

I n T h e

**United States Court Of Appeals For The Fifth Circuit**

PRESS ROBINSON; EDGAR CAGE; DOROTHY NAIRNE; EDWIN RENE SOULE; ALICE WASHINGTON;  
CLEE EARNEST LOWE; DAVANTE LEWIS; MARTHA DAVIS; AMBROSE SIMS; NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE LOUISIANA STATE CONFERENCE, ALSO KNOWN AS NAACP;  
POWER COALITION FOR EQUITY AND JUSTICE,

*Plaintiffs – Appellees,*

v.

KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR LOUISIANA,  
*Defendant – Appellant,*

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,  
*Intervenor Defendants – Appellants.*

EDWARD GALMON, SR.; CIARA HART; NORRIS HENDERSON; TRAMELLE HOWARD,  
*Plaintiffs – Appellees,*

v.

KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR LOUISIANA,  
*Defendant – Appellant,*

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,  
*Movants – Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF LOUISIANA, BATON ROUGE: 053N-3 : 3:22-CV-211; 053N-3 : 3:22-CV-214  
THE HONORABLE SHELLY DECKERT DICK, U.S. DISTRICT JUDGE

**EMERGENCY MOTION FOR STAY PENDING APPEAL**

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**CERTIFICATE OF INTERESTED PERSONS**

**No. 22-30333 *Robinson v. Ardoin***

The undersigned counsel of record certifies pursuant to Fifth Circuit Rule 27.3 and Rule 28.2.1 that the following listed persons and private entities have an interest in the outcome of this case, including all private practice lawyers and private law firms currently engaged in this litigation. Pursuant to the fourth sentence of Rule 28.2.1, government officials and entities are not included in this certificate. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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## INTRODUCTION AND NATURE OF HARM

Over three weeks after the conclusion of a week-long preliminary injunction hearing, and despite impending elections deadlines, the district court enjoined the use of Louisiana’s Congressional districts. At every turn, the injunction ignores both controlling precedent and testimony from election officials responsible for the administration of elections. Instead, the district court cherry picks evidence, relies upon testimony of a lawyer for the Governor who has never administered an election in Louisiana, and discounts established Fifth Circuit and Supreme Court precedent. For the following reasons, this Court’s immediate intervention is necessary to vindicate Louisiana’s interest in the administration of an orderly election, to prevent widespread voter confusion, and to eliminate catastrophic harm to Louisiana voters.

First, the district court erred because Defendants are likely to succeed on the merits. The district court ignored controlling precedent to sidestep the fact that Plaintiffs’ illustrative plans are racial gerrymanders which cannot satisfy the first (or any other) *Gingles* condition. *Sensley v. Albritton*, 385 F.3d 591, 597 (5th Cir. 2004); *Cooper v. Harris*, 137 S. Ct. 1455, 1468-69 (2017). The district court also ignored controlling precedent demonstrating that Plaintiffs’ illustrative plans wrongly combine “far-flung segments of a racial group with disparate interests.” *LULAC v. Perry*, 548 U.S. 399, 433 (2006). Instead, the district court twisted the burden of proof criticizing Defendants for failing to present evidence proving the illustrative plans did not combine coherent communities of interest. (D.E. 173, 100-

101). The district court also ignored that the third *Gingles* condition cannot be established “[i]n areas with substantial crossover voting.” *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009). In order to reach this conclusion, the district court overlooked the “crucial difference between legally significant and statistically significant racially polarized voting.” *Covington v. North Carolina*, 316 F.R.D. 117, 167, 169–70 (M.D.N.C. 2016), *aff’d*, 137 S. Ct. 2211 (2017). The district court failed to cite any evidence supporting the notion that a reasonably compact group of black voters can constitute a majority in a second single-member congressional district and that any such district must be drawn with a black voting age population over 50% to provide black voters with an equal opportunity to elect their preferred candidate in that district.

Second, the district court refused to stay this case in light of the Supreme Court’s stay order in *Merrill v. Milligan* (Sup. Ct. 21-1086). The claims and defenses (and, for good measure, many of the Plaintiffs’ counsel) in *Merrill* are essentially identical to the claims and defenses in this case. Accordingly, staying the proceedings in the instant case in light of *Merrill* is in the best interests of the parties and the judicial system. If the Supreme Court finds that Plaintiffs’ illustrative districts in *Merrill* amount to racial gerrymanders, or are not required under the VRA, or otherwise alters the legal standards under the VRA, then the upcoming remedial phase and appeals on the merits in the instant case will constitute a waste of time of the Court and the parties, not to mention a waste of funds of the taxpayers of Louisiana.

