

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

PRESS ROBINSON, et al.,

Plaintiffs,

v.

KYLE ARDOIN, in his official capacity as
Secretary of State for Louisiana,

Defendant.

Civil Action No. 3:22-cv-00211-SDD-SDJ

Chief Judge Shelly D. Dick

Magistrate Judge Scott D. Johnson

EDWARD GALMON, SR., et al.,

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as
Secretary of State for Louisiana,

Defendant.

Consolidated with

Civil Action No. 3:22-cv-00214-SDD-SDJ

**LEGISLATIVE INTERVENORS' MOTION FOR EXTENSION
OF TIME TO ENACT PLAN**

Legislative Intervenor move for an extension of time to enact a plan as required by this Court's June 6, 2022 Ruling and Order, Doc. 173. Legislative Intervenor respectfully request that the June 20, 2022 deadline be extended at least until June 30, 2022. The bases of Legislative Intervenor's motion are set forth in the accompanying memorandum of law, which is incorporated herein by reference. For the reasons stated there, the motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 13, 2022, this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system. Copies of the filing are available on the Court's system.

/s/ Erika Dackin Prouty

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**LEGISLATIVE INTERVENORS' MEMORANDUM IN SUPPORT OF
MOTION FOR EXTENSION OF TIME TO ENACT PLAN**

Legislative Intervenors respectfully move the Court for an extension of time to enact a plan pursuant to this Court's June 6, 2022 Ruling and Order, which directed the Louisiana Legislature "to enact a remedial plan on or before June 20, 2022," Doc. 173 at 2, and this Court's June 9, 2022 Ruling which stated "[i]f Defendants need more time to accomplish a remedy for the Voting Rights Act violation, the Court will favorably consider a Motion to extend the time to allow the Legislature to complete its work." Doc. 182 at 3 (emphasis omitted). The June 20 deadline is unattainable. The Order afforded the Legislature fourteen days to enact a new plan, but in reality, the Legislature will have only five days to introduce, deliberate over, and pass a bill enacting a plan through the legislative process required by Louisiana law. The 2022 Regular Session

adjourned on June 6, 2022, the same day this Court issued its Order, necessitating another Extraordinary Session for the purposes of redistricting. Because the Louisiana Constitution requires a seven-day notice “prior to convening the legislature in extraordinary session,” La. Const. art. 3, § 2(B), Governor John Bel Edwards has called for the 2022 Second Extraordinary Session to begin at noon on Wednesday, June 15, 2022.¹

As set forth more fully below, five days is not enough time for the Legislature to complete “the most difficult task a legislative body ever undertakes.” *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D.N.C. 2016) (three-judge court), *aff’d*, 137 S. Ct. 2211 (2017) (citation omitted). Apparently recognizing this problem, this Court has stated that more time could be provided, Doc. 182 at 3, and the Fifth Circuit reiterated this assertion in declining to stay the Order. Doc. 185 at 32. In order to provide the Legislature with a “reasonable opportunity” to complete its work, *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978), Legislative Intervenors respectfully request the June 20, 2022 deadline be extended at least until June 30, 2022.

ARGUMENT

Because “[a]pportionment is principally a legislative responsibility,” “[a] district court should . . . afford to the government body a reasonable opportunity to produce a constitutionally permissible plan” after enjoining a plan. *Jones v. City of Lubbock*, 727 F.2d 364, 387 (5th Cir. 1984). Although the Legislative Intervenors respectfully disagree with the Court’s preliminary-injunction ruling and although the Legislative Intervenors intend to continue to prosecute their appeal, the Legislature intends to make a good-faith effort in the meantime to enact a plan that satisfies the principles the Court articulated.

¹ See Proclamation Number 89 JBE 2022, State of Louisiana Office of the Governor, available at <https://gov.louisiana.gov/assets/Proclamations/2022/89JBE2022CallSpecialSession.pdf>.

However, it is highly unlikely that the Legislature can accomplish this task in the allotted time. The legislative process for passing a new plan is the same process that the Legislature uses for passing any law. *See* Declaration of Patrick Page Cortez at ¶ 4, attached as Exhibit A (“Cortez Decl.”). Numerous requirements set by the Louisiana Constitution, statute, and the rules of the Senate and House of Representatives must be followed for any bill considered by the Legislature to become law. The attached declaration of President Cortez illustrates how these requirements constrain the Legislature’s ability to rush a bill through the legislative process and explain why additional time is needed for the Legislature to enact a new plan. *See* Cortez Decl. ¶¶ 3-18.

