

22-13544

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JACKSONVILLE BRANCH OF THE NAACP, et al.

Plaintiffs-Appellees,

v.

CITY OF JACKSONVILLE, et al.

Defendants-Appellants,

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

REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Per Rule 26.1 and Circuit Rule 26.1, Appellants certify that the CIP contained in their initial motion is complete.

Dated: November 5, 2022

/s/ Mohammad O. Jazil
Mohammad O. Jazil
Counsel for Defendants-Appellants

ARGUMENT

The City and Supervisor Hogan stand by the arguments made in their emergency motion—especially the import of *Merrill v. Milligan*. In the interest of time, however, they highlight these four points in reply:

First, Plaintiffs make much of the City and Supervisor Hogan not arguing about their likelihood to succeed on the merits. While untrue, Mot. at 11-12, the City and Supervisor Hogan don't need to make an argument on the merits. *Purcell* says that *Plaintiffs* must be absolutely right on the merits—they must have a clear-cut case on the merits. They're not, and they don't. Mot. at 10-13. *Merrill* will likely tell us what the absolute right answer is. Therefore, waiting is more appropriate.

Second, notably downplayed in Plaintiffs' response is *their* delay in filing *their* motion for preliminary injunction. Even the district court stated that “months” were “lost” due to Plaintiffs' delay, Doc.24 at 4-5, and that the delay “weigh[ed] against an injunction,” Op.130. Under *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) that's significant. Under *Purcell*, that's fatal, *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1372 n.8 (11th Cir. 2022) (“*all*” *Purcell* factors, including a consideration of delay, “must be satisfied to justify an injunction” (emphasis in the original)), especially considering the upcoming March 2023 elections and election-related dates, *see* Important Dates and Deadlines, Duval County Supervisor of Elections (last visited Nov. 5, 2022), <https://bit.ly/3DwHqYY> (noting important election-related dates, including oversees voting and early voting).

Third, Plaintiffs say that the City Council has already passed a remedial map for the district court's consideration. *E.g.*, Resp. at 1. But consider the Councilmembers' statements concerning the rushed process and compromises made during that process. "I'm hurting right now," says Councilmember Gaffney. David Bauerlein & Hanna Holthaus, *Jacksonville City Council Approves a Proposed Redistricting Map After Twists and Turns* (Nov. 4, 2022), <https://bit.ly/3fvREkJ>. "It's hard," says Councilmember DeFloor. *Id.* "It's unrealistic and it's unfair to require this council to start from scratch," says Councilmember Priestly Jackson. The truncated process that led to those statements is likely to "erod[e] public confidence," *DNC v. Wis. State Legis.*, 141 S. Ct. 28, 30 (2020) (Gorsuch, J., concurral), exactly what the *Purcell* principle seeks to prevent.

Finally, the Supreme Court's one-paragraph order in *Rose v. Raffensperger*, Case No. 22A136 doesn't require a contrary result. In that case, counsel for the Secretary of State specifically said that "we won't make an appeal based on *Purcell*." *Rose v. Raffensperger*, 2022 WL 3572823, *17 (11th Cir. Aug. 12, 2022) (Rosenbaum, J., dissenting) (cleaned up). There was no such waiver here. *See* Mot. at 19. At the preliminary Zoom hearing in this case, the City specifically told the district court that any redistricting process would take three months. Doc.27 at 14:11-14. And, throughout the proceedings below, the "Defendants' point [was] that it will be nearly impossible for a newly-crafted and Court-approved district map to be in place by December 16, 2022," and that "even if it could be, the undue burdens, confusion and hardships associated with doing so weigh against implementing new lines at this time." Doc.45 at 12.

Therefore, the emergency motion to stay should be granted.

Dated: November 5, 2022

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CERTIFICATE OF COMPLIANCE

This motion complies with Rule 27(d)(2)(A) because it contains 522 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 2016 in 14-point Garamond font.

Dated: November 5, 2022

/s/ Mohammad O. Jazil

CERTIFICATE OF SERVICE

I filed this motion with the Court via ECF. I also served via e-mail a copy of this motion on all counsel of record identified in the service list that follows.

Dated: November 5, 2022

/s/ Mohammad O. Jazil

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