

NINETEENH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NO. C-716690

SECTION 24

JAMES BULLMAN, *ET AL*

V.

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS  
LOUISIANA SECRETARY OF STATE

\*\*\*\*\*CONSOLIDATED WITH\*\*\*\*\*

NO. C-716837

SECTION 25

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
LOUISIANA STATE CONFERENCE, *ET AL*

V.

R. KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS  
LOUISIANA SECRETARY OF STATE

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**PETITION FOR INTERVENTION OF  
CLAY SCHEXNAYDER, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE  
LOUISIANA HOUSE OF REPRESENTATIVES, AND PATRICK PAGE CORTEZ,  
IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE LOUISIANA SENATE**

NOW INTO COURT, through undersigned counsel, come Clay Schexnayder, in his Official Capacity as Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in his Official Capacity as President of the Louisiana Senate, (collectively, the “Legislative Intervenors”) who bring this Petition for Intervention pursuant to Louisiana Code of Civil Procedure articles 1031, 1033, and 1091, and respectfully represent as follows:

1.

The underlying consolidated actions, brought by Plaintiffs James Bullman, Kirk Green, Stephen Handwek, Darryl Malek-Wiley, Amber Robinson and Pooja Prazid ( “Bullman Plaintiffs”) in Suit No. C-716690, Intervenors Michael Mislove, *et al.* (the “Mislove Intervenors”), and by Plaintiffs National Association for the Advancement of Colored People, Louisiana State Conference, *et al.* (“Louisiana NAACP Plaintiffs”) in Suit No. C-716837, arise out of the 2020 decennial census and redistricting of congressional districts in the State of Louisiana.

2.

The Legislative Intervenors, as the leaders of the legislative body with the sole authority to redistrict the congressional districts, undeniably have a justiciable interest in, and connection to, the underlying actions.

3.

The Legislative Intervenors seek to intervene in the above captioned actions to unite with Defendant R. Kyle Ardoin, in his official Capacity as the Secretary of State for the State of Louisiana, in resisting Plaintiffs' and the Mislove Intervenors' demands. La. C.C.P. art. 1091(2).

4.

The Legislative Intervenors seek to raise objections, defenses and exceptions to the Petitions in the consolidated cases, in accordance with La. C.C.P. art. 1034.

5.

Plaintiffs and the Mislove Intervenors ask this Court to declare an "impasse" and impose its own congressional redistricting plan before the Legislature's redistricting process has concluded. The Legislature's deadline to override the Governor's vetoes of the plans passed by the Legislature has not yet passed and it will be months before the Legislature's 2022 Regular Session will adjourn.

6.

It is entirely speculative to declare an "impasse" before the veto override process is exhausted and before the Legislature has adjourned; therefore, Plaintiffs' and the Mislove Intervenors' claims should be dismissed.

#### **FACTUAL BACKGROUND**

7.

The United States Constitution vests state legislatures with the power to redraw congressional districts. *See* U.S. Const. Art. I, §4, cl. 1. The Legislature redistricts by the same legislative process as for adoption of any other law—through a bill introduced during a legislative session, reported by a committee after a public hearing, and passed by majority vote of each chamber. *See* La. Const. Art. III, §15.

8.

Louisiana's current congressional districts were enacted during the 2011 First Extraordinary Session of the Louisiana Legislature. *See* La. R.S. 18:1276.1).

9.

On April 26, 2021, the U.S. Census Bureau released the apportionment data for the 2020 decennial census, which reported Louisiana's resident population as 4,657,757. The census data showed an overall increase in population of 124,385 residents from 2010. Although population increased within Louisiana, the population declined in the northern parts of the state and increased in the southern parts of the state.

10.

Based on the census results, Louisiana is entitled to six congressional seats for the next decade. The ideal population for each congressional district is 776,292.

11.

On June 11, 2021, the Legislature adopted Joint Rule No. 21, setting forth the criteria for redistricting plans based on the 2020 decennial census results. *See* HCR 90, 2021 R.S., eff. June 11, 2021. The redistricting criteria includes, *inter alia*, a requirement that the congressional plan contain districts with populations "as nearly equal to the ideal district population as practicable," and comply with the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the U.S. Constitution, Section 2 of the Voting Rights Act of 1965, as amended, and all other applicable federal and state laws.

