

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**ROBERT FOSTER; KATIE LIGON; KIRBY CARTER;
and JOHN WILLIAMS**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:26-CV-181-SA-JMV

**THE STATE OF MISSISSIPPI; THE STATE BOARD OF
ELECTION COMMISSIONERS; TATE REEVES, in his
official capacities as the Governor of Mississippi and a
Member of the State Board of Election Commissioners;
MICHAEL WATSON, in his official capacities as the
Mississippi Secretary of State and a Member of the State
Board of Election Commissioners; LYNN FITCH, in her
official capacities as the Mississippi Attorney General and a
Member of the State Board of Election Commissioners**

DEFENDANTS

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' RESPONSE IN OPPOSITION TO
THE DESOTO COUNTY NAACP AND DELTA SIGMA THETA'S
MOTION TO INTERVENE**

The DeSoto County Branch of the NAACP (the “DeSoto Branch NAACP”) and Delta Sigma Theta Sorority, Inc. (the “Sorority”) (together, the “NAACP Intervenors”) seek to intervene in this litigation to defend an unlawful, racially motivated, majority-minority subdistrict in DeSoto County. But the NAACP Intervenors can’t clear the first hurdle: They lack standing to intervene, and their proposed intervention is futile. And even if they could, they can’t meet any of the elements for intervention as of right, and they can’t adequately explain why this Court should grant permissive intervention. The motion to intervene should be denied.

LEGAL STANDARD

“There are two types of intervention in federal court: intervention as of right and permissive intervention.” *Fordel Mktg., LLC v. Melon Corp.*, 817 F. Supp. 3d 421, 430 (S.D. Tex. 2025). “Rule 24(a) governs interventions as of right.” *Id.* “If the party seeking intervention has not been

given an unconditional right to do so by federal statute, it must meet four requirements for intervention as of right set out by Rule 24(a)(2):

(1) the motion to intervene is timely; (2) the potential intervenor asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene; (3) the disposition of that case may impair or impede the potential intervenor's ability to protect her interest; and (4) the existing parties do not adequately represent the potential intervenor's interest."

Id. (quoting *Saldano v. Roach*, 363 F.3d 545, 551 (5th Cir. 2004)). "Failure to satisfy any one requirement precludes intervention of right." *Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm'ns of the Orleans Levee Dist.*, 493 F.3d 570, 578 (5th Cir. 2007).

Rule 24(b) governs permissive intervention. "Rule 24(b)(2) provides for permissive intervention when (1) timely application is made by the intervenor, (2) the intervenor's claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties." *LULAC, Council No. 4434 v. Clements*, 884 F.2d 185, 189 n.2 (5th Cir. 1989). In addition to those three factors, the Fifth Circuit has instructed that "a district court should consider, among other factors, whether the intervenors are adequately represented by other parties and whether they are likely to contribute significantly to the development of the underlying factual issues." *Id.* "When a proposed intervenor possesses the same ultimate objectives as an existing litigant, the intervenor's interests are presumed to be adequately represented absent a showing of adversity of interest, collusion, or nonfeasance." *Id.*

But before conducting either intervention analysis, federal courts "must" first assess the threshold question of whether intervention is futile. *United States v. Texas*, --- F.4th ----, 2026 WL 1983151, at *3 (5th Cir. July 9, 2026) ("Futility analyses are 'threshold matters that a district judge *must* conduct *before* turning to a consideration of the factors listed in Rule 24(a) and (b).'" (quoting *Pin v. Texaco, Inc.*, 793 F.2d 1448, 1450 (5th Cir. 1986) (cleaned up))).

And, as with any litigant, federal courts must also ensure that a putative intervenor has Article III standing to assert their claims or defenses via intervention. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (“Standing to sue *or defend* is an aspect of the case-or-controversy requirement.” (emphasis added)); *Little Sisters of the Poor Saints Peter and Pual Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020); *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017);¹ *accord Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) (requiring defense-side intervenors to demonstrate Article III standing); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998) (same); *Defense Distributed v. United States Dep’t of State*, 2018 WL 3614221, at *3 (W.D. Tex. July 27, 2018) (same); *see generally* Matthew I. Hall, *Standing of Intervenor-Defendants in Public Law Litigation*, 80 FORDHAM L. REV. 1539 (2012); *contra* Doc. No. 33, at 12 (stating without citation to authority that “those seeking to intervene as defendants need not clear the more stringent requirement of Article III standing”).

ARGUMENT AND AUTHORITIES

I. The NAACP Intervenors Lack Article III Standing to Intervene.

“Article III jurisdiction is always first. Here, it’s also last.” *E.T. v. Paxton*, 41 F.4th 709, 714 (5th Cir. 2022). To have standing as putative intervenors, the NAACP Intervenors must demonstrate a personalized, concrete injury in fact that is caused by the conduct complained of and redressable by this Court. *See, e.g., Mausolf*, 85 F.3d at 1300; *accord Croft v. Governor of Texas*, 562 F.3d 735, 745 (5th Cir. 2009). Organizations, like the NAACP Intervenors, might do so in one of two ways. “An organization ‘may have standing either by showing it can sue on behalf of its members (‘associational’ standing) or sue in its own right (‘organizational’ standing).” *La*

¹ *Town of Chester* abrogated the Fifth Circuit’s prior decision in *Ruiz v. Estelle*, 161 F.3d 814 (5th Cir. 1998), that rejected an argument that intervenors needn’t demonstrate Article III standing, *see Camp v. McGill*, 789 F. App’x 449, 450 n.6 (5th Cir. 2020) (per curiam).

Union Del Pueblo Entero v. Abbott, 151 F.4th 273, 285 (5th Cir. 2025) (quoting *Texas State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022)). The NAACP Intervenor fails on both fronts.

