

Appeal No. 24-1594

**United States Court of Appeals
For the Third Circuit**

ANDY KIM, et al.,

Plaintiffs-Appellees,

v.

CHRISTINE GIORDANO HANLON, in her capacity as
Monmouth County Clerk, et al.,

Defendant-Appellant,

Appeal from the United States District Court
for the District of New Jersey
No. 3:24-cv-01098
Honorable Zahid N. Quraishi

**BRIEF OF AMICUS CURIAE IN SUPPORT OF
EMERGENCY MOTION FOR STAY PENDING APPEAL**

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INTEREST OF AMICUS CURIAE¹

The amicus curiae includes the Morris County Republican Committee; Laura Ali, in her capacity as Chair of the Morris County Republican Committee; the New Jersey Republican Chairs Association; and Jose Arango, in his capacity as Chair of the New Jersey Republican Chairs Association (collectively “amicus curiae”). The amicus curiae is comprised of Republican political leaders and committees in New Jersey and is directly affected by the issues presented in the underlying litigation and any appellate proceedings regarding the scope of the district court’s March 29, 2024, Preliminary Injunction. Although the district court confirmed by Letter Order on March 30, 2024, that the order does not apply to the June 4, 2024, Republican Primary, the amicus curiae maintains a direct interest in this litigation to the extent that the Letter Order is appealed directly, or if the district court or Third Circuit issue rulings that affect future Republican primaries. No individual or entity which is currently a party to this case can adequately represent the interests of Republican primary candidates, committees, or leaders.

¹ Pursuant to Fed. R. App. P. 29(a), no party or party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money to fund the preparation or submission of this brief; and no other person except amicus curiae, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. Given the compressed timeline for the submission of this amicus brief, the amicus curiae has not been able to obtain the consent of all parties prior to the submission of this brief.

SUMMARY OF THE ARGUMENT

With just two months before New Jersey's primary elections, the district court has contravened New Jersey Supreme Court precedent and the Supreme Court's *Purcell* doctrine to enjoin a constitutional and timeless cornerstone of New Jersey elections: ballot bracketing. By issuing a preliminary injunction enjoining New Jersey's bracketing statutes, the district court has now cast New Jersey election administration into chaos and improperly dragged the court system into the political question arena. The district court's order is manifestly improper, and the Defendant-Appellant is entitled to a stay pending appeal.

ARGUMENT

- I. The Camden County Democratic Committee ("CCDC") is likely to succeed on the merits in its appeal because New Jersey's bracketing statutes are constitutional.**

The CCDC fulfills all four factors needed to support a stay of the district court's order pending appeal. "[T]he standard for obtaining a stay pending appeal is essentially the same as that for obtaining a preliminary injunction." *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Hum. Servs.*, Civ. No. 13-1144, 2013 WL 1277419, at *1 (3d Cir. Feb. 7, 2013); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). A preliminary injunction is appropriate when a party demonstrates: "(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater

harm to the nonmoving party; and (4) that the public interest favors such relief.” *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004). Accordingly, to obtain a stay, the CCDC must demonstrate the same four factors that this district court analyzed in Plaintiffs’ Motion for Preliminary Injunction. The CCDC fulfills all four factors and is thus entitled to a stay pending appeal.

First, the CCDC is likely to succeed on the merits in its appeal because the New Jersey Supreme Court has long held that New Jersey’s bracketing statutes are constitutional. *See Quaremba v. Allan*, 67 N.J. 1, 7 (1975) (finding that there was no merit in the plaintiffs’ constitutional challenges to New Jersey bracketing statutes, N.J.S.A. 19:49-2 and N.J.S.A. 19:23-24); *see also Schundler v. Donovan*, 377 N.J. Super. 339, 341 (App. Div. 2005). In light of this New Jersey precedent, the district court erred by ignoring this precedent and reaching its own rogue conclusion. *Wayne Moving & Storage of N.J., Inc. v. Sch. Dist. of Phila.*, 625 F.3d 148, 154 (“[w]hen the state’s highest court has not addressed the precise question presented, [we] must predict how the state’s highest court would resolve the issue.”) (citations omitted). Moreover, New Jersey’s bracketing statutes affect all candidates equally and do not impair any candidate’s ability to gain access to the ballot. In fact, N.J.S.A. 19:23-26.1 provides Plaintiffs with the same opportunity as any other candidate to be situated in the first ballot position, even if Plaintiffs are not bracketed with other

candidates. As such, the bracketing statutes are nondiscriminatory in application and effect.

In addition, federal courts have upheld various statutes related to the orders or groupings in which candidates appear on ballots. *See e.g. Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236 (11th Cir. 2020) (finding a lack of standing and non-justiciable political question). The *Jacobson* court also cited the variety of ways in which states choose to order their ballots. *Id.* at 1259. The Eleventh Circuit noted that all of the prior decisions addressing ballot order pre-dated the Supreme Court's opinion in *Rucho* and universally rejected the application of the *Anderson-Burdick* test to ballot order questions. *Id.* at 1266. Following the *Jacobson* decision, the Fourth Circuit held that even under *Anderson-Burdick*, the plaintiffs' challenge to West Virginia's ballot order statute failed. *Nelson v. Warner*, 12 F.4th 376 (4th Cir. 2021). While there was a subsequent Ninth Circuit opinion reversing and remanding a dismissal, *see Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022), that case was dismissed by plaintiffs voluntarily less than 60 days after the Ninth Circuit order. *Mecinas v. Hobbs*, 2022 U.S. Dist. LEXIS 98610 (D. Ariz., June 2, 2022). The ultimate resolution of the *Mecina* matter was never determined by the federal courts. As such, New Jersey's bracketing statutes are constitutional, and the CCDC is likely to succeed on the merits in its appeal.