12.

The Census Bureau delivered to Louisiana the 2020 redistricting data in legacy format (P.L. 94-171) on August 12, 2021, and released the data in easier-to-use formats on September 16, 2021.

13.

The Senate Committee on Senate and Governmental Affairs and the House Committee on House and Governmental Affairs ("Joint Committees") held nine joint public meetings across the state from October 2021 to January 2022, where the Joint Committees presented information about the population and demographic trends in the 2020 census data and the redistricting process and criteria, and also heard public testimony and received public submissions.

14.

The First Extraordinary Session of the Louisiana Legislature opened on February 1, 2022, for the purpose of enacting a congressional redistricting plan, as well as Louisiana's plans for the Louisiana House of Representatives, Louisiana Senate, Louisiana Board of Elementary and Secondary Education, Louisiana Public Service Commission, and Louisiana Supreme Court.

15.

House Bill 1 by Speaker Schexnayder was introduced on February 1, 2022, setting forth a proposed congressional redistricting plan, and was reported favorably by the House Committee on House and Governmental Affairs on February 4, 2022. On February 10, 2022, the House approved House Bill 1 by a vote of 70 to 33. The Senate Committee on Senate and Governmental Affairs reported House Bill 1 favorably on February 15, 2022, and the Senate approved an amended version of House Bill 1 on February 18 by a vote of 27 to 10. The House concurred in the Senate's amendments the same day, by a vote 62 to 27.

16.

Senate Bill 5 by Senator Sharon Hewitt was introduced on February 1, 2022, setting forth a proposed congressional redistricting plan, and was reported favorably by the Senate Committee on Senate and Governmental Affairs on February 4, 2022. The Senate approved Senate Bill 5 on February 8, 2022, by a vote of 27 to 12. The House Committee on House and Governmental Affairs reported Senate Bill 5 favorably on February 15, 2022, and the House approved an amended version of Senate Bill 5 on February 18, 2022, by a vote of 64 to 31. The Senate concurred in the House's amendments the same day by a vote of 26 to 9. The amendments to House Bill 1 and Senate Bill 5 resulted in the passage of the same congressional redistricting plan.

17.

Governor John Bel Edwards vetoed both House Bill 1 and Senate Bill 5 on March 9, 2022.

18.

The Louisiana Constitution requires the Louisiana Legislature to conduct a veto override session for House Bill 1 and Senate Bill 5 within the period beginning on March 30, 2022, and continuing until April 3, 2022. La. Const. Art. III, § 18(C).

19.

The Legislature's 2022 Regular Session convened on March 14, 2022, and several bills proposing new congressional districts have been introduced and referred to committees. *See* Senate Bill 306, House Bill 712, and HB 608 of the 2022 Regular Session.

20.

The candidate qualifying period for the November 8, 2022 Open Congressional Primary is scheduled for July 20, 2022 to July 22, 2022. *See* La. R.S. 18:467(2); La. R.S. 18:468(a).<sup>1</sup>

### PARTIES

21.

Clay Schexnayder, who serves as the Speaker of the Louisiana House of Representatives, is a resident of Ascension Parish who currently represents House District 81 which includes the Parishes of Ascension, Livingston, St. James, and St. John the Baptist.

22.

Patrick Page Cortez, who serves as the President of the Louisiana Senate, is a resident of Lafayette Parish and currently represents Senate District 23 in Lafayette Parish.

23.

Plaintiffs in *Bullman et al. v. Ardoin*, Case No. C-716690, are James Bullman, Kirk Green, Stephen Handwerk, Darryl Malek-Wiley, Amber Robinson, and Pooja Prazid.

24.

Plaintiffs in *NAACP Louisiana State Conference et al. v. Ardoin*, Case No. C-716837, are the National Association for the Advancement of Colored People Louisiana State Conference, the Power Coalition for Equity and Justice, Dorothy Nairne, Edwin René Soulé, Alice Washington, and Cleo Earnest Lowe.

