

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

PHILLIP 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,

v.

NANCY LANDRY, in her official capacity
as Secretary of State for Louisiana,

Defendant.

Civil Action No. 3:24-cv-00122

Judge David C. Joseph

Circuit Judge Carl E. Stewart

Judge Robert R. Summerhays

**ROBINSON INTERVENORS' MOTION FOR LEAVE TO ALLOW ANTHONY
FAIRFAX AND ROYCE DUPLESSIS TO TESTIFY AT TRIAL
REMOTELY VIA VIDEOCONFERENCING**

Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Cleo Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, the National Association for the Advancement of Colored People Louisiana State Conference, and the Power Coalition for Equity and Justice (collectively, the “*Robinson* plaintiffs” or “*Robinson* Intervenors”) respectfully request, pursuant to Federal Rule of Civil Procedure 43(a), that the Court enter an order permitting two witnesses that *Robinson* Intervenors anticipate calling at trial—Mr. Anthony Fairfax and Mr. Royce Duplessis—to testify remotely via video conferencing. In support of this request, *Robinson* Intervenors state:

1. On March 15, 2024, this Court granted the *Robinson* plaintiffs’ Motion to Reconsider Intervention Order and permitted the *Robinson* plaintiffs to participate in the initial

phase of the case—including the hearing commencing April 8, 2024. The Court limited the *Robinson* Intervenors' participation to the issues whether race was the predominant factor in the creation of SB 8 and whether SB 8 can pass strict scrutiny review. *See* Order ECF No. 114 at 2.

2. *Robinson* Intervenors intend to call during trial Mr. Anthony Fairfax as an expert witness and Mr. Royce Duplessis as a fact witness in their case in chief to testify on these issues.

3. *Robinson* Intervenors anticipate needing to call Mr. Anthony Fairfax on or after Tuesday, April 9, 2024. During the March 22, 2024 status conference, counsel for Plaintiffs represented to the Court that their expert, Mr. Hefner, is completely unavailable to testify on Monday, April 8, 2024, and that they will instead call him to testify on Tuesday, April 9, 2024. The testimony of Mr. Fairfax will, in part, respond to Mr. Hefner's expert report and associated testimony, and Plaintiffs submit that the Court will benefit most from Mr. Fairfax's testimony if it occurs after the testimony of Mr. Hefner.

4. Mr. Fairfax has a longstanding family commitment—the celebration of his daughter's 21st birthday—on Tuesday, April 9, 2024, which would preclude his traveling to Shreveport to testify on April 9 or 10, 2024.

5. Mr. Royce Duplessis is a member of the Louisiana State Senate, representing District Five. The 2024 Regular Session convened on Monday, March 11, 2024 and will last until Final Adjournment no later than June 3, 2024. Mr. Duplessis is a member of the Insurance, Judiciary B, and Natural Resources committees, as well as a member of the Senate Select Committee on Homeland Security. Sen. Duplessis also has multiple bills that he filed this year that may be scheduled for other committees or scheduled for floor debate. In light of the active legislative session in Baton Rouge, Mr. Duplessis would be unable to attend the hearing in person but is available to testify remotely.

6. *Robinson* Intervenors anticipate that the direct examination of both Mr. Fairfax and Mr. Duplessis will last approximately 30 minutes each.

7. The *Robinson* Intervenors have retained Impact Trial Consulting, which has extensive experience facilitating and supporting remote testimony, including coordinating hybrid in-person/remote trials and entire remote trials during the height of the COVID-19 pandemic. *See, e.g., Jones v. De Santis*, 4:19-cv-00300 (N.D. Fla.) (fully remote two-week bench trial); *Flores v. Town of Islip*, 2:18-cv-03549 (E.D.N.Y.) (voting rights bench trial); *Syntel Sterling Best Shores Mauritius Limited v. The Trizetto Group.*, 1:15-cv-00211 (S.D.N.Y.) (hybrid in-person/remote civil jury trial including over 60 remote witnesses). Impact Trial Consulting has coordinated with the Courthouse technology personnel to discuss the technology available in the Courthouse so that—should the Court grant Intervenors’ motion—the Court, the advocates, and the witness are able to engage seamlessly with remote testimony.

8. The relief requested—the use of video conferencing technology for two witnesses—will not prejudice any party. The technology set-up will provide an opportunity for the Court to administer the oath and will ensure that the testimony is provided in open court in a manner that will allow Plaintiffs to cross-examine the witness and the Court and parties to observe and make credibility determinations.

9. The Plaintiffs do not oppose the motion for remote examination with respect to Mr. Fairfax, but do oppose the motion with respect to Sen. Duplessis. The State takes no position and defers to the preference of the Court. The Secretary of State also takes no position and defers to the preference of the Court.

