IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA—MONROE DIVISION

PHILIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, DANIEL WEIR, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, ROLFE MCCOLLISTER,	)	
Plaintiffs,	)	Case No. 3:24-cv-00122-DCJ-CES-RRS
v.	)	District Judge David C. Joseph Circuit Judge Carl E. Stewart
NANCY LANDRY, IN HER OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE,	)	District Judge Robert R. Summerhays Magistrate Judge Kayla D. McClusky
Defendant.	)	

PLAINTIFFS' OPPOSITION TO GALMON MOVANTS' MOTION TO RECONSIDER ORDER DENYING INTERVENTION

INTRODUCTION

The Galmon Movants re-argue their failed Motion to Intervene without raising significant new points, let alone presenting the "extraordinary" circumstances necessary for this Court to undo its prior order. *See Leong v. Cellco P'ship*, No. CIV.A. 12–0711, 2013 WL 4009320 (W.D. La. July 31, 2013) (Rule 54(b) reconsideration of interlocutory orders follows the same standard as Rule 59(e) motions to alter or amend a final judgment); *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (movant must show a "clearly establish[ed] manifest error of law or fact" or "newly discovered evidence" to show the Court's prior judgment was incorrect).

The Galmon Movants identify neither a manifest error of law or fact nor newly discovered evidence. Since this Court denied the Galmon Movants' intervention motion, the State has presented a *more* rigorous defense of SB8 than the Galmon Movants initially predicted, as demonstrated in the State's Response to Plaintiffs' Preliminary Injunction, **Doc. 86**. Not only do the Galmon Movants ignore this filing, they make no attempt to satisfy the requisite standard for intervention that this Court told the Robinson Movants it would apply to future motions: "adversity of interest, collusion, or nonfeasance on the part of the State." **Doc. 79, at 6**.

Indeed, the Galmon Movants even falsely represent that the Court invited *them* to move to reconsider. To the contrary, given the factual overlap between movant sets, the Court invited the Robinson Movants to move to reconsider if they could meet the high standard for showing an inadequate defense by the State. (They have at least tried to do so, and Plaintiffs will separately address it).

The Galmon Movants' motion, however, makes only a paltry effort. Their apparent desire that the State raise a slightly different argument—that SB8 was not only required by a prior court's vacated ruling, but was also politically motivated—falls far short of adversity of interest, collusion, or nonfeasance. As Plaintiffs showed in their Preliminary Injunction Reply, the "political

motivation" argument is never a stand-alone basis for satisfying strict scrutiny in the face of a racial gerrymander. It is certainly not a defense in this case even under the Galmon Movants' unsupported and unsupportable version of the facts. The State is doing the parties, the Court, the voters, and even the Movants themselves a service by refraining from exploring that rabbit hole. The Galmon Movants are free to continue to file amicus briefs citing rumors from newspaper articles and blogs, but their "political" diversion cannot be allowed to stall this case and possibly endanger a remedy for SB8's blatant racial gerrymander. Thus, for these reasons, and the reasons discussed more fully below, the Court should deny their Motion to Reconsider, **Doc. 96**.

BACKGROUND

On February 6, 2024, Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard (collectively, the "Galmon Movants") filed a Motion to Intervene, arguing for intervention as of right or permissively. **Doc. 10, at 10, 15**. Another set of potential intervenors, the "Robinson Movants," filed a similar motion and requested transfer of this case to the Middle District of Louisiana. **Doc. 18**. Yet another party, the State of Louisiana, sought intervention on February 20, 2024. **Doc. 53**. After further briefing, this Court denied the Galmon Movants' motion for intervention of right *and* permissive intervention, granted the Robinson Movants' motion in part—allowing them to intervene in any remedial phase of this case, and granted the State's Motion to Intervene. **Doc. 79, at 9**.

The Court found the Galmon Movants had failed to establish the necessary "adversity of interest, collusion, or nonfeasance on the part of the State" to show that their interests were not adequately by the State. **Doc. 79, at 6**. The Court found that the State "must defend SB8 as a constitutionally drawn Congressional redistricting map" and that "[t]his is the same ultimate objective movants would have and interest they would defend this stage of the proceedings." **Doc. 79, at 5**. The Court similarly concluded that the Galmon Movants did not have a special interest

in presenting a defense in this litigation: "The *Robinson* and *Galmon* movants have neither a greater nor lesser interest in ensuring that this map does not run afoul of the 14th Amendment to the United States Constitution than any other citizen of the State of Louisiana." **Doc. 79, at 6**. Thus, it held that the State would adequately represent their interests.

