**No. 24-5546**

# UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

TENNESSEE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

*Plaintiff-Appellee,*

v.

TRE HARGETT & MARK GOINS,

*Defendants-Appellants.*

On appeal from the United States District Court
for the Middle District of Tennessee
No. 3:20-cv-1039

## Appellants' Emergency Motion for a Stay Pending Appeal and an Immediate Administrative Stay

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## JURISDICTION

The district court issued a permanent injunction on June 5, 2024. The Defendants noticed an appeal on June 7, 2024. Notice, R.242 at 3865.[1] This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).



[1] Unless otherwise noted, record citations refer to the docket, No. 3:20-cv-1039 (M.D. Tenn.). All record pincites refer to the "Page ID" numbers in the district court's ECF file stamps.

## REQUEST FOR RELIEF

Under Tennessee's Constitution and state statutes, individuals with disqualifying felony convictions cannot vote unless their voting rights have been restored. To enforce that law, the State requires individuals with disqualifying felonies who submit voter-registration applications to provide documentary proof of their eligibility ("the Documentation Policy").

On June 5, 2024, just before critical election deadlines, the district court permanently enjoined Tennessee's Documentation Policy. Defendants-Appellants Tre Hargett (Secretary of State) and Mark Goins (Coordinator of Elections) noticed an appeal.



Under Federal Rule of Appellate Procedure 8(a), the appellants request that this Court **stay the injunction pending appeal**. Because the injunction is currently effective, and considering imminent election deadlines, the State seeks an **expedited briefing schedule on this motion** and an **administrative stay** until the Court decides this motion.

## INTRODUCTION

Time and again, the Supreme Court has "emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). Yet, only three weeks before the voter-registration deadline for the August Primary and approximately four weeks before the start of early voting, a federal court has done just that—enjoined enforcement of a state law that bars individuals with disqualifying felonies from voting in elections unless they can prove that their voting rights have been restored. If *Purcell* and its progeny mean anything, it is that the injunction should not go into effect at this time.



That is particularly true because the district court enjoined an election practice blessed by the Supreme Court. In *Arizona v. Inter Tribal Council of Arizona, Inc.*, the Court recognized that States may require documentary proof of eligibility for state-form applications. 570 U.S. 1, 7, 12 (2013). The enjoined Documentation Policy accords with that ruling.

The Court should stay the injunction pending appeal and allow the State to enforce its voter-registration rules during the 2024 election cycle.

## STATEMENT

### A. Legal Background

#### 1. The National Voter Registration Act of 1993

Congress passed the National Voter Registration Act of 1993 ("NVRA") to encourage voter registration and turnout in a manner that "protect[s] the integrity of the electoral process." 52 U.S.C. § 20501(b)(3). To advance that goal, the NVRA empowers the state and local officials responsible for administering elections to accept two different types of mail-in voter-registration applications. *See id.* §§ 20501(b)(1), 20505(a).

The first application prospective voters can use is the Federal Form. A federal agency develops that form in consultation with the chief election officers of the States. *Id.* § 20508(a)(2). States must "accept and use" the Federal Form "for the registration of voters in elections for Federal office," *id.* § 20505(a)(1), which means that States must process those forms without requiring additional documentation, *Arizona*, 570 U.S. at 20.

The second application prospective voters can use is the State Form. The NVRA authorizes States to "develop and use" their own forms, 52 U.S.C. § 20505(a)(2), which in Tennessee registers applicants to vote in federal *and* state elections, State Form, R.156-10 at 2503. On those forms,

States are free to "require information the Federal Form does not" so that officials may verify voter eligibility. *Arizona*, 570 U.S. at 12.

That framework accomplishes the NVRA's goals while giving States "room for policy choice" about how best to enforce their voter qualifications. *See Young v. Fordice*, 520 U.S. 273, 286 (1997). As the Supreme Court put it, "[n]o matter what procedural hurdles a State's own form imposes" on applicants to verify their eligibility, "the Federal Form guarantees that a simple means of registering to vote in federal elections will be available." *Arizona*, 570 U.S. at 12.

