UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

PRESS ROBINSON, et al., Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE, Defendant	Case No.: 3:22-CV-0021-SDD-RLB
EDWARD GALMON, SR., et al., Plaintiffs, v. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS LOUISIANA SECRETARY OF STATE Defendant	Case No.: 3:22-CV-00214-BAJ-RLB

DEFENDANT-INTERVENOR STATE OF LOUISIANA'S REMEDY PROCESS PROPOSAL AND OBJECTION

On the morning of June 16, 2022, this Honorable Court held a hearing on the Motion for Extension of Time filed by the Defendant-Intervenor Legislative Leadership. While counsel for the Defendant-Intervenor State of Louisiana was present in the courtroom and tried to make an appearance when the Court asked for appearances, the Court indicated that it would not hear from the State of Louisiana

because the State of Louisiana did not have a motion before the Court.[1] The Secretary of State—the sole Defendant in the case— made no appearance.

After the Court ruled from the bench—denying the Motion for Extension—and without prior notice of a status conference or other matters pending before the Court, the Court took up the issue of judicial remedy. The Court entertained argument from Counsel for the House Speaker and the Senate President and Counsel for the Robinson and Galmon Plaintiffs, not from the Secretary of State or the State of Louisiana. Because the parties had no advance notice that the question of procedure for a court-ordered remedy might arise, there was no consensus by these parties on the procedure for remedy and the issue of discovery. The Court directed "all parties" to file briefs by 5:00 p.m. that day, setting forth their proposals and the nature and timeline of the judicial redistricting process in the event that the Legislature is unable to enact a remedial map. Rec. Doc. 196. The Court issuing an order requiring parties to brief remedy procedure within a few hours, when all counsel were not even allowed to speak at the hearing is fundamentally unfair, and the Attorney General objects to this procedure.

The Court's action in requiring parties to begin the judicial process of drawing a new map before the Legislature has adjourned and contrary to the order issued on June 6, with a directive for all parties (even those not in Court before her on the

[1] Attorneys for the State of Louisiana have effectively been shut down from full participation in the case. While the State of Louisiana's intervention was pending with the Court, attorneys for the State's Attorney General representing the State of Louisiana were not allowed to participate in preliminary status conferences where key scheduling for the case took place, even though other proposed Intervenors were allowed to participate. The State of Louisiana was not involved in the process of confecting timelines for this matter.

motion) to submit briefs within five hours on how to move forward, effectively, deviates from the preliminary injunction order, which provided that:

> The Court ORDERS the Louisiana Legislature to enact a remedial plan on before June 20, 2022. If the Legislature is unable to pass a remedial plan *by that date*, the Court will issue additional orders to enact a remedial plan complaint with the laws and Constitution of the United States.

Rec. Doc. 173 at p. 2 (emphasis added).

In the Court's June 6, 2022, ruling and order, the Court correctly noted that the "Court's imposition of a particular map becomes necessary only if the Legislature fails to adopt is own remedial map. . . ." Rec. Doc. 173 at p. 151. The Legislature is currently in session.

In all instances, "reapportionment is primarily a matter for legislative consideration and determination." *Upham v. Seamon*, 456 U.S. 37, 41 (1982) (quoting *White v. Weiser*, 412 U.S. 783, 794-95 (1973); *see also LULAC v. Perry*, 548 U.S. 399, 460 (2006). This includes Section 2 violations where "courts clearly defer to the legislature in the first instance to undertake remedies." *Mississippi State Chapter, Operation Push v. Mabus*, 932 F.2d 400, 402 (5th Cir. 1991); *see also Missouri v. Jenkins*, 495 U.S. 33, 51 (1990) ("[O]ne of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of local government institutions.").

"[W]hen feasible, [the Court's] practice has been to 'offer governing bodies the first pass at devising' remedies for Voting Rights Act violations." *Veasey v. Abbott*, 830 F.3d 216, 270 (5 th Cir. 2016), *cert denied*, 137 S. Ct. 612 (2017) (quoting *United*

States v. Brown, 561 F.3d 420, 435 (5th Cir. 2009)). Only when "those with legislative responsibilities do not respond" *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978), or "when it is *not* practicable to permit a legislative body this opportunity because of an impending election" does it fall to the courts. *Veasey*, 830 F.3d at 270 (emphasis in original) (quoting *Wise*, 437 U.S. at 540); *see also White*, 412 U.S. at 794-95) ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion . . . in a timely fashion after having had an adequate opportunity to do so.").

Senator Patrick Page Cortez testified that redistricting legislation is the most difficult legislation handled by the legislature. As reflected in the transcript of the June 16, 2022 hearing, the Court injected itself in the legislative process by requesting suspension of all legislative rules in order to ensure the enactment of a plan with two majority-minority districts by the Court's deadline set forth in the preliminary injunction ruling. The Speaker Schexnayder and President Cortez explained in great detail why this is not a reasonable time period to comply with the Court's order. There is no benefit in a rushed process. Indeed, rushing the process only serves to undermine confidence in the elections that do occur and is an affront to federal-state comity.

To illustrate this point the State of Louisiana points to expert reports offered by Plaintiffs for the preliminary injunction, which included analysis of the wrong maps. This resulted in supplementation and amendments to expert reports, even during the week of the preliminary injunction hearing.

