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

PLAINTIFFS' JOINT OPPOSITION TO DEFENDANTS' MOTION TO CANCEL HEARING ON REMEDY AND ENTER A SCHEDULING ORDER FOR TRIAL

NOW INTO COURT come Plaintiffs Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard (the "Galmon Plaintiffs") and Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, NAACP Louisiana State Conference, and Power

Coalition (the "Robinson Plaintiffs"), to oppose Defendants' emergency motion to cancel the remedial hearing and schedule trial. The motion reprises several meritless arguments that have already been rejected. These efforts do not warrant an unsolicited motion or emergency briefing, let alone cancelling the scheduled remedial hearing. Defendants' motion should be denied, and the remedial hearing should proceed as scheduled.[1]

In 2022, Louisiana's enacted congressional map wrongfully diluted the votes of Black Louisianians in violation of Section 2 of the Voting Rights Act. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022) (identifying likely violation). To prevent this injustice from repeating in 2024, the urgent priority now is to ensure that a lawful backstop is in place while this case proceeds to final judgment and through any subsequent appeals. The appropriate process to accomplish that, as the Court has already recognized, is to continue expeditiously to a remedial hearing and the adoption of an interim map that satisfies Section 2's commands. *See* Order, ECF No. 250 (resetting preliminary injunction hearing).

Defendants, again, seek to derail this process. Their strategy has consistently been to slow-walk this case, only to later announce that the time for entering relief has run out. *Cf.* Pls.' Joint Opp'n to State Intervs.' Mot. for Ext. of Time at 1, ECF No. 218 (noting Defendants' gambit); *Galmon* Pls.' Resp. to Leg. Intervs.' Mot. for Ext. of Time at 5, ECF No. 192 (same). Defendants should not be permitted to pursue this strategy again. As Defendants acknowledge, additional delays could jeopardize any entry of relief in time for

[1] While Plaintiffs maintain that Defendants' Motion for Expedited Consideration, ECF No. 261, attempts to manufacture an emergency where none exists, Plaintiffs are willing to accommodate Defendants' request for speedy briefing by filing this opposition in advance of their proposed deadline. *See id.* ¶ 4 (requesting Plaintiffs' response by Wednesday, August 30).

the 2024 elections. *See* Defs.' Mem. of Law in support of Emergency Mot. ("Mem.") 5, ECF No. 260-1 (asserting there "is *just* enough time to hold a trial on the merits and to allow the appellate process to run its course in advance of" the 2024 elections). That would be unjust, and the way to prevent it is to adopt a provisional remedial map soon—exactly as this Court is on track to do, with the benefit of the hearing scheduled for October.[2]

Defendants erroneously argue, again, that recent Supreme Court caselaw requires a reevaluation of Plaintiffs' liability-phase evidence. *See* Mem. 9–10 (citing *Allen v. Milligan*, 143 S. Ct. 1487 (2023), and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023) (*SFFA*)). It does not. *Allen* affirmed a preliminary injunction that closely parallels the one at issue here, and *SFFA* had nothing to do with redistricting. *See* Pls.' Joint Notice Re: Status Conf. at 3–4, ECF No. 242. Notably, the Fifth Circuit recently rejected Defendants' request to remand their appeal for further consideration in light of *Allen* and *SFFA*, and the court of appeals is instead proceeding with argument on October 6, 2023—conveniently timed *after* the remedial hearing scheduled here. *See* Order, *Robinson v. Ardoin*, No. 22-30333 (5th Cir. Aug. 22, 2023).

Defendants also argue, again, that the preliminary injunction is somehow moot. *See* Mem. 10. It is not. *See* Pls.' Joint Notice Re: Status Conf. at 4–5 (explaining the Court enjoined Defendants from conducting *any* congressional election under the enacted map). And they complain, again, that completing the preliminary injunction process would be "unfair," and maybe even unconstitutional. Mem. 7–8. Again, wrong. *See* Pls.' Joint Notice

[2] Additionally, there is currently no obstacle to proceeding towards a trial simultaneously with the remedial process or after a provisional remedy is in place. But Defendants have failed to take even the first step toward initiating merits discovery by requesting a discovery conference pursuant to Federal Rule of Civil Procedure 26(f).

Re: Status Conf. at 5–6 (explaining that "while the Court can also move towards a final judgment in this case, there is no basis to reverse the relative positions of the parties achieved through the preliminary injunction or skip over the remedial process necessary to effectuate that injunction"). The Court has already decided that a remedial hearing is appropriate, and repetitive motions for reconsideration—in style or substance—are inappropriate. *Cf.* Pls.' Joint Opp'n to State Intervs.' Mot for Extension of Time at 1–2, (recognizing another instance where Defendants' request for delay mirrored a request denied by the Court 12 days prior).[3]

The only pending question for this Court's resolution, then, is what, if any, additional process is necessary in advance of the October hearing. When the Supreme Court stayed proceedings in this case on June 28, 2022, the parties were on the literal eve of the remedial hearing. Accordingly, the preparation necessary for that hearing had essentially finished: inclined parties had submitted proposed remedial maps and memoranda in support; opposing parties had responded; witnesses and exhibits had been disclosed; expert reports had been served; and Defendants had deposed each of the two experts that Plaintiffs' intended to call at the hearing. *See* Scheduling Order, ECF No. 206.[4] "'[R]esetting' the previous preliminary injunction hearing," as Defendants have urged,

[3] Also inappropriate is Defendants' pattern of seeking to usurp this Court's case management authority. *See* Mem. 2 (castigating Court for failing to issue scheduling order); Mot. for Expedited Consideration at 2 (seeking to impose deadline for Court to rule on motion to cancel remedial hearing); Emergency Mot. of Leg. Interv. Defs.-Appellants for Stay Pending Appeal at 1, *Robinson v. Ardoin*, No. 20-303333 (5th Cir. June 9, 2023) (castigating this Court for "t[aking] no action for 24 days" after preliminary injunction hearing); *id.* at 18–19 (similar). It is the parties' responsibility to conform to the Court's judgment about the appropriate schedule, not vice versa.

[4] The deposition of a Defendants' expert was interrupted by the Supreme Court's stay. Plaintiffs are willing to continue to the remedial hearing without completing this deposition.

Defs.' Joint Notice of Proposed Pre-Hearing Schedule at 6—where all that remains is live testimony and argument before the Court—would eliminate any purported prejudice to Defendants and permit the Court to quite literally pick up where this case left off in June 2022.

Defendants' motion should be denied.

Date: August 28, 2023

Respectfully submitted,

By: */s/Abha Khanna*

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