

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

DAVID B. MEANS, ET AL.,	§	<b>CIVIL ACTION NO. 5:23-cv-00669</b>
	§	
VERSUS	§	JUDGE DAVID C. JOSEPH
	§	
DESOTO PARISH, ET AL.	§	MAGISTRATE JUDGE HORNSBY

**MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

**NOW INTO COURT**, through undersigned counsel, come Defendants, DeSoto Parish and the DeSoto Parish Police Jury (collectively referred to as the “**Police Jury**”), who submits this Motion for Partial Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking a judgment denying David B. Means, Ryan Dupree, Robert G. Burford, Robert Gross, Mary L. Salley, Martha Trisler, John F. Pearce, Joe Cobb, Jack L. Barron, W. Bruce Garlington, and Donald Barber’s (collectively referred to as the “**Plaintiffs**”) Motion for Preliminary Injunction that asks this Court to enjoin the October 14, 2023, election of DeSoto Parish Police Jurors under the current redistricting plan. The Police Jury respectfully submits that denial of Plaintiffs’ Motion for Preliminary Injunction is appropriate pursuant to the *Purcell* principle adopted by the United States Supreme Court in *Purcell v. Gonzales*, 476 US 858 (1969), and its progeny. Pursuant to Rule 12 (i), a motion for judgment on the pleadings “must be heard and decided before trial unless the court orders deferral until trial.” For the reasons set forth in the accompanying memorandum and the accompanying Motion to Expedite Consideration, this Motion for Partial Judgment on the Pleadings should be decided in advance of the July 11-13, 2023 hearing on the Plaintiffs’ Motion for Preliminary Injunction, and a Partial Judgment on the Pleadings should be rendered in favor of the Police Jury.

**WHEREFORE**, DeSoto Parish and the DeSoto Parish Police Jury respectfully request that this Honorable Court consider this Motion for Partial Judgment on the Pleadings in advance of the July 11-13, 2023 hearing on Plaintiffs' Motion for Preliminary Injunction, and after due consideration, grant this Motion for Partial Judgment on the Pleadings, dismissing Plaintiffs' Motion for Preliminary Injunction and obviating the need for a hearing on the preliminary injunction motion.

RESPECTFULLY SUBMITTED,

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*/s/ Jeanne C. Comeaux*

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DESOTO PARISH, ET AL.	§	MAGISTRATE JUDGE HORNSBY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 5, 2023, a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

*/s/ Jeanne C. Comeaux*  
\_\_\_\_\_  
Jeanne C. Comeaux

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

DAVID B. MEANS, ET AL.,

VERSUS

DESOTO PARISH, ET AL.

§ **CIVIL ACTION NO. 5:23-cv-00669**

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JUDGE DAVID C. JOSEPH

MAGISTRATE JUDGE HORNSBY

**MEMORANDUM IN SUPPORT OF**  
**MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

RESPECTFULLY SUBMITTED,

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DESOTO PARISH, ET AL.	§	MAGISTRATE JUDGE HORNSBY

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

**MAY IT PLEASE THE COURT:**

DeSoto Parish and DeSoto Parish Police Jury (collectively referred to as the “**Police Jury**”), Defendants herein, submit this memorandum in support of their Motion for Partial Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (“**FRCP**”), and request consideration and determination of this motion prior to the scheduled July 11-13, 2023 hearing on Plaintiffs’ injunction motion, pursuant to F.R.C.P. Rule 12(i) .

**I. RELEVANT FACTS<sup>1</sup> AND PROCEDURAL POSTURE**

DeSoto Parish, Louisiana is governed by an eleven member police jury, with each juror elected from a specific district within the parish. In 2011, the eleven police jury districts were designated pursuant to 2010 census data into districts: 1A, 1B, 1C, 2, 3, 4A, 4B, 4C, 4D, 5 and 6. According to data from the Census Bureau, the 2020 decennial census established that DeSoto Parish experienced population growth in the northern part of the parish requiring a redistricting of the Desoto Parish School Board and the Police Jury. Specifically, the 2020 Census population counts determined that while the Parish had a net overall change of only 156 persons, the northern part of DeSoto Parish that shares a common boundary with Caddo Parish, increased in population

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<sup>1</sup> The Police Jury herein incorporates its recitation of the factual and procedural background presented in the memorandum in opposition to the Plaintiffs’ Amended Motion for Preliminary Injunction, at pp. 1-4 thereof. [Doc. 32].

