

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION**

BETTE EAKIN, *et al.*,

Plaintiffs,

v.

ADAMS COUNTY BOARD OF ELECTIONS, *et al.*,

Defendants.

Case No. 1:22-cv-00340-SPB

**PLAINTIFFS' RESPONSE TO INTERVENORS' SUPPLEMENTAL STATEMENT  
IN RESPONSE TO THE COURT'S SEPTEMBER 3, 2024 ORDER**

The *Purcell* principle is not an “absolute” bar against injunctive relief, nor does it dissolve a court’s equitable authority simply because an election is near. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). As the Third Circuit explained just this year: “*Purcell* is a consideration, not a prohibition.” *Kim v. Hanlon*, 99 F.4th 140, 160 (3d Cir. 2024). And it counsels against issuing orders that “themselves result in voter confusion and [a] consequent incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006).

**A. Plaintiffs’ requested relief does create any risk of voter confusion.**

Intervenors wish to reduce the *Purcell* principle to a rigid formula, but applying *Purcell* is not simply a matter of timing: The primary question instead is whether a specific remedy, in a particular case, may create a risk of voter confusion that disenfranchises voters. *See, e.g., Merrill*, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring) (“How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects.”); *Kim*, 99 F.4th at 160 (“The focus of

the *Purcell* principle, then, is on avoiding election issues that could lead to voter confusion shortly before an election.”).

Here, Plaintiffs’ requested remedy requires no further action from voters and simply prevents election officials from rejecting mail ballots for missing or incorrect dates during the canvassing process. A Pennsylvania voter casting a mail ballot will receive the exact same ballot materials and the exact same instructions for the November 2024 elections regardless of this Court’s ruling. For all practical purposes, this Court’s decision will not affect the act of voting in any way; it would simply require County Defendants to count otherwise valid mail ballots even if those ballots do not comply with the date requirement. Nothing about such an order would confuse voters because the process from their perspective “will remain unchanged.” *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020); *see also Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120, 142 n.5 (3rd Cir. 2024) (Shwartz, J., dissenting) (recognizing that “order[s] affect[ing] election officials, not voters, and provid[ing] clear guidance about whether to count certain mail-in ballots . . . d[oes] not present any risk voter confusion”).<sup>1</sup> It is of no consequence that the date requirement has been subject to litigation in federal and state courts for several years, Intervenor-Defs.’ Suppl. Statement in Resp. to Sept. 3, 2024 Order at 2–4, ECF No. 420, or that the date requirement has previously been enforced, *id.* at 3. Because the relief sought involves counting—rather than casting—ballots, there is no risk of creating “voter confusion and consequent incentive to remain away from the polls.” *Purcell*, 549 U.S. at 4–5.

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<sup>1</sup> Although appearing in a dissent, Judge Shwartz’s position here does not conflict with anything in the majority’s opinion, which did not address *Purcell* considerations at all.

**B. Intervenor’s argument disregards binding precedent.**

The Third Circuit recently confronted the limits of *Purcell* in *Kim v. Hanlon*, correctly concluding that ordering county clerks to *redesign* ballots less than two months before the 2024 primaries in New Jersey would not lead to voter confusion. 99 F.4th at 160 & n.14. In that case, the plaintiffs challenged an election ballot style which grouped candidates based on the slogan they chose, and thereby effectively allowed county party committees to give their endorsed candidates a preferred ballot position. *Id.* at 147–48. The district court granted the plaintiffs’ request for injunctive relief, ordering county clerks to use a different ballot style. *Id.* at 152. The Third Circuit held that *Purcell* did not prevent injunctive relief because such relief “does not impact voters’ ability or plans for voting and would actually alleviate some ballot confusion,” while arguments to the contrary were “based on nothing but speculation.” *Id.* at 160; *see also id.* at 160 n.14 (noting “Plaintiffs moved with the appropriate alacrity, bringing this suit over 100 days before the primary election and over a month before the ballot-printing deadline”).

The only evidence of confusion in the extensive record here results from the *enforcement* of the date requirement. *See* Concise Statement of Material Facts in Supp. of Pls.’ Mot. for Summ. J. ¶¶ 80–90, ECF No. 289. Intervenor’s attempt to add to the record via their untimely supplemental brief, citing to the Secretary of State’s July 1, 2024 Directive Concerning the Form of Absentee and Mail-in Ballot Materials and statistics on compliance with the date requirement, ECF No. 420 at 3; but neither shows any evidence of voter confusion—to the contrary, they show that the date requirement is being consistently presented to voters as a mandatory requirement, which would not change regardless of this Court’s ruling. Critically, Intervenor’s do not—and cannot—show how enjoining the rejection of mail ballots with missing or incorrect dates will cause any confusion to Pennsylvania voters. In any scenario, Pennsylvania voters in the November 2024 election will be instructed to fill out their mail ballot envelopes as they always have, including the date field. If

anything, Plaintiffs’ requested relief will *remedy* voter confusion by ensuring that voters who inadvertently fail to comply with the date requirement are not needlessly disenfranchised for doing so. *Cf. Purcell*, 549 U.S. at 4 (expressing concern for “voters [who] might be turned away from the polls”); *see also* ECF No. 289 at ¶¶ 83–89.

Thus, the Court can and should promptly grant Plaintiffs’ motion for summary judgment against all Defendants.

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