IN THE UNITED STATES DISTRICT COURT

EASTERN MISSOURI

PAUL BERRY III,

Division: Eastern Division

Plaintiff,

v.

Case Number: 4:26-CV-01419 JAR

DENNY HOSKINS,
in his official capacity as
Missouri Secretary of State, et al.,

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

Defendants.

VERIFIED MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER

HERE COMES, Plaintiff Paul Berry III with his VERIFIED SUGGESTIONS IN SUPPORT OF TEMPORARY RESTRAINING ORDER on Counts IV thru VII of the underlying Complaint, states as follows:

INTRODUCTION

In what may go down as the "Kobayashi Maru" of United States congressional map controversies challenging the constitutionality of Missouri's congressional maps, Plaintiff Paul Berry III seeks this Court to enforce the provisions of 2 U.S. Code § 2a(c)(5) and order Missouri to utilize an at-large statewide congressional election to conduct the 2026 Missouri General congressional election. Since Missouri lost one congressional seat and went from nine

(9) congressional seats to eight (8) congressional seats after the congressional reappropriations based upon the 2010 United States Census Bureau decennial resident canvass, Missouri has failed to enact a single congressional map that withstands the Complaint's charges of constitutional violations."

STANDARD OF JUDICIAL REVIEW

Addressing preliminary relief in the 8th Circuit against unconstitutional state election laws, *Libertarian Party of Arkansas v. Thurston*, 962 F. 3d 390 - Court of Appeals, 8th Circuit 2020 states:

> "In this appeal from a grant of preliminary injunctive relief enjoining the enforcement of state statute, Dataphase and Rounds govern our review. Dataphase requires courts to analyze and balance "(1) the threat of irreparable harm to [Plaintiffs]; (2) the state of the balance between this harm and the injury that granting the injunction [would] inflict on [Arkansas]; (3) the probability that [Plaintiffs would] succeed on the merits; and (4) the public interest." Dataphase, 640 F.2d at 113. Under the third factor, "parties seeking to preliminarily enjoin the `implementation of a state statute' must demonstrate that they are `likely to prevail on the merits.'" Rodgers v. Bryant, 942 F.3d 451, 455 (8th Cir. 2019) (quoting Rounds, 530 F.3d at 731-32). This heightened standard "reflects the idea that governmental policies implemented through legislation ... [and] developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly." Id. at 455-56 (alteration in original) (citation omitted). Generally, if a party shows a "likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are ... deemed to have been satisfied." Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (citation omitted)."

STATEMENT OF FACTS

Plaintiff Berry incorporates by reference the definitions and facts pleaded by the First Amended Verified Complaint and the Verified Trial Brief, which details the relevant facts and circumstances relevant to the instant temporary restraining order application.

ARGUMENT

I. COUNTS IV THRU VII OF THE COMPLAINT ARE LIKELY TO SUCCEED ON THE MERITS.

A. The Missouri Secretary of State is likely constitutionally prohibited from utilizing the Missouri Congressional District Maps to conduct the 2026 Missouri General congressional election, because the Missouri Congressional District Maps were each drafted and enacted by the Missouri General Assembly unconstitutionality utilizing the race of Missourians in violation of the Voting Rights Act of 2006 and the Civil War Amendments.

1. Missouri utilized the race of Missourians to construct the boundaries of Missouri Congressional District One as a purported majority-Minority congressional district upon each Missouri Congressional District Map.

The evidentiary question for the Court to consider is whether there is a greater than average likelihood that Missouri Congressional District One was drafted on each Missouri Congressional District Map by the Missouri General Assembly as a purported majority-minorty congressional district, which establishes that race was utilized by Missouri to construct the boundaries of Missouri Congressional District One drafted on each Missouri Congressional District Map.

Missouri substantially violated Section One of the Fifteenth Amendment of the United States Constitution when Missoui drafted and enacted the Missouri Congressional District Maps, because Missouri considered and utilized the race of African Americans in Eastern Missouri as a primary factor when drafting the jurisdictional boundaries of Missouri Congressional District One provided by the Missouri Congressional District Maps, purportedly, incorrectly and unconstitutionally to comply with the Voting Rights Act.

When drafting the Missouri Congressional District Maps enacted by the Missouri General Assembly, the Missouri General Assembly unconstitutionally utilized the racial demographic information provided by the 2010 United Census and 2020 United Census certified to the Missouri Governor to construct the congressional boundaries of Missouri Congressional District One in the manner currently presented by each Missouri Congressional District Map.