more than other parts of the Parish. This created an imbalance in the population growth of the Parish between the 2010 and 2020 census counts.<sup>2</sup>

For nearly a year and a half, Michael Hefner (“**Hefner**”), Chief Demographer with Geographic Planning & Demographic Services, LLC (“**GPDS**”) worked with the Police Jury, attended public meetings and workshops, and participated in Police Jury meetings to address the development of a reapportionment plan for the Police Jury. To encourage participation and discussions among the Police Jury and public, GPDS/Hefner conducted a minimum of five (5) public redistricting workshops where members of the public and the Police Jury could freely discuss and explore a number of draft plans, district configurations and options, all in real time using GIS redistricting software.

Following numerous meetings, discussions and counterproposals, at a public hearing on April 10, 2023, the Police Jury voted in favor of adopting Reapportionment Plan H (Revised)(“**Plan H**”). Plan H, consistent with the 2010 district map, divided the parish into eleven districts designated as: 1A, 1B, 1C, 2, 3, 4A, 4B, 4C, 4D, 5 and 6. On April 19, 2023, it was forwarded to the Louisiana Secretary of State for Approval.

On May 19, 2023, nearly six weeks after Plan H’s adoption, the Plaintiffs filed their original Complaint [Doc. 1] and a Motion for Preliminary Injunction [Doc. 2]. The Plaintiffs are fourteen white residents of De Soto Parish claiming that Plan H constitutes racial gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Plaintiffs allege that Plan H *improperly* failed to reduce the number of minority-majority districts and had race as its predominate consideration.

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<sup>2</sup> See Declaration of Michael Hefner [Doc. 32-1, ¶ 8].



On May 25, 2023, the Plaintiffs filed their Amended Complaint and Amended Motion for Preliminary Injunction (Doc. 12). The Plaintiffs seek a declaratory judgment pronouncing Plan H unconstitutional in violation of the Due Process Clause, as well as preliminary injunctive relief to:

- (1) Prohibit Defendants from calling, holding, supervising or certifying any elections under Plan H (Revised);
- (2) Order Defendants to enact or adopt a new redistricting plan for Police Jury districts that complies with the Fourteenth Amendment by a reasonable deadline; and
- (3) Grant such further and other relief as this Court deems just and proper.

The Police Jury filed its Affirmative Defenses and Answer to the Amended Complaint (Doc. 31), as well as its Memorandum in Opposition to the Amended Motion for Preliminary Injunction (Doc. 32), on June 26, 2023. The Police Jury's Second Affirmative Defense specifically references the United States Supreme Court's precedents that hold that federal courts should refrain from enjoining elections or the election process if the election in question is scheduled to take place within 4 months of the injunction hearing. This policy is known as the "*Purcell*<sup>3</sup> principle," which is thoroughly discussed in the Police Jury's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction and discussed *infra* at pp. 7-10. The Fourth Affirmative Defense further asserts and incorporates all arguments and defenses raised in the Police Jury's Memorandum in Opposition to the Amended Motion for Preliminary Injunction. Accordingly, the entire opposition memorandum, and all of the attachments thereto, are subsumed into the Police Jury's Answer, and can be reviewed by this Court when considering this Rule 12(c) motion. The attachments contain all of the evidence this Court needs to grant this Motion for Partial Judgment on the Pleadings, including critical Declarations made by Louisiana Commissioner of Elections Sherri Hadskey and Desoto Parish Registrar of Voters Amanda Raynes, both of which establish that the *Purcell* principle applies here, and that the injunction

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<sup>3</sup> *Purcell v. Gonzales*, 549 U.S. 1 (1969)

should be denied.<sup>4</sup> In addition, the Jurisprudential Table, attached to the Opposition as Exhibit 5 thereto and incorporated into the Defendants' Answer, summarizes the U.S. Supreme Court cases following the *Purcell* principle.

On June 27, 2023, this Court held a status conference via Zoom, at which time a hearing on Plaintiffs' Amended Motion for Preliminary Injunction was set for July 11-13, 2023. The purpose of the Police Jury's Motion for Partial Judgment on the Pleadings is to obviate the need for the injunction hearing due to the incontrovertible dates and established deadlines evident on the face of the pleadings, dates that dictate this matter and their impermissible proximity to the October 14 election and mandatory pre-election procedures. *Purcell* and its progeny strongly frown on these types of untimely requests for injunctive relief.

