

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. C-716690

DIVISION C-10

JAMES BULLMAN, ET AL.

VERSUS

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

FILED: _____ **DEPUTY CLERK**

**MATH/SCIENCE INTERVENORS’
PETITION FOR INTERVENTION**

Michael Mislove, Lisa J. Fauci, Robert Lipton, and Nicholas Mattei (collectively, the “Math/Science Intervenors”), by and through their undersigned counsel, bring this Petition for Intervention against Defendant R. Kyle Ardoin, in his official capacity as Louisiana Secretary of State, pursuant to Louisiana Code of Civil Procedure articles 1031, 1033, and 1091, and state as follows:

NATURE OF THE ACTION

1. The underlying action challenges Louisiana’s current congressional districts (codified at La. R.S. 18:1276.1), which are now unconstitutionally malapportioned after a decade of population shifts across the state. Given that the Legislature and the Governor have demonstrated that they cannot timely agree on a new, properly apportioned congressional districting plan, the Math/Science Intervenors join the Plaintiffs in asking this Court to declare the current congressional districting plan unconstitutional, to enjoin Defendant R. Kyle Ardoin from using the current plan in future elections, and to adopt a new congressional districting plan that adheres to the constitutional requirement of “one person, one vote.”

2. The U.S. Secretary of Commerce delivered the apportionment data from the 2020 Census to the President on April 26, 2021, and the block-level data for Louisiana from the same Census to Governor John Bel Edwards and the Legislature on August 12, 2021. The data

demonstrate that Louisiana’s current congressional districting plan does not reflect the current distribution of the state’s population and is therefore malapportioned in violation of federal and state law.

3. The current redistricting map (codified at La. R.S. 18:1276.1) violates Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution. Accordingly, the current congressional plan cannot lawfully be used in any future election.

4. The results of the Legislature’s February 2022 Extraordinary Session demonstrate that Louisiana’s political branches cannot reach consensus to enact a lawful congressional plan with districts that are equally populated according to the 2020 Census data. Louisiana’s regular redistricting process has thus reached an impasse. The Republican-controlled Louisiana House of Representatives and Senate passed identical congressional redistricting plans (HB 1 and SB 5) on February 18, 2022. Governor Edwards, a Democrat, vetoed these bills on March 9, 2022. Republicans lack the supermajority needed to override the Governor’s veto. There is no realistic chance that the political branches will enact new, constitutionally valid districts in time for the 2022 elections.

5. Given the failure of the Legislature and the Governor to agree on a new congressional redistricting plan, this Court must intervene to protect the constitutional right of each Math/Science Intervenor and each voter across the state to cast an equal vote for a Representative in Congress.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over the subject matter of this action pursuant to Article V, Section 16(A) of the Louisiana Constitution because the matter concerns “the right to office or other public position” and “civil or political right[s].”

7. Venue is proper in this District because the cause of action is against the Louisiana Secretary of State “for conduct arising out of the discharge of his official duties or within the course and scope of his employment.” La. R.S. 13:5104(A).

8. This Court has the authority in this action to enter a declaratory judgment under Louisiana Code of Civil Procedure article 1871 and to grant injunctive relief under Louisiana Code of Civil Procedure article 3601(A).

RIGHT TO INTERVENE

9. Louisiana Code of Civil Procedure article 1091(1) provides that “[a] third person having an interest therein may intervene in a pending action to enforce a right related to or connected with the object of the pending action against one or more of the parties thereto by ... [j]oining with plaintiff in demanding the same or similar relief against the defendant.”

10. The Math/Science Intervenors seek to enforce rights related to and connected with the object of the above-captioned action against the Defendant named in this action. Through this Petition for Intervention, the Math/Science Intervenors join the Plaintiffs in demanding similar relief against the Defendant, and the Math/Science Intervenors’ claims arise out of the same events and transactions that give rise to the Plaintiffs’ claims in the above-captioned action.

