IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

TENNESSEE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,	)	
Plaintiffs,	)	**No. 3:20-cv-01039**
v.	)	**Judge Campbell**
	)	**Magistrate Judge Frensley**
WILLIAM LEE, et al.	)	
Defendants.	)	

EMERGENCY MOTION FOR A STAY OF PERMANENT INJUNCTION PENDING APPEAL

Defendants, Secretary of State Tre Hargett and Coordinator of Elections Mark Goins, intend to ask the Sixth Circuit to enter a stay pending appeal by Wednesday, June 12, 2024. Before seeking appellate intervention, the Federal Rules of Appellate Procedure give this Court an opportunity to stay its decision pending appeal. Fed. R. App. P. 8(a)(1). At minimum, a stay is warranted to the extent that the permanent injunction requires the State to implement changes in the middle of the 2024 election cycle. But Defendants appreciate that, having just granted an injunction, this Court disagrees that Defendants are likely to succeed on appeal. So if this Court intends for its permanent injunction to remain in full force, then Defendants respectfully ask it to deny this motion quickly, without waiting for a response from Plaintiffs, so that Defendants can exercise their right to appellate review in the Sixth Circuit.

Stays pending appeal generally turn on four factors: the movant's likelihood of success on appeal, irreparable harm to the movant, harm to others, and the public interest. *Mich. Coal. of*

Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). But when the challenged court order interferes with state election law, the legal framework differs because courts must consider the unique burdens that accompany last-minute changes to election procedures. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (explaining how the stay-pending-appeal analysis differs in the context of election cases). Based on all relevant considerations, the Court should stay the permanent injunction until the 2024 election cycle concludes. Because of the time-sensitive nature of this request, Defendants request a ruling as soon as possible.

I. The well-settled *Purcell* doctrine, by itself, supports granting a stay pending appeal. Tennessee has "a strong public interest" in "permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote" and "in [the] smooth and effective administration of the voting laws." *SEIU Local 1 v. Husted*, 698 F.3d 341, 346 (6th Cir. 2012). Given those robust interests, and the "extraordinarily complicated and difficult" nature of administering elections, *Merrill*, 142 S. Ct. at 880 (2022) (Kavanaugh, J., concurring), the Supreme Court has a "general rule" that "last-minute injunctions changing election procedures are strongly disfavored," *SEIU Local 1*, 698 F.3d at 34 (citing *Purcell*, 549 U.S. at 4–5). That general rule prevents the Court from applying its permanent injunction to the 2024 election cycle.

Tennessee's July 2, 2024 voter-registration deadline for the state and federal primary elections is just weeks away, *see* Mark Goins Decl. ¶ 14 (attached as Exhibit A), and early voting begins ten days later, *see* Tenn. Sec'y of State, Key Dates for the 2024 Election Cycle, https://bit.ly/45dJNO2 (last visited June 7, 2024). The permanent injunction will require the State to revise, print, and distribute updated state voter-registration forms, *see* Goins Decl. ¶ 16—a task that will "take time, cost money, and require staff members in the Division of Elections to re-

allocate their time away from the regular duties and responsibilities in preparing for the August State and Federal primary elections" during a presidential-election year. *Id.* ¶¶ 17-20. There simply is not enough time for the Division of Elections to make the court-ordered changes while faithfully discharging their various other election-related duties. That strongly favors granting a stay pending appeal. *See Purcell*, 549 U.S. at 4 (requiring courts to weigh the burdens to the State when crafting relief that will interfere with elections).

Moreover, requiring the Division of Elections to implement these changes during an ongoing election also undermines the State's interest in fostering "[c]onfidence in the integrity of our electoral processes"—an "essential" aspect "of our participatory democracy." *Purcell*, 549 U.S. at 4. By forbidding the Division of Elections from requiring state-form voter-registration applicants to submit documentation of eligibility, the injunction saddles an already overburdened state agency with an untold amount of work to verify that new applicants are not disqualified from voting because of past felonies. *See* Goins Decl. ¶¶ 19-23. Based on his 15-years of experience, Tennessee's Coordinator of Elections believes that forcing these changes to be implemented during the 2024 election cycle "will result in the registration of persons who are ineligible to register under Tennessee law and the voting by such persons, thereby compromising the integrity of the election process in Tennessee." *Id.* ¶ 25. That result would "driv[e] honest citizens out of the democratic process and bree[d] distrust of our government." *Purcell*, 549 U.S. at 4.

II. In any event, the traditional stay factors also favor granting a stay pending appeal. The State at minimum presents "'serious questions going to the merits,'" *Antonio v. Garland*, 38 F.4th 524, 526 (6th Cir. 2022), and the remaining factors likewise favor the State because an injunction that takes effect during the ongoing election cycle will irreparably harm the State, while granting a stay conversely would impose only minimal harm on the NAACP.

