

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

**VOICE of the EXPERIENCED, on behalf of  
itself and its members; POWER COALITION  
for EQUITY and JUSTICE, on behalf of itself  
and its members; and LEAGUE of WOMEN  
VOTERS of LOUISIANA, on behalf of itself  
and its members**

**Case: 3:23-cv-00331-JWD-SDJ**

**v.**

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

**OPPOSITION TO PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION**

**NOW INTO COURT**, through undersigned counsel, comes Defendant, R. Kyle Ardoin, in his official capacity as Secretary of State of Louisiana, who submits the following Opposition to the Motion for Expedited Consideration filed by Plaintiffs, Voice of the Experienced, Power Coalition for Equity and Justice, and the League of Women Voters ("Plaintiffs"). Secretary Ardoin reserves his right to assert any and all defenses presently available to him in response to Plaintiffs' Complaint for Declaratory and Injunctive Relief and Plaintiff's Motion for Preliminary Injunction and does not waive any defenses by submitting the following Opposition to the Motion for Expedited Consideration.

**I. INTRODUCTION**

Plaintiffs filed the instant suit against Secretary Ardoin on May 1, 2023, seeking a declaratory judgment, a permanent injunction, and attorney fees and costs.<sup>1</sup> Notably, Plaintiffs did not request any preliminary injunctive relief in their Complaint. Secretary Ardoin was served with

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<sup>1</sup> R. Doc. 1. Plaintiffs initially failed to file the exhibits to their Complaint (*see* R. Doc. 15), but on May 18, 2023, they were granted leave to supplement their Complaint to include the exhibits. R. Doc. 20.

the Complaint on May 3, 2023. Pursuant to Local Rule 7(a),<sup>2</sup> Secretary Ardoin requested an extension of time within which to file responsive pleadings for a period of twenty-one days, which was granted by the Court.<sup>3</sup> As a result, Secretary Ardoin's deadline to file responsive pleadings is June 14, 2023.<sup>4</sup>

At 5 pm on May 22, 2023, Plaintiffs filed a Motion for Preliminary Injunction.<sup>5</sup> On May 23, 2023, Plaintiffs filed a Motion for Expedited Consideration of their Motion for Preliminary Injunction.<sup>6</sup> In their Motion for Expedited Consideration, Plaintiffs propose the following schedule:

**June 1, 2023:** Secretary Ardoin's response to Motion for Preliminary Injunction due

**June 5, 2023:** Plaintiffs' reply due

**Week of June 5, 2023:** Hearing on Motion for Preliminary Injunction

For the reasons set forth below, it is respectfully requested that Plaintiffs' Motion for Expedited Consideration be denied.

## II. ARGUMENT

Plaintiffs request expedited consideration of their Motion for Preliminary Injunction pursuant to F.R.C.P. 6(c)(1)(C), which provides as follows:

A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions: (C) when a court order – which a party may, for good cause, apply for ex parte – sets a different time.

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<sup>2</sup> To obtain an extension of time under Local Rule 7(a), the moving party must certify that there has been no previous extension of time and that the opposing party has not filed in the record an objection to an extension of time. Here, both of these requirements were met.

<sup>3</sup> R. Doc. 9; R. Doc. 19.

<sup>4</sup> See R. Doc. 19.

<sup>5</sup> R. Doc. 21.

<sup>6</sup> R. Doc. 22.

Plaintiffs' Motion for Expedited Consideration seeks to shorten Secretary Ardoin's time period to respond to the Motion for Preliminary Injunction from twenty-one days<sup>7</sup> to nine days, three of which are legal holidays.<sup>8</sup> Plaintiffs have not shown good cause for expedited consideration.

**a. Plaintiffs have failed to show good cause for expedited consideration of their Motion for Preliminary Injunction.**

Plaintiffs seek expedited consideration because they contend that they "are at immediate risk of suffering irreparable injury as a result of Defendant's enforcement of the Paperwork Requirement," citing the upcoming statewide gubernatorial primary on October 14, 2023.<sup>9</sup> The "Paperwork Requirement" is reference to La. R.S. 18:177(A)(1), which provides for reinstatement after suspension for felony conviction:

The registration of a person whose registration has been suspended by the registrar of voters pursuant to R.S. 18:176(A) shall be reinstated **when the person appears in the office of the registrar and provides documentation from the appropriate correction official showing that such person is no longer under an order of imprisonment or, if the person is under such an order, that the person has not been incarcerated pursuant to the order within the last five years** and the person is not under an order of imprisonment related to a felony conviction pursuant to election fraud or any other election offense pursuant to R.S. 18:1461.2.

