No. 22-13544

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JACKSONVILLE BRANCH OF THE NAACP, *et al.*,

Plaintiffs-Appellees,

v.

CITY OF JACKSONVILLE, *et al.*,

Defendant-Appellants.

On Appeal from the United States District Court
for the Middle District of Florida, No. 3:22-cv-493 (Morales Howard, J.)

PLAINTIFFS-APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS CITY OF JACKSONVILLE AND SUPERVISOR HOGAN'S EMERGENCY MOTION TO STAY

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CERTIFICATE OF INTERESTED PERSONS

Under Federal Rule of Appellate Procedure 26.1 and this Court's Local Rule 26.1, Plaintiffs-Appellees certify that the CIP contained in Appellants' Emergency Motion to Stay is complete.

CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1, Plaintiffs-Appellees certify that the ACLU of Florida Northeast Chapter; Florida Rising Together, Inc.; Jacksonville Branch of the NAACP; and Northside Coalition of Jacksonville, Inc. each has no parent corporation, and no publicly held corporation owns 10% or more of any of those entities' stock. The remaining Plaintiffs-Appellees are individual persons.

Under this Court's Local Rule 26.1-1, Counsel for the Plaintiffs-Appellees further certify that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: November 4, 2022

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INTRODUCTION

Jacksonville's voters have been drawn into "racially segregated" districts, Op.98, "premised on impermissible racial classifications," Op.134. Absent injunctive relief, they will face *four* years of representation based on these districts. Four years of irreparable and "grievous constitutional harm." *Id*.

That harm is entirely avoidable. The district court issued an Order that allows those voters to vindicate their rights, including by ensuring a remedial map will be in place by the deadline the City itself provided.

Undeterred, the City seeks an emergency stay[1] of the court's Order. Why? Not because it is likely to prevail in its appeal. The City's motion never even makes that claim. Instead, it insists a twenty-seven-day remedial timeline places too much of a burden on the City to fix its own violation. But the Council *has passed a remedy already*. Nevertheless, voters, in its view, should be forced to live in illegal districts to avoid inconveniencing the Council that created those districts. That profound imbalance of the equities has no basis in law.

The City also seeks unprecedented expansions of the *Purcell* principle. It seeks to apply it earlier than ever before, in entirely novel ways, and in direct contradiction to its prior representations. None of these efforts have merit.

[1] The City's Motion does not meet the preconditions of 11th Circuit R.27-1(b)(1), and should not be treated as an emergency motion.

Finally, the City seeks a stay pending *Merrill v. Milligan*—a Voting Rights Act (VRA) §2 case. But by its own admissions, §2 cannot justify the race-based decisionmaking that informed the Challenged Districts.

The district court's Order meets the remedial deadline put forth by the City and lays out a clear path to preventing irreparable constitutional harm. This Court should not stay it.

BACKGROUND

I. Jacksonville Redistricting

Ordinance 2022-01-E ("Enjoined Plan") continues Jacksonville's decades-long practice of race-based redistricting, packing Black residents into four districts. Op.21-28. In 1991, the Council enacted what was officially called the "63% Plan," after four districts' 63%-Black population quotas. Doc.34-34 at 5. As the City's own expert explained, the 63% Plan formed the basis of future plans, including the Enjoined Plan. Doc.40-34 at 16-17. The 2001 Council followed suit, resulting in "oddly shaped Districts 7, 8, 9, and 10" that "maintained high percentages of Black residents." Op.23.

Finally, in the 2011 cycle, "the Challenged Districts took on the shapes that they largely maintain" in the Enjoined Plan. *Id*. "The evidence…of what occurred in 2011, which the City has not disputed, unabashedly points to racial gerrymandering," Op.102, with councilmembers rejecting maps because they

missed a 60% racial target. Op.25-26. Councilmembers, despite public criticism of the "high percentage of Black residents in particular districts," Op.26, maintained districts that gerrymandered Black voters into Districts 7-10, Op.23-28.

