

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DISABILITY RIGHTS LOUISIANA

CIVIL ACTION NO. 3:24-cv-00554
JWD-SDJ

v.

NANCY LANDRY, in her official capacity
as Secretary of State of the State of
Louisiana; and ELIZABETH MURRILL, in
her capacity as Attorney General of the State
of Louisiana

POCKET BRIEF OF DEFENDANT, NANCY LANDRY,
SUBMITTED PURSUANT TO DOC 15

MAY IT PLEASE THE COURT:

This pocket brief is submitted by Defendant Nancy Landry pursuant to Doc 15 “on the question of whether *Purcell* bars the injunctive relief before the October¹ election.”

Motion For Preliminary Injunction

The motion for preliminary injunction (Doc 12), filed July 18, 2024, seeks preliminary injunctive relief and declaratory relief “in regard to” Act No. 302, Act No. 317, Act. No. 380, Act No. 712, and La. R.S. 18:1306E(2)(a), claiming enforcement of same “will soon deprive” Louisiana voters with disabilities of their rights to choose any person they want to assist them with voting through absentee by mail ballots. The motion for preliminary injunction (Doc 12), however, does not specify which specific provisions of law plaintiffs seek to preliminarily enjoin.

Two specific allegations are made:

1. Act No. 712 and Act No. 302 and La. R.S. 18:1306E(2)(a) violate the text of the

¹Although plaintiff seeks injunctive relief for an October election, the next election will be held on November 5, 2024. There is no October election.

Voting Rights Act by prohibiting anyone from serving as a witness on an absentee ballot or assisting more than one individual with their absentee ballot and criminalizes the same; and

2. Act No. 380 and Act No. 317 violate the text of the Voting Rights Act by prohibiting anyone from assisting with delivery of more than one absentee ballot and criminalizes the same.

Not all provisions of the four Acts will be effective for the upcoming November 5, 2024 federal election. Section 2 of Act 317 became effective May 28, 2024; Section 1 of Act 317 becomes effective January 1, 2025. Section 1 of Act 302 is effective August 1, 2024; Section 2 of Act 302 becomes effective July 1, 2025. All of Act 380 is effective August 1, 2024. None of Act 712 becomes effective until July 1, 2025. In addition, the challenged provision of law, La. R.S. 18:1306E(2)(a), has been the law since June 1, 2020 (Act 210 of 2020).

Purcell would apply to a preliminary injunction issued in the present case

In *Purcell v. Gonzalez*, the United States Supreme Court held that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”² *Purcell* “reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.”³ “That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State's interest in running an

² *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).

³ *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.”⁴ “Running elections state-wide is extraordinarily complicated and difficult.”⁵ Elections officials must navigate “significant logistical challenges” that require “enormous advance preparations.”⁶ “[P]ractical considerations sometimes require courts to allow elections to proceed despite pending legal challenges.”⁷ Thus, the Supreme Court has consistently admonished courts not to alter state election laws and processes in the period close to an election.⁸

Here, the November 5, 2024 election is 106 days from today’s date, or three and a half months away. This is well-within the bounds of *Purcell*. The Supreme Court recently stayed on *Purcell* grounds an order enjoining the use of Louisiana’s newly-adopted congressional maps for the November 5, 2024, election, the same election for which Plaintiffs seek preliminary injunctive relief. *See Robinson v. Callais*, 144 S. Ct. 1171 (2024). When the injunction was issued by the district court, the election was 189 days away.

In *Merrill v. Milligan*, the Supreme Court stayed pursuant to *Purcell* a preliminary injunction issued by the district court that would have compelled Alabama to hold the 2022

⁴ *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S.Ct. 28; 208 L.Ed.2d 247 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

⁵ *Merrill*, supra 142 S. Ct. at 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays).

⁶ *Id.*

⁷ *Riley v. Kennedy*, 553 U.S. 406, 426; 128 S.Ct. 1970, 1985; 170 L.Ed.2d 837 (2008), citing *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).

⁸ *See Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application) see also *Merrill*, supra, 142 S. Ct. at 879; *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (2020); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020) (per curiam); *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020) (declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

congressional election using a two majority-minority district plan.⁹ When the preliminary injunction was issued, Alabama's May 24, 2022, primary election was 120 days away, and mail-in voting was two months away.¹⁰

In *Singleton v. E. Baton Par. Sch. Bd.*, 621 F. Supp. 3d 618, 628 (M.D. La. 2022), the hearing on plaintiffs' request for a preliminary injunction was just "2 months, 3 weeks, and 1 day (or 83 days) before the November 8 primary election."¹¹ This Court aptly noted that this timeframe of *two to four months* was clearly within the timeframe that is prohibited under *Purcell*. This Court further noted that the timeframe was even shorter than that when one further considered the deadlines for commencement of early voting and when overseas and military ballots must be mailed.¹² Thus, it is clear that the present case is well-within the bounds of *Purcell*.

