IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Paul Berry III,

Plaintiff,

v.

Denny Hoskins, in his official capacity as Missouri Secretary of State, and State of Missouri,

Defendants.

Case No. 4:26-cv-01419-JAR

DEFENDANTS' SUGGESTIONS IN OPPOSITION TO REQUEST FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Plaintiff requests that this Court grant extraordinary relief on the eve of a congressional election. But "[w]hen an election is close at hand, the rules of the road should be clear and settled." *Merrill v. Milligan*, 142 S.Ct. 879, 880 (Kavanaugh, J., concurring in grant of applications for stays); *see Democratic Nat'l Comm.*, 592 U.S. at 1043 (Kavanaugh, J., concurring in the denial of application to vacate stay). Plaintiff's request that this Court enter an order requiring the State to carry out at-large elections invites further confusion and chaos into an already complicated election. Indeed, at this point in time it is unclear whether the 2026 General Election will proceed on the map Plaintiff is contesting. *See Onder v. Missouri*, No. 26-2797, 2026 WL 2824043, at *17 (8th Cir. Sept. 21, 2026). Given that the Eighth Circuit has ordered the State to use the 2025 map for the 2026 General Election, it would be prudent—at a minimum—to wait for the Supreme Court to weigh in on the Eighth Circuit's order before proceeding in this case.

Additionally, Plaintiff has failed to meet his burden of proof entitling him to relief on his claims. His Equal Protection and 15th Amendment claims fail because Plaintiff has not met his burden of providing any direct evidence that the General Assembly impermissibly considered race; nor has he produced an *Alexander* map, which the U.S. Supreme Court views as dispositive in all but the rarest of cases. And Section 2 of the Voting Rights Act does not include a private right of action. This Court should, therefore, deny Plaintiff's request for a temporary restraining order.

BACKGROUND

This case is a small part of a greater legal dispute concerning which congressional map the state of Missouri will use in the ongoing 2026 General Election. The basic facts are follows:

I. The Missouri General Assembly redistricts mid-decade; the Primary Election is conducted using the new congressional map.

On September 12, 2025, the Missouri General Assembly decided to update the State's eight congressional districts mid-decade. It passed House Bill 1 ("HB 1"), which instituted a new congressional map in place of Missouri's previous map enacted in 2022. Following HB 1's passage, opponents of the bill submitted a referendum petition, but because verifying signatures takes time, the State had not yet completed its review when the 2026 primary took place.

In *Maggard v. Missouri*, the Missouri Supreme Court seemingly answered how the State should conduct the primary. 733 S.W.3d 411 (Mo. 2026). It held that the Secretary of State could enforce HB 1 despite a referendum petition being *submitted*, as the verification process was still ongoing and the sufficiency of the petition was still in question. *Id.* at 417–19. The court then suggested in dictum that a certified referendum could result in the law being retroactively deemed void, though it also reserved the question of whether a referendum could proceed and did not address the applicability of the state-law *Purcell* principle. *Id.* at 420 & 414 n.6.

When the Missouri Supreme Court issued its *Maggard* decision in May 2025, the Secretary faced an imminent Primary Election. *Cf. Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (staying order affecting congressional map much further in advance

of upcoming primary election). Accordingly, he conducted the election using the only map in effect at the time: HB 1.

II. The Missouri Supreme Court reinstitutes the 2022 congressional map, triggering successive litigation.

The same day Missouri held its Primary Election—August 4, 2026—the Secretary issued a certificate rejecting the referendum petition on constitutional grounds. Although the trial court agreed with the Secretary's decision, the Missouri Supreme Court reversed and directly issued an injunction ordering the Secretary "to place the referendum petition on the November 2026 general election ballot" and, more surprisingly, prohibiting the Secretary—"and all those acting in concert with him"—"from implementing, using, or mandating the use of the congressional redistricting in HB 1."[1] *Von Glahn v. Hoskins*, No. SC 101805, 2026 WL 2628846, at *7 (Mo. Sept. 3, 2026).

The Missouri Supreme Court's decision instigated numerous lawsuits in federal and state court, including this one. The successive litigation has introduced a great deal of uncertainty over which congressional map, if any, would govern the November 2026 election. Indeed, between September 3 and September 22, courts have ordered Missouri to use different congressional maps four times. *See von Glahn*, 2026 WL 2628846; *Onder v. Missouri*, No. 4:26-cv-01424, 2026 WL 2640610 (E.D. Mo Sep. 8, 2026); *People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767 (Sept.

[1] To Defendants' knowledge, the Missouri Supreme Court's decision represents the first time a court has ordered that the General Election be held on a substantially different map than the Primary Election.

10, 2026); *Onder v. Missouri*, Nos. 26-2797, 26-2827, 2026 WL 2824043, at *17 (8th Cir. Sept. 21, 2026). Most recently, the Court of Appeals for the Eighth Circuit issued an injunction ordering Missouri to conduct elections on the 2025 congressional map, though the court stayed its own ruling for one week to give the U.S. Supreme Court a chance to review. *Onder*, 2026 WL 2824043, at *17 (8th Cir. Sept. 21, 2026).

