No. 26A512

In the Supreme Court of the United States

DAVID M. SCANLAN, ET AL.,

Applicants,

v.

COALITION FOR OPEN DEMOCRACY

Respondent.

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REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

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ARGUMENT

The respondent spends the first two-thirds of its response attempting to downplay and justify the district court's late-breaking rewrite of New Hampshire's election procedures. In doing so, the respondent acknowledges that the district court substituted its own view of how HB 323 operates for that of the New Hampshire Secretary of State. The respondent does not dispute (nor could it) that the district court issued its order barely a month before the general election and after the Secretary had spent months training election officials and informing the public consistent with his interpretation of New Hampshire law. But the respondent says that this is all fine, either because it thinks the district court got New Hampshire law right or because, in its view, this Court is unlikely to grant plenary review. As to *Purcell*, the respondent suggests that the Secretary's good-faith efforts to diminish the disruption caused by the district's order mean that no stay should issue, while also arguing that the applicants somehow have unclean hands because it took them three-and-a-half days (including a weekend) to seek a stay from the First Circuit.

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The respondent's arguments are not persuasive. Just last month, this Court reiterated that the election-specific considerations animating *Purcell* can "dictate" staying injunctive relief issued by a lower federal court even when "the merits are not entirely clearcut." *People Not Politicians v. Onder*, __ U.S. __, No. 26A274, slip op. 3 (Sept. 25, 2026). The applicants maintain, as they did below, that the merits favor their position. But even if the district court based its order on a plausible construction of state law, *Purcell* dictates that it should have stayed its hand. The re-

spondent's efforts to avoid that conclusion by downplaying and justifying what the district court did only highlight the need for a stay.

A. The respondent offers no convincing reason to ignore *Purcell*.

The district court issued its order late in the evening on October 2, just 32 calendar days before the general election. App. 15a–65a.[1] Notably, this is one day closer to the election than the order in *Purcell*. *See* 549 U.S. 1, 3 (2006) (noting that the court of appeals issued its injunction on October 5 and that the general election was on November 7). There is no dispute that by that time, the Secretary had spent months training election officials and informing the public on how HB 323 would operate based on the Secretary's interpretation of state law. *See, e.g.*, D. Ct. Doc. 63, at 10–12. The district court nonetheless enjoined the Secretary from enforcing that guidance and directed the Secretary "to issue, as soon as practicable, guidance for the November 2026 general election" that comported with the district court's own view of state law. App. 66a. As explained in the underlying application, *Purcell* squarely forecloses this relief.

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The respondent contends that *Purcell* should not apply because the district court's injunction "didn't alter New Hampshire's election rules." Resp. at 24–26. According to the respondent, the Secretary's guidance is only a "gloss" on the rules, not a component of the rules themselves. *Id*. While the respondent contends that *Purcell* poses no impediment to a federal court enjoining a "gloss," *id.*, this Court does not appear to have ever limited *Purcell* in this way. But even if it had, the respond-

[1] This is the date the district court issued its narrative order. The district court issued a separate order, containing the terms of the injunction, on October 5, just 29 days before the general election. App. 66a.

ent's argument would still fail because the Secretary's guidance is plainly part of New Hampshire's election rules.

The Secretary is New Hampshire's "chief election officer." N.H. Rev. Stat. Ann. § 652:23, I. In that capacity, the Secretary is required to "provide information regarding voter registration and absentee ballot procedures for all voters," which can include "[i]nstructional and informational materials published by" the Secretary. *Id.* The Secretary is also required, "with the advice and approval of the attorney general," to "prepare or cause to be prepared preceding each state general election an up-to-date manual on the New Hampshire election laws and procedures for conducting elections." N.H. Rev. Stat. Ann. § 652:22. Likewise, the Secretary is required to "prepare an explanatory document explaining the proof of identity requirements of RSA 659:13, including all permissible methods for proving identity and the dates of applicability of these requirements." N.H. Rev. Stat. Ann. § 652:25.

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The Secretary's guidance was both authorized by and required under these provisions. The guidance itself contains the Secretary's explanations of "voter registration . . . procedures," N.H. Rev. Stat. Ann. § 652:23, I, and "all permissible methods for proving identity and the dates of applicability of these requirements," N.H. Rev. Stat. Ann. § 652:25. In other words, it constitutes the formal interpretation of New Hampshire election law by a state official authorized and required to provide that interpretation. It is therefore neither incidental to nor severable from New Hampshire's "election rules," much less some sort of voluntary "gloss" on those rules.

