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

INTRODUCTION

Defendant presents no convincing arguments to oppose Plaintiffs' Motion for Preliminary Injunction. He offers an unworkable interpretation of *Purcell* to suggest that *any* relief is barred, mischaracterizes the harm experienced and the relief requested by Plaintiffs, and grossly exaggerates the burdens of implementing injunctive relief. Plaintiffs have proper standing, and without a preliminary injunction, they will experience irreparable harm. Such relief is not barred by *Purcell*. Accordingly, Plaintiffs' Motion for Preliminary Injunction should be granted.

ARGUMENT

I. *Purcell* Does Not Bar Injunctive Relief

Under Defendant's expansive interpretation of *Purcell*, there is never enough time for Defendant to comply with his legal obligations. As Defendant would have it, *Purcell* would preclude injunctive relief, especially in a state such as Louisiana that holds elections frequently, for virtually *any* election cycle. But contrary to Defendant's argument, *Purcell* does not bar relief here, especially where Plaintiffs filed their Motion for Preliminary Injunction ten months before the election at issue.

A. Defendant Contradicts Prior Representations Made to the Court

Defendant's position in his opposition brief contradicts prior representations that he has made to this Court. In his opposition brief, Defendant argues that, under *Purcell*, there is inadequate time between the preliminary injunction hearing and the next election on March 23, 2024. ECF No. 70 at 4. Just weeks ago, however, Defendant presented the opposite position to the Court in his motion to continue, *inter alia*, the preliminary injunction hearing that, at the time, was

scheduled for July 5, 2023.[1] ECF No. 42 at 6 ("There is no scheduled Federal election that would require immediate action for an NVRA violation."); *accord* ECF No. 43 at 1-2 (noting that the next federal election in Louisiana will take place in March 2024 and that "there is no need for hurry on the motion for preliminary injunction"); ECF No. 43-1 at 2 ("There is no need for immediate action on the motion for preliminary injunction . . . .").

With these contradictory representations, Defendant seeks to move the goal post in an effort to use *Purcell* to evade complying with his legal obligations. No court has contemplated use of *Purcell* this way, and this Court should decline to do so as well.

B. Plaintiffs Satisfy the *Milligan* I Factors

In his opposition brief, Defendant argues that Plaintiffs have not shown that any of the four factors articulated by Justice Kavanagh in *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanagh, J., concurring) ["*Milligan* I"], apply here. Since *Purcell* is not reasonably at issue here, this Court need not address the *Milligan* factors. Nonetheless, for the reasons discussed in Plaintiffs' supplemental brief, ECF No. 69 at 9-11, Plaintiffs have shown that (1) the underlying merits are "entirely clearcut" in their favor; (2) they would suffer irreparable harm without injunctive relief; and (3) they have not unduly delayed bringing the complaint to the Court.

Defendant argues that, as "Plaintiffs have never amended their pending motion for preliminary injunction," which he reads to seek injunctive relief only as to the October 14, 2023 election, the irreparable harm that Plaintiffs allege cannot be redressed by the October 25 hearing. *See* ECF No. 70 at 6. Plaintiffs, however, have consistently sought relief not only for the October

[1] On May 22, 2023, Plaintiffs filed their Motion for Preliminary Injunction, seeking injunctive relief that would take effect beginning with the gubernatorial primary on October 14, 2023. ECF No. 21. The next day, Plaintiffs filed their Motion for Expedited Consideration. ECF No. 22. The Court initially scheduled a hearing on Plaintiffs' Motion for Preliminary Injunction for June 27, 2023, ECF No. 27, and later rescheduled the hearing for July 5, 2023, ECF No. 34.

2023 election cycle, but for *all* future elections in Louisiana. *See* ECF No. 21 at 1 (requesting a preliminary injunction without specifying any limitation on timing); ECF No. 1 at 30 (same).

As to the fourth *Milligan* I factor—the feasibility of the changes in question—Defendant paints a wildly overcomplicated prognosis for implementing injunctive relief in this action. Defendant asserts that injunctive relief would necessitate in-person training for parish registrars and the development of a new report or screen in ERIN, the state's voter database system. ECF No. 70 at 8. Based on these purported necessities, Defendant presents a conclusory assertion that any injunction would be "impossible to implement this close to the election." *Id.* at 9.[2]

However, as discussed in Plaintiffs' supplemental brief, public records disclosed by Defendant controvert these assertions. *See* ECF No. 69 at 14 ("[I]n 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, . . . 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."). Defendant does not explain why injunctive relief would dramatically differ here. Nor does Defendant adequately explain why an injunction would require training for the Department of Public Safety & Corrections ("DPS&C") staff, ECF No. 70 at 9, when it is the actions by registrars that would be enjoined.