Whatever form applicants choose, both State and Federal Forms must include a statement that specifies each voter-eligibility requirement, contains an attestation that the applicant meets those requirements, and requires the applicant's signature. 52 U.S.C. §§ 20505(a)(2), 20508(a)-(b). Those forms may also "require only such identifying information … and other information … as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." *Id.* § 20508(b)(1); *see id.* § 20505(a)(2).

### 2. Tennessee's Voter-Registration Requirements

Exercising its "constitutional authority to establish qualifications … for voting," *Arizona*, 570 U.S. at 16, Tennessee prohibits certain felons from casting ballots unless they have had their full citizenship rights restored. Under current law, "a conviction for any felony results in 'immediat[e] disqualifi[cation] from exercising the right of suffrage.'" *Falls v. Goins*, 673 S.W.3d 173, 179 (Tenn. 2023) (citation omitted). But Tennessee provides an avenue for felons to restore their rights. To regain eligibility to vote, a felon must (1) obtain a pardon or restoration of their full rights of citizenship, and (2) obtain a certificate of restoration. *See id.* at 182-83. Only once felons complete that process may they register.



Because some (but not all) individuals convicted of felonies are eligible to vote, the State implemented certain safeguards to prevent ineligible felons from casting ballots. Tennessee requires voter-registration applicants convicted of disqualifying felonies to provide proof that they have had their voting rights restored. That requirement—known as the Documentation Policy—applies to two categories of applicants: (1) individuals convicted of a disqualifying felony before January 15, 1973, *see* Older Felonies Memo., R.151-2 at 1095-96, and (2) individuals convicted of any

felony after May 18, 1981, which is the date on which Tennessee made all felonies automatically disenfranchising, *see Falls*, 673 S.W.3d at 176 n.1.

That policy imposes only a minimal burden on applicants to whom it applies: all they must do is submit their certificate of restoration and the document restoring their full rights of citizenship with the application. The State rejects applications from the above categories that do not comply with the Documentation Policy. *See* Goins Decl., R.151-1 at 1093.

## B. Procedural Background

Plaintiff-Appellee Tennessee State Conference of the NAACP sued various state officials raising challenges to the Documentation Policy (among other things). The operative complaint alleges that Coordinator Goins and Secretary Hargett enforce voter-registration policies that violate the NVRA. *See* 1st Am. Compl., R.102 at 627-28, 644-45, 656-57. The NAACP claims that the Documentation Policy violates the NVRA's requirements [1] that States "accept and use" the Federal Form, [2] that States only request information necessary to assess voter eligibility, and [3] that States maintain voter rolls in a "uniform" and "nondiscriminatory" manner. *See* Memo. ISO MSJ, R.154 at 2294-2306. The NAACP also brought class claims unrelated to this appeal which this Court has

previously considered. *See In re Lee*, 2024 WL 559072, at *1 (6th Cir. 2024) (order) (vacating the class-certification order and finding "the district court's analysis … insufficiently rigorous" because it "relied heavily on Plaintiffs' arguments" and "largely failed to apply the facts" to the claims).

After discovery closed, and in response to a Tennessee Supreme Court decision, Coordinator Goins changed the State's voter-registration policies. Goins Supp. Decl., R.180-1 at 2892.[2] The parties later cross moved for summary judgment.

The district court granted summary judgment to the NAACP, holding that the Documentation Policy violates the NVRA. *See* Memo. Op., R.221 at 3685-91; Order, R.222. And on June 5, 2024, the district court entered a permanent injunction prohibiting Tennessee from "enforcing, applying, or implementing" the Documentation Policy. Order, R.237 at 3285. The injunction requires Tennessee's election officials to process voter-registration forms from applicants with a disqualifying felony even absent documentary proof that they have had their voting rights restored.



[2] At the time the NAACP filed suit, and until July 2023, the Documentation Policy applied more broadly. Coordinator Goins issued guidance on July 21, 2023 to clarify that only those convicted of a disqualifying felony before January 15, 1973 or after May 18, 1981 must follow the Documentation Policy. *See* Older Felonies Memo., R.151-2 at 1095-96.