25.

The Mislove Intervenors in the *Bullman* action are Michael Mislove, Lisa J. Fauci, Robert Lipton, and Nicolas Mattei.

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<sup>1</sup> *See also* La. Secretary of State, 2022 Election Dates Calendar, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2022.pdf>.

26.

Defendant R. Kyle Ardoin is the Secretary of State for Louisiana who is sued in his official capacity in both actions.

#### **RIGHT TO INTERVENE**

27.

Louisiana Code of Civil Procedure article 1091 provides, “[a] third person having an interest” in a pending action may intervene “to enforce a right related to or connected with the object of the pending action against one or more of the parties thereto by . . . (2) Uniting with defendant in resisting the plaintiff’s demand.” La. C.C.P. art. 1091(2). “This article has been interpreted broadly.” *Heck v. Lafourche Par. Council*, 2002-2044 (La. App. 1 Cir. 11/14/03), 860 So. 2d 595, 602, *writ denied*, 2004-0067 (La. 3/19/04), 869 So. 2d 837.<sup>2</sup> “Article 1091 and the jurisprudence construing it establish that the requirement for intervention is two-fold: the intervenor must have a justiciable interest in, and a connexity to, the principal action.” *Stevens Constr. & Design, L.L.C. v. St. Tammany Fire Prot. Dist. No. 1*, 2019-0955 (La. App. 1 Cir. 7/8/20), 308 So. 3d 724, 729, *writ denied*, 2020-00990 (La. 11/4/20), 303 So. 3d 652.

28.

As the presiding officers of their respective chambers of the Louisiana Legislature, the Legislative Intervenors possesses the constitutional right and duty to enact laws governing the “Times, Places and Manner of holding Elections for . . . Representatives” to the United States Congress. *See* U.S. Const. Art. I §4. The Supreme Court’s “precedent teaches that redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking.” *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787, 808 (2015). These consolidated cases directly impact the rights and duties of the Louisiana Legislature. Accordingly, the Legislative Intervenors meet the requirements of La. C.C.P. art. 1091 and the jurisprudence on redistricting.

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<sup>2</sup> Overruled on other grounds as recognized in *Blanchard v. Cors & Bassett, Sacks, Weston, Smolinsky, Albert & Luber*, 2009-2236, 2010 WL 3496263 at \*3 (La. App. 1 Cir. 9/8/10).

29.

As the Legislature's presiding officers, the Legislative Intervenors have an undeniable interest in these consolidated actions, both of which concern the Louisiana's Legislature's powers to enact congressional redistricting plans. *See* NAACP Petition ¶1 (recognizing that this action concerns the "constitutional obligation to reapportion" congressional districts); *Bullman* Petition ¶1 (similar). Legislative Intervenors' interest in the Legislature's prerogative to enact congressional redistricting legislation is plainly justiciable. *See Karcher v. May*, 484 U.S. 72, 77 (1987) (recognizing authority of "presiding officers" of state legislature to both intervene in lawsuit challenging state legislation "on behalf of the legislature" and to appeal); *Heck*, 860 So. 2d at 601 (finding parish officer had right to intervene in litigation concerning the scope of his official authority); *cf. LaCombe v. McKeithen*, 2004-1880 (La. App. 1 Cir. 8/30/04), 887 So. 2d 48, 50 n.1, *writ denied*, 2004-2240 (La. 9/2/04), 882 So. 2d 588 (holding candidates had the right to intervene in candidate-qualification case). The first intervention element is therefore, satisfied.

30.

Legislative Intervenors' interests are connected to this case in the most fundamental of ways. The second intervention requirement is therefore, also satisfied.

31.