Missouri's Black population often seeks to migrate outside of the boundaries of the First Congressional District seeking different community interests than provided within the First Congressional District related to seeking better government services, employment opportunities, housing opportunities, educational opportunities and criminal justice services, all influenceable by Federal congressional appropriations and representation.

Missouri Congressional District One has been represented by an African American United States congressional representative for the last 58 years, since 1968 until the date of this Complaint and both Democrat and Republican voters have consistently nominated African American nominees for the First Congressional District of Missouri.

During the 21st Century, there has not been a single claim involving any local or state legislative district within or adjacent to Missouri Congressional District One that international racial discrimination caused any African American the inability to elect the political candidate of their choice or otherwise abridged the vote of African Americans within or adjacent to Missouri Congressional District One.

At all relevant temporal periods, St. Louis County's African American population is approximately twenty-five percent (25%) of St. Louis County's population; an analysis of voting trends in St. Louis County of African American countywide political candidates Charlie Dooley, Wesley Bell and Paul Berry III with White countywide political candidates Steve Stegner, Sam Page and Melissa Price receiving the majority of votes from Black voters, which establishes an extraordinary number of White voters voted for African American political candidates and White candidates received more votes from African American voters than White voters in other instances.

Evidence that African Americans do not vote as a racial voter block in Missouri Congressional District One is evident from the 2025 Democrat Primary results for City of St. Louis Mayor and 2026 Democrat Primary election results for St. Louis County Executive. African American voters in St. Louis County failed to consolidate a St. Louis County Executive candidate and split large percentages of African American voters for St. Louis County Executive between one White and two African American candidates.

In fact, the Missouri Secretary of State, himself, has publicly discussed the exact same personal disdain Plaintiff Berry shares and in the instant seeks relief from during a press statement related to Missouri's construction of Missouri's Congressional District One by utilizing the race of Missourians as published by Missouri Independent on May 12, 2026; Missouri Secretary of State Denny Hoskins states as published by Missouri Independent:

> "While he was speaking to reporters, Hoskins said he would be interested in another round of redistricting in 2027.

> Missouri's 1st District is the only one in the state that was drawn to meet the requirements of the Voting Rights Act. Hoskins said lawmakers should revise Missouri's map to eliminate the Black-majority district.
>
> **"The definition of racism," Hoskins said, "is drawing districts based on the color of one's skin. We don't want that in this state.""** (bold added)
>
> [https://missouriindependent.com/2026/05/12/no-perfect-map-missouri-ags-office-defends-gerrymandered-congressional-districts/]

Denny Hoskins as a Missouri Senator in 2022 voted on the 2022 Missouri Congressional District Map and as Missouri Secretary of State is well-qualified on behalf of Missouri to declare whether the Missouri congressional district maps enacted in the years 2022 and 2025 constructed and enacted Missouri Congressional District One utilizing the race of Missourians, to which, under a purported and unqualified assumption that Missouri was required to construct Missouri Congressional District One utilizing the race of Missourians as a mandatory obligation for compliance with the Voting Rights Act of 2006.

The Missouri Solicitor General in a Missouri court case argued without a factual determination or resolution by the Court in such Missouri court case that the 2022 Missouri Congressional District Map was illegally racially gerrymandered. (see "Missouri AG argues St. Louis congressional district is an unconstitutional racial gerrymander" by Jason Rosenbaum-St. Louis Public Radio.)

[https://www.stlpr.org/government-politics-issues/2025-11-18/missouri-attorney-general-hanaway-1st-congressional-district-unconstitutional-racial-gerrymander]

Further, in *State of Missouri v. United States Department of Commerce*, before the United States District Court of Eastern Missouri, Missouri challenges the constitutionality of

the 2022 Missouri Congressional District Map and before the 8th Circuit, admittedly based upon different legal theories, although a party can not claim a congressional district map is both constitutional and unconstitutional in the same breath before multiple courts, which Plaintiff Berry summarizes Missouri has no intention to do so before the 8th Circuit. (see Counts I-VI at):

[https://ago.mo.gov/wp-content/uploads/Missouri-v.-DOC-Complaint-1-30-2026-final.pdf]

In fact, you don't have to go any further than Missouri Governor Kehoe's special legislative session proclamation, signed as a matter of law by both Hoskins and Kehoe, to understand Missouri's position on whether race was utilized improperly to construct Missouri Congressional District One upon the 2022 Missouri General Congressional District Map in violation of the Voting Rights Act of 2006, which states in part:

> "The State of Missouri's current congressional district map may be vulnerable to a legal challenge under the Voting Rights Act and the Fourteenth Amendment, due to a lack of compactness in certain districts."

