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*, *Plaintiffs*, v. R. KYLE ARDOIN, *in his official capacity as Secretary of State of Louisiana*, *Defendant*.	Civil No. 3:23-cv-00331-JWD-SDJ

PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs Voice of the Experienced, Power Coalition for Equity and Justice, and the League of Women Voters of Louisiana ("Plaintiffs") respectfully submit this brief in further support of their motion for preliminary injunction, ECF No. 21 (the "Motion").

As detailed in their Motion and Memorandum in Support, ECF No. 21-1, Plaintiffs seek to preliminarily enjoin Louisiana's requirement that voter registrants who temporarily lost the right to vote after a felony conviction, but who have since had that right restored pursuant to Louisiana law provide documentary proof of eligibility (the "Paperwork Requirement") to re-register to vote. Plaintiffs allege that the Paperwork Requirement violates the National Voter Registration Act ("NVRA"), which prohibits states from creating additional paperwork barriers to voter registration beyond the form itself. *See* 52 U.S.C. § 20505(a)(1).

Plaintiffs filed their Motion on May 22, 2023. ECF No. 21-1. The following day, Plaintiffs filed a motion for expedited consideration. ECF No. 22. Defendant filed a memorandum in opposition to Plaintiffs' motion for expedited consideration on May 25, 2023. ECF No. 24. On May 31, 2023, the Court denied Plaintiffs' motion for expedited consideration and ordered the parties to file simultaneous briefing. ECF No. 27.

In its order, the Court directed the parties to discuss in their briefing: (1) the doctrine under *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), with particular attention paid to this Court's decision in *Singleton v. E. Baton Rouge Par. Sch. Bd.*, 621 F. Supp. 3d 618 (M.D. La. 2022); and (2) the legislative action that Defendant asserts may moot Plaintiffs' Motion for Preliminary Injunction. *Id.* at 2.

Plaintiffs note that, when the Court originally ordered this simultaneous briefing, circumstances were quite different from those surrounding this briefing today. Plaintiffs originally sought injunctive relief that would take effect before the October 14, 2023 gubernatorial primary. *See* ECF No. 21-1. The Court has since scheduled the hearing on this Motion for October 25, 2023. *See* ECF No. 61. Accordingly, Plaintiffs now seek relief that would take effect beginning with the next election cycle scheduled in Louisiana—the presidential preference primary and municipal primary elections set for March 23, 2024.

Plaintiffs maintain that *Purcell* and its progeny do not bar the Court from issuing immediate injunctive relief that would be in effect well in advance of the March 2024 presidential preference elections. Notably, Defendant has conceded that he would have been ready to implement changes similar to the relief Plaintiffs seek within two-and-a-half months of an election. *See infra* at § I.C.2.

If anything, now that Plaintiffs ask for relief beginning with the March 2024 election cycle rather than the October 2023 cycle, timing considerations that Defendant might advance are greatly

diminished if not completely eviscerated. The March 2024 election is a little less than eight months away from today's filing and a little less than five months away from the date of the hearing on this Motion. Plaintiffs are not aware of any cases in which a court has declined to issue injunctive relief with as much time before the next election cycle. Moreover, given Defendant's concession that he would have been ready to implement similar changes in as little as two-and-a-half months, there is no doubt that the Court could issue injunctive relief that Defendant will have no problem implementing.

ARGUMENT

I. *Purcell* Does Not Preclude Injunctive Relief

For the reasons discussed *infra*, neither *Purcell* nor its progeny, including *Singleton*, bars the Court from granting injunctive relief in this action. In fact, *Purcell* and its progeny counsel in *favor* of injunctive relief here because they teach that courts must give careful consideration to requests for injunctive relief where, absent an injunction, eligible voters might be wrongfully disenfranchised.