II. The Enjoined Plan

Against this backdrop, the Council began its 2021 redistricting process with the existing lines. By the City's own telling, the primary goal was to minimize changes. Councilmembers repeatedly acknowledged the artificially high Black percentages of Districts 7-10, with a key councilmember noting: "it's incumbent upon us" to "bring[]…down" the concentration of Black voters in districts so "we don't unfairly pack any ethno-racial minority." Op.44. Nevertheless, after discussions about whether to "keep [Black percentages] the same or reduce some," councilmembers chose to maintain existing percentages. Op.39.

Councilmembers knew Districts 7-10 had been drawn to maintain high Black populations. Op.118. They were not shy about their goals. Shortly before the Rules Committee approved the Enjoined Plan, Councilmember Brenda Priestly Jackson—a key figure—read the historical racial makeup of Districts 7-10, noting a "gradual decline" in their Black population. Op.63. She expressed her desire to "[d]o no harm" by maintaining the racial makeup of these districts. *Id*. She later tweeted she would not "dilut[e]" the "Black voters" of the Packed Districts as they had existed "with majority Black populations…over 4 decades." Op.65-66. Finally, just

moments before the Council approved the Enjoined Plan, Priestly Jackson explained a "fundamental principle" of redistricting was the "maintenance" of the Districts' racial makeup. Op.69.

The Enjoined Plan packs Black voters into four "bizarrely shaped" districts; the districts are visually "elongated" and "sprawling," "but certainly not 'compact.'" Op.94. They are mathematically non-compact. Op.95. Their Black voting-age population (BVAP) is artificially high: Plaintiffs' expert compared the Enjoined Plan to 10,000 algorithmically-generated alternatives—"a representative set of alternative plans that comply with" the Council's stated criteria. Op.82. The results show "it is statistically improbable that the Challenged Districts would be drawn as they are absent race as a predominant factor." Op.96.

These results are "not mere coincidence." Op.98. The Enjoined Plan divides communities in "a pattern where every single precinct on the District 7-10 side of the line has a higher BVAP percentage than the corresponding precinct on the District 2, 12, or 14 side of the line. Not *some* precincts along the line, not *many* precincts along the line, but *every single one*." Op.96.

The Council never justified its race-based division of voters by claiming it was necessary to comply with the VRA. Op.14 n.10. And the City explicitly disclaimed VRA compliance as a justification for the race-based districting in the proceedings below. *Id*.

III. Proceedings Below

Plaintiffs—ten Black Jacksonville residents and four membership organizations—sued the City, contending the Enjoined Plan includes seven racially gerrymandered districts—the four Packed Districts and three adjacent districts made artificially white by the stripping of Black residents into the Packed Districts.

The parties jointly sought the court's guidance on preliminary proceedings. Docs.23-24. The City indicated that, so long as a remedy was in place by December 16, the Supervisor of Elections (SOE) could proceed with the March 21, 2023, elections. Op.9. The court held a preliminary pretrial conference at which the City reiterated that date, which formed the basis of the court and parties' agreed-upon schedule, which the City agreed to "without caveat." *Id*.

Eight months before the March 2023 election, having compiled a 2,400-page record—encompassing four decades of redistricting history made necessary by the City's defenses—Plaintiffs moved for a preliminary injunction to prevent elections from moving forward under the Enjoined Plan. Pursuant to the court's schedule, established in consultation with the parties, the parties briefed both that motion and the contours of a remedial process if the injunction were granted. The district court held a hearing on September 16 and issued its 139-page Order granting the preliminary injunction three weeks later.

IV. The Court's Order

The district court held Plaintiffs to a high bar, noting that preliminary injunctions of legislative enactments "must be granted *reluctantly* and only upon a *clear showing* that the injunction before trial is *definitely demanded* by the Constitution and by the other strict legal and equitable principles that restrain courts." Op.6 (citation omitted). The court correctly concluded that Plaintiffs had cleared that bar. Using the *Arlington Heights* factors to guide its analysis of the direct and circumstantial evidence, the court concluded "that race was the predominant factor in the drawing of the Challenged Districts." Op.121. The court noted the unrefuted evidence that race determined the 2011 district lines, Op.102, and that current councilmembers were aware of the districts' past race-based design, Op.118-19; it also noted the repeated and explicit discussions of maintaining the Black proportions of those districts to conclude that the evidence "makes a strong showing that the City Council in 2022 reenacted the 2011 lines not despite their racial components but specifically to maintain them." Op.105.