[https://governor.mo.gov/proclamations/governor-kehoe-convenes-second-extraordinary-session-first-regular-session-one]

Any involvement by the Missouri General Assembly related to a special legislative session called for the specific purpose of constructing any Missouri congressional district as a legislative response to a "legal challenge under the Voting Rights Act" is absolutely being called to consider race under the Voting Rights Act when drafting such Missouri congressional district boundaries, and to address the Voting Rights Act violations that Plaintiff Berry has complained against since the original enactment of the 2022 Missouri Congressional District

Map.

Further, the only region of Missouri that can be remotely subject to the Voting Rights Act of 2006 related to any Federal congressional district map is the Missouri region that at all relevant temporal periods maintained territory currently and formerly comprised of the Missouri Congressional District One. Last, Missouri does not maintain a compelling state interest to segregate African Americans within one Missouri Congressional District One based upon race or ancestral bondage under slavery.

2. Missouri unconstitutionally utilized the race of Missourians to construct the boundaries of Missouri Congressional District One incorporated with each Missouri Congressional District Map as a majority-Minority congressional district without actually establishing a "fifty percent plus one vote" United States congressional district.

Bartlett v. Strickland, 556 U.S. 1 (2009) directly declares that Missouri is prohibited from utilizing the race of Missourians to construct any United States congressional district pursuant to the Voting Rights Act of 2006, unless such racially gerrymandered congressional district establishes an African American voter population exceeding more than fifty percent (50%) of the voting age population of the congressional district in question, which states in relevant part:

> "This case turns on whether the first Gingles requirement can be satisfied when the minority group makes up less than 50 percent of the voting-age population in the potential election district. The parties 1242*1242 agree on all other parts of the Gingles analysis, so the dispositive question is: What size minority group is sufficient to satisfy the first Gingles requirement?
>
> ***

> It is appropriate to review the terminology often used to describe various features of election districts in relation to the requirements of the Voting Rights Act. In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, § 2 can require the creation of these districts. See, e.g., Voinovich, supra, at 154, 113 S.Ct. 1149 ("Placing black voters in a district in which they constitute a sizeable and therefore `safe' majority ensures that they are able to elect their candidate of choice"); but see Holder v. Hall, 512 U.S. 874, 922-923, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (THOMAS, J., concurring in judgment). At the other end of the spectrum are influence districts, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected. This Court has held that § 2 does not require the creation of influence districts. LULAC, supra, at 445, 126 S.Ct. 2594 (opinion of KENNEDY, J.).
>
> ***
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> Petitioners argue that although crossover districts do not include a numerical majority of minority voters, they still satisfy the first *Gingles* requirement because they are "effective minority districts." … We reject that claim.
>
> ***
>
> "To be sure, the *Gingles* requirements "cannot be applied mechanically and without regard to the nature of the claim." *Voinovich*, 507 U.S., at 158, 113 S.Ct. 1149. It remains the rule, however, that a party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent."

As provided by the chart below, the racial makeup of Missouri Congressional District One has never exceeded fifty percent (50%) African American population at any temporal period when each Missouri Congressional District Map was enacted by the Missouri General Assembly, as presented below:

Racial Makeup of Missouri Congressional District One Historically

United States Census Bureau Decennial Census Data

Census / Map Cycle	Black / African American	White	Hispanic / Latino	Asian	Other / Two+ Races
1960	~28–32%	~68–72%	<1%	<1%	<1%
1970	~33–37%	~62–66%	<1%	<1%	<1%

1980	~38–42%	~56–60%	~1%	<1%	<1%
1990	~43–47%	~50–54%	~1%	~1%	~1%
2000	~46–50%	~44–48%	~2%	~1%	~2%
2010	~45–48%	~44–47%	~3%	~2%	~3%
2020 (HB 2909)	~40–44%	~44–48%	~4%	~2%	~6%

Based upon the United States Census Bureau's own statistics, because each Missouri Congressional District Map did not construct the boundaries of Missouri Congressional District One to establish over fifty percent (50%) African American voter population within Missouri Congressional District One incorporated with each Missouri Congressional District Map, and each such Missouri Congressional District Map constitutes either an "influence" or "crossover" congressional district, each Missouri Congressional District Map is in violation of the Voting Rights Act of 2006, the Fourteenth Amendment and the Fifteenth Amendments of the United States Constitution.

3. Missouri unconstitutionally utilized the race of Missourians to construct the boundaries of Missouri Congressional District One incorporated with each Missouri Congressional District Map without first conducting any preenactment analysis of whether international racial voter discrimination established a justifiable conclusion that suggested Missouri voters endured international racial voter discrimination that may cause the denial or abridgment of the right to vote by African American residents of Missouri, which may run afoul of Article III, Sections 21, 30 and 31 of the Missouri Constitution.

