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

PHILLIP CALLAIS, *et al.*, **Plaintiffs,** **v.** **NANCY LANDRY, in her official capacity as Louisiana Secretary of State,** **Defendant.**	**Case No. 3:24-cv-00122-DCJ-CES-RRS**

***GALMON* MOVANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO RECONSIDER ORDER DENYING INTERVENTION**

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INTRODUCTION

In its Order denying the intervention of Edward Galmon, Sr., Ciara Hart, Norris Henderson, Tramelle Howard, and Dr. Ross Williams ("*Galmon* movants"), the Court recognized that its decision could and should be revisited if it became clear that the State Defendants were adverse to or would not adequately represent the *Galmon* movants' interests, and invited them to "seek reconsideration" under such circumstances. ECF No. 79 at 7. The responses to Plaintiffs' motion for preliminary injunction filed by Defendant Secretary of State and Defendant-Intervenor the State of Louisiana do just that. Accordingly, pursuant to Federal Rule of Civil Procedure 54(b) and in compliance with this Court's Order, ECF No. 79, the *Galmon* movants, by and through undersigned counsel, respectfully move for reconsideration of this Court's order denying their motion to intervene. While the *Galmon* movants have submitted their Opposition to Plaintiffs' Preliminary Injunction as amicus, *see* ECF No. 85-1, the "right to file a brief as amicus curiae is no substitute for the right to intervene as a party." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002) (quoting *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 844 (10th Cir. 1996)); *see also United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991).

The responses to the motion for preliminary injunction make clear that the State will not vigorously defend S.B. 8—or the *Galmon* movants' interest in it—necessitating their intervention. Unlike in the Middle District of Louisiana redistricting litigation, where the Secretary provided a vigorous substantive defense of Louisiana's previous congressional map, here she offers "no position on the merits of Plaintiffs' Motion"—which requests to enjoin S.B. 8—at all. Sec'y's Resp. to Pls.' Mot. for Prelim. Inj., ECF No. 82. The State, in turn, fails to advance a crucial defense of S.B. 8's constitutionality—that the predominant motivation for the districting configuration was politics, not race—and has altogether refrained from challenging Plaintiffs' sole

expert, who is the *same* expert that the State retained in the Middle District litigation for similar analysis. *See* Intervenor-Defs.' Opp'n to Pls.' Mot. for Prelim. Inj., ECF No. 86. And the *Robinson* movants are not "existing parties" to the liability phase and thus cannot oust the *Galmon* movants' right to participate in those proceedings, nor should their participation in the remedial proceedings preclude *Galmon* movants' intervention in the case as a whole. Fed. R. Civ. P. 24(a)(2).

Because it is now clear that the *Galmon* movants satisfy the prerequisites for intervention as of right, *see* Fed. R. Civ. P. 24(a), the Court should grant intervention.

LEGAL STANDARD

Federal Rule of Civil Procedure 54(b) provides that an interlocutory order that does not adjudicate all claims against all parties is subject to revision "at any time before the entry of a judgment" in the case. In deciding a Rule 54(b) motion to reconsider, courts may consider factors including whether "1) the judgment is based upon a manifest error of fact or law; 2) newly discovered or previously unavailable evidence exists; [and] 3) the initial decision was manifestly unjust." *Adams v. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. of the U.S. & Can., AFL-CIO, Loc. 198*, 495 F. Supp. 3d 392, 395 (M.D. La. 2020). The Rule 54(b) standard is flexible and less exacting than Rule 59(e) motions for reconsideration from final judgments, and the court is "free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law." *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336 (5th Cir. 2017) (quoting *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 185 (5th Cir. 1990)).

ARGUMENT

Rule 24 entitles parties to intervene and requires courts to grant intervention where four elements are satisfied: "(1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the

applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit. *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (alteration in original) (quoting *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 1984)).