Further, the court noted the circumstantial evidence—bizarre shapes, non-compactness, statistical outliers, and race-based borders—pointed to racial predominance. The court observed "the City [made] no attempt to explain the overall peculiar shapes of these Districts on the basis of compactness, contiguity, natural geography, communities of actual shared interests, or any other traditional

redistricting factor." Op.95-96. All told, the court concluded "the circumstantial evidence considered in combination with the historical evidence present[ed] a virtually unrebutted case that the Challenged Districts exist as they do in the [Enjoined] Plan as a result of racial gerrymandering." Op.103. Because the City made no attempt to argue the Districts could satisfy strict scrutiny, the court was "convinced that Plaintiffs have made the requisite clear showing that they are substantially likely to succeed on the merits of their Equal Protection claim." Op.123.

The court also held Plaintiffs would suffer irreparable harm without relief, noting the City had conceded elections held under gerrymandered lines irreparably harmed voters. Op.123-25. It explained: "[t]he harms to Plaintiffs are significant and the ramifications of allowing the election to proceed on the [Enjoined] Plan means that Jacksonville voters living in the Challenged Districts will likely be subject to representation premised on impermissible racial classifications for four more years." Op.134. Additionally, the court noted the City had "not shown any substantial risk of harm, confusion, or disruption in the March 2023 election," underscoring that the balance of the equities weighs in favor of the Plaintiffs. *Id*.

The court set forth a remedial schedule to ensure a remedy in place by the December 16 date the City provided, giving the Council twenty-seven days to enact a remedy. Op.136-37. The Council beat that deadline by four days.

STANDARD OF REVIEW[2]

A district court's grant of a preliminary injunction is examined for abuse of discretion, whereby findings of fact are reviewed only for clear error while legal conclusions are reviewed de novo. *Jones v. Governor*, 950 F.3d 795, 806 (11th Cir. 2020) (citation omitted). Abuse of discretion is a "deferential standard" in recognition of the fact that "judgments...about the viability of a plaintiff's claims and the balancing of equities and the public interest...are the district court's to make." *Id*.

Courts consider four factors in determining whether an applicant is entitled to a stay of injunction pending appeal:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
> (2) whether the applicant will be irreparably injured absent a stay;
> (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
> (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009). "The first two factors of the traditional standard are the most critical." *Id*. at 434.

[2] Plaintiffs address why the *Purcell* principle does not apply here *infra* Part II.

ARGUMENT

I. The City Is Not Entitled to a Stay

A. The City Is Not Likely to Succeed on Merits

In seeking a stay below, the City "failed to present any argument that they are likely to succeed on the merits of their appeal. Defendants [did] not point to any error of fact or law in the [District] Court's analysis. Nor [did] they make any attempt to identify a substantial question for appeal." Doc.62 at 6. Likewise, before this Court, the City at *no point* asserts that it is likely to succeed on appeal.

What the City *doesn't* challenge is remarkable. It never argues that the district court erred in concluding that the Challenged Districts are visually bizarre. Op.78,93-95; *see Bethune-Hill v. Va. State Bd. of Elections*, 137 S.Ct. 788, 798 (2017). Or that they are non-compact. Op.95-96; *cf. Shaw v. Hunt* ("*Shaw II*"), 517 U.S. 899, 905-06 (1996). Or that they feature single-precinct-wide connections between pockets of Black voters. Op.95; *cf. Shaw v. Reno* ("*Shaw I*"), 509 U.S. 630, 635-36 (1993). Or that their shapes cannot be explained through traditional criteria. Op.95-96. Or that expert analysis indicates statistically-anomalous racial sorting. Op.89. Or that the Council refused to better comply with traditional criteria following public outcry, Op.110-11, showing "[r]ace was the criterion that…could not be compromised," *Shaw II*, 517 U.S. at 907. Or that every relevant district border cuts along racial lines. Op.96; *cf. Cooper v. Harris*, 137 S.Ct. 1455, 1469 (2017). Or

that the historical record "unabashedly points" to race-based cores. Op.102. Or that there were repeated discussions of whether to maintain or reduce Districts' minority percentages. Op.39. Or that councilmembers announced desires to maintain sky-high percentages of Black residents. Op.39-40,43,67-70.

