elias.law>; J. Cullens <cullens@lawbr.net>; S. Layne Lee <laynelee@lawbr.net>; Andrée M. Cullens <acullens@lawbr.net>; Savitt, Adam P <asavitt@paulweiss.com>; Amitav Chakraborty <achakraborty@paulweiss.com>; Jonathan Hurwitz <jhurwitz@paulweiss.com>; Leah Aden <laden@naacpldf.org>; Sarah Brannon <sbrannon@aclu.org>; Stuart Naifeh <snaifeh@naacpldf.org>; Alora Thomas <athomas@aclu.org>; Victoria Wenger <vwenger@naacpldf.org>; Nora Ahmed <Nahmed@laaclu.org>; Sara Rohani <SRohani@naacpldf.org>; Sophia LIn Lakin <slakin@aclu.org>; Jared Evans <jevans@naacpldf.org>; John Adcock <jnadcock@gmail.com>; tracie.washington.esq@gmail.com; Megan Keenan <MKeenan@aclu.org>
Subject: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

[External Email: Use caution when clicking on links or opening attachments.]

Counsel,

I am writing on behalf of the Galmon and Robinson Plaintiffs. Per yesterday's Court order, are defense counsel available on Thursday 7/20 between 3 and 5pm ET to meet and confer regarding a pre-hearing schedule?

Thanks,
Lali

Lali Madduri
Counsel

Elias Law Group LLP
202-968-4593

Exhibit B

From: Lewis, Patrick T.
To: Lali Madduri; Prouty, Erika Dackin; McKnight, Katherine L.; Phil Strach; Murrill, Elizabeth; Alyssa Riggins; Freel, Angelique; Jones, Carey; Cassie Holt; Jason Torchinsky; Wale, Jeffrey M.; John Branch; Mengis, Michael W.; McPhee, Shae; Tom Farr; Braden, E. Mark; Dallin Holt; john@scwllp.com; Raile, Richard
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule
Date: Friday, July 21, 2023 11:14:21 AM
Attachments: image001.png
image002.png
image003.png

Counsel,

Thank you for your time yesterday to discuss a proposed pre-hearing schedule. As Defendant/Intervenors have explained, we oppose any attempts by Plaintiffs to offer a new remedial plan at this stage and cannot agree to a schedule that allows Plaintiffs to submit new maps and that provides Defendant/Intervenors with just two weeks to respond to brand new maps and analyses.

We have modified our proposal below to reflect Plaintiffs' concern with the timing of identification of witnesses and adjusted the deposition and briefing deadlines to reflect supplementation of fact witness lists:

Date	Deadline
Friday, August 4, 2023	Plaintiffs' Supplemental Expert Reports Due
Friday, ~~August 11, 2023~~ August 18, 2023	Exchange Fact ~~& Expert~~ Witness Lists
Friday, September 8, 2023	Defendants' Supplemental Expert Reports Due
Tuesday, September 12, 2023	Exchange Supplemental Fact Witness Lists
~~Friday, September 15, 2023~~ Tuesday, September 19, 2023	Deadline for Fact and Expert Depositions
~~Friday, September 22, 2023~~ Monday, September 25, 2023	Supplemental Memorandum in Support and Memorandum in Opposition of Proposed Remedial Plan Due
Friday, September 29, 2023	Exchange Final Witness Lists and Copies of Exhibits
Tuesday, October 3 to Thursday, October 5, 2023	Preliminary Injunction Hearing on Remedy

Please let us know by 2:00 pm ET if Plaintiffs if Plaintiffs agree to this proposed schedule. If Plaintiffs do not agree, we will file a separate notice with the Court setting forth Defendant/Intervenors' proposal.

Sincerely,

pl

Patrick Lewis
Partner

BakerHostetler
Key Tower
127 Public Square | Suite 2000
Cleveland, OH 44114-1214
T +1.216.861.7096

plewis@bakerlaw.com
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From: Lali Madduri <lmadduri@elias.law>
Sent: Thursday, July 20, 2023 12:50 PM
To: Prouty, Erika Dackin <eprouty@bakerlaw.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Murrill, Elizabeth <MurrillE@ag.louisiana.gov>; Alyssa Riggins

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Counsel,

See below for Plaintiffs' proposed schedule. Looking forward to discussing this afternoon.

Event	Defendants' Proposed Deadline	Plaintiffs' Proposed Deadline
Deadline for the submission of plaintiffs' proposed map, supporting memoranda, and expert reports	Friday, August 4, 2023	Tuesday, August 15, 2023
Deadline for defendants' responses to plaintiffs' proposed map and expert reports	Friday, September 8, 2023	Tuesday, August 29, 2023
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Lali Madduri
Counsel
Elias Law Group LLP
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Thanks, Erika. We'll send a Teams link for 4-5 tomorrow.

Lali Madduri
Counsel
Elias Law Group LLP
202-968-4593

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From: Prouty, Erika Dackin <eprouty@bakerlaw.com>

Sent: Wednesday, July 19, 2023 4:02 PM
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Subject: RE: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

Dear Counsel,

On behalf of the Defendant/Intervenors, we are available tomorrow between 3:30pm to 5pm ET tomorrow to meet and confer to discuss a proposed pre-hearing schedule.

In preparation for that meet and confer, below is Defendant/Intervenors' proposal for the pre-hearing schedule. To be clear, Plaintiffs' supplemental expert reports will not be permitted to include any new remedial plans, per Plaintiffs' counsel's representations to the Court during last week's status conference.

Date	Deadline
Friday, August 4, 2023	Plaintiffs' Supplemental Expert Reports Due
Friday, August 11, 2023	Exchange Fact & Expert Witness Lists
Friday, September 8, 2023	Defendants' Supplemental Expert Reports Due
Friday, September 15, 2023	Deadline for Fact and Expert Depositions
Friday, September 22, 2023	Supplemental Memorandum in Support and Memorandum in Opposition of Proposed Remedial Plan Due
Friday, September 29, 2023	Exchange Final Witness Lists and Copies of Exhibits
Tuesday, October 3 to Thursday, October 5, 2023	Preliminary Injunction Hearing on Remedy

Sincerely,

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Associate

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Subject: Robinson v. Ardoin / Galmon v. Ardoin -- Meet and Confer re Pre-Hearing Schedule

[External Email: Use caution when clicking on links or opening attachments.]

Counsel,

I am writing on behalf of the Galmon and Robinson Plaintiffs. Per yesterday's Court order, are defense counsel available on Thursday 7/20 between 3 and 5pm ET to meet and confer regarding a pre-hearing schedule?

Thanks,
Lali

Lali Madduri
Counsel
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202-968-4593

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 AND _GALMON_ PLAINTIFFS' PROPOSED PREHEARING SCHEDULE

On July 17, 2023, the Court set a hearing on a remedy under the preliminary injunction entered on June 6, 2022, and ordered that the parties meet and confer and submit a proposed pre-hearing scheduling order. Between July 19 and 21, 2023, the parties exchanged initial proposed schedules, met-and-conferred, and exchanged revised proposals. The parties have not been able to reach consensus on the case schedule. The Plaintiffs propose the following schedule for prehearing discovery, briefing, and exchange of witness and exhibit lists.