The Plaintiffs' demanded injunctive relief is impermissible (even if it were legally supportable, which it is not) under the instant time constraints. Police Jury elections are scheduled to occur concurrently with Louisiana's gubernatorial elections on October 14, 2023 (**only 93-95 days** after the July 11-13, 2023 hearing on the preliminary injunction).<sup>5</sup> Qualifying for the Police Jury election is scheduled for August 8-10, 2023 (**only 28-30 days** from the injunction hearing).<sup>6</sup>

The Louisiana Secretary of State, Louisiana Commissioner of Elections, and the DeSoto Parish Registrar of Voters ("**DeSoto Registrar**") have already been provided Plan H to begin the election process<sup>7</sup> and any Federal Court interference at this stage would be contrary to well-established jurisprudence. This is especially true here, where the Plaintiffs seek an order from this Court requiring the adoption/implementation of a new map and corresponding redistricting plan on the eve of the scheduled election.

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<sup>4</sup> Demographer Michael Hefner's Declaration is also attached and incorporated herein, but it speaks more to the merits (or lack thereof) of the Plaintiffs' declaratory judgment action – not the request for injunctive relief.

<sup>5</sup> See Declaration of Sherri Wharton Hadskey, Louisiana Commissioner of Elections, [Doc 32-3, ¶¶ 13, 14], and the Declaration of Amanda L. Raynes, DeSoto Parish Registrar of Voters [Doc.32-4, ¶¶ 10, 13].

<sup>6</sup> Hadskey Declaration, [Doc. 32-3, ¶ 21, 29].

<sup>7</sup> Hadskey Declaration, [Doc. 32-3, ¶ 27]; Raynes Declaration, [Doc 32-4, ¶ 12].

Accordingly, it is respectfully requested that the Plaintiffs' Amended Motion for Preliminary Injunction be denied, without the necessity of an evidentiary hearing. A denial of the Plaintiffs' request for a preliminary injunction would not impact the Plaintiffs' claims for declaratory relief and permanent injunction, but the requested preliminary injunction would improperly and impermissibly interfere with the October 2023 elections of the DeSoto Parish Police Jury.

## II. LAW & ARGUMENT

### A. The Police Jury's Rule 12(c) Motion for Partial Judgment on the Pleadings is Appropriate in This Case and Should be Granted

A Rule 12(c) motion is evaluated using the same elements as a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Johnson v. Johnson*, 385 F.3d 503, 529 (5 Cir. 2004); *Gentilello v. Rege*, 627 F.3d 540, 543-544 (5 Cir. 2010); *Tarver v Wyeth*, 2005 WL 4052382 (W.D. La 2005). Unlike a Rule 12(b)(6) motion, a Rule 12(c) motion may be filed after the pleadings are closed (*i.e.*, after the defendant's answer has been filed). F.R.C.P. Rules 12(c) and 12(h)(2)(B). *Yor-Wic Construction, Inc. v. Engineering Design Technologies, Inc.*, 329 F.Supp.3d 320 (W.D. La. 2018). A 12(c) motion is designed to dispose of cases where the material facts are not in dispute, and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts. *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002); *J.M. Blythe Motor Lines Corp.*, 310 F.2d 77 (5<sup>th</sup> Cir. 1962) (wherein the court took judicial notice of New York state law on the appropriate statute of limitations to apply); *Yor-Wic Construction, Inc.*, 329 F. Supp. at 327.

If the untimeliness of the complaint is apparent on its face, the complaint may properly be dismissed. *Smith v. State Life Ins. Co.*, 2010 WL 11538272 (M.D. La. 2010); *Gabarick v. Laurin Mar. Am., Inc.*, 2009 WL 43096 (E.D. La 2009). Even though the well-pled facts are accepted as true and viewed in a light most favorable to the plaintiff, the issue is whether the plaintiff is entitled

to offer evidence to support the claim. *Fee v Herndon*, 900 F.2d 804, 807 (5th Cir. 1990); *Doe v. Hillsboro Independent School Dist.*, 81 F.3d 1395, 1401 (5th Cir. 1996). A motion for partial judgment on the pleadings is appropriate when the mover seeks dismissal of certain claims or defenses, but not all. *Mark Shiffer Surveyors, Inc. v. SJ-194*, 2021 WL 3487227 (E.D. La. 2021).