The court repeatedly explained that the evidence of racial predominance, both this cycle and historically, was unrebutted. Op.102-103,120-21,134. The City never points to rebuttal evidence or otherwise suggests that was error. Instead, it flyspecks the decision below, hoping *something* may stick. Nothing does.

First, the City notes there is nothing "inherently wrong" with "retain[ing] the cores of existing districts," Mot.11, ignoring caselaw that core retention cannot insulate race-based districts from strict scrutiny. In *North Carolina v. Covington*, the Supreme Court affirmed a rejection of districts that "retained the core shape of districts that [the district court] had earlier found to be unconstitutional." 138 S.Ct. 2548, 2551 (2018) (per curiam) (internal punctuation omitted). Even "[t]he defendants' insistence that the…legislature did not look at racial data in drawing remedial districts d[id] little to undermine the district court's conclusion—based on evidence concerning the shape and demographics of those districts—that the districts unconstitutionally sort voters on the basis of race." *Id.* at 2553; *see also Chen v. City of Houston*, 206 F.3d 502, 518 (5th Cir. 2000); *Bethune-Hill*, 141 F.Supp.3d 505, 544-45 (E.D. Va. 2015); *Polish Am. Cong. v. City of Chicago*, 226 F.Supp.2d 930,

937 (N.D. Ill. 2002); *cf. Clark v. Putnam Cnty.*, 293 F.3d 1261, 1267 n.16, 1271-72 (11th Cir. 2002) (racial gerrymander where previous plan was "preserved as much as possible"). Here, too, the district court explained that "[t]o apply core preservation in the way the City asserts in this case would mean that once enacted, a legislature could perpetuate racially gerrymandered districts into the future merely by invoking a 'neutral' desire to maintain existing lines." Op.105.

The City concedes the cores were race-based but insists that is not why the Council chose to preserve them. Mot.11. Under *Covington*, this doesn't matter—the districts *themselves* do. Moreover, the City never explains why the district court erred in concluding the "Council in 2022 reenacted the 2011 lines not despite their racial components but specifically to maintain them." Op.121. While the Council chose to *start* with existing lines in August, Mot.11, councilmembers subsequently considered changes and discussed whether to "keep [Black percentages] the same or reduce some." Op.39. They chose to maintain the high BVAPs, and explicitly acknowledged doing so.[3]

Next, the City faults the district court for focusing on Priestly Jackson's statements, Mot.12, although courts routinely consider the statements of key

[3] This defeats the City's contention that the district court held "race and partisanship are one and the same." Mot.1. It did no such thing, and the City cites no portion of the Order to support this claim. More fundamentally, the problem with the districts is their *race-based cores*, not the small adjustments to edges of those cores that the City insists were partisan.

legislators when assessing racial predominance. *See, e.g.*, *Cooper*, 137 S.Ct. at 1468-69. Reliance on *Greater Birmingham Ministries* is misplaced because there, the evidence was "largely unconnected to the passage of the actual law in question." 992 F.3d 1299, 1324 (11th Cir. 2021). Here, Priestly Jackson made her most damning comments (1) immediately before the Plan passed and immediately after her colleagues recognized her as a leader in the process, and (2) as mapping decisions were being made. Op.37-43,63-69. The City does not contest the *case-specific findings* that Priestly Jackson played an outsized role in the process and shepherded the Challenged Districts. Op.114-15. In fact, the City's own expert notes she "play[ed] an instrumental part in the process as both the chairman of the Rules Committee and as a member of the Redistricting Committee." Op.115.

