

Baker, Sarah

From: Victoria Wenger <vwenger@naacpldf.org>
Sent: Monday, January 15, 2024 12:02 PM
To: House & Governmental Affairs
Cc: Jared Evans
Subject: Testimony in Support of HB 5
Attachments: Robinson Plaintiffs' Testimony in Favor of HB 5.pdf

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Good afternoon,

Please find the attached written testimony in support of HB 5 submitted for the legislative record on behalf of the Plaintiffs in *Robinson v. Landry*, Dr. Press Robinson, Mr. Edgar Cage, Dr. Dorothy Nairne, Bishop Edwin René Soulé, Dr. Alice Washington, Rev. Clee Earnest Lowe, Commissioner Davante Lewis, Ms. Martha Davis, and Mr. Ambrose Sims.

Thank you for your consideration.

Victoria Wenger

Attorney | (she/her)



40 Rector Street, 5th Floor, New York, NY 10006
o: 212.965.2267 | c: 646-385-0471 | vwenger@naacpldf.org
naacpldf.org

PRIVILEGE AND CONFIDENTIALITY NOTICE: This email and any attachments may contain privileged or confidential information and is/are for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

January 15, 2024

Committee on House and Governmental Affairs
P.O. 94062
900 North 3rd Street
Baton Rouge, LA 70804
h&ga@legis.la.gov

RE: HB 5 and Obligations Related to *Robinson v. Landry*

Dear Chairman Beaulieu and Members of the Committee:

We write on behalf of the plaintiffs in *Robinson v. Landry* regarding your role in the extraordinary session called by Governor Landry on January 8, 2024 and ask that this letter be included in the legislative record.¹ The United States Court of Appeals for the Fifth Circuit and the United States District Court for the Middle District of Louisiana have provided the Legislature with an opportunity to pass a map that complies with the Voting Rights Act of 1965 (VRA) by including a second majority-Black district. Adhering to the guidance of the courts will ensure that Louisiana finally provides Black voters with an equal opportunity to participate in the political process and elect their candidates of choice—the promise in Section 2 of the VRA.² While the courts have appropriately provided the Legislature the first opportunity to develop a map that accords with their instructions, should the Legislature fail in this duty, the District Court will step in and impose a VRA-compliant map.³ It is up to you to decide if the path to a fair and representative map will conclude here in the extraordinary session or will proceed in the courts—but Louisiana *will* have a congressional map that provides two districts in which Black voters can elect their preferred candidates.

In this extraordinary session, the Legislature must not repeat the mistakes of the past. The *Robinson* litigation (then *Robinson v. Ardoin*) was filed moments after the Legislature overrode then-Governor John Bel Edwards' veto of the currently enacted congressional plan (the "Enacted

¹ *Robinson v. Landry*, 3:22-cv-00211-SDD-SDJ (MDLA). Plaintiffs include the Louisiana State Conference of the NAACP, Power Coalition for Equity and Justice, and individuals Press Robinson, Edgar Cage, Dorothy Nairne, Edwin René Soulé, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims. In addition to the NAACP Legal Defense and Educational Fund ("Legal Defense Fund" or "LDF"), Plaintiffs are represented by the American Civil Liberties Union ("ACLU"), ACLU of Louisiana, Harvard Election Law Clinic, the Louisiana Justice Institute, Louisiana attorney John Adcock, and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

² Voting Rights Act, 52 U.S.C. § 10301(a).

³ If the Legislature fails to pass a new map, trial will begin in just a few weeks on February 5, 2024. Minute Entry, *Robinson v. Ardoin*, Case 3:22-cv-00211-SDD-SDJ (Nov. 27, 2023), ECF No. 315 ("If the Defendant/Intervenors fail to produce a new enacted map on or before January 30, 2024, this matter will proceed to a trial on the merits on February 5, 2024 which shall continue daily until complete. If a new enacted map is produced, exchanged with Plaintiff's counsel, and filed in the record on or before January 30, 2023, a trial on the merits shall be held commencing on March 25, 2024, and shall continue daily until complete."). If the Legislature passes a new map that Plaintiffs oppose as a continued violation of the VRA, the District Court has set trial for March.