Event	Plaintiffs' Proposed Deadline	Time from Order Setting Hearing Dates
Submission of proposed plans and expert reports in support	8/11/2023	25 days
Exchange of fact and expert witness disclosures	8/11/2023	25 days
Submission of responsive expert reports	9/5/2023	50 days
Exchange of supplemental witness disclosures	9/8/2023	53 days
Deadline for fact and expert depositions	9/19/2023	64 days
Prehearing briefs	9/26/2023	71 days
Final witness and exhibits lists	9/29/2023	74 days
Remedial hearing	10/3/2023-10/5/2023	78 days

Plaintiffs' proposed schedule allows for any party, including the Defendant or Defendant-Intervenors, to submit a new or amended map along with supporting expert evidence. Consistent with the Court's 2022 remedial orders, the *Robinson* and *Galmon* Plaintiffs intend to jointly submit at most one map. Providing Plaintiffs the opportunity to propose a new map will provide for a more robust remedial process by allowing Plaintiffs to incorporate new election data and

accommodate concerns raised by Defendants in opposition to the initial remedial map Plaintiffs proposed in 2022. Plaintiffs' proposal also allows Defendants a new opportunity to submit a proposed map, consistent with the Court's approach to the remedial proceedings initiated last year.[1]

By contrast, Defendants decline to even contemplate a schedule that accommodates the submission of a new proposed map, despite the two and a half months between the Court's order and the hearing. Defendants have offered no reason as to why the parties should be precluded from offering a new proposed map that takes account of the most recent election data and better addresses concerns raised during last year's remedial proceedings.[2] Under the Court's schedule, there is ample time for the parties to consider new proposed maps; indeed, the two and a half months between the Court's setting of the remedial hearing (July 17) and the hearing itself (October 3) is almost two months more than provided during the initial remedial proceedings last year.

Although Plaintiffs believe the Court's schedule allows for sufficient time for the consideration of new maps, should the Court order that no new maps may be proposed, Plaintiffs respectfully request that the Court also decline to permit additional expert briefing from any party on the original maps. Plaintiffs and Defendants have already submitted expert reports in support of and in opposition to the map Plaintiffs proposed during the June 2022 remedial proceedings, and—with the exception of one deposition of Defendant's expert, which was interrupted by the issuance of the stay from the U.S. Supreme Court—expert depositions are complete. Under this

[1] Any schedule the Court adopts that allows for new maps should require all parties—including Defendants, if they choose to do so—to produce their proposed maps and any supporting expert reports by the same deadline—under Plaintiffs' proposed schedule, by August 11, 2023.

[2] Defendants claim that Plaintiffs stated an intention not to alter the remedial map they submitted in June 2022, but Plaintiffs intended only to state that should no further map submissions be permitted, a remedial hearing could be set within a couple of weeks of the status conference on July 12, 2023. The Court has now set the remedial hearing for nearly 2.5 months from today, providing ample time to consider more up-to-date maps.

alternative proposal, Plaintiffs and Defendants would meet and confer to reschedule the pending expert deposition, schedule an exchange of fact witness lists and depositions of fact witnesses, and set a deadline for pre-hearing briefs.

Date: July 21, 2023

Respectfully submitted,

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Counsel for Robinson Plaintiffs

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

EMERGENCY MOTION TO CANCEL HEARING ON REMEDY AND TO ENTER A SCHEDULING ORDER FOR TRIAL

Attorney General Jeff Landry, on behalf of the State of Louisiana, Secretary of State Kyle Ardoin, Clay Schexnayder, Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, President of the Louisiana Senate, each in their respective official capacities (collectively "Defendants") seek an Emergency Motion to Reset Deadlines and Request that this Matter be Set for Trial (hereinafter, "Emergency Motion").

1.

The Court should immediately cancel the currently scheduled remedial proceeding set for October 3rd and set this matter for a trial on the merits with sufficient time for any appeals to be resolved prior to the 2024 congressional elections.

2.

The following are all causing extreme prejudice to Defendants: (1) the delay of over a month and counting for a schedule prior to the remedial hearing on Plaintiffs' motion for preliminary injunction to be set (as well as Plaintiffs' inaction absent a schedule); (2) the failure to set a date or scheduling order for a prompt trial on the merits; and (3) the lack of jurisdiction to commence a remedial proceeding. Defendants require a prompt decision given the impending remedial proceeding.

3.

Defendants sought consent from Plaintiffs for the relief sought herein. Plaintiffs oppose such relief.

4.

Defendants also contemporaneously filed a motion to expedite the decision on this motion, seeking a ruling by September 8, 2023.

5.

Therefore, for the reasons more fully explained in Defendants' memorandum in support, Defendants respectfully request the Court cancel the remedial proceeding currently scheduled for October 3-5 and set this matter for trial on the merits to be conducted with sufficient time for any appeals prior to the 2024 congressional elections.

Dated: August 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of August 2023, the foregoing has been filed with the Clerk via the CM/ECF system that has sent a Notice of Electronic filing to all counsel of record.

/s/ Jeffrey M. Wale
Jeffrey M. Wale

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

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR EMERGENCY MOTION TO CANCEL HEARING ON REMEDY AND TO ENTER A SCHEDULING ORDER FOR TRIAL

Attorney General Jeff Landry, on behalf of the State of Louisiana, Secretary of State Kyle Ardoin, Clay Schexnayder, Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, President of the Louisiana Senate, each in their respective official capacities (collectively "Defendants") present this Memorandum in Support of their Motion to Cancel Hearing on Remedy and to Enter a Scheduling Order for a Trial on the Merits. Due to the fast-approaching hearing, a response by Plaintiffs is respectfully requested by Wednesday, August 30th, and a decision is

respectfully requested by Friday, September 8th. A companion motion for expedited review will be filed shortly after the instant motion.

RELEVANT BACKGROUND

On July 17, 2023, the Court ordered "that the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3-5, 2023, at 9:00 a.m." (ECF No. 250). The Court further directed that "[t]he parties shall meet and confer and jointly submit a proposed pre-hearing scheduling order on or before Friday July 21, 2023." *Id*. The parties met and conferred in good faith and were unable to reach complete agreement with respect to a schedule to govern the remedial proceeding. Therefore, the Plaintiffs and the Defendants each filed their own proposed scheduling orders. *See* (ECF Nos. 255 & 256). Meanwhile, on August 22, 2023, the United States Court of Appeals for the Fifth Circuit set Defendants' appeal of the underlying preliminary injunction order for oral argument on October 6, 2023, *Robinson v. Ardoin*, No. 22-30333 (5th Cir.), the day after the conclusion of the scheduled remedial proceeding.

As of the time of this filing, the Court has yet to issue a scheduling order in this matter despite the proposed schedules being submitted over 35 days ago. Many of the proposed deadlines in Plaintiffs' and Defendants' schedules have now passed.[1] Plaintiffs, for their part, have not sought to press their proposed schedule on the remedy phase and have not yet produced any expert reports or disclosures, or any proposed remedial plans, even though their own proffered deadlines have passed. (ECF No. 255 at 5). Given the significant delay on an already expected schedule,

[1] Plaintiffs' proposed schedule had August 11th as the date the parties would submit "any proposed plans" and as the deadline to exchange witness lists. (ECF No. 255 at 5). Defendants, jointly, proposed August 4th as the deadline for Plaintiffs' supplemental expert reports and disclosures and August 18th as the date to exchange fact and witness lists. (ECF No. 255-2 at 1).

there is simply no longer sufficient time to conduct a remedial hearing on a timeframe sufficient to sure the quality of presentations of counsel and the Court's decision.

The 2022 November Elections have come and gone, which means the premise for the Plaintiffs' twin preliminary injunction motions no longer exists. More to the point, any urgency that there be a remedy *now*, before a trial on the merits, is also gone. The 2024 General Election, however, is on the horizon, which, at roughly fourteen months away, means that the Court has enough time to try this case to a final judgment—if it acts *now* to set a date for trial. This window will close very soon if the Court declines to do so. And declining to do so would transgress the Supreme Court's mandate that this case is to proceed "for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). For the reasons that follow, the Court should cancel the upcoming October remedial proceeding and schedule a trial on the merits so that the litigants, and more importantly the people of Louisiana, can have a final resolution of this continuing litigation.