To begin, on “Day 1” a bill is introduced on the House floor and read for the first of three times. *See* Cortez Decl. at ¶ 6; La. Const. art. 3, § 15(D) (“Each bill shall be read at least by title on three separate days in each house.”).² The bill then lies over until the next day. *Id.*

On Day 2, the bill is read a second time on the House floor and referred to Committee for a public hearing. *See* Cortez Decl. at ¶ 7; La. Const. art. 3, § 15(D) (“No bill shall be considered for final passage unless a committee has held a public hearing and reported on the bill.”); *see also, e.g.*, Senate Rules 10.8, 10.10 and 10.11. During Committee, amendments to bills may be offered and members of the public may provide public input on bills and amendments—during the 2022 Extraordinary Session, dozens of citizens offered public comments and testimony to the House and Senate Committees considering redistricting bills. *See* Cortez Decl. at ¶ 7. It could take multiple days for a bill to be reported out of committee, *id.*, and for the bill to be reviewed and reported by the legislature bureau for technical corrections. *Id.* at ¶¶ 8-9; *see also, e.g.*, Senate Rule

² The three-readings rule is mandatory, not discretionary, and legislation that does not go through three readings in each house is unconstitutional. *Doll v. City of New Orleans*, 85 So.2d 514, 515 (La. 1956); *Casey v. Southern Baptist Hosp.*, 526 So.2d 1332, 1336 (La. App. 4th Dist. 1988); *see also, e.g.*, Rules of Order of the Senate (“Senate Rules”) 10.6 titled “Three readings of bills required” (“No bill, including any joint resolutions, shall be finally passed by the Senate unless it has been read at least by title in open session of the Senate on three separate days. The President or Secretary shall announce at each reading whether it is the first, second, or third reading.”).

10.15 (“All instruments intended to have the effect of law shall be examined by the Legislative Bureau.”). On Day 4 (or, potentially, Day 5 or later), the “day after the day on which the report is read,” Senate Rule 10.12(A), the bill would be read for a final time on the House floor, and moved for final passage. *Id.* at ¶ 9; *see also, e.g.*, Senate Rule 10.13.

After final passage in the House, the earliest a House bill could be introduced on the Senate floor is Day 4, and the same process would be repeated, meaning that the earliest the Senate could consider the bill for final passage would be Day 7. *See* Cortez Decl. at ¶ 11. Amendments adopted by the Senate would necessitate the House’s concurrence—or, if the House rejected the amendments, a conference and adoption of the conference report by both chambers—potentially adding several more days to the process. *Id.* at ¶ 12.

The Legislature has three days for administrative services to complete its duties and for the Clerk to deliver the bill to the Governor following passage. *See* Cortez Decl. at ¶ 13. Only then can the plan be sent to the Governor to review and either sign, not sign, or veto the plan. *See id.*; La. Const. art. 3, § 18(A). If the Governor vetoes the plan, the Louisiana Constitution mandates³ that the Legislature meet in veto session on the fortieth day following adjournment of its most recent session, which would be Saturday, July 30, 2022 following a June 20, 2022 adjournment. *See* Cortez Decl. at ¶ 14; La. Const. art. 3, § 18(C)(1).

This timeline will expand, however if there are multiple bills, amendments, or lengthy debate, which add time and complexity to the process. *See* Cortez Decl. at ¶ 5. All of this occurred during the 2022 First Extraordinary Session—and will likely occur again here—and add additional time between the beginning of the Extraordinary Session and a new redistricting law.

³ *But see* La. Const. art. 3, § 18(C)(2) (“No veto session shall be held if a majority of the elected members of either house declare in writing that a veto session is unnecessary. The declaration must be received by the presiding officer of the respective houses at least five days prior to the day on which the veto session is to convene.”).

Redistricting is an incredibly complex and time-consuming task. *See* Cortez Decl. at ¶ 15. The Legislature has been ordered to draw a plan very different from the status quo plan drawn in 2022, which was a replica of the 2011 plan. *Id.* Members of the Legislature will need time to consider, provide input on, and negotiate a new plan, especially those representing the areas of the state where a “remedial majority-minority district” may be created. *Id.* at ¶ 16. These members likely to have differing ideas of how various communities of interest should be treated in any new plan, and will want to contact local community leaders to understand the local effects of a new plan as they negotiate with fellow members. *Id.* at ¶¶ 16, 18.