This Court did grant the Robinson Movants permissive intervention in the remedial phase of this case, reasoning that, "[a] remedial phase would implicate the main objective movants fought for in the *Robinson* case[.]" **Doc. 79, at 7**. This Court stated that it would allow the *Robinson Movants* to "seek reconsideration of this ruling if they can establish adversity or collusion by the State." **Doc. 79, at 7**.

As for the Galmon Movants, this Court concluded that "since the Court is allowing the *Robinson* movants to intervene . . . the Court does not find it necessary to also allow the *Galmon* movants to intervene." **Doc. 79, at 7**. Notably, this Court did *not* state it would allow the Galmon Movants to seek reconsideration if adversity or collusion arises. The Court assigned this task to the Robinson Movants, implicitly finding that the role of policing the proceedings and making a possible future showing of adversity or collusion could fairly be taken up by the Robinson Movants. The Robinson Movants, in fact, filed a Motion to Reconsider on Saturday, March 9, 2024 (**Doc. 103**).

Since this Court's Order regarding intervention, the Defendant Secretary of State and the State filed Responses to Plaintiffs' Motion For Preliminary Injunction (**Doc. 17**). **Doc. 82 and 86,** respectively. The Galmon and Robinson Movants also filed lengthy and detailed Amicus Briefs opposing Plaintiffs' Motion for Preliminary Injunction. **Doc. 93 and 94**, respectively. Plaintiffs filed their Reply in Support of Preliminary Injunction, addressing all four sets of briefing, on March 8, 2024. **Doc. 101**.

On March 1, 2024, despite this Court's direction assigning the "policing" role to the Robinson Movants, the Galmon Movants filed a Motion to Reconsider this Court's order denying their intervention. *See* **Doc. 96**. For the reasons stated below, this Court should deny the Galmon Movants' Motion to Reconsider.

ARGUMENT

No Federal Rule of Civil Procedure specifically applies to a motion to reconsider. *Cressionnie v. Hample*, 184 Fed. App'x. 366, 369 (5th Cir. 2006); *Shepard v. Int'l Paper Co.*, 372 F.3d 326, 328 (5th Cir. 2004). Federal Rule of Civil Procedure 54(b) is the closest, albeit imperfect, fit. It allows courts to revise "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . before the entry of judgment." Fed. R. Civ. P. 54(b).

Courts in the Western District of Louisiana typically evaluate Rule 54(b) motions to reconsider interlocutory orders under the same standards that govern Rule 59(e) motions to alter or amend a final judgment. *See e.g., Leong v. Cellco P'ship*, CIV.A. 12–0711, 2013 WL 4009320 (W.D. La. July 31, 2013). Altering or amending a judgment under Rule 59(e) is an "extraordinary remedy" used infrequently, and only in specific circumstances. *Templet*, 367 F.3d at 479. "A motion to alter or amend the judgment under Rule 59(e) 'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Res. Grp., Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)) (other citations and quotation marks omitted).

This Court should deny the Movants' Motion to Reconsider for multiple reasons. First, this Court invited the Robinson Movants, *not the Galmon Movants*, to seek reconsideration of its Order, in the event developments show the State's defense is inadequate. Second, Movants fail to show

that the State no longer represents their interests in all phases of this case. Third, the Robinson Intervenors still adequately represent Movants' interests.

I. This Court invited the Robinson, not the Galmon, Movants to seek reconsideration if a change in events indicated they could make the requisite showing.

In their Motion to Reconsider, Movants state that this Court "invited them to 'seek reconsideration[.]'" **Doc 96, at 1**. This is simply incorrect. In fact, this Court stated that it would "allow the *Robinson* movants to . . . seek reconsideration of this ruling if they can establish adversity or collusion by the State." **Doc. 79, at 7** (emphasis added). This Court said nothing of the Galmon Movants seeking reconsideration. This Court concluded that the few Galmon Movants' interests were completely subsumed by those of the Robinson Movants, and the Galmon Movants provide no evidence or facts indicating that one or more of them will present different arguments or interests not already covered by the Robinson Movants.

II. The State adequately represents the Galmon Intervenors in all phases of litigation.

The Galmon Movants concede that they share the same ultimate objective with the State—defending SB8. **Doc. 96-1 at 6**. Nonetheless, Movants argue they have "unique interests that require intervention as right." **Doc. 96-1, at 7**. That unique interest, however, turns out to be a mere factual argument that cannot possibly have a significant impact in this case. Specifically, the Galmon Movants complain that the State "declines to offer" what these Movants claim is "the most obvious defense of the map, its political motivation." **Doc. 96-1, at 6**. This difference in litigation strategy does not provide a legal basis for intervention.