ARGUMENT

While the Defendants appreciate the Court's efforts to move this case to a speedy resolution, the Defendants' rights to a fair and full hearing no longer permit the proceedings to move along the present path. The prejudice that the impending October 3rd remedial proceeding has to the Defendants' rights cannot be gainsaid. For more than forty years, the Supreme Court has recognized that "where a federal district court has granted a preliminary injunction, the parties generally will have had the benefit neither of a full opportunity to present their cases nor of a final judicial decision based on the actual merits of the controversy." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 396 (1981). This is true by virtue of the preliminary injunction mechanism (which necessitates expedited, yet *temporary*, resolution, given the specter of a rapidly impending

irreparable injury), and it is aggravated by the nature of Voting Rights Act litigation (which cannot be resolved without tremendously detailed, and time-consuming, preparation and presentation of expert testimony). Defendants have *never* been given the opportunity to make their case in defense of the enacted maps fully, and denying them the opportunity to do so now, given the ability for them to do so before the 2024 November Elections, would imperil the Defendants' rights and call into question the fundamental fairness of this litigation.

The Defendants are aware that much needs to be accomplished between now and the 2024 November Elections to avoid another round of, among other things, *Purcell* fights and expedited motions practice before this Court. Circumventing a repeat of the chaos leading up to the 2022 November Elections has motivated the Defendants to submit this request on an emergency basis. The gravity of this litigation, the implications of the challenged congressional maps for the 2024 election and Defendants' rights, as well as simple procedural fairness and federalism concerns, should compel the Court to swiftly decide this motion in Defendants' favor.

I. There is now insufficient time to conduct a remedial proceeding by October 3rd, and allowing it to proceed would result in a waste of judicial resources.

The Court's remedial proceeding cannot practically occur as scheduled because none of the lead-up events can occur as *any* of the parties envisioned. With fewer than 6 weeks before a three-day hearing, there still is not a scheduling order, and no order embracing all necessary events can be practically achieved.

The parties each submitted their proposed schedules on July 21st, over a month ago, and no scheduling order has been issued by the Court. In the meantime, many of the parties proposed deadlines have already come and gone without a scheduling order. Moreover, Plaintiffs have not

adhered to the case deadlines they themselves proposed.[2] Thus, nothing has happened in this remedial matter since the Supreme Court's order vacated its stay. Defendants have yet to see any disclosures or revised plan(s) from Plaintiffs. Defendants can hardly to begin to mount a cogent defense when they are, at present, completely in the dark as to what plans Plaintiffs will even be proffering and what expert opinions they intend to support them. There is now not enough time for the necessary disclosures and expert reports in advance of the hearing, and if the Court were to conduct it anyway, it would sacrifice the quality of presentations and, by consequence, the quality of any future ruling..

Conversely, the 2024 General Election is roughly fourteen months away. This is *just* enough time to hold a trial on the merits and to allow the appellate process to run its course in advance of those elections. In the expedited, chaotic world of redistricting litigation, the amount of time that the Court has to allow *both* sides to fully and fairly litigate their positions is a luxury that does not often arise, and it should not be squandered.

The Plaintiffs themselves recognize that more robust litigation, certainly beyond the proceedings that occurred during the 2022 preliminary injunction proceedings, is needed. That is why they asked the Court for leeway to engage in "a more robust remedial process by allowing [them] to incorporate new election data[3] and accommodate concerns raised by Defendants in opposition to the initial remedial map Plaintiffs proposed in 2022." (ECF No. 256, at 2-3.) In other words, the Plaintiffs recognize that more work needs to be done to account for the truncated preliminary-injunction proceedings. For its part, the Supreme Court has long recognized that

[2] One would assume that, given their desire for a swift remedy, Plaintiffs would be acting of their own volition absent an order from this Court to ensure, for their part, that any remedial proceeding occurs along their preferred timeline. They are not.

[3] The existence of new election data that Plaintiffs themselves wish to rely upon simply underscores the incomplete factual record exists in this case without a trial on the merits.

redistricting litigation is an especially fact-intensive endeavor. *See Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) All of these issues point to the inescapable conclusion that a remedial hearing should be cancelled and a trial set. Yet another rushed proceeding is simply not in the interest of the parties or of substantial justice.

The Defendants would be remiss if they also did not point out that the Plaintiffs' proposed scheduling order, if entered near the time it was filed, would exacerbate tremendously all of the issues the Defendants have identified in this motion. The Plaintiffs have insisted on (1) barreling past a decision on the merits of their claims to the remedial phase, (2) submitting brand-new remedial maps and expert reports, but (3) not providing those materials in time for the Defendants to properly assess and respond to them. These concerns are now further exacerbated by the fact that the parties generally, and the Defendants specifically, have lost *a month* of time to prepare for the remedial hearing that is scheduled less than 6 weeks from now because no scheduling order has been entered and Plaintiffs have sat on their hands instead of voluntarily complying with their proposed deadlines. Any scenario short of cancelling the hearing and setting this matter for trial will result in the abridgement of Defendants' rights and a violation of basic principles of federalism. In no uncertain terms, the Court should prevent this outcome.

The United States Court of Appeals for the Fifth Circuit has set Defendants' appeal of the underlying preliminary injunction order for oral argument on October 6, 2023, *Robinson v. Ardoin*, No. 22-30333 (5th Cir.). That is the day after the conclusion of the scheduled remedial proceeding, which is currently set for October 3-5, 2023. The Fifth Circuit's scheduling of oral argument on October 6 is yet another reason for this Court to cancel the remedial proceedings. The timing of oral argument—just nine days after the conclusion of supplemental briefing the Fifth Circuit requested—suggests the Fifth Circuit is prepared to rule quickly on the merits of the preliminary

injunction. That forthcoming ruling could have any number of different impacts on this matter, including a reversal which would negate the need for any remedial phase on the preliminary injunction. This Court should instead focus resources on the ultimate merits questions in this case and set this matter for a trial sufficiently in advance of next year's elections. By proceeding forward with a remedy phase on a preliminary injunction order that is currently on appeal, and with a decision from the Fifth Circuit seemingly forthcoming, this Court risks a complete waste of judicial resources at both levels.

II. Forgoing resolution of the merits via a final trial is fundamentally unfair to Defendants and is disrespectful to basic principles of federalism.

Declining to resolve the merits of the Plaintiffs' Section 2 claims by way of a full trial would inflict further constitutional injury on the Defendants. Defendants have not yet had the opportunity to fully and fairly litigate the merits of its enacted maps, given the remarkably expedited preliminary injunction proceedings that occurred back in late Spring 2022. This alone raises basic fairness concerns if the Court moves past the merits and onto considerations of a remedy.

To be certain, it is error to "improperly equate[] 'likelihood of success' with 'success,'" and it is an even more erroneous error to "ignore[] the significant procedural differences between preliminary and permanent injunctions." *Camenisch*, 451 U.S. at 394. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties *until a trial on the merits can be held*." *Id.* at 395 (emphasis added). "Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Id.* Indeed, "[a] party . . . is not required to prove his case in full at a

preliminary-injunction hearing, . . . and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Id*.

In other words, the merits of this case have not yet been fully and fairly resolved. By treating them as if they had been (i.e., by skipping past a final trial on the merits and moving on to considerations of a remedy), the Court is at risk of prejudicing a State with nearly 3.5 million voters[4] preparing to cast ballots during a 2024 General Election cycle that is likely to see record-level voter turnout. And this is no idle concern. For more than a century, the Supreme Court has held that every defendant must be afforded "an opportunity to present" its defense *and then* to have a "question" *actually* "decided" against it. *Fayerweather v. Ritch*, 195 U.S. 276, 299 (1904).