Most importantly, there needs to time for the Legislature to obtain public input on a new plan. *See* Cortez Decl. at ¶ 17. While certain rules and requirements could be suspended to accelerate the consideration of a plan, *see id.* at ¶ 7, they play important roles in ensuring that the public is able to participate in the legislative process and have their voices heard by their elected representatives. A primary reason why Committee agendas are posted in advance of hearings, and bills and amendments are allowed to lie over to the next day, is to provide citizens the opportunity to review these proposals and, if they like, to travel from different parts of the state to participate in committee hearings. *Id.* at ¶ 10, 17. The current schedule set by this Court would require the Legislature to redistrict (if at all) behind close doors, without meaningful public input and without opportunity to respond to that input. *Id.* at ¶ 17. It would make little sense to invalidate a redistricting plan enacted after a lengthy process of public input and then order a new plan to be enacted by excluding the public from any meaningful involvement.

As this Court acknowledged, the seven-day notice requirement of the Louisiana Constitution meant there was far less than fourteen days for the Legislature to comply with the Order. Doc. 173 at 3 (“So, seven days are available to comply with this Court’s order.”). But there

is even less time because, as convened by Governor Edwards, the Extraordinary Session will not begin until June 15, 2022 at noon, leaving just five days—including Friday, June 17 when all state offices will be closed in observance of Juneteenth—for the Legislature to complete the process.⁴ Forcing the Legislature to rush this important process detailed above to meet the Court’s June 20, 2022 deadline would be a disservice to the public and would deprive the Legislature of the “reasonable opportunity” the law requires to enact a new plan. *Wise*, 437 U.S. at 540.

CONCLUSION

The Court should grant Legislative Intervenors’ motion and extend the time for the Louisiana Legislature to enact a plan as ordered by this Court at least until June 30, 2022.

Respectfully submitted,

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⁴ See Proclamation Number 60 JBE 2022, State of Louisiana Office of the Governor, available at <https://gov.louisiana.gov/assets/Proclamations/2022/60JBE2022Juneteenth.pdf>.

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EXHIBIT A

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DECLARATION OF PATRICK PAGE CORTEZ

I, Patrick Page Cortez, declare and state pursuant to 28 U.S.C. § 1746 as follows:

1. I serve as President of the Louisiana Senate. This declaration is given based on my personal knowledge concerning facts with which I am familiar.

2. I understand that the Court has ordered the legislature to draw a new congressional plan with two majority-Black districts as a so-called remedial plan in the above-referenced matter.

3. This declaration has been prepared to provide the Court with information about the legislative process in preparing such a plan.

4. The legislative process for passing a redistricting map is the same process the legislature uses for passing any law.

5. For illustrative purposes, following is an example of a bill that is introduced in the House. Importantly, this example does not contemplate lengthy debate, amendments, or multiple

bills, each of which are likely to occur and would extend the timeline detailed below.

6. The bill would be introduced on the House floor on Day 1. The Louisiana Constitution requires all bills be read on the House floor three times, on three separate days. The first reading on Day 1 is considered the introductory reading of the bill. The bill then lies over until the next day.

7. On Day 2, the House bill would be read a second time on the House floor and referred to Committee. Rules would need to be suspended by 2/3 vote of those present and voting in order to allow the bill to be placed on a committee agenda on the same day. If no rule suspension is granted, the bill would be heard in Committee on Day 3. In Committee, amendments to the bill can be offered which may change the bill substantially. Committee hearings are also an opportunity for members of the public to address the Committee and provide public input on bills and on potential amendments. During the 2022 First Extraordinary Session, dozens of citizens offered public comments and testimony to the Committees in support of and in opposition to redistricting bills. Depending upon the number of bills referred to the Committee, it may take multiple days to report a particular bill out with amendments to the full House.

8. Absent rules being suspended, upon receipt of the Committee report, which may be on Day 3 or Day 4, the bill would then lie over, and the House would then send the bill to the legislative bureau for technical corrections. This timing allows very little room for discussion in Committee.

9. On Day 4 or Day 5, the House bill would be received from the legislative bureau and read for the third time and moved to final passage or reported from the legislative bureau and read a third time and moved for final passage. After final passage, the House bill will be sent to the Senate where this process will begin again.

10. The Legislature made it a practice to ensure that whenever amendments were offered to redistricting legislation, the legislature would allow those amendments to lie over a night to allow public and members to understand what the amendments mean before moving forward with the legislative process.