Typically, in a Rule 12 motion to dismiss analysis, the court is constrained by what is contained in the pleadings.<sup>8</sup> If, however, evidence is referred to in the pleadings and is central to the claims and defenses being made by the parties, courts may consider the evidence in a Rule 12(c) deliberation. *Yor-Wic Construction*, 329 F. Supp. at 327. “Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to [the party’s] claim.” *In re Katrina Breaches Litigation*, 495 F.3d 191, 205 (5<sup>th</sup> Cir. 2007); *Causey v. Sewel Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5 Cir. 2004), citing *Collins v. Morgan Stanley Dean Witter*, 24 F.3d 496, 498-99 (5th Cir. 2000).

All of the temporal facts addressed herein are static and cannot be denied by either side. There are no material facts in dispute here. The dates are set, and the injunction hearing is too close to the election date to even consider the issuance of an injunction at this point. The Police Jury’s affirmative defenses incorporate its opposition to the plaintiffs’ motion for preliminary injunction, as well as the exhibits thereto. [Docs. 31 and 32]. All of the determinative facts about the election process and the pending deadlines are established by Louisiana’s Commissioner of Elections and DeSoto Parish’s Registrar of Voters. Their declarations also confirm that undue expense, confusion, and hardship would result if an injunction were issued in mid-July to upend the October 14, 2023 election. [Docs. 32-3 and 32-4].

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<sup>8</sup> When the court is asked to review matters outside of the pleading, the motion can be treated as one for summary judgment. That is not the case here, as all of the factual evidence necessary for a partial judgment on the pleadings can be found in the Police Jury’s Affirmative Defenses, as well as in its opposition to the motion for preliminary injunction.

The only remaining issue is a pure question of law: Does the *Purcell* principle<sup>9</sup> preclude the issuance of a preliminary injunction only 93 to 95 days before the October 14, 2023 election? The answer must be a resounding “yes.”

Finally, this Court’s consideration and decision on this Motion for Partial Judgment on the Pleadings in advance of the July 11-13 hearing will achieve economies and efficiencies for the Court and the parties. Rule 12(i) of the FRCP encourages courts to make expedient determinations of motions to dismiss insufficient complaints at early stages of the litigation, or “at a point of minimum expenditure of time and money by the parties and the court.” *Yor-Wic Construction Co. Inc.*, 329 F. Supp at 327, quoting, *Bell Atlantic Corp. v. Twombly*, 55 U.S. 544, 558 (2007). Just as Middle District Judge John deGravelles did in the *Singleton*<sup>10</sup> case, this Court is free to cancel the injunction hearing scheduled for July 11-13, and deny the request for a preliminary injunction based upon the pleadings, briefs, and the declarations already submitted. *Singleton*, 621 F. Supp. 3d at 620, 629.

**B. The *Purcell* Principle is Directly on Point**

The Plaintiffs seek injunctive relief which, if granted, would undeniably cause significant cost, confusion, and hardship to DeSoto Parish and the Louisiana Commissioner of Elections in moving forward with this election. The Plaintiffs seek injunctive relief requiring this Court to enjoin the upcoming election of Police Jurors entirely, or require the DeSoto Parish Police Jury to discard Plan H and create, agree upon, and properly adopt a new redistricting map within the timeframes applicable to the October 14, 2023 election (which is not possible). First, it is impossible to approve, then submit to the Louisiana Secretary of State within the applicable timeframe, a new redistricting plan for the October 14, 2023 election. Second, the relief sought would undoubtedly cause DeSoto Parish to incur significant cost, confusion, and hardship.

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<sup>9</sup> The *Purcell* principle includes the learned guidance found in the opinions on *Purcell*’s progeny.

<sup>10</sup> *Singleton v. E. Baton Par. Sch. Bd.*, 621 F. Supp. 3d 618 (M.D. La. 2022).