*See id.* at 3825-26. The injunction also requires the election officials to issue guidance and live training regarding the changes to the State's voter-registration procedures that the injunction requires. *Id.*

Two days after the injunction issued, the State noticed an appeal and filed an emergency motion for a stay pending appeal in the district court. Notice, R.242; Mot. to Stay, R.243. The motion explained that the State intended to seek emergency relief from this Court by June 12, 2024. Mot. to Stay, R.243 at 3868. The State now seeks a stay from this Court because the district court, having taken no action on the emergency motion, has "failed to afford the relief requested." Fed. R. App. P. 8(a)(2)(A)(ii). The State also informed the NAACP of its intent to seek relief from this Court.



## REASONS FOR GRANTING A STAY

A stay is justified under both the *Purcell* doctrine and the traditional stay standard. At minimum, the Court should stay the permanent injunction until the ongoing 2024 election cycle concludes.

### I. The *Purcell* Principle Warrants A Stay.

The *Purcell* principle standing alone justifies staying the injunction pending appeal. By enjoining Tennessee from enforcing its voter-registration policies amid an ongoing election cycle and mere weeks before early

voting begins, the lower court disregarded the "general rule" that disfavors "last-minute injunctions changing election procedures." *SEIU Local 1 v. Husted*, 698 F.3d 341, 345 (6th Cir. 2012) (per curiam).

The *Purcell* principle "reflects a bedrock tenet of election law" that "the rules of the road must be clear and settled" when "an election is close at hand." *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). That principle, which derives from *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), displaces the "traditional test for a stay" when "a lower court" alters "a state's election law in the period close to an election." *Merrill*, 142 S. Ct. at 880. To avoid "disruption" and "unanticipated and unfair consequences," *id.* at 881, the interest in orderly elections alone justifies staying burdensome injunctions and leaving in place the State's election procedures, regardless of a court's ultimate opinion "on the correct disposition" of the "appea[l]," *Purcell*, 549 U.S. at 5.



This Court faithfully applies *Purcell* to prevent "last-minute injunctions" that interfere with election procedures. *SEIU*, 698 F.3d at 345. In fact, it routinely relies on that doctrine to stay preliminary and permanent injunctions pending appeal. *E.g.*, *A. Philip Randolph Inst. v. LaRose*, 831 F. App'x 188 (6th Cir. 2020); *Priorities USA v. Nessel*, 978 F.3d 976 (6th

Cir. 2020) (order); *see Mich. State A. Philip Randolph Inst. v. Johnson*, 749 F. App'x 342 (6th Cir. 2018). It should follow the same course here.

The *Purcell* doctrine unquestionably applies to injunctions that disrupt voter-registration procedures. *See, e.g.*, *League of Women Voters v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (per curiam); *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 952-53 (9th Cir. 2020). *Purcell* itself involved an injunction against a state law "requiring voters to present proof of citizenship when they register to vote and … when they vote on election day." 549 U.S. at 2. So the district court's permanent injunction, which forbids Tennessee from using the Documentation Policy to review voter-registration applications, triggers *Purcell* scrutiny.

Nor can anyone reasonably dispute that the injunction was issued "on the eve" of an election. *Republican Nat'l Comm.*, 589 U.S. at 424. The injunction here "implicates voter registration—which is currently underway—and purports to require the state to take action *now*." *League of Women Voters*, 32 F.4th at 1371 (emphasis added). In Tennessee, the presidential primary election has already passed, and more primary elections are imminent. Individuals wanting to vote in the congressional and state legislative primary elections must submit their applications by July 2,

2024, early voting begins on July 12, 2024, and the primary happens on August 1, 2024.[3] *See Petteway v. Galveston County*, 87 F.4th 721, 723 (5th Cir. 2023) (Oldham, J., concurring) ("Citing *Purcell*, the Supreme Court refused to bless judicial intervention in State elections … 48 days before the primary election date, 92 days before the primary election date, and 120 days before the primary election date." (citations omitted)). Even the general election, although "months away," remains close enough that "moving or changing a … procedure now will have inevitable, other consequences" on "important, interim deadlines" for the election. *Thompson v. DeWine*, 959 F.3d 804, 813 (6th Cir. 2020) (per curiam) (order).