Neither has occurred here. The Defendants were prevented from fulsomely defending their case by virtue of the expedited preliminary-injunction proceedings, and the resulting preliminary-injunction opinion from the Court did not fully resolve—and as a matter of law, could not have fully resolved—the merits of the Plaintiffs Section 2 claims. Given the limited purpose of a preliminary injunction ("merely to preserve the relative position of the parties until a trial on the merits can be held") they are often considered "on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Camenisch*, 451 U.S. at 395. "[A]t the preliminary injunction stage, the court is called upon to assess the *probability* of the plaintiff's ultimate success on the merits" and "[t]he foundation for that assessment will be more or less secure" depending upon multiple factors, including the pace at which the preliminary proceedings were decided. *Sole v. Wyner*, 551 U.S. 74, 84-85 (2007) (emphasis added). Simply put, deciding that a claim is "likely to succeed" is not the same as "actually litigat[ing] and resolv[ing]" a claim.

[4] Louisiana has a voting age population estimate of 3,564,038. Federal Register, Estimates of the Voting Age Population for 2020, https://www.federalregister.gov/documents/2021/05/06/2021-09422/estimates-of-the-voting-age-population-for-2020 (last accessed August 24, 2023).

Taylor v. Sturgell, 553 U.S. 880, 892 (2008). And providing a remedy for a claim that has not yet been "actually litigated and resolved" amounts to a violation of the basic rights of litigants. *Id*.

There is, moreover, the changing legal landscape in the wake of *Allen v. Milligan* and *Students for Fair Admission v. University of North Carolina*, both of which the Supreme Court issued while this case was held in abeyance. In the former, the Supreme Court addressed Section 2 of the Voting Rights Act for the first time in fourteen years, and it clarified how the *Gingles* preconditions apply. Relevant to this case, the Supreme Court elucidated "how traditional districting criteria limit[] any tendency of the VRA to compel proportionality," *id*. at 1509, which means that the district court's reliance (in part) on a proportionality as a legitimate goal is no longer tenable and must be revisited. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022). *Milligan* also emphasized the centrality of communities of interest in the Section 2 analysis, which has featured prominently at every stage of this case. *See* 143 S. Ct. at 1505. And Justice Kavanaugh's concurring opinion in *Milligan* stressed that it is the compactness of the minority community—not solely the compactness of the proposed districts—that must be evaluated. *Id.* at 1518 (Kavanaugh, J., concurring).

The latter case, in turn, changed fundamentally the way in which States may consider race when taking state action. The *Students for Fair Admissions* Court underscored that as race-based legislative acts reach their intended ends, they become obsolete and less likely to survive Equal Protection scrutiny. This principle followed the Court's decision in *Shelby County v. Holder*, which struck as unconstitutional a different Voting Rights Act provision because "[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." 570 U.S. 529, 557 (2013).

Simply put, the merits of this case (particularly given the changing legal landscape) remain live. So long as they do, there can be no remedy imposed.

III. The Court has no jurisdiction to proceed with a remedial hearing stemming from a preliminary injunction that is now moot.

Mootness typically arises if an Article III-required injury-in-fact ceases. But it also arises if time has rendered a court unable to *remedy* a purported injury. Injunctive relief, moreover, is necessarily and solely prospective. What matters is that the Plaintiffs are no longer "likely to suffer irreparable harm in the absence of preliminary relief." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). It follows inexorably that the Court has no power to hold a hearing about a remedial injunction if the event purporting requiring the injunction has come and gone. The Plaintiffs filed motions seeking injunctive relief based on their argument that conducting the *2022* November Elections under the auspices of Louisiana's enacted congressional map would inflict an irreparable injury upon them unless the Court granted their requested relief *before* the 2022 November Elections. The 2022 congressional elections, however, were held nine months ago. Because the Court can no longer provide a remedy related to the 2022 November Elections, it has no power to "reset" a previously stayed *remedial* hearing. (ECF No. 250.) Instead, the only option available to the Court is to set a trial date to fully and fairly resolve the merits of their claims.

CONCLUSION

There is no legally defensible reason to allow the now-moot preliminary-injunction order to control final resolution of the Plaintiffs' claims on the merits. The Court no longer has jurisdiction to issue the relief sought by the Plaintiffs in their preliminary-injunction motions. The truncated timeline under which those motions were adjudicated prejudiced the Defendants' rights, and it would prejudice them further if the Court were to transmogrify its preliminary-injunction "likelihood of success on the merits" conclusion into a final resolution of the Plaintiffs' Section 2

claims. Finally, the over month long delay (and counting) in setting a schedule and inaction by the Plaintiffs has further prejudiced Defendants such that it is simply not possible to have a remedial hearing.

For all these reasons, the Court should vacate its preliminary-injunction hearing and set a date for a final trial in this matter.

Respectfully submitted this the 25th day of August, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of August 2023, the foregoing has been filed with the Clerk via the CM/ECF system that has sent a Notice of Electronic filing to all counsel of record.

/s/ Jeffrey M. Wale
Jeffrey M. Wale

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

ORDER

Before the Court is Defendants' Emergency Motion to Cancel Hearing on Remedy and to Enter a Scheduling Order for Trial. After considering the motion, the Court is of the opinion it should be GRANTED.

IT IS THEREFORE ORDERED that the preliminary injunction hearing currently scheduled to begin on October 3, 2023 is hereby cancelled and a scheduling order setting trial is forthcoming.

Baton Rouge, Louisiana, this ____ day of _____, 2023.

_____
Honorable Judge Shelly D. Dick
UNITED STATES DISTRICT JUDGE
Middle District of Louisiana

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, *et al*

versus

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

CIVIL ACTION

22-211-SDD-SDJ

consolidated with

EDWARD GALMON, SR., *et al*

versus

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

CIVIL ACTION

22-214-SDD-SDJ

RULING

This matter is before the Court on a *Motion to Cancel Hearing on Remedy and to Enter a Scheduling Order for Trial*[1] filed by Defendant, Louisiana Secretary of State Kyle Ardoin, and the Intervenor Defendants, Senate President Page Cortez, Speaker Clay Schexnayder, and Attorney General Jeff Landry. The *Galmon* and *Robinson* Plaintiffs filed a joint *Opposition*,[2] and the Louisiana Legislative Black Caucus separately opposed[3] the *Motion*. For the reasons that follow, the *Motion* is DENIED.

This case has been extensively litigated. The parties have conducted expansive discovery, presented testimony from twenty-one witnesses, introduced hundreds of exhibits into evidence throughout a five-day preliminary injunction hearing, and filed hundreds of pages of

[1] Rec. Doc. No. 260.
[2] Rec. Doc. No. 264.
[3] Rec. Doc. No. 263.

pre- and post-hearing briefing—all of which culminated in this Court's 152-page *Ruling* on liability.[4] On the eve of the remedial hearing, this matter was stayed by the United States Supreme Court.[5] The preparation necessary for the remedial hearing was essentially complete. The parties were ordered to submit proposed remedial maps. The Defendants elected not to prepare any remedial maps. The Plaintiffs disclosed proposed remedial maps; witnesses and exhibits were disclosed; expert reports were disclosed; and Defendants deposed Plaintiffs' identified experts.[6] The only remaining issue is the selection of a congressional district map—a limited inquiry—which has been the subject of disclosure and discovery in the run up to the June 29, 2022 remedy hearing that was stayed on the eve of trial.

The Court finds that based on the remaining issue before it, there is adequate time to update the discovery needed in advance of the hearing to take place October 3–5, 2023. The parties were previously ordered[7] to confer and jointly submit a proposed pre-hearing scheduling order in advance of the October 3, 2023 hearing date but have failed to reach an agreement. Accordingly, the Court will refer this matter to the Magistrate Judge on an expedited basis for the entry of a scheduling order.

ACCORDINGLY, **IT IS HEREBY ORDERED** that Defendants' *Motion to Cancel Hearing on Remedy and to Enter a Scheduling Order for Trial*[8] is DENIED. The matter is hereby referred to the Magistrate Judge for an expedited entry of a Scheduling Order.

Signed in Baton Rouge, Louisiana this 29th day of August, 2023.