In *Purcell v. Gonzalez*, the United States Supreme Court held that “[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.”<sup>11</sup> *Purcell* “reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. **Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.**”<sup>12</sup> “That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.”<sup>13</sup>

The Supreme Court has consistently admonished courts not to alter state election laws and processes in the period close to an election.<sup>14</sup> A long history of Supreme Court jurisprudence<sup>15</sup> has recognized the *Purcell* principle which was recently discussed in significant detail in Louisiana’s Middle District by Judge deGravelles in *Singleton v. E. Baton Par. Sch. Bd.*, 621 F. Supp. 3d 618 (M.D. La. 2022). In *Singleton*, the plaintiffs alleged that the reapportionment plan adopted by the East Baton Rouge School Board violated the one person, one vote rule embedded in the Equal Protection Clause of the Fourteenth Amendment. There, the voters were seeking a temporary restraining order and preliminary injunction preventing ballots from being prepared and school

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<sup>11</sup> *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam).

<sup>12</sup> *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays) (**emphasis added**).

<sup>13</sup> *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S.Ct. 28; 208 L.Ed.2d 247 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

<sup>14</sup> See *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application); *Milligan*, 142 S. Ct. at 880; *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); *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020) (declining to vacate stay); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

<sup>15</sup> The Police Jury will not belabor the Court with another full recitation of its *Purcell* analysis here, but will incorporate it herein by reference to pp. 5-10 of Doc. 32.

board elections being conducted, based on the adopted reapportionment plan. The *Singleton* court issued a reasoned opinion and found that any injunctive relief within four months of that election was “too close to the election” to permit injunctive relief. The *Singleton* court quoted Justice Kavanaugh’s concurring opinion in *Merrill v. Milligan*, 142 S.Ct. 879 (2022), at great length, including the following guidance:

[The] principle—known as the *Purcell* principle—reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others. It is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.

*Merrill*, 142 S. Ct. at 880–81.

When discussing the issue of timeliness, the *Singleton* court noted that in *Merrill v. Milligan*, the Supreme Court stayed a preliminary injunction with the primary election “about four months” away and with the absentee primary voting “more than two months after the court issued its order.” *Id.* at 629 (citing *Merrill*, 142 S. Ct. at 888 (Kagan, J., dissenting)). Based on the Supreme Court’s ruling in *Merrill v. Milligan*, the *Singleton* court explained:

Thus, the Court finds that one reasonable albeit cautious reading of the Supreme Court’s most recent action is that they found five months to be too close to the election.

But here the Court finds that somewhere between four months (*Merrill*) and two months (*Husted*) is within the *Purcell* doctrine. See *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4<sup>th</sup> 1363, 1371 (11<sup>th</sup> Cir. 2022) (“Whatever *Purcell*’s outer bounds, we think that this case fits within them” because “[w]hen the district court here issued its injunction, **voting in the next statewide election was set to begin in less than four months** (and local elections were ongoing” (citing *Thompson v. Dewine*, 959 F.3d 804, 813 (6<sup>th</sup> Cir)) (per curiam) (noting that a stay was warranted in light of *Purcell* notwithstanding its observation that the election was “months

away”), *motion to vacate stay denied*, — U.S. —, — S.Ct. —, 207 L.Ed.2d 1094“(2020))). (**emphasis added**)

*Id.* at 629.

In *Singleton*, the preliminary injunction hearing was scheduled to occur on August 17, 2022, which was: “(a) 2 months, 3 weeks, and 1 day (or 83 days) before the November 8 primary election; (b) 2 months, 1 week, and 1 day (or 69 days) before the October 25 early voting commencement; and (c) 1 month, and 1 week (or 38 days) before the September 24 deadline for absentee ballots to be mailed to military and overseas voters.” *Id.* Thus, pursuant to *Purcell* and the federal precedent cited, the *Singleton* court canceled the preliminary injunction hearing scheduled for August 17, 2022 and denied the request for preliminary injunction based upon the briefs and declarations submitted. *Id.* at 620, 629.

The *Singleton* ruling is consistent with a long history of binding jurisprudence and, respectfully, the same result should occur here. For the Court’s convenience, a table addressing pertinent jurisprudence has been provided [Doc 32-5].

**C. Plaintiffs’ Request for Injunctive Relief is Impermissibly Close to the Election and the Electoral Process**

Here, the Plaintiffs’ ask this Court to interfere in the instant election by issuing an injunction a little over 3 months before the scheduled election is an impermissible intrusion into Louisiana’s electoral process and should not be countenanced. The election at issue is set for October 14, 2023.<sup>16</sup> DeSoto Parish adopted its new redistricting plan on April 10, 2023. Despite participating in the lead up process and being aware of the adoption, Plaintiffs waited nearly six weeks, until May 25, 2023, to file their request for injunctive relief. The Court held a status conference on June 27, 2023, wherein the hearing on the Plaintiffs’ Motion for Preliminary Injunction was set for July 11-13. The preliminary injunction hearing will be a mere 93-95 days

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<sup>16</sup> Hadskey Declaration, [Doc. 32-3, ¶ 13]; Raynes Declaration [Doc 32-4, ¶ 10].



before the October 14 election, a timeframe deemed to be “too close to the election” by *Merrill v. Milligan*.