Nor is it clear why Defendant would have to undertake any significant software development projects to comply with an injunction requiring Defendant to treat voter registrants subject to the Paperwork Requirement the same as registrants with felony convictions registering

[2] Defendant likewise alleges in a conclusory fashion that "*any* change . . . will cause confusion among affect voters, as well as the registrars of voters and their staff." ECF No. 70 at 8-9 (emphasis added). As discussed in Plaintiffs' supplemental brief, records disclosed by Defendant suggest that injunctive relief here would in fact *reduce* confusion. ECF No. 69 at 15.

for the first time. To the extent this is because Defendant wishes to implement a system to check the ineligibility list for these individuals—something he has never implemented for first-time registrants—that is not part of Plaintiffs' requested relief. Moreover, Bradley Robert Harris admits that all the requisite functionalities already exist. *See* ECF No. 70-1, Declaration of Bradley Robert Harris ("Harris Decl.") ¶ 36 (explaining that "there is an automated nightly process that matches active and inactive voters statewide against the ineligible persons list"); *id.* ¶ 50 (acknowledging that "it is possible to determine if [a suspended voter is] no longer on the ineligible list").

Indeed, it bears reemphasis that Defendant has previously represented to the Court that he would be capable of implementing changes similar to the relief sought by Plaintiffs here in two-and-a-half months. *See* ECF No. 69 at 13-14 ("[H]ad House Bill 396 become law, the bill would have enacted changes 'similar' to the relief that Plaintiffs request and [] Defendant would have been ready to implement such changes on August 1, 2023 . . . .").

In sum, Defendant's unsupported, conclusory assertions that an injunction would be "impossible" to implement are a meritless attempt at excusing Defendant from fulfilling his legal obligations. Plaintiffs have satisfied all four *Milligan* I factors.

II. Plaintiffs Satisfy the Preliminary Injunction Requirements

A. Plaintiffs Have Standing

1. Plaintiffs Have Article III Standing

As set forth in Plaintiffs' opposition to Defendant's Motion to Dismiss, which is expressly adopted and incorporated by reference herein, Plaintiffs have standing. ECF No. 58 at 9-19. All three Plaintiffs assert organizational injuries-in-fact sufficient to establish standing to sue on their own behalf. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (noting that a showing of "drain on the organization's resources" or "concrete and demonstrable injury to [an]

organization's activities" can establish injury in fact); *see also* *Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014) (finding that a nonprofit organization had standing where it "devoted resources to counteract [the defendant's] allegedly unlawful practices" under the NVRA). Plaintiffs all have standing because the Paperwork Requirement requires them to divert substantial resources from their respective organizational missions to educate eligible Louisianans with prior felony convictions on the Paperwork Requirement and assist them in navigating it. *See* ECF No. 21-1 at 16-18; ECF No. 58 at 15-18. Contrary to Defendant's assertion that "Plaintiffs speak only to the alleged injuries that Plaintiffs will sustain if the documentation requirement is not enjoined prior to the October 2023 state gubernational primary," ECF No. 70 at 11, Plaintiffs' harm is ongoing, and will continue into the 2024 election cycle as they divert substantial resources to helping eligible Louisianans navigate the burdensome Paperwork Requirement. Nothing in Plaintiffs' declarations suggest that their efforts would be limited to the October 2023 election. To the contrary, the declarations outline continuous work that predates the October 2023 election cycle.

Furthermore, Plaintiff VOTE also asserts standing on behalf of its members, including individuals who have been and *will be* denied voter registration because of the Paperwork Requirement. VOTE's members are people with felony convictions and their family members. ECF No. 21-3, Declaration of Norris Henderson ("VOTE Decl.") ¶ 4. And a requirement of VOTE membership is voter registration upon eligibility. ECF No. 30-3, Declaration of Emily Posner ("Posner Decl.") ¶ 4. Thus, VOTE has a constant flow of members that have been and will be subjected to the Paperwork Requirement and who turn to VOTE for assistance with this Requirement. *See, e.g.*, ECF No. 21-3, VOTE Decl. ¶¶ 5-6; ECF No. 21-5, Declaration of Gregory Finney ("Finney Decl.") ¶¶ 15, 20 *see* ECF No. 58-2 (noting that declarant is a VOTE member who will become eligible for reinstatement in the future). As such, VOTE's members would be

able to present an Article III injury-in-fact based on the burden on the right to vote caused by the Paperwork Requirement.