11. Parties seeking to intervene must have a justiciable interest in, and connection to, the principal action. *Palace Props., L.L.C. v. City of Hammond*, (La. App. 1 Cir. 6/27/2003), 859 So. 2d 15, 20 (citing *Niemann v. American Gulf Shipping, Inc.*, 96-687, p. 6 (La. App. 5 Cir. 1/15/97), 688 So. 2d 42, 45, writ denied 97-0404, (La. 3/27/97), 692 So.2d 397). A justiciable interest as it relates to intervention is “the right of a party to seek redress or remedy against either plaintiff or defendant in the original action or both.” *Amoco Production Co. v. Columbia Gas Transmission Corp.*, 455 So. 2d 1264 (La. App. 1 Cir. 8/31/1984). A connection to the action requires that the justiciable right be “so related or connected to the facts or object of the principal action that a judgment on the principal action will have a direct impact on the intervenor’s rights.” *Id.* As set forth in this Petition, the Math/Science Intervenors are qualified electors who reside in malapportioned congressional districts and are entitled to seek redress from this Court to ensure that the Defendant conducts future congressional elections in constitutionally apportioned districts. Judgment on the principal action will directly impact the Math/Science Intervenors’ rights to cast equal votes in properly apportioned congressional districts.

12. Under Louisiana Code of Civil Procedure articles 1031 and 1033, a petition for intervention can be filed without leave of Court at any time up to and including the time the answer to the principal demand is filed. Here, the Defendant has not yet answered the underlying Petition for Injunctive and Declaratory Relief. Thus, this intervention is timely.

13. Accordingly, the Math/Science Intervenors have the right to intervene in this matter. *See* La. Code Civ. Proc. arts. 1031, 1033, 1091.

PARTIES

14. The Math/Science Intervenors are United States citizens and qualified electors in the State of Louisiana who plan to vote in the 2022 primary and general congressional elections and who reside in malapportioned congressional districts that were established in 2011 based on 2010 Census data.

15. The Math/Science Intervenors each reside in a congressional district that is malapportioned according to the 2020 Census data.

16. Absent the adoption of a new congressional redistricting map for Louisiana, the Math/Science Intervenors will be unable to cast equal votes in future congressional elections.

17. As registered voters in the State of Louisiana, the Intervenors wish to exercise their rights to cast undiluted votes for their preferred congressional candidates in primary and general elections.

18. The Math/Science Intervenors are not only concerned citizens and qualified voters, but also prominent professors of mathematics and computer science.

19. The Intervenors believe that high-performance computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, improve the redistricting process, and promote fair and effective representation for all Louisianans. By creating and systematically evaluating millions of alternative maps by computer, rather than drawing single maps by hand, computational redistricters can generate proposed congressional districts that better comply with federal law, state law, and traditional neutral redistricting principles.

20. Math/Science Intervenor Michael Mislove is a citizen of the United States and is registered to vote in Louisiana. He resides in St. Tammany Parish, in Louisiana's Congressional

District 1, which is overpopulated due to population changes since the 2011 redistricting. Dr. Mislove is a Professor of Computer Science and the Pendergraft Herbert Buchanan Professor of Mathematics at Tulane University; he has served as chair of the mathematics department, and also served as the founding chair of the current Computer Science Department. Dr. Mislove's research interests in mathematics include topological algebra, domain theory and ordered structures, category theory, and non-well-founded set theory; and his research interests in theoretical computer science include computational and probabilistic models and the semantics of high-level functional quantum programming languages. In 2018, Dr. Mislove secured a multimillion-dollar grant from the U.S. Air Force Office of Scientific Research to help develop cutting-edge technology related to quantum computing. He has held visiting professorships at universities in the United Kingdom, France, and Germany. Dr. Mislove holds a Ph.D. in Mathematics from the University of Tennessee.

