

No. 22-30333

In the United States Court of Appeals for the Fifth Circuit

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 LOUISIANA STATE CONFERENCE, ALSO KNOWN AS NAACP; POWER COALITION FOR EQUITY AND JUSTICE,
Plaintiffs-Appellees

v.

KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF STATE FOR LOUISIANA,
Defendant - Appellant

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ;
STATE OF LOUISIANA – ATTORNEY GENERAL JEFF LANDRY,
Intervenor Defendants - Appellants

EDWARD GALMON, SR.; CIARA HART; NORRIS HENDERSON;
TRAMELLE HOWARD,
Plaintiffs - Appellees

v.

KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF STATE FOR LOUISIANA,
Defendant - Appellant

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ;
STATE OF LOUISIANA – ATTORNEY GENERAL JEFF LANDRY,
Movants - Appellants

Appeal from the United States District Court for the Western District of Louisiana No. 3:22-cv-00211; No. 3:22-cv-00214 (Hon. Shelly D. Dick.)

**APPELLANTS' OPPOSED MOTION FOR A LEVEL-TWO EXTENSION
OF TIME TO FILE A PETITION FOR REHEARING EN BANC**

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CERTIFICATE OF INTERESTED PERSONS

Under the fourth sentence of Fifth Circuit Rule 28.2.1, movants, as governmental parties, need not provide a certificate of interested parties.

Dated: November 22, 2023

/s/ Jason B. Torchinsky

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RELIEF REQUESTED

Pursuant to Federal Rule of Appellate Procedure 40(a)(1) and Fifth Circuit Rules 26.2 and 35.4, Appellants State of Louisiana, by and through Jeff Landry, the Attorney General of Louisiana; the Louisiana Secretary of State Kyle Ardoin, in his official capacity; and Clay Schexnayder and Patrick Page Cortez, in their official capacities (collectively, the “State”)—respectfully request a sixty-day extension of time to file their Petition for En Banc Rehearing of this Court’s November 10, 2023 opinion. If granted, the State’s deadline would extend from November 24, 2023, to January 23, 2024. If the Court denies that request, the State requests a fourteen-day extension from the date of such denial.

In compliance with Fifth Circuit Rule 27.4, Counsel for the State has contacted all other parties, and Appellees indicated that they oppose this request and intend to file an opposition. For the reasons set forth below, the State has a “serious need for the court to act,” Fed. R. Civ. P. 27.4, by November 24, 2023, which is the current deadline for filing a petition for rehearing en banc. *See* Fed. R. App. P. 40(a)(1); 5th Cir. R. 35.4.

ARGUMENT

The Court has power to extend the deadline for an en banc petition “by order,” Fed. R. App. P. 40(a)(1), and exercises that power where there are “compelling reasons” for an extension, 5th Cir. R. 35.5. The State’s request for an extension is amply supported by three compelling justifications.

First, new and important precedent has been handed down after the panel's decision was published, which creates a definitive circuit split as to whether Section 2 of the Voting Rights Acts ("VRA") confers a private right of action. Just two days ago, the Eighth Circuit ruled that Section 2 does not confer a private right of action. *Ariz. State Conf. NAACP v. Ariz. Bd. of Apportionment*, No. 22-1395, 2023 WL 8011300, at *1 (8th Cir. Nov. 20, 2023). The State tendered the same argument with this Court, but it reached the opposite conclusion. *See Robinson v. Ardoin*, No. 22-30333, 2023 WL 7711063, at *5 (5th Cir. Nov. 10, 2023). The clean "conflict[]" between this Court's ruling and "the authoritative decisions of other United States Court of Appeals that have addressed the issue" renders this case a compelling vehicle for en banc review. *See Fed. R. App. P. 35(b)(1)(B)*.

However, the Eighth Circuit's decision did not issue until November 20, leaving the State only four days to analyze it and, as appropriate, prepare and file an en banc petition. Without an extension, the State may not have the opportunity to present this important question to the full Court in an adequate en banc petition. An extension is essential to preserve this opportunity. Moreover, by the proposed extension, this Court can benefit from further developments in the Eighth Circuit proceeding, including en banc review or review in the Supreme Court.

Second, undersigned counsel require an extension because of their extensive overlapping commitments in this case and in many others including *Nairne v. Ardoin*, No. 3:22-cv-00178-SDD-SDJ, (M.D. La.), a Section 2 challenge to

Louisiana's state legislative map. *Nairne* is set for trial that begins on November 27 and could last for up to two weeks.

Moreover, undersigned counsel will soon become engaged in expedited proceedings, which may culminate in a trial in early 2024. Although this Court instructed the district court "to conduct no substantive proceedings until the earliest of (1) the completion of legislative action, (2) notice indicating the Legislature will not create new districts, or (3) January 15, 2024[,]" *Robinson v. Ardoin*, No. 23-30333, 2023 WL 7711063 at *17 (5th Cir. Nov. 10, 2023), this Court permitted the district court to "conduct[] proceedings to schedule future proceedings[,]" *id.* The district court has done so, setting a scheduling conference for November 27, and ordering briefing for that conference by November 22.

Third, additional time is warranted given the upcoming holidays between now and the end of the year. Counsel will be traveling extensively between now and the new year, further complicating the briefing timeline for a petition for rehearing en banc.

CONCLUSION

For the foregoing reasons, the State's request for a sixty-day extension of time, from November 24, 2023, to January 23, 2024, to file a petition for rehearing en banc is supported by compelling justifications and should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the length limitations of Fed. R. App. P. (“Rule”) 32(a)(7)(B) because it is 718 words, excluding the parts that are exempted under Rule 32(f). It complies with the typeface and type-style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it is printed in 14-point Calisto MT font, a proportionally spaced typeface with serifs.

Dated: November 22, 2023

/s/ Jason B. Torchinsky

JASON B. TORCHINSKY

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served via electronic filing upon all counsel of record in this case.

Dated: November 22, 2023

/s/ Jason B. Torchinsky

JASON B. TORCHINSKY

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