The respondent is, of course, free to challenge the Secretary's interpretation. But the respondent cannot evade *Purcell* by pretending that challenge is something other than what it is. The respondent's attempt to distinguish *Purcell* therefore fails. As set forth in the underlying application, *Purcell* applies.

The respondent argues that this Court should nonetheless ignore *Purcell* because the Secretary has sought to comply with the district court's order while simultaneously seeking a stay. Resp. at 28–31. This argument is based on a false premise. The applicants have not argued, as the respondent suggests, that it is physically impossible to comply with the district court's order before the general election. They have instead argued that the very existence of the district court's order, whether complied with or not, creates a substantial risk of voter confusion and inconsistent application of state law. Appl. at 9–11. This is because the Secretary's office has spent the past five months training election officials, issuing guidance, and educating the public about HB 323, consistent with the Secretary's interpretation of state law. *Id.* A single updated guidance document cannot unwind those efforts.

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The record below reflects this. To be sure, the Deputy Secretary of State testified that the Secretary's office can reach most clerks, supervisors, and moderators by email. D. Ct. Doc. 47, at 187:3–10. But he also explained that the Secretary's office does not have contact with ballot clerks and other poll workers. D. Ct. Doc. 61, at 157:10–15. He further explained that a single blast email could not ensure that each town or city ward retrieved and destroyed all prior versions of the Secretary's guidance. D. Ct. Doc. 61, at 162:1–5. And he explained the complexities involved in

implementing even a seemingly simple message that contradicts earlier guidance and training. D. Ct. Doc. 61, at 167:2–6.

The respondent is therefore wrong to assert that "the status quo is now the injunction." Resp. at 29. The status quo remains, as it has since April, the language of HB 323 itself and the Secretary's guidance as to how that language should be implemented. The district court's order disrupts, rather preserves, that status quo. Even worse, it injects uncertainty where there had previously been stability.

The respondent's argument, if adopted, would also present state election officials with a Hobson's choice. Under the respondent's conception of *Purcell*, an election official would have to defy a late-breaking district court order if he wants to seek a stay. But this would place the election official in jeopardy of contempt, particularly if a stay did not issue. The respondent cites no authority for this untenable scenario, and this Court should not indulge it.

This Court should also not indulge the respondent's attempt to justify its own significant delay in bringing this lawsuit by equating it to the three-and-a-half days between the district court's order and the applicants' request for a stay. It is hard to see how these timeframes are comparable on their face. In any event, the respondent cites no authority for the proposition that this Court should turn a blind eye to how the respondent's own actions materially contributed to the timing of the district court's order and its disruptive effect. This Court's precedents make clear that these considerations are relevant. *See, e.g.*, *Benesek v. Lamone*, 585 U.S. 155, 160 (2018). Nor does the respondent cite any authority for the notion that under the present

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circumstances—where the district court had previously denied relief based on *Purcell* and there was no cause to believe that the district court would enjoin only the Secretary's guidance based its own construction of state law—three-and-a-half days is somehow unreasonable.[2] To the contrary, this matter appears to be proceeding on a timeline similar to that in *Purcell* itself. *See* 549 U.S. at 3–4.

B. The respondent's other arguments are not persuasive.

As mentioned, the respondent devotes the bulk of its response to merits arguments. In doing so, the respondent all but ignores that this case involves considerations that are not present in a typical application for a stay. *Purcell* makes clear that when "[f]aced with [an order] enjoin[ing] operation of voter identification procedures just weeks before an election," this Court will "weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures." 549 U.S. at 4. Only weeks ago, this Court observed that these election-specific considerations can "dictate" the issuance of a stay when "the merits are not entirely clearcut." *People Not Politicians*, __ U.S. __, No. 26A274, slip op. 3.

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The respondent's own filing confirms that the merits do not clearly favor its position. As noted, the respondent acknowledges that the district court premised relief on its own interpretation of state law. Resp. at 17–23. The respondent further acknowledges that the applicants have offered a contrary interpretation, which

[2] This timeframe is comparable to the amount of time this Court gave the respondent to respond to the present application.

supports the Secretary's guidance. *Id.* While the applicants maintain that their construction is the better one, it is certainly not clear that the district court got it right.