In *Merrill v. Milligan*, when the preliminary injunction was issued by the district court, absentee voting was set to commence in 65 days. In the case at bar, for absentee ballots to be finalized and mailed out (at least 45 days before an election under federal law), the candidates must first submit for qualifying, then pass through the qualifying period without any successful challenges.<sup>17</sup> Qualifying for potential candidates begins on August 8, 2023, a mere **28 days** after the upcoming injunction hearing.<sup>18</sup> It will not be until August 18, at the earliest, that the ballot programming process can begin and August 25 until the ballots can be mailed to absentees.<sup>19</sup> Additionally, early voting starts on September 30, 2023, only **81 days** after the injunction hearing is set to begin. In-person voting occurs on October 14, 2023, a mere **95 days** after the July 11 start date for the injunction hearing. Since the Supreme Court deemed the preliminary injunction to have been issued too close to the election in *Merrill v. Milligan*, it follows that Plaintiffs’ request for a preliminary injunction here is also too close to the October 14, 2023 election under the *Purcell* principle, and should be denied.

**D. An Injunction at this Stage Would Cause Significant Costs, Confusion, and Hardship**

It is infeasible to require the Police Jury, DeSoto Parish and the Louisiana Commission of Elections to adhere to the Plaintiffs’ proposed timelines. As explained in Ms. Hadskey’s Declaration, as the Louisiana Commissioner of Elections, “The 2023 election cycle requires the commitment of significant administrative resources by state and parish level officials. Specifically, voters need to be assigned to new voting districts in accordance with statewide plans passed by the Louisiana Legislature, and to any new voting district subject to redistricting at the municipality,

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<sup>17</sup> Hadskey Declaration, [Doc 32-3, ¶ 30]; Raynes Declaration, [Doc. 32-4, ¶ 18].

<sup>18</sup> Hadskey Declaration, [Doc. 32-3, ¶ 30].

<sup>19</sup> Hadskey Declaration, [Doc. 32-4, ¶ 30].

parish, or school board level.”<sup>20</sup> “Specifically, each voter must be assigned to their new districts in our elections database system called ERIN. Once voters are assigned to new districts, the information must be carefully proofed before it goes ‘live’ in the ERIN system. This often includes coordination with parish registrars of voters.”<sup>21</sup>

“Once a voter is assigned to their new district in ERIN, new voter registration cards containing a list of the district the voter resides in must be mailed to registered voters. Issuance of these cards helps decrease voter confusion. It also serves the purpose of letting citizens know what district they can run in, and what district they need to gather signatures in if they decide to file for election by nominating petition. In order to facilitate this, cards must be mailed well before the deadline to submit nominating petitions, which for this election cycle is **July 11, 2023.**” This also happens to be the first day of a 3-day hearing on Plaintiffs’ preliminary injunction motion.<sup>22</sup> Because this process takes time and must comply with layers of deadlines, some imposed by law, “assigning voters to their new legislative and municipal districts in the ERIN system has already begun. This work is necessary to ensure we meet deadlines set by state law given the late start caused by the late census data. We are also in the process of mailing voter registration cards to newly assigned voters in the new legislative and municipal districts.”<sup>23</sup>

The Commissioner of Elections is “concerned that any disruption to that process will make it difficult to hold a successful and timely primary election. **Election administration should not be rushed as rushing the voter assignment process creates an unacceptable risk of error that leads to flawed elections.**”<sup>24</sup> “Should a court order the October 14, 2023 election be conducted using a different plan, I calculate that August 14, 15 and 16, 2023 are the latest dates upon which

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<sup>20</sup> Hadskey Declaration, [Doc 32-3, ¶ 33].

<sup>21</sup> Hadskey Declaration, [Doc. 32-3, ¶ 34].

<sup>22</sup> Hadskey Declaration, [Doc 32-3, ¶ 35].

<sup>23</sup> Hadskey Declaration, [Doc. 32-3, ¶ 36].