First, as it relates to organizational standing, “[o]rganizations suing on their own behalf ‘must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals.’” *Id.* (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393–94 (2024)).

The DeSoto Branch NAACP doesn’t suffer any injury that is fairly traceable to the challenged conduct or redressable by this Court. In his attached declaration, Robert Tipton, Jr., President of the DeSoto Branch NAACP, swears that he is “Black or African American,”² and that the DeSoto Branch NAACP “work[s] to, among other objectives, eliminate racial prejudice; to keep the public aware of the adverse effects of discrimination; to take lawful action to secure the elimination of racial discrimination; and to improve the political, educational, social, and economic status of African Americans and other racial and ethnic minorities.” Doc. No. 32-3, at 2–3. However, Tipton’s proffered affidavit doesn’t explain any injury to the DeSoto Branch NAACP itself, let alone one that is fairly traceable or redressable. Nor does the NAACP Intervenor’s brief articulate any such injury felt by the NAACP itself. Thus, the NAACP has failed to demonstrate that it has organizational standing as a putative intervenor. *See also, e.g., United States v. Texas*, 173 F.4th 659 (5th Cir. 2026) (en banc) (diversion of resources or organizational restructuring aren’t cognizable injuries-in-fact); *NAACP v. City of Kyle*, 626 F.3d 233 (5th Cir. 2010).

The Sorority similarly lacks any cognizable injury that’s fairly traceable or redressable. According to Dorcas Washington’s proffered affidavit, the Sorority “coordinates with other civic-minded organizations in DeSoto County to provide voter education and information, and to

² However, at a recent Voting Rights Act trial in the Northern District of Mississippi, Tipton testified under oath that his race was “American,” not “Black or African American,” as he now proteanly contends. *Harris v. DeSoto County*, 2026 WL 1816145, at *1 (N.D. Miss. June 24, 2026).

encourage voter registration and turnout in elections.” Doc. No. 32-4, at 3. Nothing about the Sorority’s efforts in those regards has anything to do with advocacy regarding election law, nor does the Sorority offer any evidence or argument that the organization engages in or has any interest in such advocacy. Thus, the Sorority lacks organizational standing.

The NAACP Intervenors are left relying upon associational standing. But they lack associational standing too. “‘Associational standing’ is derivative of the standing of the association’s members, requiring that they have standing and that the interests the association seeks to protect be germane to its purpose.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). “[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Prison Justice League v. Bailey*, 697 F. App’x 362, 363 (5th Cir. 2017) (quoting *Hunt v. Wash. St. Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

Neither the DeSoto Branch NAACP nor the Sorority can meet their burden to demonstrate associational standing. Neither has identified which of its members suffer an ostensible injury, offering only vague statements that the NAACP Intervenors have members residing “throughout” DeSoto County, including “several members who are Black registered voters” within the subdistrict. *Summers v. Earth Island Institute*, 555 U.S. 488, 499 (2009) (noting that “the [Supreme] Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm”); *NAACP v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010); Doc. No. 32-4, at 3; Doc. No. 32-3, at 2–3. No such member has been identified. The only two named members don’t allege that they reside within the subdistrict, Doc. Nos. 32-3 & 32-4,

and it's unclear how they might have standing to defend subdistrict voters' ability to cast an extra vote, assuming that both Tipton and Washington live outside the subdistrict.³ Either way this action might be resolved, Tipton and Washington benefit, according to the NAACP Intervenor. If Plaintiffs are successful, Tipton, Washington, and all the NAACP Intervenor's members living outside the subdistrict are placed on equal footing with all other voters in DeSoto County. Doc. No. 32-2, at 13; Doc. No. 33, at 3–4. If Plaintiffs aren't successful, they will live under the jurisdiction of a judge selected from a majority-black subdistrict, which according to them is a positive. See Doc. No. 33, at 11. So it's clear that either way this litigation is resolved, Tipton and Washington won't suffer any cognizable injury, and therefore, they lack standing individually. Accordingly, each of the NAACP Intervenor's lack associational standing too, and their motion to intervene should be denied for that reason alone.

II. The NAACP Intervenor's Proposed Intervention Is Futile.

The next threshold issue that this Court must consider is whether the NAACP Intervenor's proposed intervention would be futile. *United States v. Texas*, --- F.4th ----, 2026 WL 1983151, at *3 (5th Cir. July 9, 2026). What that means for putative defense-side intervenors is that they must plead “a legally sufficient claim or defense” or a “colorable defense to the challenged statute.” *Id.* at *3 n.8 (first quoting *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72, 75 (D.C. Cir. 1988), and then quoting *R.I. Fed'n of Tchrs., AFL-CIO v. Norberg*, 630

³ The NAACP Intervenor's make no effort to demonstrate how those two identified voters—who presumably live outside the subdistrict—have any personal or legally cognizable interest to ensure that voters living within the subdistrict maintain an extra vote over them. This highlights another oddity in the NAACP Intervenor's stance—they claim to represent the interests of all their members, but some of their members' interests are diametrically opposed to other members' interests. More specifically, they actually have **more** members living outside the subdistrict who have no interest in ensuring that their fewer subdistrict members continue to have greater voting power than their own, just as their subdistrict members' (unjustifiable) interests in protecting their greater, inequitable voting power at the expense of non-subdistrict members.

F.2d 850, 851 (1st Cir. 1980)). The NAACP Intervenor's haven't offered a legally sufficient or colorable defense to the challenged statute or otherwise offered any explanation as to why their defenses to Plaintiffs' claims are not futile. Therefore, the NAACP Intervenor's have failed to carry a threshold burden for intervention.