The respondent suggests that the applicants have somehow changed their position on appeal. Resp. at 19–23. This is manifestly not so. The Secretary's guidance made clear that, in the wake of HB 323, student IDs could not be used to prove identity when registering to vote or obtaining a ballot. D. Ct. Doc. 46, ¶¶ 3, 16. This position has been a matter of public record since April 23. *Id.* The applicants have defended that position throughout this litigation.

In the proceedings below, the Deputy Secretary testified that "the secretary of state's office and the attorney general's office have historically interpreted 654:12"—which governs registering to vote—"and 659:13"—which governs obtaining a ballot—"in harmony." D. Ct. Doc. 61, at 171:7–9. He explained that "when you read those two statutes in conjunction," the removal of "student ID from 659:13" means that "student ID is not other reasonable evidence establishing it's more likely than not that the person is who they claim to be" under N.H. Rev. Stat. Ann. § 654:12. D. Ct. Doc. 61, at 171:13–18. The Deputy Secretary reiterated that "the legislature's removal in 659:13," when read "together" with N.H. Rev. Stat. Ann. § 654:12, means that "student ID is not considered other reasonable documentation under 654:12." D. Ct. Doc. 61, at 172:3–6. Similarly, the Deputy Secretary testified that because the Secretary's office interprets "those two statutes together," when "the legislature expressly removes one, to us, it's a clear indication that [the] legislature does not consider that [to be a] document that meets the requirements of

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654:12." D. Ct. Doc. 61, at 171:11–16. This testimony is wholly in keeping with the applicants' litigation position before the First Circuit and this Court.

The respondent's merits arguments also discount the federalism implications of the district court's order. As the respondent notes, the district court appeared to agree that the Eleventh Amendment barred any independent state-law challenge to the Secretary's guidance. Resp. at 16. The district court nonetheless concluded that the Secretary's guidance likely violated federal law under the *Anderson-Burdick* framework. App. 47a. It reached this conclusion based on how it resolved an antecedent question of state law. As explained in the underlying application, this analysis presents federalism questions that are not clearcut and may eventually warrant this Court's intervention. Appl. at 12–13.

The respondent's suggestion that the applicants did nothing to justify the Secretary's guidance under *Anderson-Burdick* is also incorrect. This necessarily assumes that the applicants' construction of state law is wrong. If that construction is right, then the Secretary's guidance and HB 323 are coextensive. The same justifications would therefore apply to each. The suggestion that the district court's "constitutional holding doesn't turn on whose interpretation is right," Resp. at 18, ignores this reality.

The respondent's reliance on their Twenty Sixth Amendment claim, Resp. at 23–24, is also misplaced. The district court noted that the First Circuit "has not articulated a precise standard for Twenty-Sixth Amendment claims." App. 50a. Nor has this Court. The district court further found that neither HB 323 nor the Secre-

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tary's guidance was intentionally discriminatory. App. 53a–55a. The district court therefore applied its *Anderson-Burdick* analysis to the respondent's Twenty Sixth Amendment claim. App. 49a–57a. Without any controlling authority on point, it is certainly not clearcut that this was the correct analysis. And even if it was, it is not clearcut that the district court's conclusions were correct for the reasons already stated. The respondent's contention that their Twenty Sixth Amendment claim "independently supports the injunction," Resp. at 24, is therefore not persuasive.

Finally, there is no merit to the respondent's contention that a stay should not issue because "[t]his is an interlocutory appeal from a preliminary injunction." Resp. at 15. Many of this Court's recent decisions on emergency applications involved requests to stay preliminary injunctive relief. *See, e.g.*, *Trump v. Cook*, 146 S. Ct. 2234, 2245–46 (2026); *Trump v. CASA, Inc.*, 606 U.S. 831, 837–38 (2025). *Purcell* did too. 549 U.S. at 3. The fact that this application arises out of a preliminary posture is hardly a reason to deny a stay.

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CONCLUSION

For all these reasons, and those stated in the underlying application, this Court should stay the district court's orders pending proceedings in the court of appeals and in this Court.

Respectfully submitted,

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