Given those imminent deadlines, *Purcell* applies in full force. And allowing the injunction to remain in effect will inflict all the disruptive consequences that *Purcell* seeks to prevent:

*First*, the injunction imposes extraordinary burdens on state and local officials in an ongoing presidential election cycle when voter participation reaches its apex. Because the injunction forbids Tennessee from using the Documentation Policy to verify voter eligibility, already

[3] Tenn. Sec'y of State, Key Dates for the 2024 Election Cycle (last visited June 12, 2024), https://bit.ly/45dJNO2.

overworked election officials must now research "the felony status and restoration status of all voter registration applicants who disclose that they have a felony conviction." Goins 3d Supp. Decl., R.243-1 at 3879. That creates "an arduous, and sometimes impossible, burden" for the (currently) eleven Division of Elections staffers who are already "working around the clock to prepare for the upcoming August primary election and November general election." *Id.* at 3878, 79. On top of those new burdens, the injunction also requires the State to revise, print, and distribute updated State Forms to remove references to the Documentation Policy. *Id.* at 3877. That will "take time, cost money, and require staff members in the Division of Elections to re-allocate their time away from [their] regular duties and responsibilities." *Id.* at 3877. It simply is not feasible for that all to happen before the July 2, 2024 registration deadline. *Id.* at 3878.



Those "administrative burdens" are "significant" and justify a stay pending appeal. *Mi Familia Vota*, 977 F.3d at 952-53. The truth is that "[r]unning elections state-wide is extraordinarily complicated and difficult" and "require[s] enormous advance preparations." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). The injunction transformed the voter-registration process during an ongoing election cycle and suddenly creates

new administrative burdens that "would require heroic efforts by … state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion." *Id.*

*Second*, the injunction erodes the integrity of Tennessee's state and federal elections. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4. Tennessee thus has "a strong public interest" in "permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote." *Ne. Ohio Coal. for Homeless & SEIU, Local 1199 v. Blackwell*, 467 F.3d 999, 1012 (6th Cir. 2006). By forcing the State to change its voter-registration procedures during a frenzied election season, the inevitable consequence of the sudden confusion and administrative burdens will be that some ineligible voters will slip through the cracks and improperly cast ballots, "thereby compromising the integrity of the election process in Tennessee." Goins 3d Supp. Decl., R.243-1 at 3879.



## II. The Traditional Factors Warrant A Stay.

The Court need not consider the traditional stay factors to grant this motion. But if it does reach them, they strongly support staying the injunction pending appeal because Tennessee is likely to succeed on the

merits, the State will suffer irreparable harm absent relief, and the NAACP will suffer no tangible harm from a stay.

### A. Tennessee raises serious questions on the merits.

Tennessee will likely succeed in vacating the injunction on appeal because the NAACP lacks standing to bring its claim and because the Documentation Policy complies with the NVRA. At minimum, a stay is warranted because the State presents "serious questions going to the merits." *Antonio v. Garland*, 38 F.4th 524, 526 (6th Cir. 2022).

#### 1. The NAACP lacks organizational standing.

Every plaintiff must suffer a cognizable injury caused by the challenged policy to bring their claim to federal court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562-63 (1992). Here, the NAACP argues that the Documentation Policy injures the organization itself by requiring its volunteers to expend time and resources [1] assisting applicants fill out their registration forms and [2] helping individuals whose voter-registration applications have been erroneously denied. *See* Reply, R.192 at 3224. They insist that those costs are ongoing, thus justifying forward-looking relief. *See id.* at 3224. The district court agreed. Memo. Op., R.221 at 3668-69.

That holding suffers from two independently fatal problems.

*First*, the resource costs that NAACP asserts simply do not confer standing to seek prospective relief. A diversion-of-resources theory suffices when organizational plaintiffs actually change their allocation of resources because of the challenged policies, "not when they go about their business as usual." *Friends of Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942 (9th Cir. 2021) (cleaned up). Even without the Documentation Policy, NAACP volunteers would have assisted prospective applicants fill out their voter-registration forms. The time and resources the NAACP purportedly spent, just like the resources that other voting-rights organizations have expended in the past, do not create standing because they are part and parcel of the mission of the organization—in other words, business as usual. *See, e.g.*, *Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977, 982 (6th Cir. 2020). Concluding otherwise based on the NAACP's "efforts and expense to advise others how to comport with the law" would "eviscerat[e]" Article III's jurisdictional limits. *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014).