Plaintiffs note that the October 14, 2023, election "is the first gubernational election cycle since the implementation of Act 127." Act 127 of the 2021 Louisiana Regular Legislative Session amended certain provisions in the Election Code, namely, La. R.S. 18:102, 18:171, 18:171.1 and 18:176 and enacted La. R.S. 18:102(C), all of which became effective February 1, 2022. Notably, Act 127 did not amend La. R.S. 18:177, which was last amended by Act 636 of the 2018 Louisiana Regular Legislative Session and became effective March 1, 2019.

<sup>7</sup> See Local Rule 7(f).

<sup>8</sup> Monday, May 29, 2023, is Memorial Day, which is a legal holiday.

<sup>9</sup> R. Doc. 22, p. 2.

Plaintiffs assert that the deadline to register to vote, either in person or by mail, is September 13, 2023, and they argue that expedited consideration of their Motion for Preliminary Injunction “is necessary to provide the Court ample time to rule on the Motion as soon as possible, thereby providing desperately needed clarity<sup>10</sup> to Plaintiffs, their members, and their constituents as to what steps they must take in order to successfully register to vote.”<sup>11</sup> This purported urgency, however, is of Plaintiffs’ own creation.

Plaintiffs submit that the parties have been corresponding regarding the “Paperwork Requirement” since August of 2022.<sup>12</sup> Indeed, on September 22, 2022, Secretary Ardoin responded to an August 30, 2022, letter from the Power Coalition and League of Women Voters, two of the Plaintiffs herein, alleging National Voter Registration Act (“NVRA”) violations in connection with reinstatement after suspension for felony conviction pursuant to La. R.S. 18:177(A)(1).<sup>13</sup> At the time of the August 30, 2022, letter, Act 127 had been in effect over six months, and La. R.S. 18:177 had not been changed since Act 636 of 2018, effective March 1, 2019.

“A person who is aggrieved by a violation of [the NVRA] may provide written notice of the violation to the chief election official of the State involved. If the violation is not corrected within 90 days after receipt of a notice...or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of election for Federal office, the aggrieved person may bring a civil action in an appropriate district court...”.<sup>14</sup> Here, the August 30, 2022, letter from the Power Coalition and League of Women Voters to Secretary Ardoin was sent 70 days prior to the November 8, 2022, federal election. Thus, the Power Coalition and League of Women Voters could

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<sup>10</sup> Secretary Ardoin submits that the instant suit does not appear to be seeking “clarity;” rather, the suit alleges a violation of the NVRA.

<sup>11</sup> *Id.*

<sup>12</sup> R. Doc. 22, p. 4.

<sup>13</sup> R. Doc. 15-3. The August 30, 2022, letter to which Secretary Ardoin responded was not included as an exhibit to Plaintiffs’ Complaint. A copy of the August 30, 2022, letter is attached hereto as Exhibit A.

<sup>14</sup> 52 U.S.C.A. § 20510.

have filed suit as early as September 19, 2022.<sup>15</sup> Yet, the instant suit was not filed until May 1, 2023, nearly seven months later.

When Plaintiffs eventually filed their lawsuit, they did not request a preliminary injunction. Instead, Plaintiffs waited an additional three weeks to request preliminary injunctive relief. Additionally, Plaintiffs did not file an objection to an extension of time within which Secretary Ardoin must respond pursuant to Local Rule 7(a), and Secretary Ardoin was, indeed, granted an extension of the deadline to June 14, 2023. These decisions, together with the delay in filing suit, belie the alleged urgency Plaintiffs now claim in their Motion for Expedited Consideration.

While Plaintiffs claim that “Defendant has long been aware of Plaintiffs’ position on the ‘Paperwork Requirement,’” the same can be said of Plaintiffs’ own awareness of the procedure for reinstatement after suspension for felony conviction pursuant to La. R.S. 18:177, which was not changed by Act 127. Moreover, Plaintiffs were undoubtedly aware prior to May 1, 2023 that the next gubernatorial primary would occur in the fall of 2023.<sup>16</sup> Yet, Plaintiffs waited until May 1, 2023, to file the instant suit, not to mention an additional three weeks to request preliminary injunctive relief. If the situation were as urgent as Plaintiffs now claim, they should have acted sooner. For these reasons, Plaintiffs have failed to show good cause for expedited consideration of their Motion for Preliminary Injunction. Therefore, their Motion for Expedited Consideration should be denied.

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<sup>15</sup> Even if the 20-day notice period did not apply, the Power Coalition and League of Women Voters could have filed suit as early as November 28, 2022 under the 90-day notice period.

<sup>16</sup> See La. Const. Art IV, § 3.