Finally, the City laments the district court's criticisms of the lack of response to public comment but doesn't argue that those criticisms were erroneous. The court correctly noted that, despite public outcry and a report outlining the extent of the packing, the Council made "no adjustments, great or small" to comply with traditional redistricting criteria. Op.111. Nor does the City dispute this failure "supports a finding that the racial percentages in the historic minority access districts were not subject to compromise." Op.112. These factual findings are key circumstantial evidence that traditional criteria were subordinated to race.

B. The City Will Not Face Irreparable Harm

The City makes no effort to show it will be irreparably harmed absent a stay—"the second 'most critical' factor" governing its request. *Florida v. HHS*, 19 F.4th 1271, 1291 (11th Cir. 2021) (quoting *Nken*, 556 U.S. at 434).

The City will not be harmed. The Supreme Court and this Court have indicated a government can claim no harm from being enjoined from enforcing an unconstitutional election statute. *Abbott v. Perez*, 138 S.Ct. 2305, 2324 (2018) (irreparable harm "[u]nless [a] statute is unconstitutional"); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283 (11th Cir. 2020) (same). "[T]he city has no legitimate interest in enforcing an unconstitutional ordinance," so it cannot be harmed by being barred from doing so. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Because the City makes no serious effort to contest the district court's determination that race predominated in its districting, it cannot be irreparably harmed by the injunction.

C. A Stay Will Harm Plaintiffs and the Public

The City has conceded that elections held under unconstitutional lines cause irreparable harm. Granting a stay now will cause that harm, not just to Plaintiffs, but to all residents of the Challenged Districts. They would be forced to live in districts unnecessarily based on racial "[c]lassifications…[that] 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of

equality.'" *Shaw I*, 509 U.S. at 643. Their "elected representatives," meanwhile, will receive a "pernicious" message making them "more likely to believe that their primary obligation is to represent only the members of [one racial] group." *Id.* at 648. These serious harms are "altogether antithetical to our system of representative democracy." *Id.* Additionally, "the public…has no interest in enforcing an unconstitutional law," *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010), and it is always in the public interest to ensure the Constitution is followed, *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019).

Beyond that, as the district court explained: "allowing the election to proceed with districts that…are substantially likely to be unconstitutional…poses a significant threat to voter confidence in the legitimacy of the election." Doc.62 at 16. Below and now, the City makes no meaningful merits arguments in seeking a stay. To grant a stay under these circumstances would undermine confidence in the election and in the legitimacy of the elected councilmembers. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 283 (2015) (Scalia, J., dissenting).

II. *Purcell* Does Not Apply

Having made no attempt to satisfy the traditional stay factors, the City invokes *Purcell*. As the district court explained, *Purcell* is inapplicable for three independent reasons.

First, the City cannot invoke *Purcell* after repeatedly representing that a remedy in place by December 16 would allow effective relief. The district court scheduled its proceedings based on that representation, and the City accepted the schedule "without caveat." Op.9. The Supreme Court recently rejected a similar gambit. *Rose v. Raffensperger*, 2022 WL 3568483, at *1 (U.S. Aug. 19, 2022). There, as here, the district court set its schedule based on defendants' representations that the schedule would allow effective relief. So here, the City cannot now "fairly…advance" a *Purcell* argument "in light of [their] previous representations to the district court that the schedule on which the district court proceeded was sufficient to enable effectual relief." *Id.*

Second, no court has applied *Purcell* so early. *Purcell* applies only "on the eve" of the relevant election. *RNC v. DNC*, 140 S.Ct. 1205, 1207 (2020). This Court has indicated that four months reflects the "outer bounds" of *Purcell*'s application to date. *League of Women Voters of Fla. v. Fla. Sec'y of State* ("*LOWV*"), 32 F.4th 1363, 1371 (per curiam) (11th Cir. 2022). The district court's injunction came more than five months before the election, and the election is still more than four months away. Early voting does not begin until over *seventeen* weeks from now. *Contra Milligan*, 142 S.Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (voting begins "just seven weeks from now").