*Second*, the NAACP failed to offer "specific facts" that establish standing at the summary-judgment stage. *Lujan*, 504 U.S. at 561. Despite over two years in discovery, all the NAACP could muster in support

of standing was a declaration filed with their summary-judgment motion *after* discovery closed. Gloria Sweet-Love Decl., R.156-2; *see* Memo. Op., R.221 at 3668 (relying solely on that declaration). That declaration contains conclusory assertions but no specific facts.

For one thing, it lacks details about the extent to which the NAACP assists applicants using the Federal Form, or *any* specific facts showing that it has *ever* assisted an individual using the Federal Form whose application has been rejected by the Documentation Policy. That matters because the NAACP "almost exclusively" uses the State Form or an online portal, *see* 1st Am. Compl., R.102 at 620-21, yet insists it has standing to challenge the State's policies regarding the Federal Form.

For another thing, the declaration asserts that NAACP diverts resources to "correct … erroneous rejection[s]" of voter-registration applications, Sweet-Love Decl., R.156-2 at 2357, but omits specific facts about *when* it has expended resources to help correct erroneous rejections, *how often* it expends those resources, and *where* it expended those resources, much less that those expenditures continue on an *ongoing* basis, as the district court found, and as is required to issue prospective relief.

Simply put, the declaration is "too conclusory" and "threadbare" to "establish organizational standing." *Viasat, Inc. v. FCC*, 47 F.4th 769, 781 (D.C. Cir. 2022); *e.g.*, *Fair Elections*, 770 F.3d at 460 (vacating summary judgment because plaintiffs lacked "specific facts" showing standing).

The district court held otherwise by relying on *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and its admonition that resource costs can create standing. Memo. Op., R.221 at 3667-68. But that reliance "is misplaced" because "the plaintiff organization [in *Havens*] sought damages, not an injunction," and "plaintiffs who have standing to bring a damages claim do not necessarily have standing to bring a claim for injunctive relief." *Fair Elections*, 770 F.3d at 460 n.1. The burden for plaintiffs like the NAACP seeking forward-looking relief demands proof that the injury is ongoing or will occur imminently—proof that is absent here. Moreover, in *Havens*, the plaintiff had standing because the relevant law included a statutory right of "any person" to truthful information regarding housing availability. *Id.* So the plaintiff suffered an injury to a "legal right intrinsic to the organization's activities." *Id.* Here, the NAACP has shown no similar injury to its own rights.

In short, the court erred because the NAACP lacks standing.

### 2. The Documentation Policy honors the NVRA.

Apart from those jurisdictional problems, Tennessee will also likely succeed on the NAACP's statutory claim challenging the use of the Documentation Policy to State Form applicants.

**a.** Applicants with disqualifying felonies must prove their eligibility. As applied to the State Form, that policy complies with the NVRA.

For starters, the Documentation Policy complies with Tennessee's obligation to "ensure that any eligible applicant is registered to vote ... if the valid voter registration form of the applicant" is timely submitted. 52 U.S.C. § 20507(a)(1)(B). "The use of the word 'eligible' … limits the affirmative obligation" to register only to applicants that meet the requirements. *Bellitto v. Snipes*, 935 F.3d 1192, 1201 (11th Cir. 2019). The Documentation Policy exists so officials may distinguish eligible applicants from ineligible applicants, and thereby comply with the NVRA by registering only those applicants that meet Tennessee's voter qualifications.



Next, the Documentation Policy "require[s] only such … information … as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration." *Id.* § 20508(b)(1). For applicants with disqualifying felonies, the Division of

Elections needs some way to verify whether they have restored their voting rights. So it requests "only" the "information" that it needs "to assess the eligibility of the applicant"—namely, proof of their eligibility. *Id.*

The Supreme Court's NVRA decisions confirm that States may require state-form applicants to submit that documentary proof. In *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), the Supreme Court considered Arizona's policy of rejecting voter-registration applications submitted on the Federal Form unless the applicant also submitted "concrete evidence of citizenship." *Id.* at 5. Although Arizona could not enforce that policy as applied to Federal Form applicants, *see id.* at 20, nothing in the Court's decision "question[ed] [a State's] authority … to create its own application form that demands proof of citizenship," *id.* at 39 (Alito, J., dissenting). On the contrary, the Court agreed that State Forms "may require information the Federal Form does not," and acknowledged that States may impose "procedural hurdles" on their own "more demanding state form" to ensure that applicants are eligible. *Id.* at 12 & n.4 (majority opinion). As an example of what information a State may request, the Court pointed to Arizona's requirement that applicants using the state form provide *documentary* proof of citizenship. *Id.* at 12; *id.* at 7

(Proposition 200 required "documentary proof of citizenship"). So there should be no doubt the Documentation Policy follows the NVRA.

