

In the Supreme Court of the United States

DAVID M. SCANLAN, ET AL.,

Applicants,

v.

COALITION FOR OPEN DEMOCRACY

Respondent.

**EMERGENCY APPLICATION TO STAY ORDER OF
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW
HAMPSHIRE AND REQUEST FOR ADMINISTRATIVE STAY**

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

New Hampshire Secretary of State David M. Scanlan and New Hampshire Attorney General John Formella are the applicants here and are the appellants in the court of appeals and defendants in the district court. Coalition for Open Democracy is the respondent here, the appellee in the court of appeals, and the plaintiff in the district court.

The related proceedings below are:

1. *Coalition for Open Democracy v. Scanlan*, No. 26-2132 (1st Cir.) – Order denying stay issued October 14, 2026;
2. *Coalition for Open Democracy v. Scanlan*, No. 1:26-cv-00647-JL (D.N.H.) – Orders granting in part and denying in part motion for preliminary injunction issued October 2 and October 5, 2026.

To the HONORABLE KETANJI BROWN JACKSON, Associate Justice of the Supreme Court of the United States and Circuit Justice for the First Circuit:

Pursuant to Supreme Court Rule 23 and the All Writs Act, 28 U.S.C. § 1651 the New Hampshire Secretary of State and New Hampshire Attorney General respectfully request that this Court stay the orders issued by the U.S. District Court for the District of New Hampshire, App. 15a–67a, granting preliminary injunctive relief pending further proceedings in the court of appeals and this Court. The applicants further request an immediate administrative stay of the district court’s orders, which preliminarily enjoin the Secretary from enforcing months-old guidance interpreting recent amendments to New Hampshire’s election laws and order that the Secretary issue revised guidance, inconsistent with that interpretation, in the lead up to the November 2026 general election.

INTRODUCTION

This Court has, time and again, admonished lower federal courts not to intervene in state election procedures in the lead up to an election. *See, e.g., People Not Politicians v. Onder*, __ U.S. __, No. 26A274, slip op. 3 (Sept. 25, 2026); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (collecting cases); *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). The district court initially heeded that admonishment, relying on the *Purcell* principle to deny the respondent’s request to preliminarily enjoin enforcement of a recent amendment to state law—colloquially referred to as HB 323—in advance of New Hampshire’s September 8

state primary election. App. 1a–14a. HB 323 prohibits the use of student IDs as valid proof of identity when voting.

With respect to the general election, however, the district court reversed course. At 9:23 p.m. on Friday, October 2, the district court granted the respondent’s request for a preliminary injunction in part with respect to the general election. App. 15a–65a. While the district court did not enjoin enforcement of HB 323 itself, it did enjoin “the State from enforcing” guidance issued by the Secretary more than five months earlier interpreting HB 323. App. 64a. The district court further ordered the Secretary “to issue, as soon as practicable, guidance for the November 2026 general election” that comported with its view of how state law operates. App. 64a. On October 5, the district court issued a separate order containing the terms of its injunction. App. 66a.

Believing that an earlier oral motion to stay had satisfied their obligation to seek a stay from the district court in the first instance, the applicants filed a notice of appeal with the First Circuit on October 5 and an emergency motion for a stay pending appeal and an emergency motion to expedite that motion on October 6. App. 67a. On October 7, the First Circuit denied the applicants’ motion without prejudice, concluding that “it would be prudent and most consistent with Federal Rule of Appellate Procedure 8” for the applicants to seek “a stay pending appeal in the district court in the first instance.” App. 67a. The applicants promptly did so, D. Ct. Doc. 70, and the district court denied that motion that same day. App. 69a–72a. On October 8, the applicants filed a renewed emergency motion for a stay pending

appeal in the First Circuit. Ct. Appeal, Doc. 00118520512. On October 14, the First Circuit denied that motion in a 2-1 decision, with Judge Dunlap indicating that he would have granted a stay. App. 73a.

The district court's order cannot be squared with *Purcell*. The district court issued its order just 32 days before the general election. Governor Ayotte signed HB 323 into law on April 3. App. 3a. The Secretary issued the guidance in question later that month. App. 8a. Over the next five months, local election officials were trained on the new identify-verification rules consistent with that guidance. D. Ct. Doc. 63, at 10–11. During that same timeframe, the Secretary's office published student voting guides, updated polling place posters, updated its website, conducted social media outreach, produced and ran radio ads, and spoke at public events to explain how identity verification would work. D. Ct. Doc. 63, at 11–12.