First, one of the goals of the consolidated cases is to accomplish congressional redistricting outside of Louisiana's legislative process. Both lawsuits request this Court "to adopt and implement a new congressional district plan." *Bullman* Petition. Prayer for Relief ¶(c); *see also* NAACP Petition, Prayer for Relief ¶(C) (virtually identical language). A court ordered plan would remove the authority to redistrict from Louisiana's Legislature, depriving the Legislative Intervenors and the members of the Louisiana Legislature of the opportunity to vote on a congressional redistricting legislation, and strip the Legislature of authority granted by the United States Constitution. *See McPherson v. Blacker*, 146 U.S. 1, 25 (1892) ("[T]he legislature possesses plenary authority to direct the manner of appointment.").

32.

Second, Plaintiffs request a court-ordered Congressional redistricting plan on an expedited time frame, as part of preliminary-injunction proceedings, even though the Louisiana Legislature

is still working to enact a congressional redistricting plan. Both Petitions make assertions about the “prospect” of a legislatively enacted redistricting plan, *Bullman* Petition ¶4, and the “indications” of where the legislative process is likely to go, *NAACP* Petition ¶4. Legislative Intervenors deny the legislative process has concluded and remain committed to enacting new congressional redistricting legislation. It would be improper for this Court to adjudicate the consolidated cases predicated on the purported state of the political process and thereby, deny the persons most concerned in that process the ability to participate.

33.

Third, if this Court deems it necessary to issue a remedy in this case, the Legislative Intervenors have an equally compelling and justiciable interest in advancing legitimate legislative policies to be implemented in any court remedy. “[A] court, as a general rule, should be guided by the legislative policies underlying the existing plan.” *Abrams v. Johnson*, 521 U.S. 74, 79 (1997); *see also Perry v. Perez*, 565 U.S. 388, 393 (2012). The Legislative Intervenors have an interest in ensuring that legislative policy choices guide redistricting matters overseen by a court and in making arguments against efforts by existing parties (or other intervenors) to use this proceeding “to defeat the policies behind a State’s redistricting legislation.” *Perry*, 565 U.S. at 394.

34.

Fourth, the Legislative Intervenors have an interest in advocating their understanding of the legal requirements applicable to redistricting plans. *See id.* (“A district court making such use of a State’s plan must, of course, take care not to incorporate into the interim plan any legal defects in the state plan.”). A significant question in this case is how to ensure that a congressional redistricting plan does not leave Louisiana’s minority voters “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice,” which Section 2 of the Voting Rights Act prohibits. 52 U.S.C. §10301(b). Louisiana NAACP Plaintiffs contend that Section 2 requires a second majority-minority district in the congressional redistricting plan and that the plans enacted by were unlawfully dilutive. *See NAACP* Petition ¶¶9–10 and Prayer for Relief ¶(D). Louisiana NAACP Plaintiffs overlook that configurations with two majority-minority districts draw down the minority voting-age population, compromise those districts’ ability to perform as effective opportunity districts, and constitute a violation, not a



vindication, of Section 2. *See, e.g., Thomas v. Bryant*, 919 F.3d 298, 308–11 (5th Cir. 2019) (finding a majority-minority district likely violated Section 2 because the minority voting-age population was too low to ensure performance); *Monroe v. City of Woodville, Miss.*, 881 F.2d 1327, 1333 (5th Cir. 1989), *opinion corrected on reh'g*, 897 F.2d 763 (5th Cir. 1990) (“Unimpeachable authority from [the Fifth] [C]ircuit has rejected any *per se* rule that a racial minority that is a majority in a political subdivision cannot experience vote dilution.”). This Court should not entertain Louisiana NAACP Plaintiffs’ claims that “the Legislature’s map would have deprived Black voters of their rights under Section 2 . . . by ‘packing’ large numbers of Black voters into a single majority-Black congressional district,” NAACP Petition ¶10, prior to allowing the Legislative Intervenors an opportunity to be heard and present evidence on the subject, should the adjudication of the question become necessary. *See Shaw v. Hunt*, 517 U.S. 899, 917, n. 9 (1996) (“States retain broad discretion in drawing districts to comply with the mandate of § 2.”).

35.