The State of Louisiana respectfully lodges and notes its disagreement with the Court's preliminary-injunction opinion on the law and the facts. With this in mind, and without waiving any rights, including the right to challenge the liability ruling on appeal before and after final judgment and the right to challenge the propriety of ordering a remedial phase as part of a preliminary injunction decision, the State recommends that the following process be followed:

- The Louisiana Legislature be provided an adequate opportunity to seek meaningful appellate review of this Court's ruling and order dated June 6, 2022. That appeal has been expedited and is set for argument July 8.
- If unsuccessful on appeal, the Louisiana Legislature be provided an adequate opportunity to adopt is own remedial map.
- If the Legislature fails to reapportion in a timely fashion after having had an adequate opportunity to do so the Plaintiffs present their map through legal argument or expert testimony.
- Defendants be afforded a reasonable opportunity to conduct discovery of the proposed map, as provided pursuant to the ordinary rules of Federal Civil Procedure.
- After Discovery, Defendants be given an opportunity to object to Plaintiffs' map in the form of legal argument, briefing, and/or expert presentations.
- The Court hold a hearing on the remedial plan.

This morning, the Court also requested that parties provide citation supporting their right to discovery by 5:00 p.m. this afternoon. Again, the parties were not before the Court on this matter. It came up in the context of other discussions. The State, therefore, objects to only having five hours to brief such an important issue. Nevertheless, to the extent it can comply with this directive, it adopts the arguments set forth in the brief filed by the Legislative Defendants and

submits the following. The Fifth Circuit addressed the fundamental right of litigants to discovery in *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 883 (5th Cir. 2021). In *Miller*, the plaintiff sued Sam Houston State University (SHSU) and Texas State University System (TSUS) under Title VII of the Civil rights Act of 1964, 42 U.S.C. §2000(3), *et seq.*, and the Equal Pay Act, 29 U.S.C. §206(d). She alleged sex discrimination, retaliation and a hostile work environment. Shortly thereafter, filed a separate action against the University of Houston Downtown (UHD) and the University of Houston System (UHS) under Title VII alleging denial of employment constituted retaliation.

The district court dismissed Miller's claims against TSUS and UHS. It denied a subsequent motion for reconsideration and denied repeated requests for leave to take discovery and eventually granted summary judgment in favor or SHUS and UHD. On appeal the Fifth Circuit took note that "[f]rom the outset of these suits, the district judge's actions evinced a prejudgment of Millers' claims." *Id.* at 884. The court stated that "A litigant has the fundamental right to fairness in every proceeding. Fairness is upheld by avoiding even the appearance of partiality. *Id.* at 883 (citing *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980)). When a judge's actions stand at odds with these basic notions, we must act or suffer the loss of public confidence in our judicial system. "[J]ustice must satisfy the appearance of justice." *Id.* (citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954)).

The district court had "stifled Millers' attempts at discovery," including limiting discovery and denying requests to take depositions. *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 886 (5th Cir. 2021). On appeal, among other complaints, Miller raised as issue that the district court abused its discretion in denying her repeated discovery requests. Positing the general law on discovery, the Fifth Circuit stated that:

> We review a district court's discovery rulings for an abuse of discretion. *Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 373 (5th Cir. 2020). Generally, broad discretion is afforded to the district court when deciding discovery matters. *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 261 (5th Cir. 2011). We reverse "only if [the decision] affected a party's substantial rights." *N. Cypress Med. Ctr. Operating Co. v. Aetna Life Ins. Co.*, 898 F.3d 461, 476 (5th Cir. 2018). Substantial rights are affected if the district court's decision was "arbitrary or clearly unreasonable." *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 428 (5th Cir. 2005) (citation omitted). nder Federal Rule of Civil Procedure 26(b), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense or proportional to the needs of the case ... [.]" This standard is broad, especially when viewed in the context of Title VII. *See Trevino v. Celanese Corp.*, 701 F.2d 397, 405 (5th Cir. 1983) ("The imposition of unnecessary limitations on discovery is especially frowned upon in Title VII cases.").

Miller v. Sam Houston State Univ., 986 F.3d 880, 891 (5th Cir. 2021). Having discussed the district court judge's actions limiting the plaintiff's discovery, including preventing her from deposing witnesses, the Fifth Circuit wrote that "To put it simply, the court's discovery restrictions suffocated any chance for Miller to fairly present her claims." *Id.* at 892.

The Fifth Circuit concluded by holding that:

> When a party is not given a full and fair opportunity to discover information essential to its opposition to summary judgment, the limitation on discovery is reversible error." *McCoy*, 695 F. App'x at 759 (quoting *Brown v. Miss. Valley State Univ.*, 311 F.3d 328, 333 (5th Cir. 2002)). Miller has demonstrated that the district court's almost blanket denials of her discovery requests affected her substantial rights, including her ability to respond to the Universities' motions for summary judgment. Because the district court abused its discretion in this regard, we reverse the district court's summary judgments and remand these cases to allow Miller the opportunity to obtain discovery "relevant to any party's claim or defense or proportional to the needs of the case." FED. R. CIV. P. 26(b).

Id. at 892.

The Court's remedial phase must provide for sufficient development of the evidentiary record of the parties' proposed remedial plans before the Court adopts or rejecting any plan. The Fifth Circuit has recognized that even in expedited proceedings, a district court must conduct an "evidentiary hearing" and have "either specific fact findings, or at least, a record sufficient to allow review" when considering remedial plans. *Jones v. City of Lubbock*, 727 F.2d 364, 387 (5th Cir. 1984) (noting "shortcomings" in the district court's remedial phase, which lasted less than a month and a half, that would have required vacatur).

Here, Defendant and Intervenorss are entitled to a full and fair opportunity to discover information to the preparation and creation of Plaintiffs' maps to prepare a defense. Should they be deprived of this opportunity for discovery, their chances of fairly presenting defense claims will be suffocated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 16th day of June 2022, 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/ Angelique Duhon Freel

Angelique Duhon Freel