Purcell requires courts to consider the timing of elections in granting preliminary relief, but it "is not a magic wand that defendants can wave to make any unconstitutional election restriction disappear so long as an impending election exists." *People First of Alabama v. Sec'y of State for Alabama*, 815 F. App'x 505, 514 (11th Cir. 2020); *accord Coalition for Good Governance v. Kemp*, 1:21-CV- 02070-JPB, 2021 WL 2826094, at *3 (N.D. Ga. July 7, 2021) (noting that *Purcell* "does not function as the bright line rule Defendants propose"). Rather, courts flexibly consider the impact on election administration of enjoining laws ahead of an election. *See New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020); *Coalition for Good Governance*, 2021 WL 2826094, at *3.

This Court has explicitly declined to read *Purcell* as implying "that a district court may *never* enjoin a State's election laws in the period close to an election." *Singleton*, 621 F. Supp. 3d at 628. Instead, the Court has quoted Justice Kavanaugh's concurrence in *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) ["*Milligan* I"], interpreting *Purcell*:

> [T]he *Purcell* principle is probably best understood as a sensible refinement of ordinary stay principles for the election context—a principle that is not absolute but instead simply heightens the showing necessary for a plaintiff to overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures. Although the Court has not yet had occasion to fully spell out all of its contours, I would think that the *Purcell* principle thus might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut [sic] in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

Id.

A. *Purcell* Does Not Define a Particular Timeframe for Its Presumption Against Injunctive Relief

Decisions issued by numerous courts, including the Supreme Court, make clear that *Purcell* does not define any particular timeframe that triggers a presumption against injunctive relief.

Significantly, in *Veasey v. Abbott*, 578 U.S. 957 (2016), the Supreme Court suggested that injunctive relief could be granted with less than four months before an election. In *Veasey*, the Court declined to vacate the stay of injunctive relief entered by the Fifth Circuit in an action challenging voter identification laws in Texas. Notably, "recogniz[ing] the time constraints the parties confront in light of the scheduled elections [on] November [8], 2016," the Court explicitly provided that "an aggrieved party may seek interim relief from this Court" if the Fifth Circuit had "neither issued an opinion on the merits of the case nor issued an order vacating or modifying the

current stay order" by July 20, 2016—a date three months and nineteen days before the November 2016 election.

Moreover, courts have repeatedly granted injunctive relief, notwithstanding *Purcell* concerns, on the eve of an election and even, in at least one case, after the registration deadline for an election had already passed. *See, e.g.*, *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020) (reversing district court denial of preliminary injunction, in a decision issued six days before an election); *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1055 (D.N.D. 2020) (enjoining, in a decision issued on June 3, the state from rejecting absentee ballots on the basis of mismatched signatures for a June 9 election, finding "the countervailing threat of the deprivation of the fundamental right to vote more significant" than "the impact on election officials"); *Democratic Nat'l Comm. v. Bostelmann*, 447 F. Supp. 3d 757, 770 (W.D. Wis. 2020) (enjoining, in a decision issued on March 20, the state from enforcing a March 18 absentee voting registration deadline for an April 7 election in light of COVID-19 pandemic, reasoning that "some accommodation is necessary to preserve citizens' right to vote").

Thus, *Purcell* does not establish any timeframe in which a presumption against injunctive relief applies. Rather, as discussed below, *Purcell* requires courts to consider a number of factors, placing particular weight on the risk that voters may be disenfranchised.

B. *Purcell* and Its Progeny Confirm That *Purcell* Does Not Preclude Injunctive Relief Here, Especially Given the Risk that Eligible Voters Might Be Wrongfully Disenfranchised Absent Injunctive Relief

Purcell and its progeny instruct courts to give careful consideration to requests for injunctive relief such as Plaintiffs', where—absent injunctive relief—eligible voters might be wrongfully denied the right to vote. In such cases, regardless of the time remaining before an election, the risk of unlawful disenfranchisement weighs heavily in favor of injunctive relief,

especially where, as discussed *infra* at § I.C.2, the state cannot show that compliance with such an injunction would impose any meaningful administrative burden.