**b.** The district court's decision to the contrary misinterprets the NVRA, disregards binding precedent, and will needlessly entangle federal courts in micromanaging state election procedures.

The injunction forbids Tennessee from requiring felons "to present documentary proof of eligibility" apart from the voter-registration form itself. Order, R.237 at 3825. That blatantly defies the Supreme Court's instruction in *Arizona* that States "may require information the Federal Form does not," including by making requests for documentary evidence. 520 U.S. at 12. The upshot is that, at least for the State Form, the NVRA "leaves room for policy choice" when it comes to "information the State may—or may not—provide or request." *Young*, 520 U.S. at 286. The injunction eviscerates that discretion by treating the State Form the same as Federal Form, thereby making a hash of the statute and *Arizona*.

By forbidding Tennessee from enforcing the Documentation Policy as applied to the State Form, the injunction also creates serious constitutional problems. "Since the [State's] power to establish voting requirements is of little value without the power to enforce those requirements,

… it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." *Arizona*, 570 U.S. at 17. Yet that is precisely what the injunction does here. It enjoins Tennessee from collecting the information that it needs to enforce its voter qualifications. *See* Goins 3d Supp. Decl., R.243-1 at 3879 (explaining that ineligible voters will slip through the cracks without the Documentation Policy). Whether viewed as an independent constitutional defect with the injunction, or as a reason for accepting the State's interpretation of the NVRA, that serious constitutional problem warrants granting a stay.

Separate from the injunction, the district court in its order granting summary judgment to the NAACP offered various reasons for finding the Documentation Policy unlawful. None persuade.

*First*, the district court flat-out refused to consider Tennessee's argument that "it needs documentation to assess the eligibility of applicants with felony convictions" because the court believed that the defendants "fail[ed] to direct the Court to any evidence in the record of Tennessee making such a determination." Memo. Op., R.221 at 3691. But the policy *itself* evidences that determination—the reason why Tennessee uses the

Documentation Policy is because its officials believe they need that information to determine an applicant's eligibility. The district court's rule that state election officials must prove that *they determined* they need the information that *their own policies require* is nonsensical, turns federalism upside down, and encourages federal courts to "become entangled, as overseers and micromanagers, in the minutiae of state election processes." *Ohio Democratic Party v. Husted*, 834 F.3d 620, 622 (6th Cir. 2016).

The district court's refusal to consider the State's argument also flouts bedrock summary-judgment principles. Assume for the moment that the district court correctly concluded that neither party presented evidence about whether Tennessee's election officials determined that they need the Documentation Policy. All reasonable inferences must be drawn in favor of the State as the non-moving party. *Troche v. Crabtree*, 814 F.3d 795, 798 (6th Cir. 2016). But here, the district court assumed from the record's silence that no such determination had been made. That draws an unsupported inference *against* the non-moving party. That is especially egregious here because the NAACP bears the burden of proof, and because the State receives "considerable deference" when setting election procedures, *Vote.org v. Callanen*, 89 F.4th 459, 481 (5th Cir. 2023).

*Second*, the district court held that the Documentation Policy violates "the NVRA's prohibition against requiring unnecessary information" because "it is undisputed that county and state election officials have the information the State says it needs to assess an applicant's eligibility." Memo. Op., R.221 at 3691. But the defendants *did* dispute—and continue to dispute—that the State has all the information it needs. Defs.' Resp., R.181 at 2920; *see* Lim Dep. 151-3 at 1123, 1226 (stating that the Division of Elections does not possess felony conviction information from before 1973 because felony records were digitized in the 1990s).

Although the NAACP certainly *argued* that the State already has all the information it needs, it offered no *evidence* to prove that point. The NAACP highlighted various steps that election officers can take to try to track down an applicant's eligibility—ranging from checking databases to contacting courts or submitting public-records requests. Yet none of the evidence they cite establishes that the State always, usually, or even *frequently* has enough information to verify eligibility. *See* Defs.' Resp., R.181 at 2920. The court nevertheless credited the NAACP's argument as a matter of fact and used that to grant judgment. That defies the law.