III. Plaintiff files suit against the 2022 congressional map, alleging that the General Assembly impermissibly considered race.

Following the Missouri Supreme Court's decision, Plaintiff initiated the present action on the theory that Congressional District 1 ("CD1") constitutes a racial gerrymander. *See generally* Doc. 1. In his First Amended Complaint, Plaintiff expanded his claims to include a challenge to the manner in which Missouri selects its judges. *See* Doc. 11 at 51–58 (Counts I–III). However, his request for a temporary restraining order rests entirely on his claims against the 2022 congressional map. Specifically, Plaintiff contends that CD1 violates the Fourteenth and Fifteenth Amendments, as well as Section 2 of the Voting Rights Act, and asks this Court to require Missouri to conduct the General Election using an at-large, statewide system. Doc. 19 at 1.

LEGAL STANDARD

To prevail on a request for a temporary restraining order, a plaintiff must demonstrate "(1) the likelihood the moving party will succeed on the merits; (2) the threat of irreparable harm to the movant; (3) the balance between this harm and the injury that granting the injunction will inflict on other parties; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981));

see also SH3 Health Consulting, LLC v. Page, 459 F. Supp. 3d 1212, 1219 (E.D. Mo. 2020) ("Courts in the Eighth Circuit apply the same standards to a request for a preliminary injunction and temporary restraining order." (citation omitted)). When applying these factors, courts should "flexibly weigh the case's particular circumstances to determine whether the balance of equities so favors the movant that justice requires the court to intervene." *Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 601 (8th Cir. 1999) (citation omitted).

ARGUMENT

This Court should deny Plaintiff's request for a temporary restraining order that would enjoin the use of the 2022 congressional map for the ongoing General Election. Not only would any such order add to the growing confusion surrounding the November election, but Plaintiffs' motion fails on the merits.

I. The public interest counsels against an additional court order related to the map governing the 2026 General Election.

As this Court is aware, in recent weeks, Missouri has suffered a great deal of uncertainty over which congressional map would govern the November 2026 General Election. Between September 3 and September 10, the legally-required map changed three times. *See von Glahn v. Hoskins*, No. SC101805, 2026 WL 2628846 (Mo. Sept. 3, 2026); *Onder v. Missouri*, No. 4:26-cv-01424, 2026 WL 2640610 (E.D. Mo Sep. 8, 2026); *People Not Politicians v. Onder*, No. 26A326, 2026 WL 2659767 (Sept. 10, 2026). Yesterday, the Eighth Circuit directed another Eastern District court to enter a permanent injunction prohibiting the Secretary and numerous others from using any map but the 2025 congressional map in the 2026 election. *Onder*, 2026 WL

2824043, at *17. The Eight Circuit directed that this injunction be stayed for a week pending appellate review. *Id.*

At a minimum, this Court should allow any appeals related to the *Onder* order to play out. More generally, the public interest counsels against yet another court order that would inflict uncertainty into a rapidly approaching general election.

II. Even if this Court could grant relief without upending the ongoing election, Plaintiff's claims fail on the merits.

Defendants read Plaintiff's motion to raise three legal theories in support of his request for a temporary restraining order. None are likely to succeed on the merits.

A. Plaintiff has not met his burden to establish an Equal Protection Clause violation.

This Court should reject Plaintiff's intentional discrimination and racial gerrymandering claims regarding CD1, as Plaintiff failed to allege or establish by sufficient evidence that the Missouri legislature acted with a racial motive. When bringing an intentional discrimination claim against a legislature, it is "the plaintiffs' burden to overcome the presumption of legislative good faith and show that the [state] Legislature acted with invidious intent." *Abbott v. Perez*, 585 U.S. 579, 605 (2018). This means showing that race was "'the predominant factor motivating" the redistricting process, such that the legislature "subordinated traditional race-neutral districting principles" to achieve racial goals. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Plaintiff makes no such showing here.

To defeat the presumption of good faith, Plaintiff must present an alternative map that controls for the same redistricting principles pursued by the legislature and achieves greater racial balance. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 8, 10 (2024); *see also LULAC*, 146 S. Ct. at 419 (reversing preliminary injunction because court failed to draw dispositive adverse inference from plaintiffs' failure to produce a viable alternative map). According to the Supreme Court, if challengers fail to produce a suitable substitute map, then courts are to treat that failure as "an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that redistricting lines were 'based on a permissible, rather than prohibited ground.'" *Alexander*, 602 U.S. at 35 (citing *Cooper v. Harris*, 581 U.S. 285, 317 (2017)). This adverse inference "packs a wallop" and should be dispositive except where a party has "direct evidence or some extraordinarily powerful circumstantial evidence." *Id*. at 35, 36.