Below, the City failed to "identif[y] a single case where the Eleventh Circuit or the Supreme Court…applied *Purcell* under similar timeframes." Op.10. That remains true. Its reliance on *LOWV* and *Ardoin v. Robinson* is misplaced. When the district court issued its injunction in *LOWV*, "voting in the next statewide election was set to begin in *less* than four months." 32 F.4th at 1371.[4] Moreover, "local elections were ongoing," and the "injunction implicate[d] voter registration," which was "currently underway," risking immediate confusion. *Id.* These facts are starkly different from the still-months-away Jacksonville elections.

In *Ardoin*, meanwhile, the injunction came two-and-a-half-months before ballots had to be sent. Appellants' Br., 2022 WL 2317533, at *77. It enjoined a *statewide* plan, and implicated uncertainty on the merits pending *Milligan*. It's not clear *Purcell* played a role *at all* since the Supreme Court gave no reasoning when it stayed the case and held it in abeyance. 142 S.Ct. 2892 (2022). It's dubious *Ardoin* is *Purcell*-based given *Wisconsin Legislature v. Wisconsin Elections Commission*. There, the Supreme Court expressed no *Purcell* qualms as it struck down racially gerrymandered districts in a statewide plan about four months before the primary elections. 142 S.Ct. 1245 (2022).

[4] Rather than measuring from the injunction to when voting *begins*, as *LOWV* did, the City notes the time to election day. Mot.8. But even with this mischaracterization, *LOWV* provides no support. The injunction there issued *less* than five months before election day. *LOWV*, 2022 WL 969538, at *108 (N.D. Fla. Mar. 31, 2022). Here, it was *more* than five months before election day.

Third, none of the hardships courts have found relevant for *Purcell* purposes are present here. The district court noted: "The City has not shown any substantial risk of harm, confusion, or disruption in the March 2023 election." Op.134. That remains the case, despite counsel's conjecture. Mot.14-18. No statutory deadlines would have to be moved for relief; unlike the statewide injunction in *Milligan*, state and local officials won't need to coordinate; and the injunction here doesn't alter voting procedures in a way that courts have found would be a source of "judicially created confusion" in the past. *RNC*, 140 S.Ct. at 1207.

In short, the City seeks the *most aggressive* application of *Purcell* ever. It does so without showing significant risk of harm to electoral administration, and after the district court managed the case to meet the City's December 16 deadline. This Court should not reward that tactic.

III. The City's Attempt to Refashion *Purcell* Fails

In the face of these three independent reasons why *Purcell* does not apply, the City proposes a novel refashioning of the *Purcell* principle—insisting that it should protect a legislature from having to expeditiously remedy its own constitutional violation. That argument would functionally allow a legislature to manufacture *Purcell* problems by insisting that the time it needs for a remedy is just long enough to eclipse an election deadline. It also ignores the Supreme Court's directive that,

where a legislature is unable or unwilling to pass an interim remedy, courts should. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

Most fundamentally, these complaints are unmoored from reality. *The Council has passed a remedial plan*, because twenty-seven days was ample time to enact a plan. Twenty-seven days is *generous* relative to what other courts have done. *E.g.*, *Harris v. McCrory*, 159 F.Supp.3d 600, 627 (M.D.N.C. 2016), *aff'd sub nom*. *Cooper*, 137 S.Ct. 1455 (fourteen days); *Larios v. Cox*, 300 F.Supp.2d 1320, 1356 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004) (twenty); *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F.Supp.3d 1292, 1326 (N.D. Fla. 2016) (sixteen); *Vieth v. Pennsylvania*, 195 F.Supp.2d 672, 679 (M.D. Pa. 2002) (twenty-one); *Johnson v. Mortham*, 926 F.Supp.1460, 1494 (N.D. Fla. 1996) (thirty-five, plan passed in fifteen); *United States v. Osceola Cnty*., 474 F.Supp.2d 1254, 1254 (M.D. Fla. 2006) (thirty-five, plan passed in twenty-six).

The City falters as it seeks to shoehorn legislative convenience into *Purcell* by invoking ostensible "chaos" from the remedial timeline. Mot.14-18. First, there will be no chaos for SOE: the City has repeatedly said the Supervisor can run the elections with a remedy in place by December 16. That date is over three months before the election and will commence the preparation process. The City has never before said that it will divert resources from the November elections. *Contra* Mot.17.