10. Pursuant to Fed. R. Civ. P. 43(a), “the court may permit testimony in open court by contemporaneous transmission from a different location” for good cause. Good cause exists for

Mr. Fairfax to testify remotely because Mr. Fairfax must testify after Mr. Hefner is examined, Plaintiffs have indicated that Mr. Hefner cannot testify until April 9, 2024 and Mr. Fairfax has a longstanding family commitment that would preclude travel for an examination on April 9 or 10. Good cause exists for Mr. Duplessis to testify remotely because he is a sitting Louisiana State Senator and the Senate is in session during the April 8–10, 2024 trial.

CONCLUSION

For the reasons stated above, Robinson Intervenors respectfully request that this Court exercise its discretion to enter an order granting Robinson Intervenors leave to call Mr. Fairfax and Mr. Duplessis to testify at trial remotely via video conferencing.

DATED: April 2, 2024

By: /s/ Tracie L. Washington
Tracie L. Washington
LA. Bar No. 25925
Louisiana Justice Institute
8004 Belfast Street
New Orleans, LA 70125
Tel: (504) 872-9134
tracie.washington.esq@gmail.com

*Counsel for Robinson Intervenors
Dorothy Nairne, Martha Davis, Cleo
Earnest Lowe, and Rene Soule*

Respectfully submitted,

By: /s/ John Adcock
John Adcock
Adcock Law LLC
3110 Canal Street
New Orleans, LA 70119
Tel: (504) 233-3125
jnadcock@gmail.com

Counsel for Robinson Intervenors

Stuart Naifeh (admitted pro hac vice)
Kathryn Sadasivan (admitted pro hac vice)
Victoria Wenger (admitted pro hac vice)
NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
Tel: (212) 965-2200
snaifeh@naacpldf.org
ksadasivan@naacpldf.org
vwenger@naacpldf.org

R. Jared Evans
LA. Bar No. 34537
I. Sara Rohani (admitted pro hac vice)
NAACP Legal Defense and
Educational Fund, Inc.
700 14th Street N.W. Ste. 600
Washington, DC 20005
Tel: (202) 682-1300
jevans@naacpldf.org
srohani@naacpldf.org

Sarah Brannon (admitted pro hac vice)
Megan C. Keenan (admitted pro hac vice)
American Civil Liberties Union Foundation
915 15th St., NW
Washington, DC 20005
sbrannon@aclu.org
mkeenana@aclu.org

Nora Ahmed
NY Bar No. 5092374 (pro hac vice
forthcoming)
ACLU Foundation of Louisiana
1340 Poydras St, Ste. 2160
New Orleans, LA 70112
Tel: (504) 522-0628
nahmed@laaclu.org

Additional counsel for Robinson Intervenors

*Practice is limited to federal court.

Robert A. Atkins (admitted pro hac vice)
Yahonnes Cleary (admitted pro hac vice)
Jonathan H. Hurwitz (admitted pro hac vice)
Amitav Chakraborty (admitted pro hac vice)
Adam P. Savitt (admitted pro hac vice)
Arielle B. McTootle (admitted pro hac vice)
Robert Klein (admitted pro hac vice)
Neil Chitrao (admitted pro hac vice)
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Tel.: (212) 373-3000
Fax: (212) 757-3990
ratkins@paulweiss.com
ycleary@paulweiss.com
jhurwitz@paulweiss.com
achakraborty@paulweiss.com
asavitt@paulweiss.com
amctootle@paulweiss.com
rklein@paulweiss.com
nchitrao@paulweiss.com

Sophia Lin Lakin (admitted pro hac vice)
Dayton Campbell-Harris (pro hac vice
forthcoming)*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
slakin@aclu.org
dcampbell-harris@aclu.org

T. Alora Thomas-Lundborg (admitted pro hac
vice)
Daniel Hessel (admitted pro hac vice)
Election Law Clinic
Harvard Law School
6 Everett Street, Ste. 4105
Cambridge, MA 02138
(617) 495-5202
tthomaslundborg@law.harvard.edu
dhessel@law.harvard.edu

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[PROPOSED] ORDER

The Court having considered the *Robinson* Intervenors' Motion For Leave to Allow Anthony Fairfax and Royce Duplessis to Testify at Trial Remotely via Video Conferencing, it is hereby ORDERED that the motion is GRANTED.

IT IS SO ORDERED. This ____ day of _____ 2024.

Judge Carl E. Stewart
United States Circuit Judge

Judge Robert R. Summerhays
United States District Judge

Judge David C. Joseph
United States District Judge