Map”),⁴ which he vetoed due to his firm belief that the map violated Section 2 and the “principle of fundamental fairness.”⁵ After the District Court granted Plaintiffs’ Motion for Preliminary Injunction and enjoined the Secretary of State from conducting any elections under the Enacted Map, Governor Edwards called the Legislature back into session to draw a new map.⁶ In that second extraordinary session of 2022, the previous Legislature again squandered an opportunity to pass a VRA-compliant map, convening and adjourning without any earnest attempt to pass a map with a second majority-Black district.⁷

Although the Enacted Map was temporarily reinstated when the U.S. Supreme Court put the case on hold pending their consideration of an analogous Section 2 case in Alabama, *Allen v. Milligan* (then *Merrill v. Milligan*),⁸ the events that followed could not provide a clearer signal that this Legislature must now act to pass a map with a second majority-Black congressional district. In *Milligan*, the Supreme Court upheld 37 years of precedent defining the requirements for enforcement of Section 2.⁹ Soon after, the Alabama Legislature convened and enacted a map that failed to provide the electoral opportunity for Black voters the courts had mandated.¹⁰ The federal district court in Alabama rejected the state’s transparent attempt to circumvent its order, and stepped in to impose a court-drawn map instead.¹¹ Alabamians will elect congressmembers under a map with two majority-Black congressional districts this fall. As the same ultimate outcome reaches inevitability for Louisiana, what remains to be decided is if that map will result from this legislative process or another intervention by the federal courts.

⁴ See *Louisiana lawmakers override governor’s veto of proposed congressional remap*, Associated Press, (Mar. 30, 2022), <https://www.wbrz.com/news/lawmakers-override-governor-s-veto-of-louisiana-congressional-map>; see also Complaint, *Robinson v. Ardoin*, 3:22-cv-00211-SDD-SDJ (MDLA Mar. 30, 2022), https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/Complaint_3.30.22.pdf.

⁵ La. Gov. John Bel Edwards Letter to H. Speaker Clay Schexnayder re: Veto of H. B. I of the 2022 First Extraordinary Sess. (Mar. 9, 2022), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1258719>. (“It is my firm belief that this map violates Section 2 of the Voting Rights Act of 1965 and further is not in line with the principle of fundamental fairness that should have driven this process. In choosing this map, the Legislature rejected numerous alternative maps with two majority minority districts, which happen to be one-third of the six congressional districts, that would have given more Black voters an opportunity to elect a candidate of their choice.”).

⁶ *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 766 (M.D. La. 2022).

⁷ See Paul Braun, *Louisiana lawmakers end court-ordered redistricting session without passing new congressional map*, WRFK (Jun. 18, 2022), <https://www.wvno.org/2022-06-18/louisiana-lawmakers-end-court-ordered-redistricting-session-without-passing-new-congressional-map>.

⁸ Order 597, *Ardoin v. Robinson*, No. 21-1596 (U.S. June 28, 2022), https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/SCOTUS_Order_LA_6.28.22.pdf (holding *Robinson* in abeyance pending the Court’s decision in *Merrill v. Milligan* (No. 21-1086 and No. 21-1087)).

⁹ See, e.g., *Allen v. Milligan*, 599 U.S. 1, 9-42 (2023) (applying the standards defined in *Thornburg v. Gingles*, 478 U.S. 30, (1986), to a Section 2 challenge to Alabama’s congressional map and finding Plaintiffs were likely to succeed on the merits).

¹⁰ See *Alabama lawmakers refuse to create a 2nd majority-Black congressional district*, ASSOC. PRESS (July 21, 2022) <https://www.npr.org/2023/07/21/1189494854/alabama-redistricting-map-black-districts>.

¹¹ Injunction, Order, and Court-Ordered Remedial Map, *Milligan v. Allen*, 2:21-cv-01530-AMM (Oct. 5, 2022), ECF No. 311, <https://storage.courtlistener.com/recap/gov.uscourts.alnd.179302/gov.uscourts.alnd.179302.311.o.pdf>.

Following its *Milligan* ruling, the Supreme Court allowed the *Robinson* litigation to proceed “in advance of the 2024 congressional elections in Louisiana.”¹² This permitted the Fifth Circuit Court of Appeals to move forward with hearing Defendants’ appeal of the District Court’s preliminary injunction ruling.¹³ In the Fifth Circuit’s November 10, 2023 opinion, the court affirmed the strength of the Plaintiffs’ Section 2 claim and rejected the State’s legal arguments that Section 2 does not require a second majority-Black district in Louisiana.¹⁴ The Fifth Circuit granted the Legislature “time to consider enacting a new congressional redistricting plan” before the district court proceeds with trial because “redistricting is a quintessential obligation of a state.”¹⁵ That time, however, is finite. The Fifth Circuit set an initial deadline of January 15, 2024 for the Legislature to conclude its consideration of a new map.¹⁶ That deadline was subsequently modestly extended to allow for this extraordinary session.¹⁷