In their proposed response in opposition to Plaintiffs' motion for preliminary injunction, the NAACP Intervenor's proffer three "defenses": (1) an argument that Plaintiffs' request for a preliminary injunction is foreclosed by *Purcell v. Gonzalez*, 549 U.S. 1 (2006); (2) an argument that Plaintiffs fail to state any constitutional or statutory claims, and; (3) a request that this Court narrow or limit the scope of relief.⁴ Doc. No. 32-2, at 4. Each is futile.

A. *Purcell* is not a defense to the merits.

To begin, the NAACP Intervenor's wave *Purcell* around like it's a magic wand that absolves the State Defendants of any and all constitutional violations simply because they are brought to a Court's attention during an election year. Obviously, *Purcell* is no such fiction. *People First of Ala. v. Sec'y of State for Ala.*, 815 F. App'x 505, 514 (11th Cir. 2020) (Rosenbaum, R., and Pryor, J., concurring) (stating that "*Purcell* is not a magic wand that defendants can wave to make any unconstitutional election restriction disappear so long as an impending election exists").

To be sure, *Purcell* is not a defense to the merits at all. See, e.g., *League of United Latin Am. Citizens v. Abbott*, 809 F. Supp. 3d 502, 599, 606 (W.D. La. 2009) (recognizing that "courts have applied *Purcell* as 'a consideration, not a prohibition,' based on a variety of factors and pre-election and election deadlines" and applying those principles to hold that "*Purcell* does not require us to deny a preliminary injunction."), reversed on other grounds by *Abbott v. LULAC*, -- S. Ct. ----, 2026 WL 1127246 (Apr. 27, 2026); *Get Loud Ark. v. Thurston*, 748 F. Supp. 3d 630,

⁴ The NAACP Intervenor's raise similar defenses in their proposed answer to Plaintiffs' complaint. See Doc. No. 32-1 at 8–10. All are futile for the same reasons explained below.

665 (W.D. Ark. 2024) (recognizing that “*Purcell* is ‘not some magic wand that bars [c]ourts from issuing injunctions some amount of time out from an election.’”); *Robinson v. Ardoin*, 37 F.4th 208, 229 (5th Cir. 2022) (rejecting defendants’ argument that *Purcell* precludes an injunction).

Rather, the *Purcell* principle is an equitable consideration for federal courts to consider whether to stay an injunction pending appeal, as virtually every Fifth Circuit case citing *Purcell*—all of which constitute the “mountain” that the NAACP Intervenor’s reference, Doc. No. 32-2, at 4—has understood it,⁵ where an injunction issued days or weeks before an election remains in dispute. See *Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring) (“The stay order is not a ruling on the merits, but instead simply stays the District Court’s injunction pending a ruling on the merits.”).

The NAACP Intervenor’s seem to confuse the Court’s duty to identify constitutional violations and issue appropriate relief with the Court’s secondary task of *timing* that relief in a manner consistent with prudential considerations, such as causing chaos on the eve of an election and whether defendants contest that injunction via appeal. See *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (“[T]he *Purcell* principle is probably best understood as a

⁵ Plaintiffs are aware of no Fifth Circuit case where *Purcell* has been relied upon or applied to analyze the *merits* of a plaintiff’s claims, as opposed to considering whether the relief to which the plaintiff is entitled ought to be delayed or stayed until after an election. After a review of every Fifth Circuit case citing *Purcell*, Plaintiffs understand that the only substantive discussion of *Purcell* at the Fifth Circuit has concerned whether a district court or the Fifth Circuit should stay an injunction pending appeal. *RNC v. Wetzel*, 120 F.4th 200, 214 (5th Cir. 2024) (discussing *Purcell* in the context of staying the effect of district court injunction), *reversed and remanded Watson v. RNC*, 609 U.S. ---- (June 29, 2026); *LUPE v. Abbott*, 119 F.4th 404 (5th Cir. 2024) (same); *Petteway v. Galveston Cnty.*, 87 F.4th 721 (5th Cir. 2023) (en banc) (Oldham, J., concurring) (same); *Robinson v. Ardoin*, 86 F.4th 574, 599–600 (5th Cir. 2023) (same); *Robinson v. Ardoin*, 37 F.4th 208 (5th Cir. 2022) (per curiam) (same); *Texas All. for Retired Ams. v. Scott*, 28 F.4th 669, 671 (5th Cir. 2022) (same); *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 142 (5th Cir. 2020) (same); *Texas All. for Retired Ams. v. Hughs*, 976 F.3d 564 (5th Cir. 2020) (per curiam) (same); *Mi Familia Vota v. Abbott*, 834 F. App’x 860 (5th Cir. 2020) (per curiam) (same); *Thomas v. Bryant*, 919 F.3d 298, 315 (5th Cir. 2019) (same); *Patino v. City of Pasadena*, 677 F. App’x 950 (5th Cir. 2017) (per curiam) (same); *Veasey v. Perry*, 769 F.3d 890, 892–93 (5th Cir. 2014) (same); see also *Veasey v. Abbott*, 830 F.3d 216, 243 (5th Cir. 2016) (instructing district court regarding *timing of relief* in light of *Purcell*).

sensible refinement of ordinary stay principles for the election context . . .”). The mere *possibility* that this Court might stay whatever injunctive relief it deems appropriate pending appeal is not a sufficient basis to avoid adjudicating the merits and issuing relief altogether. In other words, the *Purcell* principle is not a substantive defense or bar to Plaintiffs’ arguments for a preliminary injunction, even if it did work as a prudential consideration to stay this Court’s ruling pending appeal.⁶

B. Even if *Purcell* were a defense to the merits, it does not apply here.

Regardless, even assuming the fiction that *Purcell* may operate to bar claims outright or that the NAACP Intervenors simply wish to delay the relief to which Plaintiffs are entitled should they or the State Defendants take an appeal, *Purcell* does not apply here. “To be sure, *Purcell* is not an absolute principle.” *LUPE*, 119 F.4th at 409. Indeed, where it applies, *Purcell* “may be overcome “if ‘(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed in bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.’” *Id.* (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022)). Plaintiffs satisfy each of those criteria.