Finally, the district court has erroneously intervened into state election laws in defiance of the *Purcell* doctrine. Tellingly, the injunction was issued 155 days before the November 2022 election, and 110 days prior to the date ballots must be mailed overseas pursuant to federal law. This Court has previously indicated that lower courts “interven[ing] and alter[ing] the election rules” 168 days before an election, is an “error” that must be corrected. *Texas Democratic Party v. Abbott*, 961 F.3d 389, 412 (5th Cir. 2020) (*app. to vacate stay den’d*, 140 S. Ct. 2015). In erroneously intervening, the district court largely ignored the testimony of Louisiana’s Commissioner of Elections, choosing instead to rely on a witness who has never administered elections. The district court also repeatedly and erroneously asserted that the election is “6 months” away, when in fact, the federal election is 5 months away on November 8, 2022.

The district court has now refused to grant Defendants’ Joint Motion for Stay. Therefore, Secretary of State Ardoin respectfully requests an emergency stay pending appeal by **Tuesday, June 14, at 12:00pm**. Secretary Ardoin also requests that a temporary administrative stay be immediately issued until such time as this Court can rule on his application for a permanent stay of the district court’s preliminary injunction. Under the circumstances of this case, a stay is necessary to prevent manifest injustice to the citizens of Louisiana.

## **ARGUMENT**

### **Standard of Review**

Under the “traditional” standard for a stay pending appeal, a court considers four factors: “(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).

However, in election cases where an injunction has issued close to an upcoming election, the standard is arguably more relaxed and the burden shifts to the plaintiff. Under those circumstances, plaintiffs must show that “(i) the underlying merits are entirely clear-cut 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.” *Merrill*, 142 S. Ct. at 881. A stay should be issued under any of these standards.

### **Discussion**

#### **I. Defendants will succeed on the merits.**

Under current precedent the district court’s order is unlikely to withstand appellate scrutiny and Defendants will succeed on the merits. The reason

Defendants will succeed on the merits is fully outlined in the Joint Proposed Findings of Fact and Conclusions of Law, which Secretary Ardoin incorporates here by reference. Secretary Ardoin will focus here on several egregious errors by the district court that alone should be fatal to the court's order.

First, Plaintiffs' illustrative plans are plainly racial gerrymanders. *Sensley*, 385 F.3d at 59; *Miller v. Johnson*, 115 S. Ct. 2475 (1995). During the 1991 redistricting cycle, after repeated refusals by the DOJ to preclear a plan drawn by the Georgia General Assembly without a third majority-minority district, the General Assembly finally relented and enacted the ACLU's "max-black" plan. *Id.* at 2484. The hallmark of the ACLU's "max-black" plan was the "Macon/Savannah trade" which moved the black population of Macon into a new district, thereby creating a district that connected "black neighborhoods of metropolitan Atlanta to the poor black populace of Coastal Chatham County" near Savannah. *Id.* This new district was 260 miles long and "worlds apart in culture." *Id.* The Supreme Court found this district was a "geographic monstrosity" tying majority black population centers at the periphery of Atlanta, Augusta, and Savannah with a sparsely populated rural area called "plantation country." *Id.* In striking down this "max-black" strategy, the Supreme Court held that only "a shortsighted and unauthorized view of the Voting Rights Act... which has played a decisive role in redressing some of our worst

forms of discrimination” could support “the very racial stereotyping the Fourteenth Amendment forbids.” *Id.* at 2494.

Plaintiffs’ illustrative plans bear striking similarities to the ACLU’s 1991 “max-black” plan. The plans are almost the exact same length as the Georgia district struck down in *Miller*. Moreover, all the illustrative plans take urban and suburban areas of East Baton Rouge Parish (“EBR”) and connect them to far away northeastern parishes which have a largely rural and agrarian economy. These configurations have never been seen before in any lawful district.

These configurations also create a likely unlawful districting scheme because there is no evidence that EBR has legally significant racially polarized voting. While the district court’s order confuses the distinction between statistically significant racially polarized voting and legally significant racially polarized voting, the Supreme Court is clear that polarized voting becomes legally significant only when there is “a white bloc vote that normally will defeat the combined strength of minority support plus white ‘crossover’ votes....” *Thornburg v. Gingles*, 478 U.S. 30, 55-56 (1986). Plaintiffs failed to prove that white voters voted as a bloc to defeat the combined strength of minority voters plus white crossover voters, and the district court ultimately ignored testimony showing there was often significant white crossover voting in EBR resulting in the election of minority preferred candidates.