Fifth, the Legislative Intervenors have an interest in the ultimate adoption of a congressional redistricting plan that does not, “without sufficient justification,” “separate[e] . . . citizens into different voting districts on the basis of race.” *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (citation omitted). As noted, central to the Louisiana NAACP Plaintiffs’ case is the assertion that the new congressional plan should include two majority-minority districts, one more than in the plans adopted by the Legislature last decade. The purposeful creation of an additional majority-minority district would likely trigger strict scrutiny under the U.S. Constitution’s Equal Protection Clause. *See Cooper v. Harris*, 137 S. Ct. 1455, 1468–69 (2017). The Louisiana Legislature was not presented with “a strong basis to conclude that §2 demands race-based measures,” which is necessary to satisfy strict scrutiny. *Id.* at 1461. A congressional redistricting plan with two majority-minority districts would likely violate the Equal Protection Clause. The U.S. Supreme Court just two days ago summarily reversed a Wisconsin Supreme Court order adopting legislative redistricting plans creating “one more [majority-minority districts] than the current map”—“by reducing the black voting-age population in the other six majority-black districts”—because the plans were obvious racial gerrymanders. *Wisconsin Legislature v. Wisconsin Elections Comm’n*, No. 21A471, 2022 WL

851720, at \*1 & n.1, \*2–4 (U.S. Mar. 23, 2022). The appeal of the Wisconsin Legislature, upheld the right of equal-protection of innumerable Wisconsin citizens. Louisiana NAACP Plaintiffs in this case appear to be requesting this Court to make the exact error made by the Wisconsin Supreme Court. The Legislative Intervenors, like the Wisconsin Legislature in *Wisconsin Legislature*, have a compelling interest in assuring that Louisiana citizens' equal protection rights are honored in any future redistricting plan.

36.

These consolidated actions directly impact multiple interests of Legislative Intervenors, therefore, this intervention satisfies all legal requirements.

37.

Finally, there can be no doubt that the Legislative Intervenors' motion is timely. An intervention petition is an incidental demand that may be filed without leave of court at any time up to and including the time the answer to the principal demand is filed. *See* La. C.C.P. arts. 1031(B) and 1033. Since no answer has been filed in this case, leave of court is not required.

### **LEGAL ARGUMENTS**

38.

The Petitions in this case should be dismissed as unripe and nonjusticiable, for failing to state a right of action for lack of standing, and for failing to state a cause of action.

39.

The Louisiana Legislature possesses the constitutional right and duty to redistrict the state's congressional districts. *See* U.S. Const. Art. I § 4. Under the present circumstances, state courts have no authority under the U.S. or Louisiana Constitutions to redistrict congressional districts.

40.

The allegations in the Petitions are entirely speculative and it is premature to declare that the Legislature will not enact a new congressional redistricting plan to equalize population and to order a court-drawn plan before the legislative process has concluded. The legislative process has not concluded and there is sufficient time for the Legislature to enact a congressional redistricting plan.

41.

Since an impasse has not occurred in the legislative process, Plaintiffs and the Mislove Intervenors lack standing to bring their claims.

42.

The Petitions fail to state a cause of action as neither their malapportionment claim nor their freedom of association claim are viable. Additionally, the Petitions fail to allege Louisiana lacks a rational plan of redistricting, nor would any such allegation be available, given that the Legislature is working diligently to enact redistricting legislation.

43.

Alternatively, and only in the event this Court concludes that the Petitions are ripe and justiciable, any court-ordered plan must reflect the legitimate legislative policies adopted by the Legislature for redistricting, correctly apply the requirements of Section 2 of the Voting Rights Act, and comply with the Equal Protection Clause of the U.S. Constitution and all other applicable federal and state laws.

**PRAYER FOR RELIEF**

WHEREFORE, Clay Schexnayder, in his Official Capacity as Speaker of the Louisiana House of Representatives, and Patrick Page Cortez, in his Official Capacity as President of the Louisiana Senate, pray that they be permitted to proceed as parties in this action, and that after all parties have been served with a copy of this Intervention, there be judgment entered in their favor as follows:

- a. Dismissing the Petitions of the Plaintiffs and the Mislove Intervenors at their cost;
- b. Granting other full, general, and equitable relief.

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