The underlying merits are clearcut. The NAACP Intervenors do not dispute that voters within the subdistrict get an extra vote pursuant to H.B. 1544 and S.B. 2768. *See* Doc. No. 32-2, at 1, 3–5, 13 (“the subdistrict at issue may raise constitutional questions due to receiving an extra vote”). With respect to Plaintiffs’ constitutional claims, the Equal Protection Clause prohibits denial of the right to vote to some residents within a jurisdiction based on homesite and race. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 557–58 (1964); *Gray v. Sanders*, 372 U.S. 368, 379–81

⁶ As explained below, it doesn’t justify a stay pending appeal either. *LUPE*, 119 F.4th at 409.

(1963). On their plain text, H.B. 1544 and S.B. 2768 discriminatorily deny the right to vote based on homesite, and looking at the legislative history, the only explainable reason for perpetuating that constitutional violation is race, as the NAACP Intervenor implies, Doc. No. 32-2, at 14, making H.B. 1544 and S.B. 2768's intended use of the subdistrict doubly unconstitutional. No one—not the State Defendants, nor either of the putative intervenors—seriously disputes that. The only argument that such a constitutional violation is not entirely clearcut is the NAACP Intervenor's offhand citation to *Chisom v. Roemer*, 501 U.S. 380, 402 (1991), which misreads *Chisom* and relies on a mistaken understanding of the law of precedent.⁷ See Doc. No. 32-2, at 13.

In any event, *Chisom* expressly held that such claims are cognizable under the Voting Rights Act, 501 U.S. at 403–04, which does not permit race-based voting discrimination, absent the State Defendants coming forward with identifiable instances of past discrimination in the election of DeSoto County's judges and showing that this electoral scheme is the narrowest remedy to resolve any purported past discrimination, *Louisiana v. Callais*, 146 S. Ct. 1131, 1152–53 (2026). Neither the State Defendants nor the NAACP Intervenor make any effort to defend against Plaintiffs' claim that H.B. 1544 and S.B. 2768 violate the Voting Rights Act. And because it is clear from the evidence in the public record that H.B. 1544 and S.B. 2768 were passed for a racially discriminatory purpose, Plaintiffs have a substantial likelihood of success under the Voting

⁷ For starters, *Chisom* did not hold, nor did it recognize that the Supreme Court has “held the one-person, one-vote rule inapplicable to judicial elections.” See Doc. No. 32-2, at 13. Rather, that quotation from *Chisom* appears only in the Court's characterization of arguments made by the *Chisom* respondents and a Fifth Circuit en banc majority opinion en route to reversing the reasoning employed by the Fifth Circuit. The NAACP Intervenor merely takes the same position as respondents in *Chisom*, relying on *Wells v. Edwards*, 409 U.S. 1095, 1095 (1973)—a one-line affirmation of the judgment issued by the Middle District of Louisiana Judge Gordon West, without expressing any view on the reasoning given by Judge West. That one-liner from the Supreme Court didn't transform Judge West's reasoning into binding precedent; it only affirmed the *judgment* as to the parties before the Supreme Court.

Rights Act, as well as the Constitution.⁸

Irreparable harm is certain absent an injunction. As with virtually every other constitutional or fundamental right, the denial or abridgment of the right to vote in an election is a harm that cannot be remedied.⁹ Unless an injunction is issued, Plaintiffs and other DeSoto County voters who are being denied and deprived of their right to vote will not have a remedy until the next decade. The practical effect is that, if left as is, voters in DeSoto County will be served for full four-year terms by judges chosen using laws that violate federal rights. The harm is undoubtedly severe and irreparable in the absence of the requested relief. And the NAACP Intervenor's suggestion that such harm isn't serious or irreparable, *see* Doc. No. 32-2, at 8, flies in the face of their own organizational principles, let alone their prior litigation positions. *See, e.g.,*

⁸ The NAACP Intervenor's characterization of Plaintiffs' position as one that does not oppose the existence of the subdistrict—just the “extra vote” issue. That's a highly misleading argument. Plaintiffs challenge both the race-based enactment and planned usage of the subdistrict. And the NAACP Intervenor even recognizes that Plaintiffs would certainly oppose the usage of the subdistrict as the NAACP Intervenor proposes. Doc. No. 33, at 1 (“Plaintiffs apparently seek to dismantle DeSoto County's only Black-majority judicial district for electing judges to the circuit and chancery courts”). That's clear from Plaintiff Kirby Carter's independent vote-dilution claim, which challenges the subdistrict's race-based drawing as unconstitutionally diluting her voting strength.

But to the extent the NAACP Intervenor identifies a failure of the Plaintiffs to ask this Court to order the erasure of the subdistrict from the Mississippi Code, Plaintiffs refrain from engaging in the writ-of-erasure fallacy. Jonathon F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 941 (2018) (“All that a court can do is announce its opinion that the statute violated the Constitution, decline to enforce the statute in cases before the court, and instruct executive officers not to initiate enforcement proceedings.”); *see also* *Moody v. NetChoice, LLC*, 603 U.S. 707, 764 n.5 (2024) (Thomas, J., concurring in the judgment) (“Although the Court's precedents describe an unconstitutionally overbroad statute as facially ‘invalid,’ ‘federal courts have no authority to erase a duly enacted law from the statute books.’”).