As discussed above, *supra* at § I, courts have made clear that timing is not dispositive under *Purcell*. In fact, *Purcell* and its progeny do not automatically bar injunctive relief even where an election is already underway. *See Milligan* I, 142 S. Ct. at 881 (noting that the *Purcell* principle is "not absolute"). In *Craig v. Simon*, 493 F. Supp. 3d 773, 789 (D. Minn. 2020), *aff'd*, 980 F.3d 614 (8th Cir. 2020), a district court granted a preliminary injunction on October 9, 2020 for a November 3 election in which early voting had already begun on September 18. The court enjoined Minnesota from enforcing a statute that required postponing an election date if a major political party candidate in that election died within 79 days before the general election. *Id.* at 778. The court reasoned that *Purcell* did not prohibit injunctive relief because the injunction sought did "not fundamentally alter the nature or rules of the election, create voter confusion, or create an incentive for voters to remain away from the polls." *Id.* at 789; *see also id.* at 784 n.4, 788 n.7 (noting that, if deceased candidate were to posthumously win the election, harm to voters for that candidate would be caused by candidate's unexpected death, rather than state action).

Indeed, under *Purcell*, considerations other than timing are especially important where there is a risk that eligible voters might be improperly disenfranchised. *Purcell* "demands 'careful consideration' of any legal challenge that involves 'the possibility that qualified voters might be turned away from the polls.'" *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 387 (6th Cir. 2008) (quoting *Purcell*, 549 U.S. at 7). In *Land*, for example, the Sixth Circuit declined to stay a preliminary injunction prohibiting a Michigan practice in which voters were removed from the voter rolls when their identification cards were returned to the state as undeliverable. *Id.* at 376. Rejecting the defendants' *Purcell* arguments, the Sixth Circuit reasoned:

> In this case, the district court's preliminary injunction ensures that qualified voters whose registrations were rejected due to the undeliverable-voter-ID-card practice will not be turned away at the polls. Moreover, the district court has determined that staying the preliminary injunction would likely put individual voters at risk of disenfranchisement. Additionally, the preliminary injunction affects a small fraction of Michigan voters, at most 5500 individuals, and the change is therefore not a "precipitate" alteration to the state's entire voting methodology.

Id. at 387. The Sixth Circuit further noted that the steps that the defendants needed to take to comply with the preliminary injunction were relatively straightforward and that the defendants "appear already to have identified the voters whose voter status must be changed based on the preliminary injunction." *Id.* The parallels between *Land* and the instant action are clear. Like the Michigan practice in *Land*, the Paperwork Requirement here threatens to disenfranchise voters. Likewise, as in *Land*, the number of voters subject to the Paperwork Requirement is relatively small; thus, an injunction would not dramatically alter the state's entire voting methodology.

Similarly, *Action NC v. Strach*, 216 F. Supp. 3d 597, 608 (M.D.N.C. 2016), which—like this action—involved claims under the NVRA, is instructive here. In *Action NC*, individual and organizational plaintiffs brought suit, alleging that North Carolina had violated the NVRA where the North Carolina Department of Motor Vehicles ("DMV") had failed to transmit voter-registration data to the State Board of Elections ("SBE"). Voters then appeared at the polls in an election in 2014, were told that they were not on the voter rolls, were permitted to submit provisional ballots, but later found out that their ballots were not counted. *Id.* at 610. With a general election less than two weeks away, the court issued a preliminary injunction requiring North Carolina to treat as registered voters who attested to registering at the DMV but were required to submit provisional ballots because their names did not appear on the voter rolls. *Id.* at 647.

The court found that such an injunction was "warranted to ensure that qualified voters are not deprived of their right to participate in the upcoming election because of transmission errors on the part of DMV to the SBE." *Id.* at 646. Critically, the court noted that the defendants had "failed to show that it would be unduly burdensome to comply with such injunctive relief or that such relief would disrupt the administration of the 2016 General Election" and that "any additional burden they face will be minimal compared to the hardship eligible voters may face if improperly denied the right to vote." *Id.* at 647.