Second, the CCDC will suffer irreparable harm if the stay is denied. The CCDC and all political committees and candidates have the constitutional right to freely associate with other candidates, as protected by the First and Fourteenth Amendments. The New Jersey bracketing statutes simply permit political candidates and parties to express their associations through a “county line” ballot design. The district court’s preliminary injunction prohibiting this form of association and expression directly contravenes the First and Fourteenth Amendments and irreparably harms the CCDC and all political committees and candidates. As the district court quoted in its preliminary injunction order, “[i]t is well-established that ‘[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Hohe v. Casey*, 868 F.2d 69, 72 (3d Cir. 1989) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As such, the Defendant-Appellant satisfies the second factor needed to obtain a stay.

Third, a stay will not result in greater harm to Plaintiffs because, as already established, the New Jersey bracketing statutes provide all candidates with equal access to the ballot and provide equal opportunity to appear in the first ballot position, even if a candidate is not bracketed with other candidates. As such, Plaintiffs do not face any constitutional harm if a stay is granted, whereas the Defendant-Appellant will be irreparably harmed if the district court’s preliminary injunction remains in place and effectively eliminates the Defendant-Appellant’s

right to association. As such, the Defendant-Appellant satisfies the third factor needed to obtain a stay.

And finally, the public interest strongly favors the granting of a stay pending appeal. Bracketing statutes and bracketing ballot designs have been utilized—and upheld by the New Jersey Supreme Court—for decades. They have helped inform voters about different candidates and associations, as well as allowed candidates to freely associate with one another on primary ballots. The bracketing statutes were enacted by the New Jersey Legislature in response to the will of the people. It would be manifestly improper for the judiciary to remove a timeless and constitutionally valid practice from New Jersey ballots just weeks before the primary elections. If the public truly shares Plaintiffs’ dismay for ballot bracketing, then the public could express that will through their elected officials and seek change. But that has not happened, and Plaintiffs should not be permitted to exploit the court system to now nullify this practice right before an election. And in fact, the *Purcell* doctrine squarely forecloses Plaintiff’s improper course of action. As such, the public interest strongly favors the granting of a stay.

In sum, the CCDC fulfills all four factors needed to support a stay of the district court’s order pending appeal.

II. The *Purcell* doctrine supports the grant of a stay pending appeal.

Even if the Court does not find the preceding arguments persuasive, the *Purcell* doctrine prohibits the implementation of court orders prior to an impending election. In *Purcell*, the Supreme Court admonished that “[c]ourt orders affecting elections, especially conflicting orders, can [] result in voter confusion and consequent incentive to remain away from the polls. As an election draws nearer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). This doctrine “not only prevents voter confusion but also prevents election administrator confusion,” *Democratic Nat’l Comm v. Wisconsin State Legis.*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring), as state and local officials “need substantial time to plan for elections” and handle “significant logistical challenges.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). For this reason, the Supreme Court “has repeatedly stated that federal courts ordinarily should not enjoin a state’s election laws in the period close to an election, and [] has often stayed lower federal court injunctions that contravene that principle.” *Id.*

Here, the district court’s order casts New Jersey primary elections in chaos by disrupting the process of printing ballots and depriving voters of timeless, expected information on their ballots. Bracketing has been a standard practice in New Jersey for decades, and voters understand and expect to see bracketing on their ballots. To remove this timeless form of expression and information from the ballots abruptly and without any significant advanced warning to voters will generate extensive voter

confusion. Furthermore, requiring county clerks to design and print new ballots—without any specific directions or instructions (as the district court’s order lacks) —will create confusion in election administration. There is simply not enough time to properly implement such a significant change with the primary elections just two months away.

Further, the burden is on Plaintiffs to show that their desired preliminary injunction would not result in widespread confusion. *See Grace, Inc. v. City of Miami*, 2023 U.S. App. LEXIS 20292, at *7-8 (11th Cir. Aug. 4, 2023) (“Because of the [State]’s ‘extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws,’ the plaintiffs must make the showing that the remedial plan is feasible without significant costs, confusion, or hardship.”); *see also id.* (“[T]he absence of chaos is hardly acceptable under *Purcell*.”). Plaintiffs fail to meet this burden.

In sum, the district court’s order violates the *Purcell* doctrine and casts New Jersey primary elections into chaos for both election administrators and voters.

CONCLUSION

For the aforementioned reasons, as well as those articulated by the Defendant-Appellant, the Court should grant a stay pending appeal.

Dated: April 1, 2024

Respectfully Submitted,

KING MOENCH & COLLINS LLP

/s/ Peter J. King
Peter J. King, Esq.

/s/ Matthew C. Moench
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cc: All counsel (via ECF)

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 1,872 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1), as counted using the word-count function on Microsoft Word 2016 software.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016, in Times New Roman Standard style, 14 point font.

Dated: April 1, 2024

/s/ Peter J. King
Peter J. King, Esq.

/s/ Matthew C. Moench
Matthew C. Moench, Esq.

CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that Matthew C. Moench, undersigned and counsel for Amicus Curiae, is a member of the bar of the United States Court of Appeals for the Third Circuit.

Dated: April 1, 2024

/s/ Matthew C. Moench
Matthew C. Moench

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2024, I electronically filed the original of the foregoing brief with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/ Peter J. King
Peter J. King, Esq.

/s/ Matthew C. Moench
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