Second, the district court did not address Defendant’s arguments under *Cooper* where the Supreme Court struck down North Carolina’s CD1, finding that the inclusion of the urban area of Durham was an attempt to reach an impermissible racial target. 137 S. Ct. at 1466-1472. The *Cooper* Court held that electoral history provided “no evidence that a §2 plaintiff could demonstrate the third *Gingles* prerequisite- effective white block voting” in Durham. *Id.* at 1472. In *Cooper*, the Supreme Court held that the victories by preferred candidates occurred because the district’s white population did *not* vote sufficiently as a bloc to thwart black voter preference. *Id.* This doomed the state’s efforts to redraw CD1 with a majority black population using the black population in Durham because “in areas with substantial cross over voting” §2 plaintiffs cannot prevail because they cannot establish the 3<sup>rd</sup> *Gingles* prong. *Id. citing Strickland*, 556 U.S. at 24. All of Plaintiffs’ illustrative plans make the same legal mistake—they use black population in EBR, where there is substantial crossover voting, to achieve the 50% racial target needed to draw a second majority black district. Plaintiffs’ mapdrawer conceded that the second majority black district could not have been drawn without using black population in EBR. FOF 148, Appendix Ex. 13. This is indistinguishable from North Carolina’s impermissible use of Durham’s black population to form the basis for a majority black district and dooms Plaintiffs’ claims.

Finally, the district court completely failed to grapple with the *Gingles* geographic compactness requirement as explained by the Supreme Court in *LULAC*. The district court simply relied on Plaintiffs’ experts’ mathematical compactness calculations purporting to show that the illustrative plans met certain scores. But this reduces the compactness inquiry to “style points.” *LULAC*, 548 U.S. at 434. “The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.” *Id.* at 433 (citation omitted). An illustrative district is not compact if it adjoins disparate communities on the basis of race, *see Sensley*, 385 F.3d at 597, notwithstanding their “different characteristics, needs, and interests,” *LULAC*, 548 U.S. at 434. A district joining urban and suburban Black residents in EBR with rural Black residents of the delta region up to one-hundred eighty miles away, COL ¶487 Appendix Ex. 13, is precisely the type of district *LULAC* and *Sensley* found non-compact. *See Sensley*, 385 F.3d at 597 (finding a district joining discrete communities “roughly 15 miles apart from one another” failed the first precondition).

## **II. This Case Should be Stayed Pending the Outcome of *Merrill v. Milligan*.**

On February 7, 2022, the United States Supreme Court announced that it will consider issues associated with claims identical to the claims in this case in *Merrill v. Milligan* (Sup. Ct. 21-1086).<sup>1</sup> The specific legal issues common to *Merrill* are

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<sup>1</sup> This case was consolidated with *Caster v. Merrill* (Sup. Ct 21-1087), which raised largely the same issues and was heard at the same time as *Merrill v. Milligan*.

dispositive issues in the instant case. Plaintiffs here rely upon the same statutes, arguments, and in some instances share the same counsel and experts as *Merrill*.

The Court considers three factors in determining whether to stay a case pending outcome of other litigation that could have a dispositive effect on the case at hand. *Coker v. Select Energy Servs., LLC*, 161 F. Supp. 3d 492, 495 (S.D. Tex. 2015). In weighing the various competing interests, courts consider: (1) the potential prejudice to plaintiffs from a brief stay; (2) the hardship to defendants if the stay is denied; and (3) the judicial efficiency in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay. *Id.*

Staying the proceedings in the instant case in light of *Merrill* is in the best interests of the parties and the judicial system. If the Supreme Court finds that Plaintiffs' illustrative districts in *Merrill* amount to racial gerrymanders, or are not required under the VRA, or otherwise alters the legal standards under the VRA, then the upcoming remedial phase and merits appeal in the instant case will constitute a waste of time of the Court and the parties, not to mention a waste of funds of the taxpayers of Louisiana. A stay pending *Merrill* is warranted under these circumstances. *See Bank of La. v. Fed. Deposit Ins. Corp.*, 919 F.3d 916, 921 (5th Cir. 2019) (noting the court "stayed proceedings pending the Supreme Court's decision in *Lucia v. SEC*"); *Louisiana ex rel. Guste v. Roemer*, 949 F.2d 145, 150 (5th Cir. 1991) (noting the court stayed proceedings "pending a resolution by the

United States Supreme Court of *Ayers v. Mabus*”); *Creasy v. Charter Commc’ns, Inc.*, 489 F. Supp. 3d 499, 511 (E.D. La. 2020) (“Because the viability of the plaintiffs’ surviving claim will turn in large part on the Supreme Court’s forthcoming decision in *Facebook, Inc. v. Duguid*, staying this action in wait of such a decision is the best course.”).