21. Math/Science Intervenor Lisa J. Fauci is a citizen of the United States and is registered to vote in Louisiana. She resides in Orleans Parish, in Louisiana's Congressional District 1, which is overpopulated due to population changes since the 2011 redistricting. Dr. Fauci is the Pendergraft Nola Lee Haynes Professor of Mathematics at Tulane University and was the President of the Society for Industrial and Applied Mathematics in 2019–2020. Dr. Fauci is a Fellow of the American Mathematical Society and the American Association for the Advancement of Science. Dr. Fauci's research interests include numerical analysis, scientific computing, computational fluid dynamics, and mathematical biology. Dr. Fauci holds a Ph.D. in Mathematics from the Courant Institute of Mathematical Sciences at New York University.

22. Math/Science Intervenor Robert Lipton is a citizen of the United States and is registered to vote in Louisiana. He resides in East Baton Rouge Parish, in Louisiana's Congressional District 6, which is overpopulated due to population changes since the 2011 redistricting. Dr. Lipton is the Nicholson Professor of Mathematics at Louisiana State University. Dr. Lipton is a Fellow of the American Mathematical Society, the Society for Industrial and Applied Mathematics, and the American Association for the Advancement of Science. Dr. Lipton's research interests include multi-scale analysis of heterogeneous media, photonics,

metamaterials, fracture, effects of interfaces, and strong composites. Dr. Lipton holds a Ph.D. in Mathematics from the Courant Institute of Mathematical Sciences at New York University.

23. Math/Science Intervenor Nicholas Mattei is a citizen of the United States and is registered to vote in Louisiana. He resides in Orleans Parish, in Louisiana's Congressional District 2, which is malapportioned due to population changes since the 2011 redistricting. Dr. Mattei is an Assistant Professor of Computer Science at Tulane University. Dr. Mattei teaches discrete mathematics, and his research interests include artificial intelligence, data science, decision making, and preferences. Dr. Mattei has taught or lectured on social choice, reasoning, and artificial intelligence at universities and conferences in the United States, Australia, and New Zealand. Dr. Mattei holds a Ph.D. in Computer Science from the University of Kentucky.

24. Defendant R. Kyle Ardoin is sued in his official capacity as the Louisiana Secretary of State. In this role, he serves as "the chief election officer of the state," La. R.S. 18:421(A), and will be "involved in providing, implementing, and/or enforcing whatever injunctive or prospective relief may be granted" to the Intervenors. *Hall v. Louisiana*, 974 F. Supp. 2d 978, 993 (M.D. La. 2013).

FACTUAL ALLEGATIONS

I. Louisiana's congressional districts are unconstitutionally malapportioned.

25. Given the population changes over the last decade reflected in the 2020 Census, Louisiana's congressional districts are now malapportioned in violation of Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution.

26. The 2020 Census reported Louisiana's population as 4,657,757. That figure represents an increase of 124,385 residents since the 2010 Census. The Census data showed a shift in Louisiana's population toward the urban and suburban areas in the southern part of the state and an increase in the percentage of Louisianans who belong to racial or language minority groups.

27. According to the 2020 Census, the average population for Louisiana's six congressional districts is 776,292.83.

28. According to the 2020 Census, the populations of Louisiana’s congressional districts range from 728,346 to 816,466 and thus deviate substantially from population equality. Louisiana’s population grew by almost 3% between the 2010 and 2020 Censuses. This growth was fueled by a nearly 15% increase in people of color as the population of White Louisianans decreased by more than 5%.

29. In the 2020 Census, 57% of Louisianans identified as White and 33% identified as Black or African American. But non-White Louisianans are a majority of the population in only one (or about 17%) of Louisiana’s six current congressional districts.