The district court's order requires the Secretary to reverse all these efforts in the immediate lead up to the general election. It does so based on its own interpretation of state law, while generating more questions than it answers. These are the precise circumstances in which the considerations animating *Purcell* are at their apex. And this is especially true given that the respondent waited more than four months after HB 323 was enacted to initiate this lawsuit.

This Court should therefore issue a stay pending further proceedings in the court of appeals and this Court. Given the uncertainty the district court's order has injected into New Hampshire's election procedures, and the need for clarity and stability with less than three weeks to go before the election, this Court should also

issue an immediate administrative stay of the district court's order. In doing so, this Court should once again remind lower federal courts that they should not intervene in state elections procedures in the lead up to an election.

STATEMENT

Governor Ayotte signed HB 323 into law on April 3, 2026. App. 3a. HB 323 amended RSA 659:13, removing public and private school student IDs from the list of valid identifications to prove identification when obtaining a ballot. D. Ct. Doc. 45, at ¶2. After HB 323, only government-issued ID could serve as automatic identity verifications. D. Ct. Doc. 45, at ¶2. This change went into effect on June 2. D. Ct. Doc. 45, at ¶5. New Hampshire's primary election was held on September 8. D. Ct. Doc. 45, at ¶8. Its statewide general election will be held on November 3. D. Ct. Doc. 45, at ¶31.

On August 11, the respondent filed a four-count complaint and motion for a preliminary injunction. D. Ct. Doc. 1, 2. The complaint alleges that RSA 659:13, as amended by HB 323, violates the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution, and Part I, Article 37 of the New Hampshire Constitution. D. Ct. Doc. 1, ¶¶ 232–271. The respondent asserts facial constitutional challenges, seeking declaratory and injunctive relief, pursuant to 42 U.S.C. §§ 1983 and 1988. D. Ct. Doc. 1, ¶¶2–3. Defendants objected to the motion. D. Ct. Doc. 25.

As directed by the district court, the parties filed a joint timeline setting forth all pertinent dates, times, and events, and a joint statement of agreed and disputed facts in advance of an August 31 evidentiary hearing. D. Ct. Doc. 45. After receiving

evidence at the August 31 evidentiary hearing, the district court denied the applicant's motion as to the primary election. App. 1a–14a. The district court reasoned that the “*Purcell* doctrine dictates that the court refrain from interfering in the State's election law on the eve of the election, with absentee voting already underway.” App. 1a–2a.

On September 2, the respondent asked the district court to consider its motion with respect to the general election on the existing record. D. Ct. Doc. 44, at 1. The district court declined to do so, finding that the record was “insufficiently developed.” D. Ct. 44, at 1. The court issued an order scheduling a second hearing. D. Ct. Doc. 44, at 1. As directed by that order, the parties filed a supplemental joint timeline setting forth all pertinent dates, times, and events, D. Ct. Doc. 45, and a supplemental joint statement of agreed and disputed facts, D. Ct. Doc. 46.

On September 15 and 16, the district court held a second evidentiary hearing, receiving additional evidence and argument. At 9:23 p.m. on Friday, October 2, the district court issued an order partially granting preliminary relief. App. 15a–66a. The court did not enjoin the operation of HB 323's repeal of public and private school IDs as forms of *per se* identity verification. App. 16a. The court held, however, that the respondent “is likely to succeed in challenging a related directive from the Secretary of State” that the district court believed “reaches further than the statute itself.” App. 15a. The district court issued a subsequent order reiterating the terms of its injunction on October 5, the next business day. App. 66a.

That same day, the applicants filed a notice of appeal to the First Circuit. D. Ct. Doc. 65. Believing that their oral request for a stay during the district court’s preliminary injunction hearing complied with Federal Rule of Civil Procedure 8(a), the applicants moved for a stay in the First Circuit the next day. App. 67a. The First Circuit denied that motion without prejudice, reasoning that the applicants’ oral motion prior to injunction-issuance may not have satisfied Rule 8(a)’s requirements. App. 67a. The applicants promptly filed an emergency motion to stay in the district court. D. Ct. Doc. 70. Later that evening, the district court denied the motion. App. 69a. The applicants filed a renewed emergency motion to stay in the First Circuit the next day. App. 73a. On October 14, the First Circuit denied the request for a stay in a 2-1 decision. App. 73a. Judge Dunlap indicated that he would have granted the request. App. 73a.