Second, there will be minimal disruption, let alone "chaos," for candidates. Candidates can qualify via fee beginning in January. Until then, they can collect signatures from *anywhere* in Jacksonville, regardless of district, and need not submit district-specific signatures in a "year of apportionment." Op.127 n.69; *contra* Mot.8-9.

Finally, as the district court explained, "[t]he City has not shown any substantial risk of harm, confusion, or disruption in the March 2023 election." Op.134. *Contra* Mot.18. It is inherent in redistricting that voters may "reside in new districts," "vote in a new precinct," or vote "for a new councilmember or schoolboard member." Mot.18. No evidence indicates this decennial process (or previous court-ordered redistricting remedies) confuses voters in any way. Courts have repeatedly required legislatures to remedy constitutional and statutory violations on tighter timelines, *supra* Part III; there is no evidence this led to mass voter confusion.

City Charter provisions about ordinary districting processes cannot preclude a federal court from remedying constitutional violations enacted through that process—especially where, as here, those processes provided no protection from rampant constitutional violations. *Contra* Mot.14-15. To the extent the Council must "abandon the City Charter's and City Code's redistricting provisions," Mot.14, it is because the *Council* violated the Constitution and must remedy the error.

Similarly, Jacksonville's residency requirements for candidates cause no *Purcell* issue.[5] States and localities across the country have durational residency requirements, many of which are far longer than Jacksonville's. If these anti-carpetbagging provisions could preclude relief, federal courts would be unable to cure constitutional violations throughout the country without waiting for would-be candidates to move into districts they sought to represent. *See, e.g.*, N.C. CONST. art.II, §§6-7 (yearlong residency requirements for state legislature); *Covington*, 138 S.Ct. 2548 (redistricting case regarding North Carolina legislature).

The City's invocation of the July 14 date amounts to an argument that the City is entitled to a free pass to hold an election (to four-year terms) under unconstitutional lines: the July 14th date was 114 days from the Council's passage of the Plan. There is virtually no set of circumstances in which a preliminary injunction motion and interim remedial process could be completed in that timeframe—certainly not with the multi-months-long remedial process that the City insists is necessary. *Purcell* is not a get-out-of-jail-free-card.

IV. A Stay Is Not Warranted Even if *Purcell* Applies

Even if *Purcell* were expanded to apply to this case, Plaintiffs clear the bar set by Justice Kavanaugh's *Milligan* concurrence and discussed in *LOWV*.

[5] It is unclear why the City thinks this provision is "a dead letter," or that the district court conceded as much. Mot.9.

First, Plaintiffs have made a "clearcut showing" they are entitled to relief. In fact, the district court applied a heightened standard and concluded Plaintiffs had made a "clear showing" that relief was "definitely demanded." Op.134. The City does not meaningfully call that into question, instead presenting a hodgepodge of meritless quibbles. *Supra* Part I.A.

Second, the City concedes Plaintiffs face irreparable harm if a stay is granted. Mot.6-7.

Third, Plaintiffs have not unduly delayed. As the district court explained: "given Plaintiffs' high evidentiary burden and the voluminous record they developed, including the comprehensive reports of two experts…Plaintiffs were moving expeditiously under the circumstances in compiling their evidence." Op.130. Racial gerrymandering claims are fact-intensive and often involve expert analysis. Here, Plaintiffs had to examine the direct and circumstantial evidence from four decades of redistricting, due to the core preservation defense. At no point has the City cited a *single* case in which a comparable timeline was held to constitute undue delay.

The City also advances the remarkable "delay" argument that its *past* constitutional violations preclude injunction of the *new* irreparable harm. Mot.13. Plaintiffs challenged the Enjoined Plan shortly after it was enacted. This Plan "inflicts a new harm on these Plaintiffs, and it is the actions of the current City

Council in passing this Plan…which warrant injunctive relief." Doc.62 at 9-10. Plaintiffs *couldn't* have sought relief before the Plan was passed. *Benisek v. Lamone*, Mot.13—where plaintiffs waited *years* to challenge a plan—doesn't compare to this case, where Plaintiffs took weeks.