11. The earliest the House bill could be introduced on the Senate floor is Day 4, after final passage in the House and if the Senate is in session and there to receive the bill from the House on the same day. The Senate would repeat the same process detailed for the House in paragraphs 7-11. Specifically, the House bill would be introduced on the Senate floor on Day 4. As required by the Louisiana Constitution, that House bill would be read on the Senate floor three times, on three separate days, and the bill would be sent to Committee. Absent rules suspension, the earliest the House bill could be up for full passage on the Senate floor, all things considered, is Day 7. Any amendments to the House bill would be voted on and added to the bill during this full debate on the Senate floor.

12. If the House bill is amended by the Senate, the House bill will be sent back to the House for the House to concur on the Senate's amendments to the House bill. If the House rejects the Senate amendments, the House bill would go into conference where the Speaker of the House and the President of the Senate would identify three members of their respective bodies to work out differences between the House bill and the Senate's amendments to the House bill. The estimate of timing for a conference to resolve differences varies and could take days. If changes are developed on Day 8 in conference, and differences are resolved that same day and reported out of conference to both chambers, then those changes will lie over to the next day, Day 9, for both chambers to adopt the conference report. Once all is completed, the bills are sent to administrative services to be fixed for presiding officers' signatures.

13. Only after this process concludes with a plan sent to both houses—and adopted by both houses—can that plan be sent to the Governor. The Legislature has 3 days for administrative services to complete its duties and for the Clerk to deliver the bill to the Governor. A bill shall become law if the Governor signs it or if he fails to sign or veto it within ten days after delivery to him if the legislature is in session on the tenth day after such delivery or within twenty days after delivery if the tenth day after delivery occurs after the legislature is adjourned. (La Const. Art. III, Section 18).

14. If the Governor vetoes the bill, the Legislature “shall meet in veto session in the state capital at noon on the fortieth day following final adjournment of the most recent session, to consider all bills vetoed by the governor. If the fortieth day falls on Sunday, the session shall convene at noon on the succeeding Monday. No veto session shall exceed five calendar days, and any veto session may be finally adjourned prior to the end of the fifth day upon a vote of two-thirds of the elected members of each house.” La. Const. art. 3, § 18(C)(1).

15. While the legislative process for passing a plan is the same process the legislature uses for passing any law, the act of preparing redistricting legislation is unique in the work of the Legislature. The Legislature set out policy goals for redistricting the congressional plan this year with a focus on drawing a plan that is a status quo plan and that seeks to protect voter expectations of representation. The Court has asked the Legislature to draw a map that is very different from the status quo; it will be very different from the 2011 congressional plan and its replica the 2022 congressional plan. This will be a difficult and time-consuming task.

16. Legislative redistricting, particularly of the type ordered here requiring substantial changes to expectations, needs sufficient time to allow members of the Legislature to understand how a proposed map unites or divides the communities of interest existing in their districts, or

decides which voters will no longer be able to hold their existing representatives accountable (because they will be drawn into a new district with a different representative). There are 144 legislators in the State Legislature, and each has different ideas of how a redistricting plan should be configured. Members representing portions of the State where a so-called remedial majority-minority district may be created are almost certain to have differing ideas of how communities of interest should be preserved, joined, and separated, and these discussions and negotiation will take time.

17. Additional time is needed to obtain public input. Citizens rely on their elected representatives to speak for them when a proposed map divides an established community, and where there is an opportunity to keep that same community whole. As described in paragraph 8, citizens travel from different parts of the state to participate in committee hearings and testify about what is important to them. The purpose of posting agendas for committee work and allowing bills to lie over to the next day is to allow this travel and participation to happen. This is a democratic process and citizens expect the opportunity to be heard. The current remedial schedule would compel the Legislature to redistrict (if at all) behind closed doors, without meaningful public input, and without opportunity to respond to that input.

18. The process of legislative redistricting relies on the negotiation between members. Part of that negotiation will include contacting local community leaders (including municipal and parish leaders), to understand the local effects of a new map, and allowing time for neighboring members working together to ensure as little disruption as possible. Rushing the legislative process to the bare minimum time necessary will prevent this critically valuable and uniquely legislative negotiation from occurring.

I declare under penalty of perjury that to the best of my memory the foregoing is true and correct.

Executed this 13th day of June 2022.


Patrick Page Cortez

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[PROPOSED] ORDER

Upon consideration of Legislative Intervenors motion for an extension of time to enact a plan pursuant to this Court's June 6, 2022 Ruling and Order, it is hereby

ORDERED that the motion is GRANTED; and further

ORDERED that the June 20, 2022 deadline for the Louisiana Legislature to enact a remedial plan is EXTENDED at least until June 30, 2022.

SO ORDERED.

This ____ day of _____ 2022.

United States District Judge