In his verified memorandum, Plaintiff fails to produce an *Alexander* map. This is fatal to Plaintiff's claim because Plaintiff likewise fails to identify any direct evidence that race was the predominant factor motivating the 2022 General Assembly when it instituted the boundaries for CD1 in the 2022 map. The memorandum instead rests almost exclusively on opinions offered by non-legislators years after the map came into effect. *See, e.g.*, Doc. 19 at 7 (quoting Governor Kehoe). Although these quotes suggest that statewide officials had concerns that the map may be target of a lawsuit following *Callais*, the statements have little probative value as to the General Assembly's mental state at the time the map was enacted.

The U.S. Supreme Court has clarified that direct evidence must come from "relevant state actor[s]" involved in the redistricting process, such as a map-drawer or bill sponsor. *Alexander*, 602 U.S. at 8. None of the statements identified by Plaintiff qualify under that rubric.

The closest Plaintiff comes is a news article dated earlier this year, paraphrasing the Secretary, who served in the Senate when the 2022 map was being considered. The problem for Plaintiff—outside of the fact that the article constitutes hearsay—is that the Secretary never commented on the 2022 legislature. His remarks at most suggest that at some point in the district's history, CD1 was drawn to meet the requirements of the Voting Rights Act. Doc. 19 at 6. He offers no insight as to why the 2022 legislature may have adopted similar boundaries. Plaintiff obviously believes the 2022 legislature was motivated by a similar goal, but that inference is unsupported and cannot overcome the presumption of good faith, particularly when Plaintiff made no effort to disentangle race from legitimate interests. *Cf. Brown v. E. Miss. Elec. Power Ass'n*, 989 F.2d 858, 861 (5th Cir. 1993) (defining direct evidence as "evidence which, if believed, proves the fact *without inference* or presumption") (emphasis added).

Given this lack of evidence, Plaintiff has not met his burden under *Alexander*. His request for a temporary restraining order should be denied.

B. Plaintiff likewise failed to establish a violation of the Fifteenth Amendment.

Plaintiffs' claim under the Fifteenth Amendment fails for the same reason as his Equal Protection claim: he cannot demonstrate by direct or circumstantial

evidence that the Missouri legislature acted with a discriminatory purpose. *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 481 (1997); *see also City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 62 (1980) ("Our decisions . . . have made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose."). Plaintiff's verified memorandum at best suggests that some prior legislature may have configured CD1 to deliberately create a majority-minority district. But he offers little to no evidence that 2022 General Assembly sought to advance the same objective. *See supra* II.A. As the Supreme Court explained in *Abbott v. Perez*, although the "'historical background' of a legislative enactment" may act as "'one evidentiary source' relevant to the question of intent," 585 U.S. at 603–04 (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)), historical discrimination alone does not suffice. *Id.* at 604. What matters is the intent of the enacting legislature—in this case, the legislature that met in 2022.

C. Plaintiff's VRA claim fails as a matter of law.

Nor is Plaintiff entitled to emergency relief under his VRA claim. Rather. Plaintiff lacks a private right of action.

The Eighth Circuit previously recognized that "[t]he Voting Rights Act lists only one plaintiff who can enforce § 2: the Attorney General." *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1216 (8th Cir. 2023). It therefore determined that the statute lacked both an express and an implied private right of action, which precludes Plaintiff from bringing this claim. *Id.* While it is true the

Eighth Circuit left open whether a private party could enforce Section 2 via a § 1983 claim, that possible exception does not apply here. *Id.* at 1218. In his First Amended Complaint, Plaintiff brings his claim directly under Section 2, not § 1983, putting him squarely under the Eighth Circuit's holding. Doc. 11 at 58 (Count IV).

That said, Defendants recognize that courts will liberally construe pro se complaints. *Atkinson v. Bohn*, 91 F.3d 1127, 1129 (8th Cir. 1996). Accordingly, Defendants point this Court to the Eight Circuit's holding in *Turtle Mountain Band of Chippewa Indians v. Howe*, which determined that private parties do not have a cause of action under § 1983 to enforce Section 2 of the VRA. 137 F.4th 710, 721 (8th Cir. 2025). Although the Supreme Court later vacated the judgment, it only did so to give the appellate court the chance to take *Callais* into account. *See Turtle Mountain Band of Chippewa Indians v. Howe*, 224 L. Ed. 2d 827 (May 18, 2026). The reasoning remains just as persuasive today as it did when the court first issued its holding. Defendants therefore urge this Court to adopt the holding in *Turtle Mountain Band* should it read Plaintiff's complaint as bringing a § 1983 suit.

CONCLUSION

For the reasons stated herein, Defendants urge this Court to deny Plaintiff's request for temporary restraining order enjoining the 2022 map.

Dated: September 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2026, a true and accurate copy of the foregoing was electronically filed by using the Court's CM/ECF system to be served on Paul Berry, III, pursuant to his request to receive electronic communications. Doc. 20.

/s/ *Kathleen T. Hunker*