Finally, implementing a remedial plan under the timeline ordered by the district court would not create "significant cost, confusion, or hardship." The district court extensively analyzed the City's claimed harms, and correctly concluded that none of them rose to the level *Purcell* and its progeny address. *Supra* Part II. Indeed, even if the December 16 representation would not preclude a *Purcell* analysis, it certainly shows that a remedy by that date will not cause "significant cost, confusion, or hardship"—if it would, the Supervisor would not have made the representation he did.

Indeed, the most chaotic outcome here would be to stay the district court's Order: the injunction received substantial public attention; the remedial process has garnered significant public comment; the Council has passed an interim plan. Reverting to the unconstitutional lines risks sowing confusion.

V. *Merrill v. Milligan* Will Not Salvage the Unconstitutional Districts

The City also suggests the Supreme Court's forthcoming decision in *Merrill v. Milligan* might change the legal landscape governing this case. Mot.19-20. Not so. *Milligan* will do nothing to alter the law relevant to this case. *Milligan* is not a

Fourteenth Amendment racial gerrymandering case; instead, it involves a claim under VRA §2. 142 S.Ct. 1105 (2022). Any change in §2 doctrine will not disturb the district court's preliminary injunction ruling, because "[t]he City does not contend that the VRA justifies the shape of the Challenged Districts or that it considered any evidence pertinent to that issue." Op.14 n.10.[6] *Milligan* will have no bearing on what the City has said is its sole defense on the merits: that race did not predominate in district-drawing. Further, the City has asserted that §2 is not an issue in the remedial phase. On the City's own view, then, *Milligan* affects *no part* of this process.

The City points to no other racial gerrymandering claim stayed pending *Milligan*. In fact, in *Wisconsin Legislature*, the Supreme Court reversed racially gerrymandered districts a month after it stayed *Milligan*. 142 S.Ct. 1245. Other racial gerrymandering cases continue apace. *E.g.*, *S.C. State Conf. of NAACP v. Alexander*, No. 3:21-cv-03302 (D.S.C.); *Finn v. Cobb Cnty. Bd. of Elections & Registration*, No. 1:22-cv-02300 (N.D. Ga.).

The City cannot show the district court abused its discretion in declining to stay on these grounds. *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d

[6] If anything, *Milligan* will make it *harder* to justify the type of race-based decisions the Council made.

1284, 1288 (11th Cir. 1982) (abuse-of-discretion review of stay decision pending outcome of other case).

CONCLUSION

For the foregoing reasons, the Court should deny the City's motion.

Dated: November 4, 2022

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CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27(d)(2)(A) because it contains 5,179 words, excluding the parts that can be excluded. This motion also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word, 14-point Times New Roman font.

Dated: November 4, 2022

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No. 22-13544

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JACKSONVILLE BRANCH OF THE NAACP, *et al.*,

Plaintiffs-Appellee,

v.

CITY OF JACKSONVILLE, *et al.*,

Defendant-Appellants.

On Appeal from the United States District Court
for the Middle District of Florida, No. 3:22-cv-493 (Morales Howard, J.)

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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CERTIFICATE OF INTERESTED PERSONS

Under Federal Rule of Appellate Procedure 26.1 and this Court's Local Rule 26.1, Plaintiffs-Appellees certify that the CIP contained in Appellants' Emergency Motion to Stay is complete.

CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1, Plaintiffs-Appellees certify that the ACLU of Florida Northeast Chapter; Florida Rising Together, Inc.; Jacksonville Branch of the NAACP; and Northside Coalition of Jacksonville, Inc. each has no parent corporation, and no publicly held corporation owns 10% or more of any of those entities' stock. The remaining Plaintiffs-Appellees are individual persons.

Under this Court's Local Rule 26.1-1, Counsel for the Plaintiffs-Appellees further certify that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: November 4, 2022

/s/ Daniel J. Hessel‡

Daniel J. Hessel

Counsel for Plaintiffs-Appellees

‡ *Federal practice only*