**A. The Dispositive Nature of *Merrill* Warrants a Stay.**

*Merrill* squarely presents the same fundamental questions confronted in this litigation. The appellants’ merits brief in *Merrill* characterizes the question presented for the Supreme Court as:

1. Whether the 2021 Alabama Congressional redistricting plan violated §2 of the Voting Rights Act, 52 U.S.C. §10301, as the District Court determined that it was likely that it did, in light of Plaintiffs’ evidence showing that it was possible to draw, not one majority minority district, as it had existed for decades but 2, majority minority districts, by ignoring preexisting districts, and prioritizing racial considerations over race-neutral districting criteria.

Furthermore, the facts in *Merrill* are essentially identical to the facts here. In *Merrill*, Plaintiffs, with largely the same counsel as are representing Plaintiffs here, alleged that because the statewide population of Alabama was such that a second majority-minority district could be drawn, the VRA requires it be drawn. This is the same claim brought by Plaintiffs here. The *Merrill* defendants countered that Alabama’s districts were based on core retention of the previous districting plans for the last few decades—the same defense raised in the instant case—and that the

illustrative plans proposed by Plaintiffs prioritized race over traditional districting principles. The record in this case is clear that Plaintiffs’ mapdrawers, including Mr. Cooper, also an expert for Plaintiffs in *Merrill*, prioritized race in drawing their illustrative plans. Based on the issues raised and the similarity of the facts, it is likely the Supreme Court’s decision in *Merrill* will be dispositive of the issues here, including whether Plaintiffs can show a likelihood of success on the merits. In fact, this Court need look no further than the fact that the district court cited the corresponding district court case in *Merrill* 16 times in its preliminary injunction opinion.

**B. Judicial Economy Warrants a Stay.**

Judicial economy is best served by staying any further proceedings in this case until after the Supreme Court issues its opinion in *Merrill*. There is little point to re-drawing districts or proceeding on an appeal on the merits with all of the public confusion and expense that comes with the same as the Supreme Court is hearing and considering a case that will be controlling on any analysis of the facts and law. *See Greco v. NFL*, 116 F.Supp. 744, 761 (N.D. Tx. 2015) (“appropriate conservation of judicial resources” and “risk of duplicative litigation” weighed in favor of a stay when a pending Fifth Circuit case would “very likely bear on this case”).

**C. The Prejudice to Plaintiffs in Granting a Stay is Minimal, While the Prejudice to Defendants in Denying a Stay Would be Severe.**

The remedial phase ordered by the district court will be highly publicized and expend significant taxpayer resources. It will also cause widespread voter confusion

for Louisianians who have already received updated voter cards informing them of their new congressional district. Awaiting guidance while the Supreme Court is reviewing controlling and likely dispositive cases best serves the public welfare. Furthermore, the hardship to Plaintiffs is minimal. Plaintiffs too benefit from resolving this matter after the Supreme Court rules in *Merrill*, because neither party will have to pay for continued litigation, when the law in this matter will be resolved in the near future.

Furthermore, because it “is always in the public interest to prevent the violation of a party’s constitutional rights,” *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014), the risk that the injunction actually inflicts, rather than protects against an equal-protection violation, cannot be justified. If Plaintiffs ultimately do not prevail on the merits, then the Court’s order will have inflicted a staggering constitutional injury.

To the extent Plaintiffs argue that conducting elections under an “illegal” plan is a hardship, this grossly overstates their harm. Courts order elections to go forward under unconstitutional, or legally suspect districting schemes regularly, when faced with a short time before an election *See Covington*, 316 F.R.D. at 177 (refusing to enjoin election despite a final judgment against certain North Carolina legislative districts because “such a remedy would cause significant and undue disruption to North Carolina’s election process and create considerable confusion, inconvenience,

and uncertainty among voters, candidates, and election officials.”); *Upham v. Seamon*, 456 U.S. 37, 44 (1982) (holding that despite error by the lower court, the interim plan should be used). Accordingly, this matter should be stayed.