⁹ *Robinson v. Ardoin*, 86 F.4th 574, 600 (5th Cir. 2023) (“Once an ‘election occurs, there can be no do-overs and no redress’ for voters whose votes were diluted.” (citing *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.” (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *Alternative Political Parties v. Hooks*, 121 F.3d 876 (3d Cir. 1997))); *see also, e.g., BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) (“For the individual petitioners, the loss of constitutional freedoms ‘for even minimal periods of time . . . unquestionably constitutes irreparable injury.’” (citation omitted)); *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (quoting *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)); *accord Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) (“When constitutional rights are threatened or impaired, irreparable injury is presumed. A restriction on the fundamental right to vote therefore constitutes irreparable injury.” (citation omitted))).

Harris v. DeSoto County, Case No. 3:24-cv-289-GHD, Doc. No. 75, at 3–7 (N.D. Miss. Mar. 6, 2025) (“Plaintiffs suffer an irreparable injury whenever they vote under an unlawful plan.” (citing *Robinson*, 86 F.4th at 600)). In any event, Plaintiffs will be deprived of their right to vote or have their vote unlawfully diluted in the November 2026 election, and that injury is not reparable. *Robinson*, 86 F.4th at 600 (“Once an ‘election occurs, there can be no do-overs and no redress’ for voters whose votes were diluted.”).

And any delay in bringing this action is excusable. The statutes at issue were passed in April 2025, and H.B. 1544 took effect upon passage, while Senate Bill 2768 took effect July 1, 2025. Miss. Laws 2025, Ch. 513 (H.B. 1544), § 44; Miss. Laws 2025, Ch. 507 (S.B. 2768) § 35. At least one legislator from DeSoto County now acknowledges that he either did not know or was misled regarding the contents of both bills and their effect on DeSoto County.¹⁰ But putting that aside, one cannot forget the context of the year between the statutes’ passage and today.

At the time H.B. 1544 and S.B. 2768 were passed, the State of Mississippi was embroiled in litigation for failing to have majority-minority districts in the State’s legislative and judicial maps. See *White v. State Bd. of Election Comm’rs*, 795 F. Supp. 3d 794 (N.D. Miss. 2025); *Miss. State Conf. of NAACP v. State Bd. of Election Comm’rs*, 782 F. Supp. 3d 349 (S.D. Miss. 2025). And the State initially lost those cases with federal courts faulting the State for not adequately taking race into account in drawing their electoral maps. *Ibid.*

Enter *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). While *Callais* was pending at the Supreme Court of the United States, Governor Tate Reeves announced in April 2026 that he would call a special session for the Legislature to address Mississippi’s Supreme Court districts in light

¹⁰ Mark Randall, THE DESOTO TIME-TRIBUNE, *Supervisor Robert Foster sues state over judicial redistricting* (July 2, 2026), available at: https://www.desototimes.com/news/supervisor-robert-foster-sues-state-over-judicial-redistricting/article_4ef7b0af-6c39-4620-a3c8-98cf87461c80.html.

of the changing seasons in the law that he anticipated.¹¹ *Callais* was decided days later on April 29, 2026. 146 S. Ct. 1131 (2026). The Supreme Court entered its judgment in *Callais* on May 4, 2026, 146 S. Ct. 1111 (2026), and denied motions to recall the judgment on May 6, 2026, --- S. Ct. ----, 2026 WL 1235969, at *1 (May 6, 2026). After *Callais* became final, in mid-May 2026, the Fifth Circuit vacated the decision in *White* and the Supreme Court vacated the three-judge panel's decision in *Miss. State Conf. of NAACP v. Bd. of Election Comm'rs*, 2026 WL 1340213, at *1 (5th Cir. May 11, 2026); *Bd. of Election Comm'rs v. NAACP*, --- S. Ct. ----, 2026 WL 1377105, at *1 (May 18, 2026). All the while Plaintiff Robert Foster sought to avoid litigation, along with his colleagues on the DeSoto County Board of Supervisors, by asking the Governor to call a special session to rectify the constitutional concerns with H.B. 1544 and S.B. 2768. See Doc. No. 42-15.

But Governor Reeves cancelled the special session in the month following *Callais*, noting that the Fifth Circuit had vacated the *White* opinion, thus dissolving the injunction preventing Mississippi from using the current Supreme Court map, which allowed Mississippi to use the current state supreme court map in all future elections.¹² Upon Governor Reeves announcing that a special session would not occur, at least until later this year,¹³ Plaintiffs faced the approaching November 2026 general election and no indication that a special session would address the at-issue subdistrict. So Plaintiffs were forced to prepare and ultimately file this lawsuit on July 2, 2026, in

¹¹ Taylor Vance, MISSISSIPPI TODAY, *Gov. Reeves calls special Mississippi legislative session for judicial redistricting, dependent on US Supreme Court decision* (April 24, 2026), available at: <https://mississippitoday.org/2026/04/24/judicial-redistricting-special-session-callais/>.

¹² See Anthony Warren and Courtney Ann Jackson, WLBT, *Gov. Tate Reeves officially cancels special session* (May 13, 2026), available at <https://www.wlbt.com/2026/05/13/gov-tate-reeves-officially-cancels-special-session/>.

¹³ See Frank Corder, MAGNOLIA TRIBUNE, *Governor likely to call special session to redistrict legislative seats later this year* (June 25, 2026), available at: <https://magnoliatribune.com/2026/06/25/governor-likely-to-call-special-session-to-redistrict-legislative-seats-later-this-year/>.

order to try and stop these unconstitutional violations and deprivation of federal and state rights. Doc. No. 1. Any delay in doing so is excusable given the uncertainty in the law pre-*Callais* and the State's post-*Callais* indecision about whether to take up redistricting matters in a special session. *Cf. Veasey v. Perry*, 135 S. Ct. 9, 10 (2014) (Ginsburg, J., dissenting) (recognizing that “any voter confusion or lack of public confidence in Texas’ electoral processes is . . . largely attributable to the state itself.”).

