



To: Interested Persons
From: Take Back the Court
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Subject: Supreme Court uses shadow docket decision to subvert democracy yet again

Today, the Supreme Court issued a shocking shadow docket decision to summarily throw out the Wisconsin Supreme Court ruling that adopted the Democratic governor's redistricting maps — siding with Republicans in an unprecedented action. In *Wisconsin Legislature v. Wisconsin Elections Commission*, the Court summarily reversed the state supreme court's decision, which resulted from a five-month process involving all stakeholders. The Court's opinion ignored the *Purcell* principle — which it cited just weeks ago in determining that a Republican gerrymandered map in Alabama could *not* be thrown out because the 2022 elections are too “close at hand.” A comparison of these cases shows that the Court is selectively applying the *Purcell* principle to achieve political ends.

The *Purcell* principle is a presumption against last-minute changes to election procedures, intended to protect voters from confusing 11th-hour changes and avoid administrative issues for election officials. But in the Supreme Court's shadow docket opinion issued six weeks ago in *Merrill v. Milligan*, Justice Kavanaugh invoked *Purcell* for political purposes. In *Merrill*, Kavanaugh invoked *Purcell* to block a federal court order requiring Alabama to redraw its congressional map, which was illegally diluting the voting power of Black voters. Despite the fact that the general election was *nine months* away (and the primary three and a half months away), the Court decided to keep the illegal gerrymandered map under the guise of concern for so-called last-minute changes and the impact it would have on voters. Effectively, it used *Purcell* to subvert democracy to the detriment of voters most at-risk of having their rights suppressed.

We are now just seven months from the November 2022 elections (and just over four months away from the Wisconsin state primaries). But nowhere in its analysis in *Wisconsin* did the Court mention *Purcell*, despite it being an eminent concern six weeks ago. When throwing out a map originally suggested by a Democratic governor, the Court seemingly has no concerns over “last-minute” changes — yet six weeks ago, it invoked such concerns to protect a map crafted by a Republican state legislature that dilutes the voting power of Black voters. Applying *Purcell* unequally is the Court's latest method of attacking democracy on behalf of Republican interests.

Purcell is the latest tool the Republican supermajority has pulled from its belt to strangle democracy and voting rights when convenient to its agenda. Applying *Purcell* to

keep illegal Republican maps and ignoring it to throw out Democratic maps amounts to nothing more than partisan gamesmanship. Time and time again, the Court — abandoning its facade of political neutrality — has shown its commitment to the radical Republican agenda and its hostility to democracy.