### **III. The Purcell Doctrine Requires a Stay of the District Court’s Order.**

The *Purcell* doctrine also requires a stay of the district court’s order. The Supreme Court of the United States held in *Purcell v. Gonzalez*, “[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.” 549 U.S. 1, 4-5 (2006) (per curiam). Since this seminal opinion, the Supreme Court has regularly stayed injunctions of challenged election laws. See *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application); *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); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018)(per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

Even in a normal election cycle, “[r]unning elections state-wide is extraordinarily complicated and difficult.” *Merrill*, 142 S. Ct. at 880. Elections officials must navigate “significant logistical challenges” that require “enormous advance preparations.” *Id.* But, the 2022 election cycle has been far from a “normal”

cycle in Louisiana, as the Covid-19 pandemic delayed census results, exacerbating the challenge of drawing new districts and conducting elections under these new districts, statewide and parishwide.

The 2022 election cycle already underway is no exception. In his concurring opinion in *Merrill*, Justice Kavanaugh invoked the *Purcell* doctrine for the proposition that courts “should not enjoin a state’s election laws in the period close to an election.” 142 S. Ct. at 879-880. This is because “filing deadlines need to be met” and candidates need to “be sure what district they need to file for” or even determine “which district they live in.” *Id.* An increased risk of voter confusion resulting from last minute election changes is also a concern. *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 42 (2020) (DNC) (Kagan, J., dissenting) (“Last-minute changes to election processes may baffle and discourage voters...”).

The facts regarding election administration and the election chaos the district court’s injunction brings were identified by Louisiana’s Commissioner of Elections, Sherri Hadskey—who has 30 years of experience as an elections administrator. Particularly, Ms. Hadskey testified:

- Substantial administrative work has already been completed on administration of the Enacted Congressional Plan. 5/13 Tr. 31:5–15.<sup>2</sup> In order to implement a new congressional plan Ms. Hadskey’s office would

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<sup>2</sup> The cited transcripts were completed by the parties’ court reporter to meet the district court’s schedule. Because the official transcripts are not available, these transcripts are submitted in the interim. The May 13 transcript is filed as appendix exhibit 22.

have to reassign voters who are in new congressional districts to their new districts. The Secretary of State's office has already reassigned voters in the fifteen Louisiana parishes that required changes under the enacted plan in the Secretary of State's ERIN system. Moreover, approximately 250,000 voting cards have been sent to voters whose parishes changed districts following reapportionment. *Id.*; Those voters have been notified of the specific congressional district in which they will be voting this year. *See id.*

- Prior to any qualifying deadline, Ms. Hadskey's office must notify voters (and potential candidates) of which districts they live in—which has already been done under the Enacted Plan by the mailing of the new voter cards. *Id.* at 32:2–15. Candidates and voters need adequate notice of these districts to ensure they have enough time to decide whether to attempt to qualify by petition or, in the case of voters, who to support. *Id.* If congressional candidates do not meet the original June 22 qualification deadline, the candidates will have to pay a filing fee and qualify by between July 20–22, 2022. *Id.* at 32:16–20.
- Between now and July 20, Ms. Hadskey's office must complete several tasks to ensure timely and accurate administration of the 2022 election in Louisiana for all offices. *Id.* at 32:21–36:5. These activities include: (1) implementation of complicated school board and municipal redistricting plans; (2) conducting a June 4 special election in Calcasieu Parish due to a redistricting error; (3) conducting yearly maintenance on scanners and voting equipment; (4) processing an estimated 800 legislative acts when the latest session ends; (5) completion of a statewide voter registration canvas to maintain the voter rolls; and (6) complete the voter canvas already began on May 23, 2022 which requires determination of whether a voter's address or registered name has changed. *Id.* None of these tasks are straightforward and all are under already limited time constraints.

Implementing a new congressional districting plan would create undue hardship and chaos for Louisiana and its voters. The deadline to mail ballots is merely three months away, and the November election is just five months away (a fact that the district court's order repeatedly misconstrues as six months). And in this now extremely truncated time period, Secretary Ardoin will be required to implement a new

plan, starting the entire process over again. The Order also reduces the amount of time registrars have to program the map, error check, and notify voters and potential candidates of their new districts – which is less than 20 days between the deadline imposed on the legislature and the court-created July 8 petition qualifying deadline.