With respect to this litigation, Plaintiffs sent a courtesy copy of the complaint to the State Defendants on July 1, 2026, filed the complaint on July 2, and immediately moved for a preliminary injunction on an expedited basis. Doc. Nos. 1 & 3. Despite the expedited nature of the proceedings, recusal issues have slowed down the proceedings. *See* Doc. No. 8; *see also* Doc. Nos. 14 & 24. Judge Mills initially set the matter for a hearing on July 22 but ultimately recused four days later. Doc. Nos. 7 & 8. This Court was assigned to the case on July 6 and held a conference call four days later to disclose a potential conflict, giving the State Defendants and putative intervenors three and a half days to decide whether to ask this Court to recuse. Once all parties and putative intervenors waived any potential conflict, this Court entered an order stating as much on July 14, as well as an order setting a briefing schedule, and scheduled a conference call on July 15 to discuss scheduling a preliminary injunction hearing. The Court set that hearing for July 31 after the State Defendants raised objections to holding the hearing on July 23–24 due to two of their attorneys’ scheduled attendance at a conference. While Plaintiffs understand that the Court must do its due diligence, none of those delays can be used to say that Plaintiffs have delayed in the prosecution of their claims.

The relief sought is more than feasible. While candidate qualifying in the normal course has concluded, *see* Miss. Code Ann. § 23-15-977, the election is not “underway,” as the NAACP

Intervenors represent, Doc. No. 32-2, at 1. Elections for the new circuit judge and chancellor are scheduled to take place on November 3, 2026. And while *applications* for absentee ballots must be available on September 4, 2026, Miss. Code Ann. § 23-15-625(1), the actual ballots are not finalized by the State Board of Election Commissioners until September 9, 2026, when the Secretary of State publishes a sample of the official November General Election Ballot in SEMS. Miss. Code Ann. § 23-15-367(3). Absentee ballots will not be made available until September 19, 2026, Miss. Code Ann. § 23-15-715(b), and absentee voting won't occur in the circuit clerk's office until September 21, 2026, Miss. Code Ann. 23-15-715. Though absentee ballots may be completed before then, the voter registration deadline isn't until October 5, 2026. Miss. Code Ann. §§ 23-15-37, 23-15-47, 23-15-125. Put simply, the election has not occurred, and no ballot has even been finalized or published to the public, much less cast. Indeed, there is no possibility that a ballot will be cast within nearly two months of today's date.

But even putting aside the time before the first absentee ballot can possibly be cast, let alone the time before the ballot is even finalized by the State, the NAACP intervenors turn *Purcell* on its head. The *Purcell* principle exists to minimize confusion and adverse impact to voters by a federal court's late-breaking intervention. *Robinson*, 86 F.4th at 599. But the opposite is true in this case. The laws at issue cause more confusion than clarity, as voters outside the subdistrict might be totally unaware that a fourth circuit judge and third chancellor, both of whom will exercise jurisdiction over the entire county, are being elected this November.¹⁴ And it will hardly cause an adverse impact to voters by simply adding an additional candidate to the ballot for voters

¹⁴ DeSoto County Circuit Clerk, 2026 Judicial and Federal Candidate Listing, available at: <https://www.desotocountymiss.gov/980/2026-Judicial-Federal-Candidate-Listing> (last visited 7/19/2026 at 10:02 a.m.).

outside the subdistrict, leaving the subdistrict's ballots virtually untouched.¹⁵

Indeed, this is not a case where voters will be left unaware of requirements for casting their ballot, *Veasey*, 769 F.3d 890 (applying *Purcell* to stay injunction against voter-ID law), where this court is asked to pull a last-minute switcheroo by moving voters to new districts with entirely different candidates, *Petteway*, 87 F.4th at 723 (plurality) (Oldham, J., concurring) (invoking *Purcell* after court imposed newly redistricted maps after primaries), where voters and election officials will be unaware of appropriate conduct at the polls, *La Union Del Pueblo Entero*, 119 F.4th 404 (applying *Purcell* to stay injunction of Texas law prohibiting solicitation of voters at the ballot box), or where election officials will have to fundamentally substitute the type of ballot to be used, *Hughs*, 976 F.3d at 568 (staying injunction 18 days before early voting where injunction required fundamental change to the type of ballot to be used). All those scenarios are consistent with the purpose of *Purcell*—to stay injunctions “entered days or weeks before an election” that “threaten to confuse voters, unduly burden election administrators, or otherwise sow chaos or distrust in the electoral process,” *pending appeal*. *Robinson*, 37 F.4th, at 228.

This one isn't. Here, the law itself is disrupting the status quo—that all registered voters living within the jurisdiction are entitled to vote for their government representatives, Miss. Code Ann. §§ 23-15-11, 23-15-985¹⁶—and the actual law itself risks voter confusion. Indeed, the laws

¹⁵ The NAACP Intervenor cry foul relying on a red herring. According to them, “voters in the challenged subdistrict may believe, if their [sub]district is eliminated, that there is no longer an election to participate in.” Doc. No. 32-2, at 10. But to the extent the subdistrict's voters are aware of the electoral scheme enough to know that they are voting in a judicial subdistrict, they would also know that there are other judicial seats for which they will vote, as has always been outlined on the DeSoto County Circuit Clerk's website. The NAACP Intervenor also neglect to consider that there are other elections that will be on the ballot in November, aside from the judicial races at issue. There is simply no concern that voters informed enough to know that they will be voting for the subdistrict's judge will be fooled into thinking that no election at all will occur in November.