<sup>24</sup> Hadskey Declaration, [Doc. 32-3, ¶ 37] (**emphasis added**).

qualifying could be conducted. These qualifying dates could only occur **after** the Secretary of State has implemented whatever plan ordered by the Court into the ERIN system **and** the Registrar of Voters has assigned all voters to the correct district, a process that would itself take as long as 7 – 10 business days prior to qualifying.”<sup>25</sup> Moreover, DeSoto Parish “has or will have close to 1200 absentee by mail ballots to assemble, ship and enter into the ERIN system. This is a very tedious task and the [adjusted August 14 qualifying timeframe] would only give the DeSoto Parish Registrar of Voters two weeks to complete this process” with no room for error.<sup>26</sup>

Similarly, the DeSoto Registrar would be impacted by any change in the current election map or timeline and would not be able to feasibly meet the Plaintiffs’ deadlines. The DeSoto Registrar must participate in the election administration by assigning voters to any new voting district subject to redistricting at the municipality, parish, or school board level.<sup>27</sup> The Registrar only has one full time employee, in addition to herself.<sup>28</sup> In reliance on the properly approved Plan H, the Desoto Parish Registrar of Voters has updated the precincts assigned to each individual registered voter.<sup>29</sup> The DeSoto Registrar has to go through the same process of updating and confirming the Police Jury districts assigned to each individual registered voter, a process that takes at least two weeks and is very labor intensive.<sup>30</sup> Moreover, once a voter’s precinct or district is updated by the registrar, it cannot be reverted back to prior assignments without completing the same process for the previous plan again, meaning a nullification of a new map would require the same amount of work to revert voters back to their prior assignments.<sup>31</sup>

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<sup>25</sup> Hadskey Declaration, [Doc. 32-3, ¶ 31] (**emphasis** added).

<sup>26</sup> Hadskey Declaration, [Doc. 32-3, ¶ 31].

<sup>27</sup> Hadskey Declaration, [Doc. 32-3, ¶ 31]; Raynes Declaration, [Doc. 32-4, ¶¶ 6, 7].

<sup>28</sup> Raynes Declaration, [Doc. 32-4, ¶ 11].

<sup>29</sup> Raynes Declaration, [Doc. 32-4, ¶ 12].

<sup>30</sup> Raynes Declaration, [Doc 32-4, ¶¶ 7, 13].

<sup>31</sup> Raynes Declaration, Ex. 4, ¶ 8.

It is only after the work of the DeSoto Registrar is complete that qualifications for the newly apportioned membership districts can be held.<sup>32</sup> Also, delaying the current qualifying deadline could cause a delay in timely preparation of ballots by the Secretary of State, thus causing a delay in the processing and mailing of Absentee-by-mail voters' ballots by the DeSoto Registrar.<sup>33</sup> The DeSoto Registrar lacks the personnel and resources to meet the deadlines and timeframes that would be necessitated by Plaintiffs' untimely request.

If this Court were to require the Police Jury to adopt a new redistricting map, that would require the Policy Jury to create and adopt a new map on an expedited and undoubtedly rushed timeline and file it with the Secretary of State by July 11,<sup>34</sup> the Commissioner of Elections to update the ERIN system, and the DeSoto Registrar to reassign precincts and confirm or change all police jury districts in a severe time crunch. This intrusion would cause significant voter confusion and undermine the reliability of the entire electoral process, creating an "unacceptable risk of error that leads to flawed elections."<sup>35</sup>

Even if this Court were inclined to agree that Plan H is improper, the type of electoral chaos requested by the Plaintiffs would not justify an invalidation of Plan H for the October 14, 2023 election. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court acknowledged that an invalid apportionment plan may be used *despite the fact of its invalidity*.<sup>36</sup> Specifically,

[U]nder certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, **equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid.** In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general

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<sup>32</sup> Raynes Declaration, Ex. 4, ¶ 16.

<sup>33</sup> Raynes Declaration, Ex. 4, ¶ 18.

<sup>34</sup> July 11 is also the first day of the scheduled hearing on Plaintiffs' Motion for Preliminary Injunction.

<sup>35</sup> Hadskey Declaration, Ex. 3, ¶ 37.