The hardship here is undeniable. Ms. Hadskey testified that if the Secretary of State were forced to implement one of Plaintiffs’ illustrative plans, at a minimum the following tasks would need to be completed by July 20: (1) undoing the coding of the fifteen parishes already completed for the enacted plan; (2) coding the approximately twenty-five parish changes under an illustrative plan, and (3) timely notifying voters and potential candidates of those changes. 5/13 Tr. 36:6-38:2. At each stage, Ms. Hadskey testified that the process would be rushed, which gives her significant concern that voters’ information could be coded incorrectly, leading to incorrect information on ballots used in the election. *Id.* at 37:14-38:2. This task would be further complicated if an illustrative map splits precincts, as the registrar of voters for each parish is responsible for moving voters in split precincts by hand. *Id.* at 38:3–12. In addition to regularly scheduled early voting, Ms. Hadskey testified that overseas ballots must be mailed no later than September 24, 2022, under the federal UOCAVA deadline. *Id.* at 45:1-10. While the district court’s order blithely states that completing these tasks should be no problem, given the amount of time it took to code the current Congressional plan, this ignores that the current congressional plan was based on core

retention, meaning a fairly low number of voters actually needed to be reassigned. It also completely ignores that Ms. Hadskey and her staff will be required to implement a new plan at the same time they are engaged in all of the other tasks enumerated above. This unanticipated multi-tasking produces a clear risk of error and is exactly what the *Purcell* doctrine is designed to avoid.

In addition to the confusion created by reassigning voters, there is a real risk that such a compressed time frame could lead to the issuance of incorrect ballots, and even possibly an invalidated election. This is not a theoretical concern. Ms. Hadskey testified that this scenario has already occurred due to a compressed timeframe this cycle. For example, in Calcasieu Parish, late census information caused a rushed entry of voter information and led to entry of incorrect voter information, ultimately resulting in the issuance of incorrect ballots. *Id.* at 38:3–21. As a result, a judge required state and local officials to hold a special municipal election in Calcasieu Parish to remedy the issue. *Id.* Ms. Hadskey expressed great concern that the issues Calcasieu Parish experienced will arise again, but on a larger scale, if a new congressional plan is implemented by the Court in June or July—especially considering the fact that there are nineteen (19) new registrars across the state who have not handled decennial redistricting before. 5/13 Tr. at 38:22-39:4. Ms. Hadskey expressed her great concern as to whether her office could administer an error-free election on a new congressional plan within the next few months:

I'm extremely concerned. I'm very concerned because when you push – when you push people to try and get something done quickly and especially people that have not done this process before, the worst thing you can hear from a voter is I'm -- I'm looking at my ballot and I don't think it's right, I think I'm in the wrong district or I don't feel like I have the right races.

The other thing is notifying the voters. I think we all can relate to we know who our person is that we voted for Congress or for a school board or any race; and when you get there and you realize it's not the person you are looking for, you're thinking that's who you are going to vote for and then you find out, wait, I'm in a different district. If we don't notify them in enough time and have that corrected, it causes confusion across the board, not just confusion for the voters, but also confusion for the elections administrators trying to go back and check and double check that what they have is correct.

*Id.* at 40:12-41:15

Based on Ms. Hadskey's testimony, it is clear that the district court's injunction “require[s] heroic efforts by those state and local authorities in the next few weeks— and even heroic efforts likely would not be enough to avoid chaos and confusion.” *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). That is hardly contested; Plaintiffs' evidence *supports* it. Plaintiffs' “election-administration” witness, Matthew Block, confirmed as much. As an initial matter, Mr. Block was a curious choice as an “election administration” witness as he has never been an elections commissioner, never served on a parish board of supervisors, never sat on a state elections board, and never meaningfully participated in elections administration. 5/11 Tr. 28:5–29:9.<sup>3</sup> The premise of Mr. Block's testimony was that the election might be

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<sup>3</sup> Appendix Exhibit 20.

administered *sans* disaster if the election date, November 8, 2022, is pushed back, as occurred with state legislative elections after Hurricane Ida. 5/11 Tr. 21:17–22:21. But that premise fails: Louisiana may move its state election dates, but not the *federal* election date because Congress codified that date, *see* 2 U.S.C. §§ 1 and 7, under its Elections Clause authority. *Foster v. Love*, 522 U.S. 67, 69 (1997).

