



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

VOLUNTARILY WITHHOLDING THE COURT'S AUTHORITY

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Federal Courts Have an Obligation to Decide Cases.

One of the most fundamental obligations of the federal courts is to decide the cases before them. This is implied from Article III, Section 2 of the Constitution, which provides that the court's judicial power extends to cases and controversies. As one court stated: "a federal judge has a duty to sit where not disqualified which is equally as strong as the duty to not sit where disqualified." *Laird v. Tatum*, 409 U.S. 824, 837 (1972) (Mem. of Rehnquist, J.) (collecting cases). This requirement is also embodied in the Code of Conduct for United States Judges:

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. . . .
The judge should adhere to the following standards:

(A) Adjudicative Responsibilities. . . .

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

There May Be Real-world Consequences to Courts' Actions.

Federal judges recognize that exercising their fundamental responsibility to decide cases can, in some circumstances, have significant impact on people beyond the immediate parties. A prime example of that is cases involving elections. Our country will hold a federal election in November, which means we will go to the polls to cast our votes for our preferred candidates. Each state holds the primary authority to administer elections by its respective citizens. Each state therefore has laws, rules, and regulations for elections and a host of election officials and workers who are responsible for conducting elections. Every election year we can anticipate federal court litigation challenging a number of election issues, including voting procedures and requirements, eligibility, voting locations, voting hours, precinct and district boundaries, and absentee voting. Individuals or organizations filing these lawsuits will assert that the rules, procedures, and

regulations governing the voting process violate their rights in some way. They may allege that certain individuals will be disenfranchised if the rules and regulations remain in place. They therefore go to the federal courts seeking protection and to change the rules, procedures, and regulations they believe are improper.

Changes to Rules and Procedures on the Eve of Elections Can Be Disruptive.

When a party files a lawsuit seeking to change election rules and regulations, the dispute has real-world consequences beyond the individual party, especially when the lawsuit is filed close in time to the election. A change to the rules may require election workers to be retrained, new ballots to be printed and issued, polling locations to be changed, polling hours to be shortened or lengthened, and other last-minute changes to be made. The reality is that election officials may not have the time or resources to adjust to what the court orders, and additional funding may be necessary to carry out the court's decision. Deciding such a case too close to the date of an election thus can cause confusion and even disrupt the election process.

Purcell v. Gonzalez.

In response to this practical reality, the Supreme Court created what is referred to as the *Purcell* principle. While courts have the authority to decide election cases, they should not change election rules during the period of time just prior to an election. This principle is not found in the Constitution nor is it written into any statute passed by Congress.

Instead, the case that created this principle is *Purcell v. Gonzalez*, 549 U.S. 1 (2006). In this case, a lower court had blocked a voter-identification law from being enforced during a midterm election, which effectively changed the rules for the election. The Supreme Court vacated the lower court's order. The Supreme Court based its decision in part on the short amount of time between the lower court's order and the election, and the need for election officials to have clear guidance.

The *Purcell* principle has been applied in numerous other cases. For example, in 2020 in *Republican National Committee v. Democratic National Committee*, 589 U.S. 423, the Supreme Court blocked a district court ruling issued five days before an election that extended the deadline for submitting absentee ballots. The district court, amid the Covid-19 pandemic, had based its decision on a large backlog of absentee-ballot requests due to concerns about voting in person. But the Supreme Court, relying on *Purcell*, concluded that the election was too close for the district court to have ordered changes in the election rules in the specific way that it did. Regarding absentee ballots, the Court said permitting absentee ballots to be cast (not merely postmarked) after the polls closed on Election Day would "fundamentally alter the nature of the election." The Court also concluded that the district court's order preventing the state from announcing election results until extended absentee voting ended ran afoul of *Purcell* since it would create the kind of confusion cautioned against in *Purcell*.

How Close Is too Close?

One unanswered question that hovers over election cases is how close is too close under the *Purcell* principle. In the *Republican National Committee* case, five days was too close. But is

one month too close? Three months? Six months? The Court has not answered this question. The answer will largely depend on the changes sought, the amount of confusion the proposed changes could create, and the difficulty and expense of implementing the changes. This will vary depending upon the circumstances. The unfortunate truth is that we will not know the answer until a court tells us.

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