UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE GEORGIA SENATE BILL 202	MASTER CASE NO. 1:21-mi-55555-JPB
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, et al., Plaintiffs, v. BRIAN KEMP, *Governor of the State of Georgia, in his official capacity*, et al., Defendants, REPUBLICAN NATIONAL COMMITTEE, et al., Intervenor-Defendants.	CIVIL ACTION NO. 1:21-cv-01284-JPB
GEORGIA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. BRAD RAFFENSPERGER, *in his official capacity as the Secretary of State for the State of Georgia,* et al., Defendants, REPUBLICAN NATIONAL COMMITTEE, et al., Intervenor-Defendants.	CIVIL ACTION NO. 1:21-cv-01259-JPB

THE NEW GEORGIA PROJECT, et al., Plaintiffs, v. BRAD RAFFENSPERGER, *in his official capacity as the Georgia Secretary of State,* et al., Defendants, REPUBLICAN NATIONAL COMMITTEE, et al.,	CIVIL ACTION NO. 1:21-cv-01229-JPB

> [n]o person shall . . . give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector . . . [or] establish or set up any tables or booths on any day in which ballots are being cast.

The Court refers to this portion of the provision a

The Food, Drink and Gift Ban ap

any building within which a polling place is established, which this Court calls

the 25 feet of any voter standing in line to vote at

any polling place . [6] Id. § 21-2-

414(a). A violation of the Food, Drink and Gift Ban is punishable as a

misdemeanor. Id. § 21-2-414(f). The Court refers to the provision of S.B. 202 that

imposes criminal penalties for violations of the Food, Drink and Gift Ban as the

In this case, Plaintiffs allege that the Food, Drink and Gift

Ban violates their rights to freedom of speech and expression under the First

Amendment to the United States Constitution.[7]

[6] The Food, Drink and Gift Ban also applies within any polling place, see O.C.G.A. § 21-2-414(a), but enforcement of the provision in that location is not at issue here.

[7]

II. PROCEDURAL HISTORY

A. Previous Preliminary Injunction Motions

Plaintiffs have previously sought preliminary injunctions in this Court. On May 25, 2022, the AME and Georgia NAACP Plaintiffs moved this Court to preliminarily enjoin all named defendants in their respective cases from enforcing the Penalty Provision for violations of the Food, Drink and Gift Ban. [Doc. 171]. On June 3, 2022, the NGP Plaintiffs moved for the same relief as to only two named defendants: Keith Gammage, in his official capacity as the Solicitor General of Fulton County, and Gregory W. Edwards, in his official capacity as the District Attorney of Dougherty County. [Doc. 185]. The Court held a hearing on both 612 792 re.999 (ari)3.996 (n)4.003 (g)-2.999 (o)5.997 (n)-Sso72.999 (0l(t)-2.999 (o)4.003

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that Plaintiffs were substantially likely to show that their line relief activities constitute expressive conduct that is protected by the First Amendment.

2. Whether the Food, Drink and Gift Ban Is a Content-Based Regulation of Speech

Second, the Court analyzed whether the Food, Drink and Gift Ban is a content-based or a content-neutral restriction on speech. A content-neutral

Ward v. Rock Against Racism

content-

Ward, 491 U.S. at 791.

In the 2022 Order, this Court determined that Plaintiffs were substantially likely to show that the Food, Drink and Gift Ban was a content-based regulation of speech. The Court focused on two points in reaching this conclusion. First, the

nt context. Notably, the Supreme Court of the United States had previously determined that a law restricting speech around a polling place was content-based because the law restricted only a certain *category* of speech. Burson v. Freeman, 504 U.S. 191, 197 (1992). In other

places depend[e

Id. Similarly, this Court held that

the speec *only* on the content of the speech and the direct impact that speech ha[d] Id. at 321.

The Court in Boos distinguished Renton

Id. at 39 (quoting S.B. 202 § 2, ¶ 13, Reg. Sess. (Ga. 2021)).

Accordingly, the Court held that Plaintiffs were substantially likely to show that

Id. at 209 (quoting Munro v. Socialist Workers Party, 479 U.S. 189, 195 96 (1986)).

in which the challenged activity physically interferes with electors

Id. at 209 n.11. For instance, the Eleventh Circuit Court of Appeals applied the Burson strict scrutiny analysis to a Florida statute that prohibited exit solicitation of voters within 100 feet of a polling place. Citizens for Police Accountability Pol. Comm. v. Browning, 572 F.3d 1213, 1215 (11th Cir.

is as capable of intimidating and confusing the electorate and impeding the voting process even deterring potential voters from coming to the polls as other kinds

Id.

The question for this Court was thus whether this case fell into the category

issue in both Burson and Browning. [Doc. 241, p. 48]. Thi

concern regarding intimidation and influence appears even greater here than in Browning, where the Eleventh Circuit found that the facts (potential for interference *after* voters cast their ballots) justified using the Burson modified

Id. at 49. In this case, by contrast, the potential for interference occurred *before* voters cast thei.003 (n)3. (r)4.003 (.1l (o)-2.9l (o)-2.984 (t)4.003 (s)-2.999 (ca)

cases. Id. at 52. Accordingly, the Court determined that the government met its burden of showing that the Food, Drink and Gift Ban was necessary to serve

that

under Burson Id.

In sum, the Court found that while Plaintiffs were not substantially likely to succeed on the merits of their claim as to the Food, Drink and Gift Ban in the Buffer Zone, they *were* substantially likely to succeed on the merits of their claim as to the Supplemental Zone. The Court also found that Plaintiffs met all other factors of the preliminary injunction test irreparable harm, balance of the equities and public interest with respect to enforcing the Food, Drink and Gift Ban in the Supplemental Zone.