This Court has already found that the *Galmon* movants established the first three elements for intervention as a matter of right, so the only factor at issue is adequacy of representation. ECF No. 79 at 4, 7. The Court invited movants to "seek reconsideration of [its] ruling if they can establish adversity or collusion by the State." *Id.* at 7. As the Court noted, the burden to demonstrate inadequate representation is minimal and satisfied if the existing representation *may* be inadequate; certainty is not required. *Id.* at 4 (citing *Brumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014), and *Guenther v. BP Ret. Accumulation Plan*, 50 F.4th 535, 543 (5th Cir. 2022)). That certainty, while not necessary, is now present.

I. The State Defendants do not adequately represent the interests of the *Galmon* movants.

Government entities rarely serve as adequate advocates for private parties, and this case only illustrates why: the State's general obligation to defend an enacted law does not equate to or take the place of zealous advocacy in defense of S.B. 8. As the State's responses to the Plaintiffs' motion for a preliminary injunction demonstrate, neither the Secretary of State—who declines to offer any defense on the merits at all—nor the State itself—which declines to offer the most obvious defense of the map, its political motivation—are vigorously defending that map or the *Galmon* movants' interests. Though they nominally share the same ultimate *objective* in defending S.B. 8 as the *Galmon* movants, their positions in their preliminary injunction papers make clear—as the Fifth Circuit has recognized—that this is one of those cases where the proposed intervenors

nonetheless have unique interests that require intervention as of right. *See Galmon* Movants' Motion to Intervene, ECF No. 10 at 9–11.

Indeed, the Fifth Circuit has reversed orders denying intervention as of right in such cases where the governmental parties are not likely to adequately defend the interests of the non-governmental parties. In *La Union del Pueblo Entero*, for example, political party committees sought intervention to defend Texas's new statute regulating election procedures. *See* 29 F.4th at 304. The Fifth Circuit recognized that the committees and the government defendants shared the same objective in upholding the challenged bill, but the court nonetheless reversed the denial of intervention because "the Committees' private interests are different in kind from the public interests of the State or its officials." *Id.* at 308–09. Likewise, in *Brumfield*, parents sought intervention to defend Louisiana's voucher program. 749 F.3d at 340. The Fifth Circuit recognized that the parents and the state shared the same objective in preserving the voucher program, but the court nonetheless reversed the denial of intervention because the state had different reasons motivating its litigation strategy and the parents offered "real and legitimate additional or contrary arguments" in defense of the program. *Id.* at 345–46. And in *Miller v. Vilsack*, a nonprofit cooperative sought intervention to defend a federal benefit program. No. 21-11271, 2022 WL 851782, at *1 (5th Cir. Mar. 22, 2022). The Fifth Circuit recognized that the cooperative and the government defendant shared the same objective in upholding the challenged program, but the court nonetheless reversed the denial of intervention because the cooperative intended to make "a meaningfully different argument" than the government in defense of the program, *id.* at *3–4.[1]

[1] *See also, e.g.*, *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for private

Since this Court's Order denying intervention, it has become crystal clear that neither of the government defendants here—not the Secretary of State, and not the State of Louisiana—adequately represents the *Galmon* movants' interests. The Secretary's response to Plaintiffs' motion for preliminary injunction disclaimed even a shared objective with the *Galmon* movants, stating that she "takes no position on the merits" of Plaintiffs' motion. ECF No. 82 at 1. The Secretary presented no substantive argument and merely requested that a final congressional plan be in place by May 15, 2024, to facilitate her administrative duties. *Id.* at 1–2. This approach is profoundly different from tactics in the preceding and related Middle District litigation, where the Secretary contributed to a comprehensive defense of the enacted congressional plan. *See* Def.'s Opp'n to Pls.' Mots. for Prelim. Inj., *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La. Apr. 29, 2022), ECF No. 101. Here, the Secretary declines to say anything at all.