Furthermore, Mr. Block testified that, even if the election date could move, elections administration would be a “huge challenge.” 5/11 Tr. 23:1–2. This alone concedes that under the *Purcell* doctrine it’s too late to change Louisiana’s Congressional districts. The *Purcell* doctrine does not afford federal district courts free reign to meddle with state election laws so long as the burdens they impose fall short of the “impossible.” Quite the opposite, *Purcell* requires “that federal district courts ordinarily should not enjoin state election laws in the period close to an election,” because “[l]ate judicial tinkering with election laws *can* lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill*, 142 S. Ct. at 881. Simply put, *Purcell* forbids injunctions that act like the natural disasters Mr. Block testified about.

Moreover, controlling precedent from this Court confirms this. *See Veasey v. Abbott*, 830 F.3d 216, 243 (5th Cir. 2016) (remanding §2 case for new trial but ordering that no remedy could be enforced until after the election, which was four months away); *Abbott*, 961 F.3d at 412, *motion to vacate den’d*, 140 S. Ct. 2015

(2020) (staying enforcement of a preliminary injunction that would have resulted election law changes prior to the November 3, 2020 election.) In *Abbott*, the district court issued the injunction on May 19, 2020, and this Court stayed the order on June 4, 2020 holding the district court had “erroneously intervene[ed] and alter[ed] the election rules so close to the election date” *Id.* The injunction in *Abbott* came 168 days before the November 2020 election, and this Court’s stay was issued 152 days prior to the election. Here, the injunction comes 155 days before the November 2022 election date. If 168 days was too short in 2020, 155 days is certainly too short today. This Court should follow the same logic it applied in *Abbott* and correct the District Court’s “erroneous[] interven[tion].”

**CONCLUSION AND RELIEF REQUESTED**

For the foregoing reasons, Secretary Ardoin respectfully requests the Court grant the motion and stay the District Court’s June 6, 2022 Order pending the United States Supreme Court’s decisions on the dispositive issues in *Merrill v. Milligan* (Sup. Ct. 1086), or in the alternative until after the 2022 Congressional elections on the basis of the *Purcell* doctrine.

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**CERTIFICATE OF CONFERENCE**

On June 9, 2022, counsel for Appellant R. Kyle Ardoin, in his official capacity as the Louisiana Secretary of State, conferred via email with counsel for *Robinson* Plaintiffs-Appellees; counsel for *Galmon* Plaintiffs-Appellees; counsel for Intervenor Plaintiff-Appellee Louisiana Legislative Black Caucus; counsel for Legislative Intervenor Defendants-Appellants; and counsel for the State of Louisiana Intervenor Defendant-Appellant. *Robinson* Plaintiffs-Appellees, *Galmon* Plaintiffs-Appellees, and Intervenor Plaintiff-Appellee Louisiana Legislative Black Caucus are opposed to the stay requested in this Motion. Legislative Intervenor Defendants-Appellants and the State of Louisiana are unopposed to the requested relief.

/s/ John C. Walsh  
John C. Walsh  
*Counsel of Record for Defendant-Appellant R. Kyle Ardoin*

**CERTIFICATE OF COMPLIANCE WITH RULE 27.3**

I certify the following in compliance with Fifth Circuit Rule 27.3:

- Before filing this motion, counsel for Appellant contacted the clerk's office and opposing counsel to advise them of Appellant's intent to file this motion.
- The facts stated herein supporting emergency consideration of this motion are true and complete.
- The Court's review of this motion is requested by 12:00p.m. CST on Tuesday, June 14, 2022, or alternatively, Appellant requests a temporary administrative stay pending that review at the earliest possible date.
- True and correct copies of relevant order and other documents are attached in the Appendix to this motion, filed separately.
- This motion is being served at the same time it is being filed.

/s/ John C. Walsh  
John C. Walsh  
*Counsel of Record for Defendant-  
Appellant R. Kyle Ardoin*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on June 10, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

I further certify that, upon acceptance and request from the Court, the required paper copies of the foregoing will be deposited with United Parcel Service for delivery to the Clerk.

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**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

1. This brief complies with the type-volume limitation of FED. R. APP. P. 35(b)(2)(A) because this brief contains 5,128 words, excluding the parts of the brief exempted by FED. R. APP. P. 32.

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft® Word 2013 in 14-point font size in Times New Roman.

Dated: June 10, 2022

/s/ John C. Walsh \_\_\_\_\_

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