¹⁶ This provision provides that “In any election for judicial office, all qualified electors, regardless of party affiliation or lack thereof, shall be qualified to vote for candidates for nomination for judicial office.” Miss. Code Ann. § 23-15-985.

at issue disrupt the norm that voters have an equal say in who their government officials are. Miss. Code Ann. §§ 23-15-11, 23-15-985. And the laws deprive that equal say by hiding it from voters at the polls: Voters outside the subdistrict won't have any idea that there's a fourth circuit judge and third chancellor being elected by the subdistrict as they head to the polls in November because their ballots won't even show that those judges are being elected.¹⁷ Plaintiffs' proffered relief remedies such confusion; it doesn't amplify it, as the NAACP Intervenor suggests. Thus, even if *Purcell* were applicable as a merits defense, and even if it were asserted in an attempt to obtain a stay pending appeal, the NAACP Intervenor's reliance upon *Purcell* is futile.

C. The NAACP Intervenor's other proffered defenses are futile to boot.

Having addressed the futility of their argument that Plaintiffs have failed to state a claim within the above response to the NAACP Intervenor's misguided *Purcell* argument, all that's left is the NAACP Intervenor's fallback argument that this Court should fashion relief that itself would be impermissible. That defense too is futile.

For starters, the NAACP Intervenor asks this Court to dismiss as “a drafting error or an inadvertent mistake” the express intent of the Legislature—that all of DeSoto County's precincts vote for five of the county's judges, while only nine of those precincts will select the remaining two. Doc. No. 32-2, at 13. Of course, there's no basis for assuming that the Legislature made a mistake or drafting error. See S.B. 2768 § 29(2) (providing that the Judiciary A chairmen may authorize the Secretary of State to “correct such omissions, overlaps, erroneous nomenclature or other defects”). But the NAACP Intervenor asks the Court to assume that the Legislature meant to create a parallel subdistricting scheme in DeSoto County, and they mischaracterize Plaintiffs'

¹⁷ DeSoto County Circuit Clerk, 2026 Judicial and Federal Candidate Listing, available at: <https://www.desotocountymys.gov/980/2026-Judicial-Federal-Candidate-Listing> (last visited 7/19/2026 at 10:02 a.m.).

position to say that all agree that would be permissible. Doc. No. 32-2, at 17. But Plaintiffs have not “concede[d] that this approach would remedy their alleged injury.” *Id.*; *contra* Doc. No. 4, at 10 (offering an “example of *arguably* permissible sudistricting—*assuming no racial gerrymandering or vote dilution*” (emphasis added)). Indeed, the creation of a majority-minority parallel subdistrict solely based on race would likewise be impermissible in the light of “our colorblind Constitution.” *Allen v. Milligan*, 608 U.S. ----, 146 S. Ct. 1377, 1380 (2026) (per curiam). Indeed, here, where the subdistrict was drawn for race-based purposes and the state cannot justify doing so, the NAACP Intervenor’s proposal would simply substitute one constitutional violation for another. *Callais*, 146 S. Ct. at 1152–53.

The path of least resistance for this Court is to order a special election for the Place Four circuit judge and Place Three chancellor, allowing all DeSoto County voters the opportunity to elect the candidate of their choice. Doing so will stave off the ostensible confusion that the NAACP Intervenor and State Defendants decry and ensure a lawful election under a lawful electoral scheme. Taking that approach will also give the State an opportunity to correct the constitutional error it committed when passing H.B. 1544 and S.B. 2768, should it so choose.

III. The NAACP Intervenor Aren’t Entitled to Intervene as of Right.

Even if the NAACP Intervenor could survive those two threshold inquiries for intervention, they are not entitled to intervention as of right. “If the party seeking intervention has not been given an unconditional right to do so by federal statute, it must meet four requirements for intervention as of right set out by Rule 24(a)(2):

(1) the motion to intervene is timely; (2) the potential intervener asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene; (3) the disposition of that case may impair or impede the potential intervener’s ability to protect her interest; and (4) the existing parties do not adequately represent the potential intervener’s interest.”

Fordel Mktg., LLC, 817 F. Supp. 3d at 430 (quoting *Saldano v. Roach*, 363 F.3d 545, 551 (5th Cir. 2004)). “Failure to satisfy any one requirement precludes intervention of right.” *Haspel & Davis Milling & Planting Co.*, 493 F.3d at 578. None of these requirements are satisfied by the NAACP Intervenor here.

The NAACP Intervenor’s motion to intervene is premature and thus not timely. The Fifth Circuit has cautioned against employing intervention as of right too early. Making mere “knowledge of the pendency of the litigation the critical event” in an intervention analysis “would be unsound” because it “would encourage individuals to seek intervention at a time when they ordinarily can possess only a small amount of information concerning the character and potential ramification of the lawsuit, and when the probability that they will misjudge the need for intervention is correspondingly high.” *Stallworth v. Monsanto Co.*, 558 F.2d 257, 265 (5th Cir. 1977). Often in cases of premature intervention, “the protective step of intervention will later prove to have been unnecessary, and the result will be needless prejudice to the existing parties and the would-be intervenor if his motion is granted, and purposeless appeals if his motion is denied,” leading to “scarce judicial resources” being “squandered,” as well as increased litigation costs to the parties. *Id.* “Therefore, the time that the would-be intervenor first became aware of the pendency of the case is not relevant to the issue of whether his application was timely.” *Id.*

At the time they moved to intervene, the NAACP Intervenor lacked any information regarding the adequacy of the defense that the State would offer. Thus, they had no idea at the time they filed their motion to intervene whether they have any independent interest that would not be served absent intervention. All their motion to intervene offers is mere speculation and reliance upon knowledge of the litigation and the potential impacts it might have should Plaintiffs

be successful. They had no knowledge that their interests will only be served by intervention, and therefore, the NAACP Intervenor's motion should be denied as premature.