The court further noted that "the public interest factor weighs heavily in favor of [] injunctive relief," where "Congress passed the NVRA for the specific purpose of 'establish[ing] procedures that will increase the number of eligible citizens to register to vote' and 'to ensure that accurate and current voter registration rolls are maintained.'" *Id.* at 648 (quoting 52 U.S.C. § 20501). The court concluded, "Voter enfranchisement cannot be sacrificed when a citizen provides the state the necessary information to register to vote but the state turns its own procedures into a vehicle to burden that right." *Id.*

Like the voters in *Action NC*, individuals subject to the Paperwork Requirement here provide Louisiana with all of "the necessary information to register to vote" as required by the NVRA, yet Louisiana, just like North Carolina, has "turn[ed] its own procedures"—namely, the Paperwork Requirement—"into a vehicle to burden that right." *Id.* Even where an election is imminent, *Purcell* requires courts to carefully consider issuing injunctive relief given the risk that eligible voters might be improperly disenfranchised in the absence of a preliminary injunction.

Like the defendants in *Action NC*, Defendant here cannot "show that it would be unduly burdensome to comply with such injunctive relief," especially "compared to the hardship eligible voters may face if improperly denied the right to vote," where an injunction would *remove* a

requirement that Defendant would enforce for voter registration in the upcoming election. *Id.* at 647. As in *Land*, the burden on Defendant to comply with an injunction would be minimal, and Defendant already possesses all of the information he needs to identify voters covered by such an injunction. *See Land*, 546 F.3d at 387.

In sum, as in *Craig*, *Purcell* does not prohibit injunctive relief here because the injunction that Plaintiffs seek will "not fundamentally alter the nature or rules of the election, create voter confusion, or create an incentive for voters to remain away from the polls." *Craig*, 493 F. Supp. 3d at 789.

C. Plaintiffs Here Meet the Four Requirements for a *Purcell* Exception Outlined in *Milligan* I

In *Milligan* I, Justice Kavanaugh explained that *Purcell* does not bar injunctive relief "if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut [sic] in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." 142 S. Ct. at 880-81. Plaintiffs here satisfy all four factors.

1. Plaintiffs Satisfy the First Three Factors

First, "the underlying merits are entirely clearcut in favor of" Plaintiffs. *Id.* As discussed in Plaintiffs' opening brief, ECF No. 21-1 at 13-20, Section 6 of the NVRA unambiguously provides that states must "accept[] as sufficient" the Federal Form for voter registration. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 2, (2013) ["*ITCA*"]; *accord* 52 U.S.C. § 20505(a)(1) (requiring states to "accept and use" the Federal Form for voter registration). The Federal Form requires voters to attest under penalty of perjury that they meet their state's requirements for voter registration and requires no additional documentation. *See* ECF No. 21, Ex.

5. Louisiana is indisputably requiring "suspended" individuals to provide documentation proving eligibility before they are allowed to become an active voter. *See* ECF No. 21, Ex. 1, Ex. 3 at 6-17. The Supreme Court has plainly held that such a requirement for documentary proof that goes above and beyond what is required on the Federal Form is preempted by the NVRA. *See, e.g.*, *ITCA*, 570 U.S. at 15; 52 U.S.C. §§ 20505(a)(1), 20508(b).

Second, Plaintiffs "would suffer irreparable harm absent the injunction." *Milligan* I, 142 S. Ct. at 880-81. As discussed in their opening brief, in the absence of an injunction, Plaintiffs' members and constituents will face wrongful denials of their voter registration applications, unlawfully abridging their right to vote, and Plaintiffs will irreversibly expend their limited resources to educate and assist voters on issues concerning the Paperwork Requirement. *See* ECF No. 21, Ex. 1 at 21-23. "A restriction on the fundamental right to vote [] constitutes irreparable injury." *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) (citation omitted).