ARGUMENT

An applicant seeking a stay typically must show “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Nat’l Republican Cong. Comm. v. Brown*, __ U.S. __, No. 26A274, slip op. 4 (Sept. 4, 2026) (per curiam). “In close cases,” this Court “balance[s] the equities and weigh[s] the relative harms to the applicant and to the respondent.” *Id.*

But when “[f]aced with [an order] enjoin[ing] operation of voter identification procedures just weeks before an election,” this Court will “weigh, in addition to the

harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures.” *Purcell*, 549 U.S. at 4. Even when “the merits are not entirely clearcut,” these election-specific considerations can “dictate” that this Court stay a lower-court injunction. *People Not Politicians v. Onder*, __ U.S. __, No. 26A274, slip op. 3 (Sept. 25, 2026).

Here, as explained below, the district court premised relief on an incorrect interpretation of New Hampshire law. But even if the merits were “not entirely clearcut,” the *Purcell* principle overwhelmingly supports a stay of the district court’s order.

A. A stay is warranted under *Purcell*.

The court denied injunctive relief prior to the September primaries because the *Purcell* principle required it to do so. App. 1a–14a. It should have reached the same conclusion with respect to the general election. Instead, it issued relief just 32 days before the election. Its order announces a new interpretation of state law that state election officials have not been trained to administer. And the district court’s order raises more questions than it answers. Under *Purcell*, it should be stayed.

This Court has warned 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.” *Purcell*, 549 U.S. at 4-5. This Court has also consistently held that each State “has a compelling interest in protecting voters from confusion” and “preserving the integrity of its election process.” *See, e.g., Burson v. Freeman*, 504 U.S. 191, 199 (1992). Ac-

cordingly, this Court has “repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm.*, 589 U.S. at 424 (collecting cases). The district court’s order here falls squarely within that admonition.

“[E]lections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process.” *Alpha Phi Alpha Fraternity v. Raffensperger*, 587 F. Supp. 3d 1222, 1324 (N.D. Ga. 2022). “[A]t every step, state and local officials must communicate to voters how, when, and where they may cast their ballots through in-person voting on election day, absentee voting, or early voting.” *Democratic Nat’l Comm. v. Wis. State Legis.*, 592 U.S. 1039, 1043 (2020) (Kavanaugh, J., concurring). So, courts should be circumspect and exercise judicial restraint when an election is near. *See id.* at 1044.

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.

Id. (collecting cases). “When an election is close at hand, the rules of the road should be clear and settled.” *Id.* at 1043.

The *Purcell* principle operates any time a material change to election procedures happens close to an election—voting need not have already begun.

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 v. Milligan, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). The principle operates as “a sensible refinement of ordinary stay principles for the election context[.]” *Id.* at 881. The State has an “extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.” *Id.*

Over the last five months, local election officials in New Hampshire have been trained on the new identity-verification rules. D. Ct. Doc. 63, at 10–11. Among other things, the Secretary's office updated its Election Procedure Manual, ballot clerk manuals, and the statewide voter registration system, to reflect these changes. D. Ct. Doc. 63 at 10. The district court's injunction requires the Secretary to update guidance to local election officials “clarifying that, although student identification cards are no longer expressly valid to establish voter identity under RSA 659:13, election officials may consider them, along with other available evidence, when determining voter identity under RSA 654:12(d)(4) and RSA 659:13(c)(1) and (3).” App. 66a. This clarification would be a complete reversal of prior guidance and training. The new guidance would be inconsistent with the Election Procedure Manual, the statutorily required polling place posters, webpages, and other manuals such as the ballot clerk procedure manual. Changing all these materials is impracticable just weeks from the election, and these are the documents used by election officials for reference on election day, though they will be out-of-date. Notably, “officials” are not limited to clerks who understand elections—they include ballot clerks and others with whom the Secretary does not have direct contact. If the injunction is not

stayed, there is a substantial risk of inconsistent application of identity-verification procedures.

This is all the more true given that the Secretary's office has been communicating with the public about the change regarding student IDs since at least April. D. Ct. Doc. 63, at 10–11. Among other things, the Secretary's office published student voting guides, updated polling place posters, updated its website, conducted social media outreach, produced and ran radio ads, and spoke at public events, to explain how identity verification will work in *both* the primary and general elections. D. Ct. Doc. 63, at 11–12. Reversing course between the primary and general elections, and just one month from the general election, creates an unacceptable risk that the contradiction disincentivizes voting. *See Purcell*, 549 U.S. at 4–5. Moreover, the district court's disagreement with the Secretary's interpretation of state law is nuanced, and the press and public could very easily misunderstand what the district court actually said. To that end, there is substantial risk that voters could show up at the polls with only their student IDs in-hand. But even under the district court's interpretation, that is not the law.