**b. Expedited consideration will not save Plaintiffs’ Motion for Preliminary Injunction from the *Purcell* principle.**

In further support of their request for expedited consideration, Plaintiffs suggest that expedited consideration is necessary in order to avoid application of the *Purcell* principle.<sup>17</sup> However, the election is already close at hand, and thus, the *Purcell* principle is applicable to Plaintiffs’ Motion for Preliminary Injunction.

In *Purcell v. Gonzalez*, the United States Supreme Court held that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”<sup>18</sup>

*Purcell* “reflects a bedrock tenet of election law:

When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others. It is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.”<sup>19</sup>

“That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.”<sup>20</sup>

Recently, in *Singleton, et al. v. East Baton Rouge Parish School Board, et al.*, this Court considered the application of the *Purcell* principle in relation to the November 8, 2022, election to

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<sup>17</sup> R. Doc. 22, p. 4.

<sup>18</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).

<sup>19</sup> *Merrill v. Milligan*, 142 S. Ct. 879 (2022), (Kavanaugh, J., concurring in grant of applications for stays) (emphasis added).

<sup>20</sup> *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S.Ct. 28; 208 L.Ed.2d 247 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

the East Baton Rouge Parish School Board.<sup>21</sup> The suit was filed on July 19, 2022, and in an August 13, 2022 ruling, this Court denied the plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction on the basis of, *inter alia*, the *Purcell* principle: "The Court is too close to the election to change the state's election law, and, further, Plaintiffs have not demonstrated that the changes could take place without significant confusion, cost, and hardship."<sup>22</sup> After a thorough review of applicable jurisprudence, the Court found "that somewhere between four months (*Merrill*<sup>23</sup>) and two months (*Husted*<sup>24</sup>) [before the election] is within the *Purcell* doctrine," and noted that "one reasonable albeit cautious reading of the Supreme Court's most recent action<sup>25</sup> is that they found five months to be too close to the election."<sup>26</sup>

Like *Singleton*, the present case falls within the range of the *Purcell* principle stated above. Plaintiffs seek a hearing on their Motion for Preliminary Injunction during *the week of* June 5, 2023. June 5, 2023 is 100 days, or 3 months and 8 days, prior to the close of in-person and mail-in voter registration for the October 14, 2023 primary election. June 5, 2023 is also 117 days, or 3 months and 25 days, prior to the start of early voting on September 30, 2023. Therefore, expedited consideration of Plaintiffs' Motion for Preliminary Injunction will not avoid application of the *Purcell* principle.<sup>27</sup> Thus, Plaintiffs' Motion for Expedited Consideration should be denied.

**c. Legislative action may moot Plaintiffs' lawsuit.**

Finally, Plaintiffs seek to expedite consideration of their request for preliminary injunctive relief, even though such request could become moot following the current session of the Louisiana

<sup>21</sup> *Singleton, et al. v. East Baton Rouge Parish School Board, et al.*, No. 3:22-cv-00489 (M.D. La. 7/19/22).

<sup>22</sup> *Singleton*, 621 F. Supp. 3d 618, 623 (M.D. La. 8/13/22).

<sup>23</sup> *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

<sup>24</sup> *Husted v. Ohio State Conference of N.A.A.C.P.*, 573 U.S. 988 (2014).

<sup>25</sup> *Ardoin v. Robinson*, No. 21-1596, 2022 WL 2312680, at \*1 (U.S. June 28, 2022).

<sup>26</sup> *Singleton*, 621 F. Supp. 3d at 629.

<sup>27</sup> Secretary Ardoin reserves his right to re-urge and expound upon the application of the *Purcell* principle in his forthcoming Opposition to Plaintiffs' Motion for Preliminary Injunction.

Legislature. Secretary Ardoin submits that House Bill 396 would amend La. R.S. 18:177 and simplify the reinstatement process in a manner similar to the relief requested by Plaintiffs in this case. House Bill 396 passed the House of Representatives and is pending before the Committee on Senate and Governmental Affairs. Final adjournment of the legislative session will occur no later than 6:00 pm on Thursday, June 8, 2023. Thereafter, legislation will be referred to the governor for signature or veto within 30 days. Given Plaintiffs' undue delays in bringing the instant suit and requesting preliminary injunctive relief, as well as the October 14, 2023, primary election drawing near, the Court should not hurry itself to consider an issue that could become moot in a few weeks. Therefore, Plaintiffs' Motion for Expedited Consideration should be denied.

WHEREFORE, for the foregoing reasons, Defendant, R. Kyle Ardoin, in his official capacity as Secretary of State of Louisiana, respectfully requests that this Honorable Court deny Plaintiffs' Motion for Expedited Consideration.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of May, 2023, a copy of the foregoing has on this date been served upon all counsel of record via CM/ECF system and has been filed electronically with the Clerk of Court using the CM/ECF system.

/s/ Caroline M. Tomeny  
Caroline M. Tomeny

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