A. To begin, even assuming this Court thinks Defendants are unlikely to succeed on appeal, it can and should enter a stay because the State raises "'serious questions going to the merits'" of the permanent injunction. *Antonio*, 38 F.4th at 526. District courts regularly stay their own injunctions. *See, e.g.*, *George v. Hargett*, 879 F.3d 711, 715 (6th Cir. 2018); *Texas v. United States*, No. 4:18-cv-167, Doc. 221 (N.D. Tex. Dec. 31, 2018). And the Court should do so here because the State's position raises serious questions that the appellate court could see differently from this Court's decision.

First, the Court erred by holding that the NAACP has standing because it suffers an "ongoing" "drain on its resources" in response to the challenged forms and policies. (Memorandum Opinion, R. 221**,** PageID# 3617-18.) As the court acknowledged, those resources are diverted when "a person TN NAACP helps register to vote is rejected despite being eligible to register." *Id.* at 20; *see id.* at 19 ("When an eligible voter is incorrectly denied the ability to register to vote, the TN NAACP must divert resources from the other activities related to its mission by following up with the eligible voter and communicating with various governmental authorities (including, but not limited to, clerks of the court and probation officers) to rectify the situation."). NAACP provided no evidence—none—that it *currently* diverts resources in that way to correct erroneous denials.[1] And even if it had, NAACP's "efforts and expense to advise others how to comport with the law" by submitting proper voter-registration forms does not amount to a cognizable injury. *Fair Elections Ohio v. Husted*, 770 F.3d 456, 460 (6th Cir. 2014). That deficiency is especially pronounced for NAACP's challenge to the federal form, because it

[1] The Supreme Court has instructed that the plaintiff "bears the burden of establishing standing as of the time [it] brought [the] lawsuit and maintaining it thereafter." *Carney v. Adams*, 592 U.S. 53, 59 (2020). So while it may be true that NAACP diverted resources *in the past* to the earlier policies that existed from "at least 2014 until July 21, 2023," Op. 13, that does not prove they have standing *to seek prospective relief*.

admitted that it "almost exclusively" uses the *state form* during its voter-registration efforts, (First Am. Complaint, R. 102, PageID# 620-21), and the NAACP's prelitigation notices only address Tennessee's documentation requirement for the *state form*, (*see* NVRA Notice Letters, R. 156-18, PageID# 2564-65; R. 156-16, PageID# 2552-54; R. 156-15, PageID# 2515-18.)

Second, the Court erroneously concluded that the challenges to the pre-July 2023 policies were not moot by ignoring the presumption of good faith and drawing negative inferences against the non-moving party that were inappropriate at the summary-judgment stage. *See Speech First, Inc. v. Schlissel*, 939 F.3d 756, 767 (6th Cir. 2019).

Third, the Court erred by granting summary judgment and holding that Tennessee's documentation policy violates the NVRA. States may require state-form applicants to submit information beyond that required by the Federal Form. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013); *Young v. Fordice*, 520 U.S. 273, 286 (1997). And here, as evidenced by the documentation policy itself, Tennessee has determined that it needs voter-registration applicants to submit certain proof so that the State may "assess the eligibility of the applicant" and "administer voter registration and other parts of the election process." 52 U.S.C. § 20508(b)(1). Nothing in the NVRA forbids States from requiring applicants to submit evidence that they satisfy the eligibility requirements. *See id.*

B. The State will suffer irreparable harm by being enjoined from enforcing its voter-registration policies during the 2024 election while its appeal is pending. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). The injunction also prejudices the State's interest in preventing electoral chaos and confusion, as well as its interest in preserving the integrity of its elections. *Supra* I.

C. The balance of the remaining equitable factors also favors the State. *See SawariMedia, LLC v. Whitmer*, 963 F.3d 595, 596 (6th Cir. 2020) (explaining why the last two

factors merge here). Plaintiff NAACP does not suffer any constitutional harm or any injury to its own statutory rights; instead, the NAACP's injury derives from some (unquantified) amount of time and resources that the organization must spend in response to the challenged voter-registration forms and policies. (*See* Memorandum Opinion, R. 221**,** PageID# 3617-18.) Whatever those costs are, they do not overcome the State's "strong public interest" in preserving the integrity of its ballot box preventing last-minute changes to election procedures weeks before upcoming deadlines. *See SEIU Local 1*, 698 F.3d at 346.

CONCLUSION

The Court should grant the motion to stay the injunction pending appeal. At minimum, the Court should stay its injunction to prevent it from applying to the 2024 election cycle.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the above document has been forwarded electronically. Notice of this filing will be sent by the Court's electronic filing system to the parties named below. Parties may access this filing through the Court's electronic filing system.

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