II. Louisiana’s political branches have failed to enact a congressional plan for the 2022 elections.

30. On February 1, 2022, the Louisiana Legislature convened an Extraordinary Session for the purpose of redistricting. Near the end of this session, on February 18, 2022, the House and Senate passed two identical congressional redistricting plans, HB1 and SB5. The Senate passed the final version of HB1 by a party-line vote of 27 to 10, with all 27 Republican Senators voting in favor of the congressional map. The House passed a final version of SB5 by a vote of 64 to 31, with 61 Republicans, two Independents, and one Democrat voting in favor of the congressional map, and 27 Democrats, three Republicans, and one Independent voting against it. The final bills were sent to Governor Edwards on February 21, 2022.

31. At the outset of the redistricting process, Governor Edwards stated that he would veto any map that lacked “basic fairness” and that fairness required increasing representation of Black Louisianans.¹

32. On March 9, 2022, Governor Edwards vetoed the congressional map passed by the Legislature “because it does not include a second majority African American district, despite Black voters making up almost a third of Louisianans per the latest U.S. Census data.” The Governor

¹ Blake Paterson and James Finn, *Gov. John Bel Edwards Will Veto Congressional Maps That Aren't 'Fair.' What Does That Mean?*, THE ADVOCATE, Nov. 30, 2021, https://www.theadvocate.com/baton_rouge/news/article_8ace3fc4-4998-11ec-a9ff-2b154a8d9dd4.html.

stated, “This map is simply not fair to the people of Louisiana and does not meet the standards set forth in the federal Voting Rights Act.” *See* Governor Edwards Veto Message.²

33. Overriding a gubernatorial veto requires a two-thirds supermajority in each chamber—70 votes in the House and 26 in the Senate. La. Const. art. III, § 18(C)(1). The supporters of the vetoed bills lack the House votes to override the Governor’s veto. Indeed, no gubernatorial veto has been overridden in Louisiana in this century.

34. There is no reasonable prospect that the Governor and the Legislature will reach a compromise to adopt a congressional redistricting plan for the 2022 elections. The Governor and the Legislature fundamentally disagree about whether there should be two congressional districts in which Louisiana’s Black citizens realistically can elect their preferred Representatives to Congress, and there is no evidence that this divide will be bridged this year.

35. Absent a new, constitutionally apportioned congressional redistricting plan enacted by the Legislature and signed by the Governor, Louisiana’s Judicial Branch should fill the void created by this political impasse and adopt a neutral plan.

36. Potential candidates for office need time to decide whether and where to run this year. Candidates for congressional primary elections must file during the qualifying period, which will be July 20 to 22, 2022, pursuant to La. R.S. 18:467(2), 18:468(A).

37. Likewise, the Math/Science Intervenors and other voters need time to participate in the political process by learning about candidates for office, publicly supporting candidates for office, and associating with other voters. It is in Louisiana voters’ best interests to have final, constitutional congressional districts in place well before the July 2022 candidate qualifying period.

² Press Release, Office of the Governor, State of Louisiana, Gov. Edwards Vetoes Proposed Congressional District Map, Announces Other Action on Newly Drawn District Maps (Mar. 9, 2022), <https://gov.louisiana.gov/index.cfm/newsroom/detail/3585>.

CLAIMS FOR RELIEF

COUNT I

Violation of Article I, Section 2 of the United States Constitution Congressional Malapportionment

38. The Math/Science Intervenors reallege and reincorporate by reference Paragraphs 1 through 37 of this Petition.

39. Article I, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives “shall be apportioned among the several States ... according to their respective Numbers.” This provision “intends that when qualified voters elect members of Congress each vote be given as much as weight as any other vote,” *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that a State’s congressional districts must “achieve population equality ‘as nearly as is practicable,’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

40. Article I, Section 2 “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Id.* at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)).

41. The 2020 Census shows that the total population deviation in Louisiana’s congressional districting plan has grown to 88,120 people.

42. Given the population shifts documented by the 2020 Census, Louisiana’s current congressional districts are unconstitutionally malapportioned.

43. The use of Louisiana’s current congressional districts in any future primary or general election would violate the Math/Science Intervenors’ rights to an undiluted vote under Article I, Section 2 of the U.S. Constitution.