CHIEF JUDGE SHELLY D. DICK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[4] Rec. Doc. No. 173.
[5] Rec. Doc. No. 227.
[6] *See* Rec. Doc. No. 206.
[7] Rec. Doc. No. 250.
[8] Rec. Doc. No. 260.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, ET AL.	**CIVIL ACTION**
VERSUS	**No. 22-211-SDD-SDJ**
KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana	
and	
EDWARD GALMON, SR., ET AL.	**CIVIL ACTION**
VERSUS	**No. 22-214-SDD-SDJ**
KYLE ARDOIN, in his official capacity as Secretary of State for Louisiana	

ORDER

On August 29, 2023, Chief Judge Dick issued an Order denying Defendant's Motion to Cancel Hearing on Remedy and referring the matter of a pre-hearing scheduling order to Magistrate Judge Johnson. (R. Doc. 267). After hearing from the parties at two status conferences (R. Docs. 271, 272), the Court ordered that the parties submit proposed pre-hearing plans addressing (1) timing of the hearing, (2) whether Plaintiffs would submit a revised remedial map, (3) whether the parties would introduce new expert witnesses, and (4) discovery and briefing schedules. (R. Doc. 272). The Parties submitted separate proposals on September 6, 2023. (R. Doc. 273, Defendant; R. Doc. 274, Plaintiffs).

The parties' proposals both contemplate the remedial hearing's remaining on its scheduled date beginning October 3, 2023. Plaintiffs have decided to forego the opportunity to submit a new remedial plan. And the parties' proposed discovery and briefing dates are the same; however, the

content of the discovery is not agreed. Namely, Defendant's proposal contemplates *only* Defendant submitting expert reports—both supplemental and new;[1] Plaintiffs' proposal allows for both supplemental and new expert reports from *all* parties. The Court has not contemplated and sees no reason for allowing only one party to submit supplemental and new expert witnesses. Indeed, both parties should have equal opportunity to present updated discovery before the hearing. Accordingly,

IT IS ORDERED that the following pre-hearing deadlines are set:

Parties Serve Fact Witness Disclosures	September 14, 2023
Parties Serve Expert Reports (Supplemental and New)	September 15, 2023
Parties Disclose Rebuttal Expert Witnesses	September 18, 2023
Parties Serve Rebuttal Expert Reports	September 28, 2023
Parties File Witnesses and Exhibit Lists	September 29, 2023
Parties File Pre-Hearing Briefs (limit 30 pages per side)	September 29, 2023
Remedial Hearing	October 3-5, 2023[2]

Signed in Baton Rouge, Louisiana, on September 7, 2023.

SCOTT D. JOHNSON
UNITED STATES MAGISTRATE JUDGE

[1] As briefly discussed in the minute entry R. Doc. 271, whether the parties are entitled to new expert witnesses or restricted to supplementing the experts put forth for the original hearing in June 2022 has been a contested issue. At the status conference on September 1, 2023, the Court expressed its inclination to issue a schedule allowing for new experts. (R. Doc. 272).
[2] Date and details set in R. Doc. 250.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 28, 2023
Lyle W. Cayce
Clerk

No. 23-30642

IN RE JEFF LANDRY, *In his official capacity as the Louisiana Attorney General*; KYLE R. ARDOIN, *in his official capacity as Louisiana Secretary of State*,

Petitioners.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC Nos. 3:22-CV-211, 3:22-CV-214

Before JONES, HIGGINSON, and HO, *Circuit Judges*.

BY EDITH H. JONES, *Circuit Judge*:

Louisiana's Attorney General has filed this request for mandamus relief seeking to vacate the district court's hearing scheduled to begin on October 3 and require the district court to promptly convene trial on the merits in this congressional redistricting case. We GRANT IN PART, ORDERING the District Court to VACATE the October Hearing.

The reasons for this grant of relief are as follows:

Redistricting based on section 2 of the Voting Rights Act, 52 U.S.C. § 10301, is complex, historically evolving, and sometimes undertaken with looming electoral deadlines. But it is not a game of ambush.

Since 1966, the Supreme Court has repeatedly reminded lower federal courts that if legislative districts are found to be unconstitutional, the elected

body must usually be afforded an adequate opportunity to enact revised districts before the federal court steps in to assume that authority. In *Reynolds v. Sims*, the Court stated that "legislative reapportionment is primarily a matter for legislative consideration and determination."[1] In subsequent cases,

> [t]he Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the courts should make every effort not to preempt. When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.

Wise v. Lipscomb, 437 U.S. 535, 540, 98 S. Ct. 2493, 2497 (1978) (citations omitted). This is the law today as it was forty-five years ago.[2]

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[1] 377 U.S. 533, 586, 84 S. Ct. 1362, 1394 (1964).

[2] *See North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018) ("[S]tate legislatures have primary jurisdiction over legislative reapportionment[.]") (quotation marks and citation omitted); *McDaniel v. Sanchez*, 452 U.S. 130, 150 n.30, 101 S. Ct. 2224, 2236 (1981) ("Moreover, even after a federal court has found a districting plan unconstitutional, redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to preempt.") (quotation marks and citation omitted); *Wise v. Lipscomb*, 437 U.S. at 540; *Connor v. Finch*, 431 U.S. 407, 414-15, 97 S. Ct. 1828, 1833-34 (1977) ("[A] state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally-mandated framework. . .. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name."); *Chapman v. Meier*, 420 U.S. 1, 27, 95 S. Ct. 751, 766 (1975) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through hits legislature or other body, rather than of a federal court."); *Gaffney v. Cummings*, 412 U.S. 735, 749, 93 S. Ct. 2321, 2329 (1973) ("Nor is the goal of fair and effective representation furthered by making the standards of reapportionment so difficult to satisfy that the reapportionment task is recurringly removed from legislative hands and

The district court did not follow the law of the Supreme Court or this court. Its action in rushing redistricting via a court-ordered map is a clear abuse of discretion for which there is no alternative means of appeal.[3] Issuance of the writ is justified "under the circumstances" in light of multiple precedents contradicting the district court's procedure here.

This case was remanded after the Supreme Court stayed lower court proceedings to decide *Alabama v Milligan*, 143 S. Ct. 1487 (2023). *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (cert. dismissed as improvidently granted and stay vacated by 143 S. Ct. 2654 (2023)). The district court here had held, in June 2022, after an expedited preliminary injunction proceeding, that Louisiana's congressional districts violate section 2, requiring an additional majority black congressional district. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022). The district court then ordered the state legislature to reconfigure such an additional district within five legislative days. *Robinson v. Ardoin*, 37 F.4th 208, 232 (5th Cir. 2022). Landry pursued an immediate appeal and a motion to stay in this court. This court denied a stay, *id.*, but

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performed by federal courts which themselves must make the political decisions necessary to formulate a plan or accept those made by reapportionment plaintiffs who may have wholly different goals from those embodied in the official plan. From the very outset, we recognized that the apportionment task, dealing as it must with fundamental choices about the nature of representation. . . is primarily a political and legislative process.") (citation omitted); *Burns v. Richardson*, 384 U.S. 73, 85, 86 S. Ct. 1286,1293 (1966) ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having an adequate opportunity to do so.") (quotation marks and citation omitted).

[3] The dissent contends that the ordinary appellate process suffices. But the dissent does not challenge the notion that if the remedial hearing goes forward, the merits of the preliminary injunction will be on a separate appellate track from the remedy order. Nor does the dissent explain how the panel that will hear the merits of the preliminary injunction would have jurisdiction to order relief to the state on the scheduling of the fifteen-month-later separately litigated remedy hearing, as no Rule 28(j) letter can manufacture appellate jurisdiction under 28 U.S.C. § 1291 over the non-final trial setting order.

expedited the appeal—until the Supreme Court entered its stay. *Ardoin v. Robinson*, 142 S. Ct. at 2892.