The State's response to Plaintiff's motion for preliminary injunction, meanwhile, only confirms the fundamental and material difference between the parties' positions, requiring intervention so that the *Galmon* movants may adequately represent their own interests. Plaintiffs accuse the Legislature of drawing congressional districts in a manner tainted by racial motivations, citing snippets of testimony from legislative debates and circumstantial evidence compiled in the expert report of Mr. Michael Hefner. *See* ECF No. 17-1 at 15–24. Remarkably, the State does not challenge *any* of this. It does not dispute that race was the Legislature's predominant motivation;

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parties."); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996–97 (10th Cir. 2009) (reversing denial of intervention and emphasizing showing of inadequate representation "is easily made when the party upon which the intervenor must rely is the government"); *Chiglo v. City of Preston*, 104 F.3d 185, 187–88 (8th Cir. 1997) ("If the citizen stands to gain or lose from the litigation in a way different from the public at large, the *parens patriae* would not be expected to represent him."); *Fresno County v. Andrus*, 622 F.2d 436, 439 (9th Cir. 1980) (reversing denial of intervention where state defendant did not pursue all arguments offered by intervenor and government defendant adopted its position "only reluctantly after [intervenor] brought a law suit against it").

it does not cite a single line of legislative testimony explaining the Legislature's stated political motives; and it does not question any of the conclusions offered by Mr. Hefner—who happens to be *the same expert* that the State of Louisiana retained in the Middle District action to opine that race predominated in the Section 2 plaintiffs' illustrative maps. *See Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La.), ECF No. 108-3 at 22–23. Instead, the State simply argues that the Legislature's racial motivations survive constitutional scrutiny. *See* ECF No. 86 at 7–12. That is true, but the State's reluctance to undermine its own redistricting expert and explain the overwhelming *political* interests motivating the Legislature's districting decisions leaves the *Galmon* movants' interests vulnerable. Because the State is conflicted out of challenging the credibility of Plaintiffs' sole expert, *contra Galmon* Amicus Br., ECF No. 93 at 23–25, and because the State's officially apolitical nature appears to render it unwilling to defend the Legislature's raw political favoritism for some congressional incumbents over others, *contra id.* at 19–23, the State does not and cannot adequately represent *Galmon* movants' interests.

This fundamental failure to represent the *Galmon* movants' interests at the preliminary injunction stage is more than enough to require that movants be allowed to intervene to defend those interests. While the State may have an ethical obligation to "defend SB8 as a constitutionally drawn Congressional redistricting map," ECF No. 79 at 5, it has not professed any particular interest in the existence—let alone the placement—of a second Black-opportunity congressional district. Those are the interests that motivate the *Galmon* movants' request for participation, and they are implicated both in the liability phase, where Plaintiffs intend to test the Legislature's understanding of its Section 2 obligations, and in the remedial phase, where any new map will be governed by Section 2. Especially because any findings and conclusions in the liability phase about

the scope of Section 2's application may continue to control in the remedial phase, it is imperative that *Galmon* movants be allowed to participate in all proceedings.

II. Participation by the *Robinson* movants does not override the *Galmon* movants' rights to participate.

The *Robinson* movants are not existing parties to the liability phase, and thus cannot adequately represent *Galmon* movants in those critical proceedings. Rule 24 provides for intervention as of right where the "existing parties" do not adequately represent the intervenor's interest, and the other elements of intervention are satisfied. Fed. R. Civ. P. 24(a)(2). Because the Secretary and the State are the only existing parties that could arguably represent the *Galmon* movants' interests, whether other *non-party* proposed intervenors like the *Robinson* movants could adequately represent the *Galmon* movants is not relevant. As the *Galmon* movants explained in their reply in support of their motion to intervene, it is common for courts to grant intervention in redistricting actions to multiple groups of voter-intervenors where they each satisfy the requirements for intervention as of right. *See* ECF No. 75 at 5–6 (citing *Berry v. Ashcroft*, No. 4:22-CV-00465-JAR, 2022 WL 1540287, *1–3 (E.D. Mo. May 16, 2022)); *see also, e.g.*, Order, *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450-OA (Wis. Oct. 14, 2021) (granting intervention to multiple groups of concerned voters in redistricting action under Wisconsin analog to Rule 24).[2]