Any official act by the Missouri General Assembly may only be conducted with a quorum vote of the duly-elected members of either the Missouri House of Representatives or the Missouri Senate. No consideration by special masters, votes by committees or actions by a single or group of members not deemed a quorum constitutes an official public act effective

outside of the Missouri General Assembly by either the Missouri House of Representatives or the Missouri Senate. Any official act or vote conducted by either legislative body of the Missouri General Assembly is required to be memorialized by such respective legislative body's official journal of record.

Because Missouri was never subject to Section 5 of the Voting Rights Act, Missouri was never under a Federal mandate to consider race when drafting congressional maps. In order for Missouri to consider race when drafting and enacting any Missouri Congressional District Map, the Missouri General Assembly and the Missouri Governor were each separately required to consider the proposition as to whether any intentional racial discrimination caused any Missourian to endure a denial or abridgement of their right to vote for United States Congress.

Missouri in no form, factually or technically, considered the proposition as to whether any intentional racial discrimination caused any Missourian to endure a denial or abridgement of their right to vote for United States Congress, nor does the official journal of either legislative body of the Missouri General Assembly reflect that Missouri ever voted or even considered the proposition as to whether any intentional racial discrimination caused any Missourian to endure a denial or abridgement of their right to vote for United States Congress.

Under Missouri law, because the Missouri General Assembly may only act as a legislative body by a quorum vote, because neither body of the Missouri General Assembly voted with regard to each Missouri Congressional District Map to adopt a committee finding or

report, voted on a resolution or enacted a preamble to the Missouri legislation in question declaring that justifiable conclusions from a preenactment analysis of whether intentional racial discrimination may cause a denial or abridgement of the right of Missourians to vote for United States Congress, each Missouri Congressional District Map that utilize race to determine congressional boundaries without the Missouri General Assembly actually voting to adopt a committee finding, report, resolution or enacted a preamble to the Missouri legislation in question declaring that justifiable conclusions from a preenactment analysis of whether intentional racial discrimination may cause a denial or abridgement of the right of Missourians to vote for United States Congress is in violation of Section 2 of the Voting Rights Act of 2006 and the Fourteenth and Fifteenth Amendments of the United States Constitution.

As a direct result of the Missouri General Assembly enacting each Missouri Congressional District Map without adopting a committee finding, report, resolution or enacted a preamble to the Missouri legislation in question declaring that justifiable conclusions from a preenactment analysis of whether intentional racial discrimination may cause a denial or abridgement of the right of Missourians to vote for United States Congress, each Missouri Governor did not consider any committee finding, report, resolution or enacted a preamble to the Missouri legislation in question declaring that justifiable conclusions from a preenactment analysis of whether intentional racial discrimination may cause a denial or abridgement of the right of Missourians to vote for United States Congress prior to signing each Missouri Congressional District Map, which clearly violates Section 2 of the Voting Rights Act of 2006

and the Fourteenth and Fifteenth Amendments of the United States Constitution, and may violate Missouri's presentation clause amendments pursuant to Article III Section 30 thru 31 of the Missouri Constitution, which deems each Missouri Congressional District Map as void and unenforceable by the Missouri Secretary of State and may also violate the original purpose clause of Article III Section 21 the Missouri Constitution.

B. Use of the 2022 Missouri Congressional District Map to conduct the 2026 Missouri General congressional election will cause a violation of Equal Protection Clause of the United States Constitution.

The Fourteenth Amendment of the United States Constitution by its Equal Protection Clause requires Missouri to grant the same weight towards the vote to elect United States congressional representatives to all Missourians, which can not occur when by Missouri's own actions caused by the Missouri Proposition A, 2026 Missouri General congressional election voters are in real pearl of being required to cast a vote for a United States congressional representative from a pool of congressional election nominees who as a matter of Missouri law may never represent them as a United States congressional Representative, not because of an unforeseen cause of death, disability or disqualification, because of the unconstitutional propositions suggested by a few instant Appellates that a Missouri congressional election should be held in the manner Missouri Proposition A has placed us in.

In the event that the Missouri Proposition A fails by statewide ballot vote during the 2026 Missouri General election, Missouri would be facing another constitutional

crisis that could potentially cause Missouri to fail to lawfully elect all eight (8) United States congressional representatives from Missouri, because such Missouri voters were denied as a direct result of Missouri election law (and its interpretation by the Missouri Supreme Court) an opportunity to vote for the congressional candidate of their choice selected during the 2026 Missouri Primary congressional election unrelated to the death, disability or otherwise removal of such congressional candidates in the manner normally provided by Missouri law.