Importantly, the courts were clear that the Legislature is not free to pass a map that fails to provide Black Louisianians new electoral opportunities. If the Legislature passes a map, but Plaintiffs object to its configuration as a continued violation of the VRA, the court will once again be called on to assess the map’s legality and to impose a court-ordered map, if necessary.¹⁸

The Legislature should, of course, pass a lawful map and avoid a court-imposed remedial map. The *Robinson* Plaintiffs welcome this outcome. HB 5 mirrors the map jointly submitted by Plaintiffs to the District Court during remedial proceedings in 2022 and 2023.¹⁹ It reflects the input of community members across the state who participated in the redistricting roadshows and session.²⁰ It balances traditional redistricting principles, including those articulated by the Legislature as the top priorities for this redistricting cycle.²¹ While maintaining the current majority-Black district in New Orleans and the River Parishes, it creates a new majority-Black congressional district by uniting communities in Baton Rouge and the Delta Parishes, which both

¹² Letter from Clerk Scott S. Harris, Off. of the Clerk, Sup. Ct. of the U.S. to Clerk of U.S. C.A. for 5th Cir., https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA_22-30333_237-1_13cvCoI.pdf.

¹³ *Ardoin v. Robinson*, 143 S. Ct. 2654 (Jun. 16, 2023) https://www.supremecourt.gov/orders/courtorders/062623zor_7m58.pdf (“The writ of certiorari before judgment is dismissed as improvidently granted. The stay heretofore entered by the Court on June 28, 2022, is vacated. This will allow the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana.”)

¹⁴ *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023), https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/LA_22-30333_336-1.pdf.

¹⁵ *Id.* at 583–84.

¹⁶ *Id.*

¹⁷ Minute Entry *supra* note 3.

¹⁸ *Id.*

¹⁹ See Pls.’ Joint Notice of Proposed Remedial Plan and Mem. in Support *Robinson v. Ardoin*, Case 3:22-cv-00211-SDD-SDJ (June 22, 2022), [ECF No. 225](https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/JN_of_Prop._Remedial_Plan_and_Memo_in_Support_6.22.22.pdf), [https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/JN_of_Prop. Remedial Plan and Memo in Support 6.22.22.pdf](https://vhdsfh2oms2wcnsvk7sdv3so.blob.core.windows.net/thearp-media/documents/JN_of_Prop._Remedial_Plan_and_Memo_in_Support_6.22.22.pdf). HB 5 shares the same general features and lines as the remedial plans, with only minor alterations made to comply with the most up-to-date precinct lines.

²⁰ *Id.* at 7.

²¹ See *id.* at 2, 6, 9, 10, and Ex. A.; see also La. Joint Rule 21 (HCR 90, 2021 R.S., eff. June 11, 2021), <https://www.legis.la.gov/legis/Law.aspx?d=1238755>.

the District Court and Fifth Circuit acknowledge reflect communities with common interests.²² HB 5 is thoroughly supported by the record built over the course of the legislative and legal processes since this redistricting cycle began. That record, and Plaintiffs' endorsement, mean the passage of HB 5 provides the clearest route to end the *Robinson* litigation. Other configurations may also satisfy Section 2 if they provide an opportunity for Black voters to elect their candidates of choice in two congressional districts.

Thousands of Louisianians from across the state, including the *Robinson* Plaintiffs, weighed in on the redistricting process. They testified, organized, and lifted their voices for fair representation. The federal courts have been clear that the *Robinson* Plaintiffs' Section 2 claims are well supported, and resolution is necessary this year. Passing HB 5 or another VRA-compliant map would ensure that nearly two years of costly, taxpayer-financed litigation can finally conclude. Such a map would provide Louisianians with clarity on the congressional districts they will be voting in for the remainder of the decade. And it would finally ensure Black voters are provided an equal opportunity to participate in the democratic process.

Sincerely,

/s/ Stuart Naifeh

Stuart Naifeh
Kathryn Sadasivan
Victoria Wenger
NAACP Legal Defense and Educational
Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006

R. Jared Evans
I. Sara Rohani
NAACP Legal Defense and Educational
Fund, Inc.
700 14th Street N.W. Ste. 600
Washington, DC 20005

²² See Pls.' Joint Notice of Proposed Remedial Plan and Mem. in Support *supra* note 19; see also *Robinson*, 86 F.4th at 590–92 (finding the district court did not err in determining that the illustrative districts “create...different communit[ies] of interest” that “share many cultural, economic, social, and educational ties,” based in part on “unrebutted evidence by the Plaintiffs experts who utilized roadshow testimony and socioeconomic data to construct the plans.”).