Third, Plaintiffs have "not unduly delayed bringing the complaint to court." *Milligan* I, 142 S. Ct. at 880-81. As detailed in Plaintiffs' reply brief in support of their motion for expedited consideration, ECF No. 25 at 2-3, honoring the purpose of the NVRA's notice requirements, Plaintiffs expeditiously worked to resolve their dispute with Defendant through extensive pre-litigation correspondence before turning to litigation. Beginning in August 2022, Plaintiffs attempted to negotiate directly with Defendant to clarify Louisiana's violation and urge an administrative resolution. Plaintiffs filed this action on May 1, 2023, only after it became clear that further negotiation efforts were futile. Contrary to Defendant's assertions, *see* ECF No. 24 at 8, this was not "undue delay," but rather Plaintiffs' good faith attempt to remedy the issue before litigation. While monitoring the then-ongoing legislative activity relating to the Paperwork

Requirement, Plaintiffs filed their Motion for Preliminary Injunction shortly after filing their Complaint.

2. *Singleton* Makes Clear that Plaintiffs Also Satisfy the Fourth Requirement

Singleton, 621 F. Supp. 3d at 618, focused on the fourth prerequisite articulated by Justice Kavanaugh—that is, the feasibility of the changes in question before an election without significant cost, confusion, or hardship. *See Milligan* I, 142 S. Ct. at 629-30. Unlike *Singleton*, the injunctive relief sought here would in fact *reduce* both voter confusion and Defendant's administrative workload by removing at least one step from the voter-registration process. Furthermore, *Singleton*, a case concerning competing districting plans, implicated concerns about voter confusion and administrative burdens that are not present here. That is, while *Purcell* applies to both redistricting cases, such as *Singleton*, and voting rights cases, such as the instant action, the appropriate remedies in redistricting cases are much more involved and time-consuming—requiring longer timeframes in the lead-up to an election—than the relief sought here, which can be implemented in a short period of time.

In *Singleton*, 621 F. Supp. 3d at 621, the plaintiffs—registered voters in East Baton Rouge Parish—sued the parish school board, seeking a preliminary injunction preventing the school board from conducting an election on November 8, 2022, based on a redistricting plan that the plaintiffs alleged violated the "one person, one vote" guarantee of the Equal Protection Clause of the Fourteenth Amendment. The Court had scheduled an evidentiary hearing for August 17, 2022, but canceled the hearing in light of its decision to deny the plaintiffs' motion for a temporary restraining order and preliminary injunction. *Id.* at 620-21.

The Court based its decision, in part, on *Purcell* grounds. The Court found that, under *Purcell*, a presumption against injunctive relief applies where an injunction would be issued

between two months and four months before an election. *Id.* (citing *Milligan* I, 142 S. Ct. at 879, and *Husted v. Ohio State Conf. of N.A.A.C.P.*, 573 U.S. 988 (2014)). Critically, however, the court noted that the timing of an upcoming election does not end the inquiry. A plaintiff can overcome the *Purcell* principle by establishing that the case meets the four prerequisites for an exception outlined by Justice Kavanaugh in his *Milligan* I concurrence.

Singleton focused on the fourth prerequisite articulated by Justice Kavanaugh—that is, the feasibility of the changes in question before an election without significant cost, confusion or hardship. *See id.* at 629-30. In stark contrast to *Singleton*, Plaintiffs' requested relief would actually *reduce* cost, confusion, and hardship in the upcoming election. In *Singleton*, the Court found the possibility of voter confusion to be "extremely significant" because, as a result of any injunctive relief the court may have granted, "(a) voters may wonder why candidates they previously believed were in one district are now identified with a different district; (b) voters will wonder why the number of candidates for their district has changed; (c) voters may think there is a mistake with their ballot; and (d) voters may think they are in the wrong precinct and ultimately may be inclined not to vote at all." *Id.* at 630.