A year later, the Supreme Court's stay was lifted, *Ardoin v. Robinson*, 143 S. Ct. at 2654, and the parties completed briefing the merits of the preliminary injunction, which another panel of this court will hear in oral argument on October 6.

Undeterred by the pendency of appeal on the merits, the district court opted to go ahead on October 3-5 with an expedited hearing to determine a court-ordered redistricting map. But the court provided merely five weeks for the state's preparation. No mention was made about the state legislature's entitlement to attempt to conform the districts to the court's preliminary injunction determinations.

This post-merits activity prompted the state to seek a writ of mandamus from this court pursuant to 28 U.S.C. § 1651. In this court, "mandamus will be granted upon a determination that there has been a clear abuse of discretion." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 309 (5th Cir. 2008) (en banc). As "one of the most potent weapons in the judicial arsenal, three conditions must be satisfied" before mandamus may be issued. *In re Gee*, 941 F.3d 153, 157 (5th Cir. 2019) (quoting *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380, 124 S. Ct. 2576, 2587 (2004)). The Supreme Court has elaborated that:

> First, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

Cheney, 542 U.S. at 380-81 (quotation marks and citations omitted).

After reviewing the mandamus factors, we conclude that the state is entitled to partial mandamus relief.

1. *The state has no other means of relief and is not seeking to use mandamus as a substitute for appeal.*

The only issue before this panel is the scheduling of the remedial hearing and potential scheduling for trial on the merits. The events leading to this writ application post-date the merits-only preliminary injunction by fifteen months. In ruling on this application, we do not discuss the merits. Likewise, the decision on the merits of a Section 2 violation of the Voting Rights Act has no direct relationship with nor factual nor legal overlap with the scheduling issues this panel confronts.

That this application presents an unusual posture for mandamus is not a contrivance of Landry or this panel but the result of the district court's unique rush to remedy when circumstances did not require it. Moreover, because this application is wholly different from the merits of the appeal, the state has no adequate remedy by way of appeal.

The plaintiffs respond that the state may adequately appeal following the decision formulating a court-ordered redistricting plan. That outcome would embarrass the federal judiciary and thwart rational procedures. Denying mandamus effectively means a two-track set of appeals on the merits

and the court-ordered plan. No matter the outcome—or timing—of this court's merits panel determination, one side will seek relief in the Supreme Court. Similarly, the anticipated court-ordered redistricting plan will be appealed to this court and likely to the Supreme Court. And all of this will persist well into the 2024 election year. The likelihood of conflicting courts' scheduling and determinations will create uncertainty for the state and, more important, the candidates and electorate who may be placed into new congressional districts. In sum, while there is on paper a right to appeal whatever decision the district court renders on drawing its own redistricting maps, the paper right is a precursor to legal chaos.

2. *Clear and Indisputable Right*

The state contends that it has a clear right to relief because the court's remedial redistricting plan should not be ordered before it has a fulsome opportunity to defend itself on the merits of plaintiffs' section 2 claim.[4] That the state lacked a full opportunity to mount a defense on the merits is likely accurate. Plaintiffs' testimony showed that they had been planning a lawsuit for months before the legislature effectuated its 2022 redistricting. But under the district court's expedited scheduling, the state had less than four weeks to prepare for what became a five-day evidentiary hearing.[5]

This court's order denying a stay pending appeal repeatedly noted that the panel's conclusions were only tentative and the plaintiffs' case had clear weaknesses. The court referenced the importance of final adjudication.

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[4] The state also argues that the plaintiffs' case became moot after the 2022 election cycle ended. This is incorrect, because the district court enjoined all future elections pursuant to the allegedly violative state plan, and this reflected the scope of the plaintiffs' demand for relief.

[5] The state says it had only two weeks before the preliminary injunction hearing to prepare expert witness reports, which are critical in legislative redistricting cases.

Robinson, 37 F.4th at 222 ("[T]he plaintiffs have much to prove when the merits are ultimately decided.").[6] Of course, an order denying stay pending appeal cannot be a "merits" ruling and is subject to reconsideration by this court, either in the upcoming oral argument or on review of a final judgment. *Id.* at 232 ("Our ruling here concerns only the motion for stay pending appeal; our determinations are for that purpose only and do not bind the merits panel[.]") (quotation marks and citations omitted). But the point is that this court recognized the hasty and tentative nature of the district court's decision and, at least implicitly, the need for further development of factual and legal aspects. *Id.* ("[N]either the plaintiffs' arguments nor the district court's analysis is entirely watertight[.]").

The progress of the Alabama redistricting litigation in some ways parallels this case but is instructive as to full and fair procedures *not* accorded here. First, while that case progressed to a seven-day preliminary injunction hearing within about two months after the legislature finalized congressional districts, Alabama has never contended that its defense was unduly truncated. *Allen v. Milligan*, 143 S. Ct. 1487, 1502 (2023) (noting that the three-judge district court's preliminary injunction hearing lasted seven days, during which it received live testimony from 17 witnesses, reviewed more than 1000 pages of briefing and upwards of 350 exhibits while considering arguments from 43 different lawyers); *Singleton v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *10 (N.D. Ala. Sept. 5, 2023) (noting that at the Alabama remedial hearing, the parties agreed that the Alabama three-judge

[6] This court also said the state put all its eggs in one basket, litigating essentially that only with race-predominant considerations could the plaintiffs justify a second majority-black congressional district. *Robinson*, 37 F.4th at 217. No litigant, however, is bound at trial on the merits to a defense strategy that failed to succeed on a preliminary injunction.

district court would consider all evidence admitted during the preliminary injunction hearing unless counsel raised a specific objection).

Second, and also pertinent, in the Alabama case on remand from the Supreme Court, the three-judge panel afforded the state legislature six weeks to propose a new districting plan. *See contra Singleton*, 2023 WL 5691156 at *6-*7 (noting that the Alabama three-judge district court delayed remedial proceedings for six weeks after remand from the Supreme Court to allow the legislature to pass a new congressional redistricting plan). Last year, with the 2022 elections fast approaching, the district court prescribed an impossibly short timetable for state legislative action amounting to only five legislative days. Whatever the propriety of that timetable (about which we express no opinion) at that time, there is no warrant for the court's rushed remedial hearing by the first week of October 2023, months in advance of deadlines for districting, candidate filing, and all the minutiae of the 2024 elections. Even more significant, the Alabama court on remand from the Supreme Court afforded the state an adequate opportunity to accomplish a redistricting compliant with final judgment. Here, of course, there is no final judgment on the merits. But the district court acted ultra vires in rushing to prescribe its own maps.

As demonstrated above, a court must afford the legislative body that becomes liable for a Section 2 violation the first opportunity to accomplish the difficult and politically fraught task of redistricting. That is *required* for redistricting litigation to proceed according to its "ordinary course and in advance of the 2024 congressional elections in Louisiana"—as the Supreme Court's remand in this case mandated. *Ardoin v. Robinson*, 143 S. Ct. at 2654. Not only has the Supreme Court serially reinforced this duty of lower courts, but this court has carefully adhered to these rulings. Nearly forty years ago, this court criticized a district court's rushed, court-ordered redistricting plan less than a month and a half following final judgment. *Jones v. City of Lubbock*,

727 F.2d 364, 387 (5th Cir. 1984). We admonished that the court's procedures

> *if challenged, would have required that we vacate this order*. For the sake of future parties, we reiterate briefly some of the principles that the district court should bear in mind. Apportionment is principally a legislative responsibility. . .. A district court should, accordingly, afford to the government body a reasonable opportunity to produce a constitutionally permissible plan. . ..

Id. (internal citations omitted) (emphasis added).[7] The district court here had no warrant to undertake redistricting (A) through a court-ordered plan (B) with no elections impending, (C) on a severely limited pretrial schedule, and (D) without having afforded the Louisiana legislature the first opportunity to comply with its ruling.