Re-educating local election officials and the public in a short time is practically impossible and risks voter confusion and inconsistent application of law, if not voter disenfranchisement. These are the very harms against which *Purcell* is designed to protect.

While these considerations, standing alone, are sufficient to grant a stay, the respondent's unreasonable delay in filing their lawsuit further compels that relief.

This Court has recognized that, in the election context, an “unnecessary” delay in seeking “preliminary injunctive relief weigh[s] against” such a request. *Benisek v. Lamone*, 585 U.S. 155, 160 (2018). “Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.” *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (Sutton, J.).

The respondent filed this lawsuit and sought preliminary relief *130 days* after Governor Ayotte signed HB 323 into law. During that time, the Secretary’s office was actively implementing HB 323. Among other things, the Election Procedure Manual, Department of State’s website, social media outreach, radio ads, professionally printed polling place posters, and ballot clerk procedure manuals, were published and distributed reflecting the Secretary’s interpretation of how HB 323 changed identity verification. The respondents have never justified their delay in seeking relief. And that delay contributed to the short timeframe between the district court’s order and the general election and exacerbated the order’s disruptive effect. This further supports the issuance of a stay.

B. A stay is also warranted under the traditional factors.

While a stay should be issued based on *Purcell* alone, it is also warranted under the traditional stay factors. The district court issued relief based on its interpretation of New Hampshire law. App. 15a–65a. The applicants maintain, as they did below, that the district court’s interpretation is wrong. *See, e.g.*, D. Ct. Doc. 70, at 3–7. But even if state law is ambiguous—a point the applicants do not concede—it is

hard to conceive why the district court’s late-breaking interpretation should trump the interpretation published and disseminated by the Secretary’s office for more than five months. This is especially true given that state, not federal, courts “are final arbiters of state law in our federal system[.]” *United States v. Taylor*, 596 U.S. 845, 859 (2022). If the First Circuit does not reverse the district court’s order, then there is reason to believe this Court will intervene under these circumstances. *See, e.g., Mckesson v. Doe*, 592 U.S. 1, 3–4 (2020) (per curiam) (granting certiorari, vacating the court of appeals’ judgment, and remanding, while recognizing that the constitutional question presented would be “greatly simplified by guidance from the Louisiana Supreme Court on the meaning of Louisiana law”); *Railroad Com. Of Tex. v. Pullman Co.*, 312 U.S. 496, 500–02 (1941) (recognizing that abstention can be appropriate when a federal constitutional question turns on an antecedent question of state law).

The balance of the harms and the public interest also support a stay. The district court has enjoined the Secretary from effectuating state law in the manner the Secretary believes is required. “Any time a state is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers). Moreover, as previously discussed, the district court’s order threatens to cause voter confusion and potential disenfranchisement, which are manifestly against the public interest. *See, e.g., Purcell*, 549 U.S. at 4–5; *Burson*, 504 U.S. at 199. In contrast, the respondent’s unreasonable delay in seeking relief undermines

its assertions of irreparable harm. *See Benisek*, 585 U.S. at 160; *see also Fishman v. Schaffer*, 429 U.S. 1325, 1330 (1976) (Marshall, J., in chambers) (denying relief in part because the plaintiffs “delayed unnecessarily in commencing [their] suit”).¹ These factors also weigh in favor of granting a stay.

C. This Court should issue an immediate administrative stay pending resolution of this application.

The district court’s order has already created a substantial risk of “voter confusion and consequent incentive to remain away from the polls” that the *Purcell* principle seeks to avoid. 549 U.S. at 4–5. “As the election draws closer, that risk will increase.” *Id.* at 5. The general election is now less than three weeks away. To mitigate the ongoing risk of harm caused by the district court’s order, this Court should issue an immediate administrative stay of that order pending resolution of this application.

¹ That the Secretary made immediate, good-faith attempts to comply with the district court’s order does not change this analysis. The ability to blast-email revised instructions does not establish that those instructions have displaced prior training and materials, reached all polling personnel, or been consistently understood by officials and voters. As discussed, the Secretary’s implementation of HB 323 has spanned months and has including trainings, publications, and press and public engagement. The risk of voter confusion and disenfranchisement caused by the district court’s order cannot be addressed through a single communication. At this stage, only a stay of the district court’s order promises to bring clarity and certainty to the election process.

CONCLUSION

This Court should stay the district court's orders pending proceedings in the court of appeals and in this Court. The Court should also issue an immediate administrative stay of that order pending resolution of this application.

Respectfully submitted,

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