The Court also found persuasive the "considerable administrative burdens" involved in requiring the school board to base the November election on a different redistricting plan. Had the Court granted injunctive relief, the defendants would have had to complete the following within short order:

> (a) a new district plan would have to be designed and implemented, and voters would need to be correctly assigned to these districts;
> (b) voters would then need to be identified by district, and cards would need to be mailed to each voter any time the voter's polling place, precincts, or election district changes;
> (c) the Registrar of Voters would then need to assign voters in the computer registration system of their new voting districts in the Parish;

> (d) the Registrar would have to work with the Secretary and Moran Printing Company to review, proof, and test each form of ballot and each ballot style for each ballot to be used in the parish; and
> (e) the Registrar would need to receive requests for absentee ballots and include the proper ballot with instructions and proper envelop for each voter.

Id. at 631 (citations omitted). The defendants further represented that "if a different apportionment plan is used, there is no guarantee that the steps necessary to ensure that the election takes place could be completed in time for the September 24, 2022, deadline for mail-in ballots." *Id.*

Singleton—a redistricting case—involved considerations regarding voter confusion and administrative burdens that are inapposite in this action. As discussed above, injunctive relief in *Singleton* would have implicated dramatic changes to the administration of the election in question—namely, to comply with a preliminary injunction, the defendants would have had to undertake significant work in reassigning a considerable number of voters to new districts and printing and disseminating revised ballots accordingly.

By contrast, here, injunctive relief would require Defendant to take few—if any—affirmative steps to comply with a preliminary injunction. Instead, a preliminary injunction would in fact *reduce* the workload Defendant must undertake in preparation for the upcoming election by *removing* the work Defendant expects to complete to enforce the Paperwork Requirement. Whereas, in *Singleton*, the defendants represented to the court that there was a likelihood that they would not be able to fully comply with an injunction in time for the upcoming election, here, Defendant can present no credible argument that he would not be able to timely comply with an injunction, which would require him to do *less* work than anticipated. Indeed, Defendant has

acknowledged that, had House Bill 396 become law,[1] the bill would have enacted changes "similar" to the relief that Plaintiffs request and that Defendant would have been ready to implement such changes on August 1, 2023, which would have been the bill's effective date. *See* ECF No. 24 at 8. This acknowledgment forecloses any claim that the requested relief here would be unworkable to implement before the March 2024 elections.

In fact, public records disclosed by Defendant confirm that the work to implement any injunction issued in this action would be *de minimis*. *See Carey v. Wisconsin Elections Comm'n*, 624 F. Supp. 3d 1020, 1035 (W.D. Wis. 2022) (granting injunctive relief where injunction would impose a "small burden" on state). These records reflect that, in the wake of the passage of Act 127, which removed the requirement of documentary proof of eligibility for individuals with felony convictions registering to vote for the first time, *see* ECF No. 21-1 at 4-5, Defendant simply emailed to parish registrars a one-and-a-quarter-page letter instructing them to stop requiring documentary proof of eligibility from new registrants. *See* ECF No. 15-6 at 2-8. There is no reason to believe that, should this Court grant the injunctive relief Plaintiffs request, Defendant could not implement such relief in the same manner—i.e., by simply instructing parish registrars to cease enforcing the Paperwork Requirement for re-registrants.

Similarly, injunctive relief here does not create the same risk of voter confusion that the court predicted in *Singleton*. To the contrary, injunctive relief would actually help *prevent* voter confusion because removing the Paperwork Requirement as a barrier to registration would simplify the voter registration process. *See Carey*, 624 F. Supp. 3d at 1035 (in a decision issued approximately three weeks from the date on which absentee ballots were to be distributed,

[1] House Bill 396 was a bill introduced in the 2023 regular session of the Louisiana State Legislature; it would have amended La. R.S. § 18:177. Although the Louisiana House of Representatives passed the bill, it died in committee in the Louisiana Senate. *See infra* § II.

enjoining state from enforcing a law prohibiting voters from obtaining third-party assistance in returning absentee ballots where injunction would alleviate voter confusion caused by state's conflicting statements as to whether it would enforce the law in question against disabled voters).