This Court's order denying intervention stated that because "the Court is allowing the *Robinson* movants to intervene" for the limited purpose of participating in any remedial proceedings, "the Court does not find it necessary to also allow the *Galmon* movants to intervene." ECF No. 79 at 7. The *Galmon* movants have asserted a right to participate in *all* proceedings,

[2] Available at https://acefiling.wicourts.gov/document/uploaded/2021AP001450/443131.

however—including the liability proceedings—where it remains the case that their interests are not represented by any existing party.

This Court also said, without explanation, that *Galmon* movants' "interests and objectives will be adequately represented by the *Robinson* movants." *Id.* But as *Galmon* movants explained in their reply brief, 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 districts." ECF No. 75 at 5–6. For example, Edward Galmon, Sr. is the only proposed intervenor who is a voter from St. Helena Parish; Norris Henderson is the only proposed intervenor who is a voter from Orleans Parish; and Ross Williams is the only proposed intervenor who is a voter from Natchitoches Parish. *See* Pls.' Resp. to Mots. to Intervene & Transfer, ECF No. 33-1 at 9. Dr. Williams's interests are particularly vulnerable here because he is the only proposed intervenor-defendant who lives in the western half of Louisiana and thus benefitted from the Legislature's decision to depart from the illustrative configurations presented in the Middle District litigation, where the plaintiffs proposed a second Black-opportunity district could be created in eastern Louisiana. To the extent the Court determines that *some Galmon* movants may be adequately represented by the interests of *some Robinson* movants—a decision it should not reach because no *Robinson* movant is an existing party to the liability proceedings—the Court should nonetheless grant intervention to the movants who remain inadequately represented.

Finally, the Court remarked that "the *Robinson* movants constitute the plaintiffs in the lead case of *Robinson v. Ardoin*, No. 3:22-cv-0211-SDD-SDJ, with which the suit filed by the *Galmon* plaintiffs was consolidated." ECF No. 79 at 7–8. But the *Robinson* case was "lead" only in the sense that the *Robinson* plaintiffs filed their Section 2 complaint minutes before the *Galmon* plaintiffs filed theirs—the Middle District court never designated either plaintiff group the "lead

plaintiff." Consolidation was entered in the "interests of efficiency and judicial economy," *see* Order of Consol., *Robinson*, No. 3:22-cv-0211-SDD-SDJ (M.D. La. Apr. 14, 2022), ECF No. 34, and the court permitted equal participation by both plaintiff groups in all phases of litigation. The two plaintiff groups were comprised of different voters, engaged different experts who conducted different analyses, submitted different illustrative maps, and represented their distinct interests in court throughout the two years of litigation.

Like in the Middle District litigation, participation by both *Robinson* movants and *Galmon* movants can be structured for efficiency and judicial economy. *Robinson* movants and *Galmon* movants, for example, could be instructed to coordinate their defenses where their interests are aligned by minimizing duplication of witnesses, briefing, and, if necessary, proposed maps. *See, e.g.*, Order, *Robinson*, No. 3:22-cv-0211-SDD-SDJ (M.D. La. June 17, 2022), ECF No. 206 (ordering plaintiffs and defendants to submit one joint remedial map and supporting memoranda in support on each side). But because the *Galmon* movants satisfy the four elements of intervention as of right, they should be granted leave to participate in all aspects of this litigation.

CONCLUSION

The Court should reconsider its Order denying intervention and grant Proposed Intervenors' motion to intervene as a matter of right under Rule 24(a)(2), or, in the alternative, permit them to intervene under Rule 24(b).

Respectfully submitted this March 1, 2024.

s/ J.E. Cullens, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, and that service will be provided through the CM/ECF system.

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