5. Application of the Purcell Principle

Fifth and finally, the Court considered whether the principle articulated in Purcell v. Gonzalez, 591 U.S. 1 (2006), counseled against enjoining enforcement of the Food, Drink and Gift Ban in the Supplemental Zone. The Purcell principle is the idea that a court should ordinarily decline to issue an injunction that changes existing election rules when an election is imminent. Purcell, 591 U.S. at 5 6. This principle of restraint recognizes that injunctions issued on the eve of an election risk confusing voters and decreasing voter turnout.[9] Id. at 4 5.

[9] The Purcell principle is discussed in greater detail in Part III.B, see infra.

III. ANALYSIS

In the renewed motions for preliminary injunctions, Plaintiffs contend that enforcing the Food, Drink and Gift Ban in the Supplemental Zone violates their First Amendment rights. In the analysis that follows, the Court evaluates whether Plaintiffs are entitled to preliminary injunctive relief before turning to whether the Purcell principle applies to this case.[14]

A. Preliminary Injunctive Relief

A plaintiff seeking preliminary injunctive relief must show (1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) that the balance of equities is in his favor; and (4) that an injunction would not be adverse to the public interest. Sofarelli v. Pinellas County, 931 F.2d 718, 723 24

efficiency of elections, creating a perception of voter intimidation, and forcing voters to accept unwanted

Therefore, according to State Defendants, because the Food, Drink and Gift Ban conduct, it is necessarily content-neutral.

As this Court explained in the 2022 Order, however, the Fooded [-2.999 (er,)2.999 (t)3.99

Insofar as State Defendants cite concerns about election efficiency, the record does not support their position. County officials provided testimony that they have easily enforced the Food, Drink and Gift Ban in the Buffer Zone and have not received complaints about line relief activities in the Supplemental Zone. [Doc. 535-5, p. 3]; [Doc. 535-6, pp. 2 3].

the first instance that is, the state would not have explained the Food, Drink and buildings at all.

In overlook a nuance in the applicable precedent. The Supreme Court has recognized states interests in peace and order around *polling places*—not around buildings per se with a view toward protecting the unique activity (voting) that occurs at those specific locations (the polls). See Burson *some* restricted zone *around the voting area* is necessary to secure the [s] emphasis added)); id. at 211

an in the

Supplemental Zone satisfies Burson .

As set forth above, Plaintiffs are substantially likely to show that implementing the Food, Drink and Gift Ban in the Supplemental Zone is not narrowly tailored and that it places an impermissible burden on the exercise of constitutional rights. For the foregoing reasons, the Court thus finds that Plaintiffs are substantially likely to succeed on the merits of their claim that, when implemented in the Supplemental Zone, the Food, Drink and Gift Ban infringes First Amendment rights.

2.

Elrod v. Burns

arguments and the record on this issue and concludes once more that Plaintiffs have established irreparable harm. See White v. Baker, 696 F. Supp. 2d 1289, 1312 13 (N.D. Ga. 2010) (

show irreparable injury for three reasons. Although the Court finds these arguments unavailing, the Court discusses them below.

First, State Defendants argue that long lines are not likely to persist in the

inability to provide line relief to waiting voters occasions no irreparable injury.

the 2022 elections. Although State Defendants offered counter evidence about short wait times, their evidence concerned wait times for *different* elections and during *different* voting periods than the information presented by Plaintiffs. Plaintiffs also introduced expert testimony that wait times in presidential election years e.g., 2024 are likely to be worse compared to other election years. After reviewing

long lines is sufficiently likely to continue in the 2024 elections such that Plaintiffs will suffer irreparable injury absent an injunction.

Second, State Defendants contend that the NGP Plaintiffs rely only on speculation to establish irreparable injury.[17] According to State Defendants, the

[17] In a footnote, State Defendants additionally

Defendants contend that Plaintiffs improperly waited nine months to file their motions after initially seeking preliminary injunctive relief. It is true that [a] delay in see

prospective harms would not have been imminent, but had they filed any later, their relief may have been barred by Purcell.

militates against a finding

not that it precludes such a finding entirely. Wreal, 840 F.3d at 1248. Thus, even if this Court determined that Plaintiffs delayed in bringing the instant motions, the Court would still need to weigh that finding

arable injury in the loss of First Amendment freedoms. And because such a loss

Elrod, 427 U.S. at 373, it is unlikely that any delay in filing these motions particularly considering the context of this case as one concerning election-related relief

Wreal, 840 F.3 at 1248. Consequently, the Court finds that Plaintiffs have established irreparable injury sufficient to support preliminary injunctive relief.

3. Balance of the Equities and Public Interest

The final two factors of the test for a preliminary injunction are the balance of the equities and the public interest. Swain v. Junior, 958 F.3d 1081, 1090 (11th Cir. 2020). The Court combines its analysis of these factors

government is the party opposing the preliminary injunction, its interest and harm

Id. at 1091. Evaluating together the balance of the equities and the public interest makes sense in the context of an election because

which was already in progress for an election that was less than four months away was within Purcell Id. However, the

Purcell to [that] case

Jacksonville Branch of NAACP v. City of Jacksonville, No. 22-13544, 2022 WL 16754389, at *2 (11th Cir. Nov. 7, 2022). The first question for this Court is

Purcell.

Plaintiffs contend that Purcell is not implicated because the elections at issue will not occur until next year, with the earliest election in March 2024. Plaintiffs assert that if Purcell

election-timing principle and become, in practice, an all-out ban on changes to

-1, p. 14]. Defendants argue that Purcell applies and that it precludes relief.

At this time, the earliest elections in Georgia are over six months away.[19] The Court finds that Purcell does not apply here. E.g., GRACE, G.66 162.86 od5c.003 (G.66v9

Miami