Moreover, injunctive relief here would alleviate administrative confusion among parish registrars. Records disclosed by Defendant suggest that parish registrars have expressed confusion as to which individuals must produce documentary proof of eligibility. *See, e.g.*, ECF No. 15-6 at 6 (email from parish registrar seeking "some clarification on how we will go forward with" Act 127), 9 (email from parish registrar seeking similar clarification), 11 (email from parish registrar expressing uncertainty about documentation required for applicant); *see also* ECF No. 21-4 ¶ 9 ("It appeared as if the employees at the registrar's offices [] did not understand the law [concerning the Paperwork Requirement]."). As Defendant's letter to the parish registrars concerning Act 127 reflects, *see* ECF No. 15-6 at 7, registrars must ask for documentary proof of eligibility from *some* applicants (i.e., individuals with felony convictions who had previously been registered to vote) but are forbidden by Act 127 from asking for documentary proof from others (i.e., individuals with convictions registering to vote for the first time). Injunctive relief here, then, would dispel registrars' administrative confusion by eliminating the Paperwork Requirement for *all* applicants.

Moreover, whereas injunctive relief in *Singleton* created a risk of depriving voters their right to vote, injunctive relief here will make it *more likely* that eligible voters will be able to exercise their right to vote. As the declarations filed in support of Plaintiffs' Motion make clear, the Paperwork Requirement imposes serious burdens on potential registrants, who must track down and request records to satisfy the Requirement—a considerable task especially for potential registrants without transportation or with conflicting work obligations. *See* ECF No. 21-3 ¶¶ 6, 8-9; ECF No. 21-4 ¶¶ 11-13; ECF No. 21-5 ¶¶ 8-17. Plaintiffs and their employees have been forced

to invest considerable time and energy in assisting potential registrants with satisfying the Paperwork Requirement. *See, e.g.*, ECF No. 21-4 ¶ 5. Without injunctive relief, Plaintiffs and the voters that they serve risk irreparable harm—i.e., being improperly denied the right to vote.

The concerns about cost, confusion, and hardship present in *Singleton* are therefore absent here, and the public interest in ensuring that eligible voters can vote weighs heavily in favor of immediate injunctive relief here. Unlike the *Singleton* plaintiffs, who could not satisfy the fourth *Milligan* I factor (i.e., show that their requested relief would not cause significant cost, confusion, or hardship), Plaintiffs here meet all four prerequisites, and therefore their relief should be granted even if they are within the *Purcell* presumption window. *Id.* at 629 (quoting *Milligan* I, 142 S. Ct. at 881).

For these reasons, *Singleton* and *Milligan* I counsel strongly in favor of immediate injunctive relief.

D. *Allen v. Milligan* Reflects the Danger of Aggressive Application of *Purcell*

In an order dated June 9, 2023, the Court required the parties to include in their simultaneous briefing "what impact, if any, the Supreme Court's decision in *Allen v. Milligan* has on the instant litigation." ECF No. 28. While *Allen v. Milligan* has limited relevance to the merits of this action,[2] the ultimate outcome and procedural history of *Allen v. Milligan*, 599 U.S. ----, No.

[2] Like *Singleton*, *Milligan* II and *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022), are redistricting cases and therefore implicate considerations about voter confusion and administrative burdens that are not relevant here. For the same reasons that *Singleton* is inapposite on the merits, *Ardoin* is not on point on the merits here.

In any event, the Supreme Court recently dismissed the writ of certiorari as "improvidently granted" and lifted the stay of the preliminary injunction in *Ardoin*, "allow[ing] 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." *Ardoin v. Robinson*, No. 21-1596, --- S.Ct. ----, 2023 WL 4163160 (U.S. June 26, 2023).

