In the

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cv-00493-MMH-LLL

Before WILSON, JORDAN, and LAGOA, Circuit Judges.

BY THE COURT:

On March 22, 2022, the Jacksonville City Council passed new district maps (the "Enacted Plan") as a product of its redistricting efforts. Appellees filed a lawsuit on May 3, 2022, alleging that the Council racially gerrymandered districts in violation of the Equal Protection Clause of the Fourteenth Amendment. U.S. Const. amend. XIV, § 1. In a Joint Motion for a Preliminary Pretrial Conference filed on July 1, 2022, Appellants represented to the dis-

conclude "Appellants City of Jacksonville and Supervisor Hogan's Emergency Motion to Stay" is **DENIED** because Appellants have not shown they are likely to succeed on the merits, and the other equitable factors weigh against them. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

The Equal Protection Clause of the Fourteenth Amendment prohibits states from "separate[ing] its citizens into different voting districts on the basis of race." *Miller v. Johnson*, 515 U.S. 900, 911 (1995). When a plaintiff alleges the state drew race-based lines, we generally engage in a two-step analysis. *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017). At the first step, the plaintiff must prove "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* (quoting *Miller*, 515 U.S. at 916). This can be shown through both direct and circumstantial evidence. *Id.* at 1463–64; *Shaw v. Hunt*, 517 U.S. 899, 905 (1996). If the plaintiff makes the requisite showing, we move to the second step, where the state "bears the burden of showing that the design of that district withstands strict scrutiny." *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022). Here, Appellants never argued that its plan could withstand strict scrutiny. So, our review is limited to the district court's analysis at the first step.

We review a district court's decision to deny a stay for abuse of discretion, "reviewing *de novo* any underlying legal conclusions and for clear error any findings of fact." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). The conclusion

that racial considerations predominated in redistricting is a factual finding and, therefore, is reviewed only for clear error. *Cooper*, 137 S. Ct. at 1465. However, "whether the court applied the correct burden of proof is a question of law subject to plenary review." *Abbott v. Perez*, 138 S. Ct. 2305, 2326 (2018).

Appellants first argue we should use the *Purcell* principle to review the issuance of this injunction. *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). Like the district court, we disagree.

The *Purcell* principle stands for the proposition that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam); *Purcell*, 549 U.S. at 4–5. This is because "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion," and the risk of confusion increases as election dates draw nearer. *Purcell*, 549 U.S. at 4–5. So, courts issuing injunctions close to elections are "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures." *Id.* at 4. Plaintiffs whose challenges are controlled by *Purcell* are subject to a heightened burden of proof. *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1372 (11th Cir. 2022) (per curiam). The question, then, is whether this injunction was issued on the "eve of an election" such that *Purcell* should apply. There is no

the concerns animating *Purcell*—all of which militate against applying the principle.

In *League of Women Voters of Florida*, we found an injunction to be within *Purcell*'s "outer bounds" because it was issued while

12593, 2022 WL 3572823, at *5–6 (11th Cir. Aug. 12, 2022) (Rosenbaum, J., dissenting),

controlling effect on the claims and issues" of a case is an "excellent" reason to grant a stay. *Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009). However, *Milligan* is unlikely to have a substantial or controlling effect on this case. Indeed, *Milligan* does not involve a claim under the Equal Protection Clause; rather, it addresses a violation of Section 2 of the Voting Rights Act (VRA). *Merrill v. Milligan*, 142 S. Ct. 1105 (2022). And while (at the moment) complying with the VRA can be a compelling interest that justifies the predominance of racial considerations in redistricting, *see Cooper*, 137 S. Ct. at 1464, Appellants did not contend that its line-drawing was done to comply with the VRA. In fact, Appellants did not put forth any arguments that its redistricting plan served a compelling interest. Therefore, we do not find the district court abused its discretion in declining to stay the injunction on this basis, and we decline to do so as well.

Finding the district court did not J-08M (h)-08M (h)5.6 (s)-4.7 .1 ÞBDC 2.7 (re)

elections should applicants win at trial." Indeed, the *Rose* defendant had conceded to the district court that he would not "make an appeal based on *Purcell*" and did not invoke *Purcell* to argue that the district court's scheduling would create problems for the upcoming election. *See Rose v. Sec'y, State of Ga.*, No. 22-12593, 2022 WL 3572823, at *5–6 (11th Cir. Aug. 12, 2022) (Rosenbaum, J., dissenting), *vacated sub nom.*, *Rose v. Raffensperger*, No. 22A136.

In agreeing to the briefing schedule for the preliminary injunction, Doc. 24, Appellants informed the district court that "[i]n order to proceed with the 2023 general consolidated government elections, the Supervisor of Elections needs to know the City Council district boundaries no later than Friday, December 16, 2022," Doc. 24-1. As the district court noted, the briefing schedule below was collaboratively developed with Appellants and accepted "without caveat" at the time it was submitted.

On the other hand, unlike the *Rose* defendant, Appellants, in their remedy brief, argued against Appellee' interim remedy and supporting rationale in the event that the district court ordered the Jacksonville City Council (the "Council") to draw new districts. Doc. 45 at 1–2. Specifically, Appellants argued for the March 21, 2023, elections to proceed under the current district lines, for the Council to pass new district lines, "in not less than five months" and subject to Plaintiffs' challenge and the court's review, and for the court or another judicially designated body to draw new lines if the Council was unable to pass new lines in the mandated time frame. *Id.* at 2. In support of their position, Appellants argued

against Plaintiffs' position that the March 2023 elections were not imminent, explaining that "the City's election machinery is already well in gear" and invoking the *Purcell* principle. *Id.* at 6–8. They also argued that it would be "nearly impossible for a newly-crafted and Court-7.3 (e)-1( )-y(c)-2.8at(r)-4.7 ( )]TJ-0.001 Tc 02002 T6.5.258 0 Tdeinven -1( ) (i)

Council was able to pass an interim remedial plan before the district court's November 8, 2022, deadline. Appellants have stated that, if the district lines are in place by December 16, 2022, the local elections can be run. And the interim lines were passed more than a month before the December 12, 2022, deadline for candidates to qualify for the ballot via petition. The substantial risks of harm, confusion, or disruption as to the March 2023 elections that Appellants raise—and which the district court found lacking—have ultimately not come to fruition, given the passage of the interim plan.

Moreover, Appellants have not