<sup>36</sup> *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.<sup>37</sup>

Likewise, in his concurring opinion in *Democratic National Committee v. Wisconsin State Legislature*, Justice Kavanaugh wrote, “Even seemingly innocuous late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences. If a court alters election laws near an election, election administrators must first understand the court’s injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes.”<sup>38</sup> “That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.”<sup>39</sup> Thus, the Supreme Court “has regularly cautioned that a federal court’s last-minute interference with state election laws is ordinarily inappropriate.”<sup>40</sup>

Here, the election administrators at risk of the most direct potential impact have confirmed, via their sworn Declarations, the significant impacts of the Plaintiffs’ requested relief. The harm resulting from an issuance of an injunction in these circumstances outweighs any potential benefit to the Plaintiffs and this Court should refuse to grant such relief.

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<sup>37</sup> *Id.* (**emphasis** added).

<sup>38</sup> *Democratic Nat’l Comm. v. Wisconsin State Legislature*, 141 S.Ct. 28; 208 L.Ed.2d 247 (2020) (Kavanaugh, J., concurrence).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

**E. Plaintiffs’ Requested Preliminary Injunction is Not Feasible Under Applicable Statutory Timeframes**

The development of Plan H took approximately 1.5 years to approve with input from the citizens of DeSoto Parish. Now, the Plaintiffs seek relief from this Court which would require the Police Jury to perform this function in less than a week. Specifically, Louisiana law requires the Police Jury to submit any redistricting plan to the Louisiana Secretary of State by “4:30 p.m. four weeks prior to the date the qualifying period opens.” La. R.S. § 18:1945(C.); Hadskey Declaration, [Doc 32-3, ¶ 22]. Here, qualifying is August 8-10, 2023.<sup>41</sup> Thus, any *new* redistricting plan required by this Court would need to be complete and submitted to the Secretary of State by July 11, 2023.<sup>42</sup> Even if injunctive relief were granted on the first day of the hearing (July 11), it would give DeSoto Parish **0 (Zero) days** in which to create, agree upon, and properly adopt a new redistricting plan. That is simply infeasible, if not impossible. July 11, 2023 is also the deadline to submit nominating petitions to the Registrar of Voters for certification 30 days in advance of the end of the qualifying period. Again, this deadline will come and go before there is a decision by this Court on whether the districts delineated in Plan H are to be disturbed.

**III. CONCLUSION**

The merits, or lack thereof, of Plaintiffs’ declaratory judgment action and request for injunctive relief are irrelevant to this Motion on Partial Judgment on the Pleadings. The Plaintiffs’ constitutional challenge to Plan H will survive the dismissal of their preliminary injunction request on *Purcell* principle grounds alone, as will the Plaintiffs’ plans to ultimately seek a permanent injunction. Accepting of the Plaintiffs’ allegations as true for this Rule 12(c) motion, and considering the Police Jury’s affirmative defenses, opposition memorandum, and the declarations attached thereto, it is hard to imagine a case that fits squarely within the bounds of *Purcell* and its

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<sup>41</sup> Hadskey Declaration, Ex. 3, ¶ 21.

<sup>42</sup> Hadskey Declaration, Ex. 3, ¶ 23.

progeny more than this one. A mere 93-95 days between the possible issuance of an injunction and the scheduled election to be enjoined is prohibitively close in proximity.

DeSoto Parish and the DeSoto Parish Police Jury respectfully request that this Honorable Court grant this Motion for Partial Judgment on the Pleadings, and do so in advance of the July 11-13, 2023 hearing, dismissing Plaintiffs' Motion for Preliminary Injunction and obviating the need for the scheduled injunction hearing.

RESPECTFULLY SUBMITTED,

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WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

DAVID B. MEANS, ET AL.,

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**CIVIL ACTION NO. 5:23-cv-00669**

VERSUS

JUDGE DAVID C. JOSEPH

DESOTO PARISH, ET AL.

MAGISTRATE JUDGE HORNSBY

**ORDER**

Considering the foregoing Motion for Partial Judgment on the Pleadings filed by Defendants, DeSoto Parish and DeSoto Parish Police Jury:

IT IS ORDERED that Motion for Partial Judgment on the Pleadings is hereby GRANTED.

IT IS FURTHER ORDERED that Plaintiffs’ Motion for Preliminary Injunction is hereby DISMISSED and the July 11, 2023 hearing on the preliminary injunction motion be removed from this Court’s docket.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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HON. DAVID C. JOSEPH  
JUDGE, UNITED STATES DISTRICT COURT