21-1086, 2023 WL 3872517 (U.S. June 8, 2023) ["*Milligan* II"], highlight the peril of over-prioritizing the *Purcell* principle over the merits of a case.

In the *Milligan* litigation, the district court issued a preliminary injunction requiring Alabama to redraw its districting map. *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 1034 (N.D. Ala. 2022) (expressing confidence that the Alabama legislature could accomplish this task because, *inter alia*, "the Legislature enacted the Plan in a matter of days last fall" and "the Legislature has been on notice since at least the time that this litigation was commenced months ago"). In a subsequent opinion, the district court refused to stay the injunction pending appeal, reasoning that there was sufficient time for Alabama to comply, with more than two months remaining until the start of absentee voting in a primary election. *Singleton v. Merrill*, No. 2:21-CV-1291-AMM, 2022 WL 272636, at *11 (N.D. Ala. Jan. 27, 2022). The Supreme Court, however, stayed the injunction pending resolution of the appeal, citing *Purcell*. *Milligan* I, 142 S. Ct. at 882 ("[T]he *Purcell* principle requires that we stay the District Court's injunction with respect to the 2022 elections." (Kavanaugh, J., concurring)). Ultimately, however, the Supreme Court agreed with the district court on the merits, holding that Alabama's districting map likely violates Section 2 of the Voting Rights Act. *Milligan* II, 2023 WL 3872517, at *5.

More than a year elapsed between the Court's stay of the injunction and the Court's resolution of the case on the merits. Because the Court had stayed the injunction on *Purcell* grounds, voters in Alabama endured one entire election cycle premised on a districting map that the Court ultimately found to be unlawful because it dilutes the voting power of Black Alabamians. The elected officials chosen under this unlawful map have represented Alabama in this Congress and will continue to do so until the next election.

This Court can easily avoid a similarly harsh and unjust outcome here by balancing the relevant factors under *Purcell*. Here, Louisiana voters should not be forced to endure an unlawful policy based on *Purcell* grounds when the facts show that compliance with an injunction within short order is eminently feasible.

II. Legislative Action Will Not Moot This Action

Recent developments make clear that, despite Defendant's representation to the contrary, Plaintiffs' request for injunctive relief will not become moot because of legislative action. *See* Def.'s Opp'n to Mot. for Expedited Consideration, ECF No. 24 at 7-8. In particular, Defendant cites House Bill 396 ("HB 396"), which would have amended La. R.S. § 18:177.[3] *Id.* Although HB 396 passed the Louisiana House of Representatives, the bill died in committee in the Louisiana Senate.

On May 31, 2023, the Louisiana State Senate Committee on Senate and Governmental Affairs, the committee responsible for HB 396, voted to defer consideration of HB 396. *See Hearing on H.B. 396 Before S. Comm. on S. & Governmental Affairs*, 2023 Leg. Sess. (La. 2023), https://perma.cc/F8KG-AZ9R (vote on motion to defer from 46:19 to 47:50). This means that HB 396 has died in committee for this legislative session, as the State Senate took no further action on the bill and the 2023 regular legislative session ended on June 8, 2023. *See* Louisiana State Legislature, *Session Information for the 2023 Regular Session*, https://legis.la.gov/Legis/SessionInfo/SessionInfo_23RS.aspx.

[3] Plaintiffs do not agree with Defendant that HB 396, had it been passed, would have provided the same relief that Plaintiffs seek in their Motion. Nevertheless, given that HB 396 failed to pass, this difference in opinion is immaterial.

The Paperwork Requirement therefore will not be altered or mooted in any way by legislative action. Only an injunction issued by this Court can avert the irreparable harm that Plaintiffs will suffer as a result of the Paperwork Requirement.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted this 28th day of July, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, July 28, 2023, I electronically filed the foregoing Motion with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to counsel of record who are registered with the Court's CM/ECF system.

/s/ Valencia Richardson
Valencia Richardson
Counsel for Plaintiffs