"A district court abuses its discretion if it: (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts. On mandamus review, we review for these

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[7] *See also United States v. Brown*, 561 F.3d 420. 435 (5th Cir. 2009) ("[A]t least in redistricting cases, district courts must offer governing bodies the first pass at devising a remedy[.]"); *Rodriguez v. Bexar County*, 385 F.3d 853, 869-70 (5th Cir. 2004) ("[D]istrict courts should use a great deal of caution in invalidating the results of a duly held election and ordering the implementation of its own alternative districting plan. The primary responsibility for correcting Voting Rights Act deficiencies rests with the relevant legislative body. . .. Both the Supreme Court and this court have admonished district courts to afford local governments a reasonable opportunity to propose a constitutionally permissible plan and not haphazardly to order injunctive relief.") (citations and footnote omitted); *Chisom v. Roemer*, 853 F.2d 1186, 1192 (5th Cir. 1988) ("[R]esponsible state or local authorities must be first given an opportunity to correct any constitutional or statutory defect before the court attempts to draft a remedial plan. In the case at bar, that means that should the court rule on the merits that a statutory or constitutional violation exists the Louisiana Legislature should be allowed a reasonable opportunity to address the problem. We have no reason whatsoever to doubt that the governor and legislature will respond promptly.").

types of errors, but we only will grant mandamus relief when such errors produce a patently erroneous result." *In re Volkswagen of Am.,* 545 F.3d at 310 (citing *McClure v. Ashcroft,* 335 F.3d 404, 408 (5th Cir.2003)). Here, we find that the district court's errors produced a patently erroneous result.

3. *Appropriate under the circumstances*

If this were ordinary litigation, this court would be most unlikely to intervene in a remedial proceeding for a preliminary injunction. Redistricting litigation, however, is not ordinary litigation. Of course, the law as set forth by the Supreme Court's interpretation of the Constitution and section 2 must be vindicated. But the remedy necessarily involves the exercise of discretion by federal courts whose judgments will interfere with a primary constitutional structural device of self-government: making decennial districting choices about representation in legislative bodies. Ever since its initial forays into legislative districting, the Supreme Court has explained the proper procedure to implement federal court judgments while accommodating to the greatest extent the legislatures' ability to confect their own remedial plans. The district court here forsook its duty and placed the state at an intolerable disadvantage legally and tactically.

Accordingly, we VACATE the remedial order hearing. Further scheduling in the case must be done by the district court pursuant to the principles enunciated herein.

JAMES C. HO, *Circuit Judge*, concurring:

I concur. I write to respond to my distinguished dissenting colleague.

I agree that mandamus is not ordinarily a substitute for appeal. I also agree that whatever the district court might have done pursuant to its October 3 hearing would eventually be subject to appeal.

But that does not end the analysis. "[E]xceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (per curiam). So it doesn't matter that "uncorrectable damage may not result if petitioners are forced to wait for a remedy on direct appeal"—"the clearly erroneous nature of the district court's order [may] call[] for a more immediate remedy." *In re Impact Absorbent Techs., Inc.*, 106 F.3d 400, 1996 WL 765327, *3 (6th Cir. 1996) (unpublished table decision) (granting mandamus relief to compel dismissal of case). *See also*, *e.g.*, *Holub Indus., Inc. v. Wyche*, 290 F.2d 852, 856 (4th Cir. 1961).

Moreover, mandamus relief may be especially warranted where the stakes of the litigation are unusually significant. *See*, *e.g.*, *Abelesz v. OTP Bank*, 692 F.3d 638, 651 (7th Cir. 2012) (granting mandamus relief to compel dismissal of case involving "appreciable foreign policy consequences" and "astronomical" "financial stakes").

Consider, for example, *In re Trinity Industries, Inc.*, No. 14-41067 (5th Cir. Oct. 10, 2014). It was asserted there (as here) that the district court had no legal basis to hold a particular proceeding (there, it was a trial under the False Claims Act). It was further argued that "the litigation stakes . . . are unusually high"—namely, the risk of a $1 billion adverse judgment. *Id.*

Notably, the mandamus panel did not deem the matter beyond the scope of the writ—even though any damages award can obviously be

reversed later on appeal (as indeed later occurred in that case). To the contrary, the mandamus panel acknowledged that "this is a close case." *Id.* It ultimately denied relief. But the panel went out of its way to caution the district court not to proceed. It said that "[t]his court is concerned" about the impending proceedings, and warned that the petitioner had presented a "strong argument" that the case should not go to trial. *Id.* The district court nevertheless proceeded to trial. So this court subsequently reversed. In doing so, this court specifically noted that the district court went to trial "despite . . . a caution from this court that the case ought not proceed." *United States ex rel. Harman v. Trinity Indus., Inc.*, 872 F.3d 645, 647 (5th Cir. 2017).[1]

As with *Trinity Industries*, this case presents "unusually high" stakes. It doesn't just delineate how Louisiana voters may exercise their right to vote for their elected representatives in the House. It could also impact the course of national policy decisions made by Congress—after all, every member of Congress has a voice, and a vote, in those deliberations. Whatever the final outcome of Louisiana's redistricting process may be, the people of Louisiana, and the country, are entitled to an orderly process that they can trust.

As the majority explains, it would fly in the face of decades of Supreme Court precedent for a district court to usurp the prerogative of the state Legislature to take the first crack at drawing a remedial map. Yet that appears

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[1] I suppose that this mandamus panel could have followed the example in *Trinity Industries* by sounding a similar firm note of warning to the district court here, while ultimately denying rather than granting mandamus relief. *See*, *e.g.*, *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 347 n.4 (5th Cir. 2017) (noting that "this court has routinely held, sometimes in published opinions, that a district court erred, despite stopping short of issuing a writ of mandamus") (collecting cases). But that's a matter of discretion, not restriction. Moreover, if our court's experience in *Trinity Industries* teaches us anything, it's that sometimes you need a writ, not a warning.

to be what is being contemplated here. As the majority notes, the district court gave the State only five legislative days to produce a remedial map.

The dissent responds that that was a year ago, and suggests that "this yearlong process" should have given the State ample time to work. But that doesn't strike me as a realistic understanding of the legislative process. This matter has been pending on appeal throughout this period of time—not to mention subject to an extended stay by the Supreme Court. And naturally, the whole point of any appeal is that the district court ruling could be set aside—thereby obviating the need for any remedial effort by the Legislature.

It seems impractical, to say the least, to expect busy elected officials and their staffs to set aside all of the other responsibilities of public office, just to focus all of their attention on negotiating a hypothetical remedial plan that the courts have not yet even resolved is necessary. And not only impractical, but unfair to the citizens of Louisiana, who no doubt seek the attention of their elected representatives on countless other pressing matters of importance to their communities.

* * *

I concur in the grant of mandamus relief.[2]

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[2] The dissent observes in passing that this mandamus proceeding could have been assigned to the pending appeal panel in No. 22-30333. I certainly agree that judges should work collaboratively and in a spirit of comity when it comes to the assignment and transfer of cases. I'm reminded of our court's experience in *Defense Distributed v. Platkin*, 55 F.4th 486 (5th Cir. 2022), and *Defense Distributed v. Platkin*, 48 F.4th 607 (5th Cir. 2022), involving the unfortunate refusal of a federal district court in New Jersey to heed a request to transfer a Texas case back to the relevant district court within our circuit. Had the panel in No. 22-30333 requested transfer of this mandamus proceeding to its current docket, I imagine I would've agreed. But no such request was made.

STEPHEN A. HIGGINSON, *Circuit Judge*, dissenting:

The Supreme Court has been clear, cautioning long ago that mandamus is a "drastic and extraordinary remed[y] . . . reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-60 (1947). Thus, settled caselaw confirms that mandamus is *not* a tool to manage a district court's docket; nor can mandamus substitute for appeal. Yet review of this matter's procedural history shows that mandamus here improperly does both.