Defendant asserts that Plaintiff has not disclosed the name of a member who would have standing to sue in his or her own right, citing the examples of VOTE members who have been previously subjected to the Paperwork Requirement. ECF No. 70 at 11-13. However, Plaintiff VOTE has not claimed that its associational standing is tied solely to these individuals. Rather, these examples demonstrate that VOTE members are continually and regularly subjected to this Requirement. *See* ECF No. 70-2, Declaration of Sherri Hadskey ("Hadskey Decl.") ¶¶ 37-58. Since VOTE diverts resources to assist members in complying with the paperwork requirement, it is not surprising that these individuals are now registered. But Mr. Finney's declaration illustrates the burdensome process undertaken by many VOTE members to re-register to vote following a felony conviction, in violation of the NVRA. Commissioner of Elections, Sherri Wharton Hadskey, confirms as much, highlighting the burdensome re-registration process and Paperwork Requirement placed on voters with felony convictions in her declaration. ECF No. 70-2, Hadskey Decl. ¶ 27. The existence of this process and the Paperwork Requirement indicate that current and future VOTE members will also be subject to the Requirement. *Cf*. ECF No. 58-2, Declaration of Eric Demond Calvin ("Calvin Decl.") ¶ 5.

2. Plaintiffs Provided Adequate Notice Under the NVRA

Plaintiffs provided adequate notice under the NVRA. The purpose of the NVRA's notice requirement is to "give[] the Defendant enough information to diagnose the problem. At that point it [is] the Defendant's responsibility to attempt to cure the violation." *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 795 (W.D. Tex. 2015). "Indeed, courts have found that an NVRA notice is sufficient if it sets forth the reasons for the conclusion that a defendant failed to comply

with the NVRA, and, when read as a whole, it makes it clear that the plaintiff is asserting a violation of the NVRA and plans to initiate litigation if its concerns are not addressed in a timely manner." *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1348 (N.D. Ga. 2016) (internal citations omitted). Plaintiffs clearly provided such notice.

Plaintiffs provided three notice letters to Defendant: one in August 2022, ECF No.17-1, another on October 28, 2022, ECF No. 17-3, and a final letter on March 31, 2023.[3] ECF No. 17-7. Defendant alleges that Plaintiffs only put Defendant on notice of violations of two NVRA sections in their letters: Sections 20505(a)(1) and 20507(a)(1). ECF 70 at 13-14. But, as set forth in Plaintiffs' opposition to Defendant's Motion to Dismiss, which is expressly adopted and incorporated by reference herein, Defendant reads the notice letters too narrowly. ECF No. 58 at 19-21. In any event, the NVRA claims presented in this case directly mirror Plaintiffs' "reasons for the conclusion that a defendant failed to comply with the NVRA" described in the letters and more than adequately put Defendant on notice. *Project Vote*, 208 F. Supp. 3d at 1348 (citations omitted).

C. Plaintiffs Will Suffer Irreparable Harm in the Absence of Injunctive Relief

Defendant argues that Plaintiffs will not face irreparable harm in the absence of a preliminary injunction. However, Defendant misunderstands both the injury to Plaintiffs caused by the Paperwork Requirement and the relief that Plaintiffs seek.

[3] For the reasons explained in Plaintiffs' opposition to Defendant's Motion to Dismiss, the March 31, 2023 letter was a notice letter. *See* ECF No. 58 at 19-21.

First, for the reasons described above, it is more than likely that, ahead of the March 2024 elections, Plaintiff VOTE's members will be harmed by the Paperwork Requirement and that all Plaintiffs will divert resources to assisting voters with navigating this Requirement.[4]

Second, Defendant claims that the timing of Plaintiffs' Complaint "undermines the immediacy of Plaintiff's request for preliminary injunction." ECF No. 70 at 16. However, this argument neglects the fact that Plaintiffs invested months into negotiating with Defendant in an effort to avoid litigation. ECF Nos. 17-1 to 17-8. Defendant also neglects to mention that Plaintiffs filed suit two weeks after the date on which Plaintiffs requested a final response to their notice letters. ECF. No. 1 ¶¶ 83-85. Just three weeks after filing the Complaint, Plaintiffs filed their Motion for Preliminary Injunction because of the imminent harm they would suffer leading up to the October 2023 gubernatorial elections and all elections thereafter. ECF No. 21. As stated above, *supra* at 3-4, Plaintiffs have sought relief for *all* future elections. Absent relief, Plaintiffs will continue diverting significant resources to educating members and voters about the Paperwork Requirement.