The *Purcell* principle "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."¹³ In his concurring opinion in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), Justice Kavanaugh wrote, "the *Purcell* principle...might be overcome even with respect to an

⁹ See *Singleton v. Merrill*, 2022 WL 265001 (N.D. Ala. January 24, 2022). The Supreme Court also treated the motion for stay as a petition for certiorari, which was granted and is still pending. *Merrill, supra*, at 879.

¹⁰ In *Robinson v. Ardoin*, the Supreme Court issued the stay 155 days prior to the election, pending its decision in *Merrill v. Milligan*, 142 S. Ct. 879 (2022). *Ardoin v. Robinson*, 21-1596, 2022 WL 2312680, at *1 (U.S. June 28, 2022). After *Merrill* was decided on the merits in June 2023, the Supreme Court dismissed the writ of certiorari before judgment in *Ardoin* as improvidently granted to "allow 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" and vacated the stay previously issued. *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). On appeal, the Fifth Circuit agreed with the district court "that *Purcell* did not bar the preliminary injunction nor require it to be stayed." *Robinson v. Ardoin*, 86 F.4th 574, 599-600 (5th Cir. 2023). However, in that case, unlike the present case, "the State acknowledged the injunction deadline would present no difficulties for Louisiana's election calendar, and the deadlines that impact voters were not until October." *Id.*

¹¹ *Id.*, at 629.

¹² *Id.*

¹³ *Merrill, supra*, at 881.

injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut 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.”¹⁴

Plaintiffs will not be able to make a showing necessary to overcome the *Purcell* principle. As set forth in the chronology below, the November 5, 2024 election is currently underway. The chronology also lists events which have occurred and/or are scheduled, which shows that not any of the four statutes should be enjoined at this stage of the election process.

Chronology¹⁵

June 11, 2020 - La. R.S. 18:1306E(2)(a) becomes law.

May 22 and 23, 2024 – Registrar of Voters Election Academy, hosted by Secretary of State and attended by registrars from throughout the state. Pending legislation was discussed, including the bills that became Acts 302, 317, 380 and 712, with explanations as to the effect of the possible changes in the law.

May 28, 2024 - Effective date of amendment to La. R.S. 18:1461.7A(6).

June, 2024 - The Office of the Attorney General revised its publication “A Summary of Election Offenses and Penalties” to include NOTICE at pp. 28-30 of the legislative changes resulting from Act 302 and 317 of 2024, noting effective dates of May 28, 2024 and/or August 1, 2024. The revised document was made available on the Attorney General

¹⁴ *Merrill, supra*, at 881.

¹⁵ See Declaration of Sherri Hadskey, Louisiana Commissioner of Elections, attached as Exhibit A.

website.¹⁶

Week of July 8, 2024 – Public notices of all Acts of 2024 Regular Session of Louisiana Legislature were published in all parish journals, La. R.S. 43:24D(1).

July 17-19, 2024 - Candidates qualified to run for an office in the November 5, 2024 Congressional election (exception for presidential electors). During qualifying, each candidate was provided with a copy of “A Summary of Election Offenses and Penalties” published by Attorney General Liz Murrill, Louisiana Department of Justice (Rev. 6/24).

August 1, 2024 - Effective date of amendments to La. R.S. 18:1308B(1), La. R.S. 18:1310C(1) and La. R.S. 18:1461.7A(6).

August 1, 2024 - Secretary of State will send notification to Registrars of Voters of the changes in law effective August 1, 2024 and May 28, 2024, including changes made by Acts 302, 317 and 308, including those changes with respect to absentee by mail ballots and applications.

August 14, 2024 - Sherri Hadskey, Commissioner of Elections, scheduled to address Continuing Education Seminar of Registrars of Voters Association in St. Martin Parish. Will train registrars on the legislative changes regarding absentee by mail ballots to ensure awareness of and training on before September 9, 2024, the day on which absentee by mail ballots may first be made available to registrars for distribution and use.

August 23, 2024 - Presidential electors qualify for the November 5, 2024 presidential election.

¹⁶ <https://www.ag.state.la.us/Files/Shared/Documents/SummaryOfElectionOffenses2024.pdf>.

September 9, 2024 - Some registrars of voters may receive absentee by mail ballots for their parish and can begin sending ballots to those who have made an absentee by mail ballot request or are in the over 65 program or disability program, or are a military and overseas (M & O) voter.

September 9-20, 2024 - Time period during which absentee by mail ballots are provided to registrars of voters.