The starting point is this Court's observation in its original Order denying the Galmon Movants' intervention: "Differences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest." **Doc. 79, at 5** (quoting *Lamar v. Lynaugh*, 12 F.3d 1099, 1099 n.4 (5th Cir. 1993) (per curiam). This Court

recognized that proposed intervenors need something "more" than a difference of opinion regarding a party's litigation strategy. *See* **Doc. 79, at 5**.

One reason for this requirement is that the State has the ethical obligation to represent the State of Louisiana and its laws, including SB8. Given that charge, the State itself is in the best position to evaluate its own case, develop a litigation strategy, and craft arguments in favor of that litigation strategy. There is no reason this Court should doubt the State's ability to do so, and the Galmon Movants supply none.

The arguments on the other side, however, are compelling. First, in its Order denying intervention, this Court found "no indication of the likelihood of collusion or nonfeasance on behalf of the State." **Doc. 79, at 5**. The Galmon Movants do not provide any facts that should disturb this finding.

This simply leaves the matter of prudence: does it make sense to argue that a racial gerrymander can satisfy strict scrutiny based on a case of political targeting? As the Plaintiffs showed in their Preliminary Injunction Reply, the answer is simply, "no." The facts are clear that the Legislature started its process with a mandate that two majority-minority districts be drawn, and that race-based quote overrode all other considerations. *See* **Doc. 101, at 16-17**. No one seriously disputes this point. Even if other considerations later affected which district or districts would have to be gerrymandered to force creation of the second minority-controlled district (such as traditional redistricting principles or even base political calculation), that cannot and does not undermine the analysis of racial predominance under *Shaw* prong I. *Bethune-Hill v. Va. State Bd. of Elecs.*, 580 U.S. 178, 189 (2017). Then, at the level of strict scrutiny under *Shaw* prong II, what must be shown is a compelling interest and narrow tailoring—a showing commonly attempted under the VRA. The Movants did not try and have not tried to show that a political move against

a single congressman is a "compelling interest" and that SB8 reflects that narrow tailoring. The political calculation argument, in short, is unlikely to prevail and is a factual and legal rabbit-hole that can only delay these proceedings and, potentially, endanger a remedy in the few remaining months.

At any rate, Movants remain free to scour the depths of that rabbit hole as Amici. They can argue that political considerations predominated the Legislature's decision-making in passing SB8 or perhaps are sufficient to make strict scrutiny. *See* **Doc. 93, at 23**. Citing newspaper articles and blog posts in support of such a conspiracy theory does not, however, require party status.

The applicable standard for obtaining party status when the parties admittedly (*see* **Doc. 96-1 at 6**) share the objective of defending SB8's two minority-controlled districts is clear. "In order to show adversity of interest, an intervenor must demonstrate that its interests diverge from the putative representative's interests in a manner germane to the case." *Guenther v. BP Retirement Accumulation Plan*, 50 F.4th 536, at 543 (5th Cir. 2022) (internal quotations omitted). The State's decision to rest SB8's defense on what it judges to be firmer factual and legal ground may show a divergence in judgment, but it does not show a divergence of—or adversity in—interest.

III. The Robinson Intervenors still adequately represent the Proposed Galmon Intervenors' Interests

Movants argue that the presence of the Robinson Intervenors does not override their right to participate in this litigation. **Doc. 96-1, at 10**. This is yet another issue that this Court has already addressed, concluding that Movants' interests will be adequately represented by the Robinson Intervenors. *See* **Doc. 79, at 7-8**. Movants now claim that the "Galmon movants and Robinson movants reside in different parts of Louisiana, and thus may have different interests in the ultimate configuration of the state's congressional district[,]" **Doc. 96-1, at 11** (internal quotations omitted), but fail to identify any of these potentially different interests. Tellingly, the Galmon Movants never

add meat to this bare assertion, and never point out how Plaintiffs have erred in their assessment of the Galmon Movants' individual locations or interests. *See* **Doc. 33-1, at 18**. Such vague re-argument of the original Motion to Intervene cannot provide a basis for reconsideration.

Further, the Robinson Intervenors have now filed their own motion to participate in the liability phase. Although that Motion—more detailed than the Galmon Movants'—clearly lacks merit and should be denied, it shows that the Robinson Movants have consistently advanced every argument and position that the Galmon Movants claim to advance, albeit with an entirely duplicative set of lawyers, witnesses, experts, and schedules.

CONCLUSION

Plaintiffs respectfully ask the Court to deny the Motion for Reconsideration (**Doc. 96**).

Dated this 11th day of March, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 11th day of March 2024, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which gives notice of filing to all counsel of record.

/s/ Edward D. Greim
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