44. Injunctive relief is warranted to avoid the deprivation of the Math/Science Intervenors’ constitutional rights. *See* La. Code Civ. Proc. art. 3601 (“An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law”); *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99), 749 So. 2d 597, 599 (“A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*,

when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right.”).

45. Further, the restriction of the Math/Science Intervenors’ rights to an undiluted vote constitutes irreparable injury. *See La. State Conf. of NAACP v. Louisiana*, 495 F. Supp. 3d 400, 419 (M.D. La. 2020) (“An injury is irreparable if it ‘cannot be undone through monetary remedies.’ The right at issue in this case, the right to vote, is entirely nonpecuniary, and no amount of financial compensation can redress its deprivation.” (quoting *Chisom v. Edwards*, 690 F. Supp. 1524, 1535 (E.D. La. 1988)); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote ... constitutes irreparable injury.”). The Math/Science Intervenors are therefore entitled to an injunction. *See* La. Code Civ. Proc. art. 3601.

COUNT II

Violation of Article I, Sections 7 and 9 of the Louisiana Constitution Freedom of Speech and Assembly

46. The Math/Science Intervenors reallege and reincorporate by reference Paragraphs 1 through 45 of this Petition.

47. The Louisiana Constitution provides that “[n]o law shall curtail or restrain the freedom of speech” and “[n]o law shall impair the right of any person to assemble peaceably.” La. Const. art. I, §§ 7, 9. “The freedom of association protected by the First and Fourteenth Amendments [to] the U.S. Constitution is also guaranteed by Article I, Sections 7 and 9 of the Louisiana Constitution of 1974.” *Shane v. Parish of Jefferson*, 209 So. 3d 726, 741 (La. 2015) (citing *La. Republican Party v. Foster*, 674 So. 2d 225, 229 (La. 1996)). “The fundamental right of freedom of association protected by these constitutional provisions includes the right of persons to engage in partisan political organizations,” and any “state action that may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.* at 741 & n.11 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)).

48. Impeding candidates’ abilities to run for political office would violate the Math/Science Intervenors’ constitutional right to freely associate by impairing the exercise of their duties as citizens to assess candidate qualifications and policy positions; to organize and advocate

for their preferred candidates; and to associate with like-minded voters. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 787–88 & n. 8 (1983).

49. Given the current status of congressional redistricting in Louisiana and the looming July 2022 candidate qualifying deadline, the legislative process appears incapable of timely yielding a new congressional redistricting plan. This failure by the political branches would deprive the Math/Science Intervenors of their ability to associate with others from their same lawfully apportioned congressional districts, which would significantly burden their constitutional right to freely associate.

50. No legitimate interest can justify this burden.

PRAYER FOR RELIEF

WHEREFORE, the Math/Science Intervenors move to intervene in this matter and pray that they be permitted to proceed as parties to this action so that they may respectfully request that this Court:

- A. Declare that Louisiana’s current congressional districts (codified at La. R.S. 18:1276.1) violate Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution;
- B. Enjoin Defendant Ardoin, his officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with him, from preparing for, administering, or conducting any election (including the 2022 primary or general election) under the congressional redistricting plan currently in effect or any other redistricting plan that violates the law;
- C. Establish a schedule for this Court to adopt a new congressional redistricting plan by a date certain to ensure that Louisiana voters are not denied their constitutional rights in the 2022 elections;
- D. Adopt a new congressional redistricting plan in compliance with Article I, Section 2 of the U.S. Constitution and Article I, Sections 7 and 9 of the Louisiana Constitution; and

E. Grant the Math/Science Intervenors such other and further relief, including attorney fees and costs, as this Court deems just and equitable.

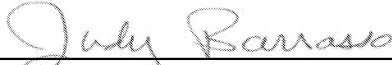
Dated: March 14, 2022

Respectfully submitted,

JENNER & BLOCK LLP

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* *Pro hac vice motion forthcoming*

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