Prior to September 21, 2024 - All absentee by mail ballots for the November 5, 2024 election must be in the possession of all registrars of voters to be shipped to meet a 45 day M & O federal deadline (La. R.S. 18:1308A(2)(a)).

October 11-29, 2024 - Time period voting may be conducted for nursing home program, including voting by disabled individuals in nursing homes or long term care facilities. (Absentee by mail paper ballots are generally used for the nursing home program, although electronic voting machines are used in some instances.)

November 5, 2024 - Presidential and Open Primary Congressional Election.

December 7, 2024 - General Congressional Election.

The November 5, 2024 Election Is Underway

As the above chronology indicates, the November 5, 2024 election is underway. The changes to the law for which Plaintiff seeks an injunction require the state to take action now, prior to the effective dates of the Acts, and certainly well prior to the time absentee mail in ballots will be in use. This action includes training and educating the Registrars of Voters, candidates, and the public about the changes in the law. The Attorney General has already issued "A Summary of

Election Offenses and Penalties,” which details the changes to be implemented by Acts 302 and 317. Candidate qualification was held July 17-19, 2024, during which candidates were provided with a copy of “A Summary of Election Offenses and Penalties.”

Any injunction issued prior to the election would cause significant cost, confusion, and hardship

Since the election is underway, any injunction issued prior to the election would cause significant cost, confusion, and hardship. On August 1, 2024, Secretary of State will send notification to Registrars of Voters of the changes in law effective August 1, 2024 and May 28, 2024, including changes made by Acts 302, 317 and 380. Just days later, on August 14, 2024, Commissioner Hadskey will train registrars on the legislative changes regarding absentee by mail ballots at the Continuing Education Seminar of Registrars of Voters Association in St. Martin Parish. Most critically, however, is September 9, 2024, the date on which absentee by mail ballots are made available to the Registrars of Voters. By that date, the registrars must be made aware of and informed of all laws applicable to absentee by mail ballots. September 9, 2024 is 49 days from today’s date.

In *League of Women Voters of Florida v. Florida Secretary of State*, the plaintiffs challenged, *inter alia*, newly enacted provisions regarding ballot drop boxes, voter registration delivery, and voter registration disclaimers.¹⁷ The district court permanently enjoined these provisions and refused to issue a stay pending appeal of the injunction.¹⁸ Citing *Purcell*, the Eleventh Circuit found that the state was entitled to a stay pending appeal. “When the district court

¹⁷ *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4th 1363, 1369 (11th Cir. 2022).

¹⁸ *Id.* at 1370.

here issued its injunction, voting in the next statewide election was set to begin in *less* than four months (and local elections were ongoing). Moreover, the district court's injunction implicates voter registration—which is currently underway—and purports to require the state to take action now, such as re-training poll workers.” “Because the election to which the district court's injunction applies is close at hand and the state ‘has a compelling interest in preserving the integrity of its election process,’ *Purcell* controls our analysis.”¹⁹ The court found that pursuant to *Purcell*, the “circumstances of this case” entitled the state to a stay pending appeal.²⁰

In the present case, as stated above, the November 5, 2024 election is 106 days from today's date. The nursing home voting program begins on October 11, 2024, in 81 days. Most importantly, absentee by mail ballots are made available to the Registrars of Voters as early as September 9, 2024, which is in 49 days. As in *League of Women Voters*, this is already well-within the bounds of *Purcell*, and no date has been set for Plaintiffs' preliminary injunction hearing.

As detailed in the attached Declaration of Sherri Hadskey, any preliminary injunction issued by the Court at this time would likely create turmoil among registrars by changing the absentee by mail process after they have been educated about it and could lead to distrust of that process among voters. As Hadskey's declaration demonstrates, any changes to the absentee by mail process that could be ordered by the Court pursuant to a preliminary injunction could not feasibly be implemented without creating significant cost, confusion, and hardship to the state and the voters, in addition to confusion and inconsistency in the administrative process. Therefore, the *Purcell* principle would apply to any such order issued by the Court.

¹⁹ *Id.*, citing *Purcell*, *supra*.

²⁰ *Id.* at 1374.

By filing this pocket brief by order of the Court, the Secretary of State requests that it be considered also as an opposition to the plaintiff's Ex Parte Motion To Expedite Consideration (Doc 13) of its motion for preliminary injunction (Doc 12); and further represents that the Secretary of State does not intend to waive but expressly reserves objections and defenses for future proceedings.

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*Attorney for Defendant, Nancy Landry, in her
official capacity as Louisiana Secretary of State*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing “Pocket Brief of Defendant, Nancy Landry, Submitted Pursuant to Doc 15” was sent either via the CM/ECF system, or electronically, or via mail to the following counsel for plaintiff:

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Baton Rouge, Louisiana, this 22nd day of July, 2024.

s/Celia R. Cangelosi
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