More to the point, the district court's ruling rests on the faulty premise that States cannot require applicants to provide information that the State has somewhere in its possession. The Sixth Circuit already rejected that position in an NVRA decision where it permitted Tennessee to require voter-registration applicants to submit social security numbers, *see McKay v. Thompson*, 226 F.3d 752, 755-56 (6th Cir. 2000)—a piece of information the State already has. Apart from the obvious administration burdens, there's also another good reason for rejecting the district court's rule that States cannot require applicants to submit information already in the State's possession—the NVRA *itself* expressly authorizes States to require "data relating to previous registration by the applicant," 52 U.S.C. § 20508(b)(2), even though most election officials have that information. The district court's interpretation thus makes the NVRA self-defeating.



**c.** The district court also held that the Documentation Policy violates the NVRA's prohibition against maintaining voter registration rolls in a non-uniform manner. That was an error.

Once again, the district court's decision rested on the mistaken premise that the parties did not dispute the legality of Tennessee's policy. As the district court put it: summary judgment was appropriate because

"it [was] undisputed" that the Documentation Policy "imposes an unnecessary requirement in a non-uniform manner" in violation of 52 U.S.C. § 20507(b)(1). Memo. Op., R.221 at 3691. But that is a legal conclusion (not a factual issue) that *was* disputed. Tennessee spent several pages disputing the NAACP's position that the Documentation Policy violates the NVRA's uniformity requirement. Def.'s Response, R.180 at 2885-87. The State pointed out that the NAACP failed to identify *any* case supporting their position or their theory about what the NVRA's uniformity provision means. Moreover, the State justified its policies by its legitimate interests "in counting only the votes of eligible voters" and "in orderly administration and accurate recordkeeping." *Id.* (citation omitted).



In any event, the Documentation Policy *is* uniform. It applies to all felons with disenfranchising convictions. And it simply requires them to provide proof that their voting rights have been restored. By holding otherwise, the court entered judgment without any explanation whatsoever about the basis for concluding that Tennessee's Documentation Policy violated the NVRA's uniformity requirement regarding voter rolls.

### B. Absent an immediate stay, the State of Tennessee and its citizens will suffer irreparable harm.

By enjoining voter-registration policies implemented by Tennessee's election officials, "serious and irreparable harm" will result because the State "cannot conduct its election in accordance with its lawfully enacted ballot-access regulations." *Thompson*, 959 F.3d at 812. The injunction thus raises concerns about the integrity of the State's elections and imposes extraordinary burdens on elected officials, both of which place the public interest in support of a stay.

### C. The NAACP will suffer minimal harm from a stay.

Any harm to the NAACP "if the stay is issued is relatively slight." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 155 (6th Cir. 1991). The NAACP suffers no constitutional or statutory injury itself; its only basis for bringing this challenge is the resource costs it purportedly incurs in response to the Documentation Policy. That does not outweigh the harm to the State and the public interest or overcome the State's strong likelihood of success on the merits.

## CONCLUSION

The Court should grant an administrative stay, expedite the briefing on this motion, and grant a stay pending appeal. At minimum, the Court should stay the injunction until the end of the 2024 election cycle.

Dated: June 12, 2024

Respectfully Submitted,

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*Attorney General and Reporter*

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Zachary Barker
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/s/ *Philip Hammersley*
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## CERTIFICATE OF COMPLIANCE

This motion complies with the Court's type-volume limitations because it contains 5,182 words, excluding portions omitted from the Court's required word count. This motion complies with the Court's typeface requirements because it has been prepared in Microsoft Word using fourteen-point Century Schoolbook font.

*/s/Philip Hammersley*
Philip Hammersley

**CERTIFICATE OF SERVICE**

On June 12, 2024, I filed an electronic copy of this motion with the Clerk of the Sixth Circuit using the CM/ECF system. That system sends a Notice of Docket Activity to all registered attorneys in this case. Under Sixth Circuit Rule 25(f)(1)(A), "[t]his constitutes service on them and no other service is necessary."

*/s/Philip Hammersley*
Philip Hammersley