I. Procedural History

This petition, filed by Louisiana Attorney General Jeff Landry and Louisiana Secretary of State Kyle Ardoin ("the State"), concerns ongoing litigation over Louisiana's congressional maps. On June 6, 2022, the district court preliminarily enjoined the State from conducting any congressional elections under the map enacted by the Legislature and ordered the Legislature to enact a remedial plan on or by June 20, 2022, at which point the district court would otherwise issue additional orders to enact a remedial plan. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766-67 (M.D. La. 2022). The district court even invited the State to seek more time should it need it, explaining that "[i]f Defendants need more time to accomplish a remedy for the Voting Rights Act violation, the Court will favorably consider a [m]otion to extend the time to allow the Legislature to complete its work." *Robinson v. Ardoin*, No. 22-00211, ECF No. 182 (M.D. La. June 9, 2022).

The preliminary injunction was appealed to this court, which administratively stayed the injunction, then vacated that stay and denied a stay pending appeal, while expediting No. 22-30333. *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022).[1] On the eve of the district court's remedial

[1] Briefing now is complete and our court will hear argument next week.

plan hearing, however, the Supreme Court stayed the injunction and held the case in abeyance pending resolution of (the then-styled) *Merrill v. Milligan* (No. 21-1086 and No. 21-1087). *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022).

When *Milligan* issued one year later, the Supreme Court instructed in the instant matter as follows: The "[s]tay heretofore entered by the Court on June 28, 2022 [is] vacated. This will allow the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana." *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023).

Correspondingly, this court in No. 22-30333, promptly ordered briefing "addressing [*Milligan*] and any other developments or caselaw that would have been appropriate for Rule 28(j) letters over the past year had the case not been in abeyance." Mem. to Counsel at 1, *Robinson v. Ardoin*, No. 22-30333, ECF No. 242 (5th Cir. June 28, 2023). In response, the State urged this court to vacate the injunction, remand, and "direct the district court to conduct a trial on the merits and reach a final judgment in advance of the 2024 congressional elections in Louisiana." Letter at 2, *Robinson v. Ardoin*, No. 22-30333, ECF No. 246 (5th Cir. July 6, 2023). On July 17, 2023, the district court rescheduled the remedial plan hearing that was supposed to have taken place the previous year—and for which the State had presumably fully prepared for given the original hearing was only cancelled the day before it was supposed to occur—for approximately eleven weeks later on October 3-5, 2023, consistent with the Supreme Court's vacatur of its stay of the district court's injunction. *Robinson v. Ardoin*, Nos. 22-cv-211 and 22-cv-214, ECF No. 250 (M.D. La. July 17, 2023).

The State then, on July 21, submitted more letter argument, *still in No. 22-30333*, reiterating its arguments as to both the hearing and also the unscheduled trial, to "request[] the remedies outlined in [its] July 6, 2023 Letter Brief." Letter at 1, *Robinson v. Ardoin*, No. 22-30333 (5th Cir. July 21,

2023). The State argued on August 19, in its reply brief to this court in No. 22-30333, that the hearing and lack of trial date "make[] little sense when the district court could bring the case to final judgment in time for the 2024 election cycle," Reply Br. at 2-3 n.2, and sought dismissal of the appeal and vacatur of the preliminary injunction, *id.* at 2.

Next, the State moved *in the district court* to cancel the remedial plan hearing. Mot., *Robinson v. Ardoin*, Nos. 22-cv-211 and 22-cv-214, ECF No. 260 (M.D. La. Aug. 25, 2023). That motion was denied, Order, *Robinson v. Ardoin*, Nos. 22-cv-211 and 22-cv-214, ECF No. 267 (M.D. La. Aug. 29, 2023), and the State neither appealed the denial nor moved to expedite its appeal of the preliminary injunction in pursuance of which the hearing is scheduled.

Despite this procedural history, the State instead separately filed a mandamus petition seeking to vacate the scheduled district court hearing and to set a district court trial date. Pet. at 4, *In re Landry*, No. 23-30642 (5th Cir. Sept. 15, 2023). On receipt of the petition, I would have consolidated with No. 22-30333 and reassigned for consideration by that panel, respectful of the long-pending appeal as well as that panel's explicit invitation to the parties to submit argument—which, months before this petition, they did, presenting the same issues and requesting the same relief. *In re Landry*, No. 23-30642 (5th Cir. Sept. 17, 2023) (Higginson, J. dissenting from order requesting responsive briefing).

II. Analysis

Until today, mandamus has been ordered only when a petitioner has "no other adequate means to attain the relief [it] desires"—thus, specifically, mandamus "is not a substitute for appeal." *In re Depuy Orthopaedics, Inc.*, 870 F.3d 345, 350 (5th Cir. 2017) (citations and internal

quotation marks omitted) (alteration in original).[2] While the majority acknowledges this principle, it factually errs in describing this matter as "wholly different from the merits appeal." There could be no more conclusive proof of the availability of appellate relief than this circumstance, where the petitioner is already an appellant pressing the same issues and seeking the same relief, challenging the *same injunction in pursuance of which this hearing was scheduled*. There is no support for the assertion that the hearing, lasting for three days at the beginning of October, is mutually exclusive with progression to a full merits trial. The State can also, of course, appeal any remedial plan that the hearing produces. The panel asserts a prerogative to ignore this as only a "paper right" based on its prediction that this litigation will "turn into legal chaos" and eventually reach the Supreme Court. Needless to say, our court has yet to adopt a rule that mandamus lies where a matter may reach the Supreme Court.

Furthermore, "we limit mandamus to only 'clear abuses of discretion that produce patently erroneous results.'" *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 290 (5th Cir. 2015) (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008)). Oddly, the majority points to this court's order *denying* the State's motion for a stay pending appeal as evidence that the State has made the higher showing that it is entitled to mandamus. No patent error exists here. Quite the opposite. Until today, we have explicitly assured district judges that they enjoy "broad discretion and inherent authority to manage [their] docket." *June Med. Servs., L.L.C. v. Phillips*, 2022 WL 4360593 at *2 (5th Cir. 2022) (quoting *In re Deepwater Horizon*, 988

[2] Contrary to the assertion that "[d]enying mandamus effectively means a two-track set of appeals," it is the majority that now invites parties to slice and dice in the hopes of eleventh-hour success in front of a mandamus panel when an earlier-in-time merits panel has so far declined to act on the same issues, presumably intending to question counsel about those issues in oral argument.

F.3d 192, 197 (5th Cir. 2021) (per curiam)). The district court exercised that discretion when the Supreme Court lifted its stay after a year. The district court could, with approximately eleven weeks of notice to parties, reschedule the hearing that had originally been scheduled for well over a year earlier, a hearing that parties had prepared for because it was not cancelled until the day before it was supposed to begin. It is this yearlong process that the majority inexplicably calls a "game of ambush."

For these reasons, I dissent and would deny the petition.

A True Copy
Certified order issued Sep 28, 2023

Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
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September 28, 2023

Mr. Michael L. McConnell
Middle District of Louisiana, Baton Rouge
United States District Court
777 Florida Street
Room 139
Baton Rouge, LA 70801

No. 23-30642 In re: Jeff Landry
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

Dear Mr. McConnell,

Enclosed is a certified copy of the opinion issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk
504-310-7651

Enclosure(s)

cc:
Mr. John Nelson Adcock
Ms. Renee Chabert Crasto
Mrs. Andree Matherne Cullens
Mr. Joseph Elton Cullens Jr.
Mr. Jared Evans
Mrs. Angelique Duhon Freel
Mr. Phillip Michael Gordon
Mr. Carey Thompson Jones
Ms. Abha Khanna
Ms. Elizabeth Baker Murrill
Mr. Stuart Naifeh
Ms. Isabel Sara Rohani
Mr. Adam Savitt
Mr. Jacob D. Shelly

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