The NAACP Intervenor's also lack any interest in intervention. Their members have conflicting interests, *see supra* note 3, and the organizations themselves have no interest in the subdistrict at issue or the voting imbalance between the subdistrict and the remainder of DeSoto County. Rather, their only purported interest in this case is to remedy a denial of the right to vote with a proposal that would still lead to an electoral scheme that segregates white voters from black voters without any justifiable reason. Doc. No. 33, at 9–11; Doc. No. 32-2, at 17–18. That interest is insufficient where the map proposed by the NAACP Intervenor's is still based on race and drawing such a race-based map does nothing to contribute or further the State's interest in allocating additional judicial resources to DeSoto County. *See Callais*, 146 S. Ct. at 1152–53. Moreover, the NAACP Intervenor's failed to support their contention that elections in DeSoto County are racially polarized in a recent trial in this district, and the circumstances haven't changed within the last month. *See Harris v. DeSoto County*, 2026 WL 1816145, at 6–8 (N.D. Miss. June 24, 2026). Thus, the NAACP Intervenor's cannot show any interest in purported racially polarized voting that doesn't exist within DeSoto County. Finally, the NAACP Intervenor's have no interest in maintaining subdistrict voters' "voting strength," Doc. No. 33, at 12, i.e., their additional vote, where **more** of their members, and the rest of DeSoto County, have a lesser vote mathematically than voters within the subdistrict.

Moreover, absent intervention, the NAACP Intervenor's are still able to protect their ostensible interests. They argue that their members have an interest in electing the candidate of their choice and that the remedy Plaintiffs seek will impede the subdistrict black voters' ability to do so. But Plaintiffs do not take a position that prevents the subdistrict voters from casting their

vote. And the only justification for giving the subdistrict's voters an exclusive say in who the fourth circuit judge and third chancellor is race. Arbitrarily creating a subdistrict for no reason other than giving one race exclusive preference over who two of the county's judges are is not a permissible districting scheme. "[O]ur colorblind Constitution" doesn't permit the double standard that the NAACP Intervenor now seek to wield. *Allen v. Milligan*, 608 U.S. ----, 146 S. Ct. 1377, 1380 (2026) (per curiam).

Nothing about Plaintiffs' lawsuit prohibits the NAACP Intervenor from furthering their interest in voter education or turning out the vote in DeSoto County, and the NAACP Intervenor can seek from the Legislature the statutory amendment that they propose. But insofar as the NAACP Intervenor seek to assert a hypothetical vote-dilution claim in response to Plaintiffs' claims, there's neither evidence to support it nor reason to believe that the NAACP Intervenor lack any other means to assert that interest. For this reason, too, the NAACP Intervenor are not entitled to intervene.

Finally, the State is uniquely situated and is duty-bound to defend the constitutionality of Mississippi statutes. Miss. Code Ann. § 7-5-1. The NAACP Intervenor don't allege—nor could they have known whether—the State will refuse to defend the law with full vigor. Doc. No. 33 at 15. That a three-judge panel ruled against the State Defendants in a different case, under a different understanding of Section 2 and the Constitution, involving different claims brought by different plaintiffs related to different electoral districts for different public offices does not mean that the NAACP Intervenor's interests are not adequately represented by the State Defendants. And even assuming the NAACP Intervenor could foresee that the State would take a different view on the law or the applicable remedies from the NAACP Intervenor, "[s]imply because [the NAACP Intervenor] would have made a different decision does not mean that the Attorney General is

inadequately representing the State’s interest—and hence, [the NAACP Intervenor’s] claimed interest—especially since state law specifically gives the Attorney General the discretion to make these kinds of decisions.” *Saldano v. Ranch*, 363 F.3d 545, 555 (5th Cir. 2004). Thus, the NAACP Intervenor’s interests are adequately represented by the State.

IV. This Court Shouldn’t Permit the NAACP Intervenor to Intervene.

As a last-ditch effort, the NAACP Intervenor request permissive intervention. But permitting it to do so “would serve no purpose other than delay,” where their motion merely underscores arguments that have been made by the State. *Ingebretsen v. Jackson Pub. Sch. Dist.*, 864 F. Supp. 1473 (S.D. Miss. 1994). In cases like this,

It is easy enough to see what are the arguments against intervention, where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses or their own, they are the sources of additional questions, briefs, arguments, motions and the like which tend to make the proceedings a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief *amicus curiae* and not by intervention.

Bush v. Viterna, 740 F.2d 350, 359 (5th Cir. 1984). Because the NAACP Intervenor have not shown that their intervention would serve to advance this litigation beyond that of the State’s defense of the statutes at issue and because they can still serve as *amici*, see Doc. No. 33, at 9 n.8, this Court should deny the motion to intervene.

CONCLUSION

The NAACP Intervenor lack Article III standing and fail to assert any non-futile defense to Plaintiff’s claims. Moreover, they aren’t entitled to intervene as of right where the State Defendant adequately represent the NAACP Intervenor’s interests, their motion is premature, they have no interest in intervention, and even if they had one, their interest can be protected through other means. And finally, the NAACP Intervenor do not propose to advance this

litigation beyond the arguments made by the parties, and therefore, this Court should deny the NAACP permissive intervention. For all those reasons, the NAACP Intervenors can't intervene.

Dated: July 23, 2026.

Respectfully submitted,

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BY: /s/ Channing J. Curtis

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing *Memorandum* with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record/ECF participants.

This, the 23rd day of July 2026.

/s/ Channing J. Curtis