Third, in arguing that the harm experienced by Plaintiffs and the voters they assist is "mere speculation," ECF No. 70 at 16, Defendant ignores the fact that Plaintiffs have submitted evidence that they regularly encounter voters struggling to comply with the Paperwork Requirement. *See* ECF No. 21-4, Declaration of Nziki Wiltz ("Wiltz Decl.") ¶ 11; ECF No. 21-3, VOTE Decl. ¶ 6. Plaintiffs have no reason to believe that the March 2024 elections will be any different. Based on their experience assisting voters and members in past elections, Plaintiffs are certain that such

[4] Although Defendant cites *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7 (2008) in his response, ECF No. 70 at 16, he mischaracterizes the probability of the harm. Plaintiffs are not merely speculating that harm may occur, but rather that such harm is likely and, in fact, to be expected based on how frequently it has occurred in past elections.

harm will occur again absent relief and are already investing resources to prepare to help voters navigate the Paperwork Requirement in upcoming elections. ECF No. 21-6, Declaration of M. Christian Green ("Green Decl.") ¶ 12; ECF No. 21-7, Declaration of Ashley Shelton ("Shelton Decl.") ¶ 13; *see also Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("The movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.").

Defendant's own evidence only underscores the irreparable harm here. According to the Harris declaration, it appears that the *majority* of the almost 168,000 Louisianans currently on the suspended list are no longer ineligible. ECF No. 70-1, Harris Decl. ¶ 51 (stating that less than half of those on the suspended list would be "identified as suspended based on DPS&C files"). Yet such voters, estimated to be over 87,000 people, would be obligated under the Paperwork Requirement to navigate complex and confusing bureaucracies to obtain, and present *in-person*, the necessary documentation to register to vote. *See id.*

Finally, Defendant argues that "irreversible expenditure of Plaintiffs' limited resources, even if proven, does not constitute irreparable harm," and that there is no irreparable harm because he believes Plaintiffs' injuries to be "capable of monetary compensation." ECF No. 70 at 17. Not so. The case Defendant cites is inapposite because Plaintiffs do not (and cannot under *Ex parte Young*) seek monetary damages. *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) (citation omitted). Such an argument would suggest that diversion of resources standing could never result in a preliminary injunction. That is decidedly not the law.

Furthermore, Defendant misunderstands the harm to Plaintiffs and construes "resources" too narrowly. Plaintiffs spend not only money, but time and staff efforts to assist voters with the Paperwork Requirement. ECF No. 21-6, Green Decl. ¶¶ 9-15; ECF No. 21-7, Shelton Decl. ¶¶ 5,

8-14; ECF No. 21-3, VOTE Decl. ¶¶ 4-5, 9-11 ("The documentation requirement at least triples our work to get registered one person who needs to get documentation compared to a person who does not."). In any given election, that means Plaintiffs are *not* conducting other vital activities during that cycle. That loss of opportunity is irreparable and justifies a preliminary injunction.

D. The Balance of the Equities Weighs in Plaintiffs' Favor, and a Preliminary Injunction is Not Adverse to the Public Interest

Arguing that Plaintiffs seek relief that cannot "be implemented without significant cost and hardship." ECF No. 70 at 19, Defendant misconstrues the relief Plaintiffs seek. Plaintiffs solely ask that someone with a felony conviction who is "suspended" be treated the same for the purposes of voter registration as someone with a felony conviction who is registering for the first time. Plaintiffs only request that Defendant be prohibited from requiring additional documentary proof for those on the "suspended" list who attempt to register. Given this, much of the Defendant's argument as to the perceived hardship of implementation is irrelevant. S*ee supra* at 4-5.

Finally, the public interest favors an injunction. Defendant offers little to show that the public interest lies in denying the preliminary injunction. Plaintiffs expressly adopt and incorporate by reference herein their previous briefing regarding the importance of injunctive relief in ensuring voters are not unlawfully disenfranchised. *See* ECF No. 69 at 1-9. No public interest is served by requiring individuals on the "suspended" list to provide documentation already in the state's possession.

CONCLUSION

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

Respectfully submitted this 11th day of August, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, August 11, 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
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