Missouri by its interpretation of its election law does not provide the same amount of constitutional protections related to their Primary congressional election selection process as this Court is required to enforce against Missouri related to Federal election laws and the requirements of the United States Constitution related to any Federal General congressional election pursuant to the Elections Clause, and as such, any passage of Missouri Proposition A during the 2026 Missouri General election would cause this Court to have to invalidate the entire 2026 Missouri General election, which may not be curable by Missouri or this Court due to the provisions provided by Federal law until a new Missouri General election is held in the year 2028.

II. PLAINTIFF BERRY REQUIRES IMMEDIATE RELIEF FROM THE COURT TO AVOID IRREPARABLE HARM.

Plaintiff Berry contends that conducting the 2026 Missouri General congressional election with a racially segregated United States congressional district subjects himself to unconstitutional racial classification in the Federal congressional electoral process. If established, that injury cannot adequately be remedied by damages or a judgment entered after

any election. Plaintiff Berry seeks protection of his own Federal constitutional rights, not merely relief from political disadvantage or disagreement with Missouri legislative policy. Under Dataphase Systems, Inc. v. C L Systems, Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc), the approaching election supports immediate consideration because the opportunity to participate in that election free from unconstitutional districting cannot later be fully restored. This temporary restraining order application is both timely and congruent with the Court's obligations against Missouri pursuant to 2 U.S.C. § 2a(c)(5).

III. THE BALANCE OF HARMS AND THE BALANCE OF EQUITIES AND PUBLIC INTEREST, WEIGH IN FAVOR OF THE COURT GRANTING IMMEDIATE RELIEF ON COUNTS IV THRU VII OF THE COMPLAINT.

The Court must weigh Plaintiff Berry's threatened constitutional injury against the injury an injunction would impose on Defendants and affected voters. Dataphase, 640 F.2d at 113. Plaintiff Berry submits that preventing a demonstrated constitutional violation outweighs avoidable administrative expense where a lawful, workable remedy remains available. Nevertheless, ballot preparation, military and overseas voting, candidate access, and voter confusion are substantial interests—not mere inconveniences. Plaintiff Berry therefore requests immediate relief limited in scope and duration to what the evidentiary record establishes is necessary and feasible, with expedited consideration of implementation burdens, to rule upon Missouri's last minute congressional map switch.

When the government is the opposing party, the balance of equities and public interest merge. *Nken v. Holder*. The public has compelling interests both in constitutional elections and

in an orderly election process that preserves meaningful participation. Plaintiff Berry requests prompt review before additional election steps are taken by the Missouri Secretary of State that extinguish the relief sought by Counts VI thru XII of the Complaint. Further, as stated by the 8th Circuit, "generally, if a party shows a "likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are ... deemed to have been satisfied." Minn. Citizens Concerned for Life, Inc. v. Swanson, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (citation omitted).""

PRAYER FOR RELIEF

Plaintiff Berry seeks this Court to issue a temporary restraining order against Missouri Secretary of State from conducting the 2026 Missouri General election utilizing the 2022 Missouri Congressional District Map until this Court renders its decision on Counts IV thru VII of the Complaint. Plaintiff Berry requests the Court stay its consideration of this Motion for Temporary Restraining Order until the accompanying motion to shorten time is entered into the record by Plaintiff Berry.

Respectfully Submitted,

Paul Berry III
Plaintiff, Pro Se
1200 S. Big Bend Blvd.
St. Louis, Missouri 63117

VERIFICATION

I have reviewed each fact and allegation of this Verified Trial Brief and attest to personal knowledge of each fact and allegation as being correct and true to the best of my belief, knowledge and understanding.



Paul Berry III
Plaintiff

Sworn and subscribed before me on September 17, 2026, executed by Paul Berry III.



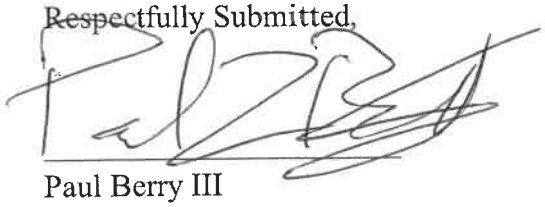
Notary Public



CERTIFICATE OF SERVICE

A copy of the foregoing motion will be mailed to the Defendants via the United States Postal Services and will be uploaded to the Pacer court document filing system by the United States District Court of Eastern Missouri assumed in the manner provided by its local Federal civil court docketing procedures.

Respectfully Submitted,



Paul Berry III
Plaintiff Pro Se