IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

ELIZABETH HEALEY, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2516-CV31273
	)	
STATE OF MISSOURI, *et al.*,	)	Division 8
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS OR IN THE ALTERNATIVE FOR TRANSFER OF VENUE

Plaintiffs have a pending motion to consolidate this case pending before another judge to which State Defendants have consented. Mot. to Transfer, *Wise v. State*, 2516-CV29597 (Jackson Cnty. Cir. Ct. Oct. 3, 2025); *see also* Notice of Hearing, *Wise v. State*, 2516-CV29597 (Jackson Cnty. Cir. Ct. Nov. 4, 2025). Only in the highly unlikely event that Plaintiffs' motion is denied should this Court then take up any motion in this case, including this motion to dismiss. *See* Jackson Cnty. Local R. 6.8.3 ("[T]he circuit judge handling the lowe[r] numbered case upon motion shall request the judge . . . having the later filed case . . . to transfer the same to the division of such requesting judge so that said judge shall dispose of all preliminary motions.").

Turning to the merits, Plaintiffs, like other plaintiffs throughout the State, challenge the General Assembly's constitutional exercise of its redistricting power. However, Plaintiffs, seeking to evade the proper venue of Cole County, *improperly* joined Board Defendants to shift proceedings to Jackson County. Three reasons

militate in favor of dismissal without prejudice to refile in Cole County and/or transfer venue to Cole County directly.

First, Article III, Sections 3 and 7, of the Missouri Constitution makes Cole County, rather than Jackson County, is the proper venue for this suit. Moreover, the statewide nature of the Plaintiffs' two constitutional questions presented reinforce the appropriateness of a Cole County venue where an injunction against statewide officials would, if Plaintiffs were to prevail, be effective statewide. This is why such venue rules exist in Missouri law.

Second, the abatement doctrine underscores why this case should be dismissed without prejudice or, in the alternative, transferred to Cole County. Plaintiffs ask this Court to resolve a question of state constitutional law with implications affecting every single Missourian. Several other actions have been filed challenging the constitutionality of House Bill 1, all identifying the Secretary of State or the State, writ large, as defendants. Potentially inconsistent rulings, when proceedings on identical legal questions are before a Cole County court tribunal with an upcoming trial scheduled, are, at best, duplicative and wasteful of judicial resources.

Third, Plaintiffs' joinder of Board Defendants is pretensive. Plaintiffs simply do not have a basis to seek injunctive relief against these entities and individuals. Board Defendants' duties, as they relate to the core constitutional issues in this case under Article III, Section 45 of the Missouri Constitution, are *purely ministerial* and effectively subordinate to the *statewide* authority of the Secretary of State. This

delimited ministerial role is consistent with Board Defendants' status as the decentralized subordinates of Missouri's elections system.

Moreover, dismissal without prejudice or transfer of venue to Cole County will not prejudice Plaintiffs. If successful, Plaintiffs' relief obtained against the proper State Defendants will be effectuated *statewide*. Meanwhile, any relief obtained against the Board Defendants would be duplicative and ineffective, as the *majority* of the Plaintiffs is not even subject to Board Defendants' jurisdiction. Curiously, Plaintiffs do not join as defendants any of the election officials to whose jurisdiction *this majority of the Plaintiffs* is subject. Arguably, Plaintiffs added Board Defendants—only Jackson County election officials—to evade proper venue in Cole County and forum shop. This Court should reject this disfavored type of tactical joinder of unnecessary parties.

For these reasons, this Court should grant State Defendants' motion to dismiss without prejudice, or, in the alternative, to transfer venue to Cole County.

I. The Constitution designates Cole County as the proper venue.

"Venue in Missouri is determined solely by statute." *State ex rel. Etter, Inc. v. Neill*, 70 S.W.3d 28, 30–31 (Mo. App. E.D. 2002) (quoting *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991)). "For lawsuits filed against state officials, venue is appropriate in the county where their offices are located and their main duties are performed." *Talley v. Mo. Dept. of Corrections*, 210 S.W.3d 212, 215 (Mo. App. W.D. 2006) (citing *State ex rel. Mitchell v. Dalton*, 831 S.W.2d 942, 946 (Mo. App. E.D. 1992)). Here, this "appropriate" venue is Cole County. *Id.*

Article III, Sections 3 and 7 reinforce that Cole County is the proper venue for constitutional challenging to redistricting plans. Plaintiffs put great weight on the fact that the 2020 amendments to the Missouri Constitution did not also insert this language into Article III, Section 45. Pls. Opp. to Mot. to Dismiss at 6–7. However, both state legislative and congressional redistricting issues are presumptively proper *exclusively* in Cole County. The need for explicit enumeration of the Cole County venue in Sections 3 and 7 is driven by the involvement of nominally local judicial officials in the state legislative redistricting process. These judges, who *do* exercise discretionary authority, may have chambers across a multitude of counties, creating inconvenient venues for litigation of these statewide issues. In the congressional context, the only relevant entities are the General Assembly—vested with the power to redistrict—and the Secretary of State—vested with the power to implement the duly-passed redistricting legislation statewide. Section 45 did not need clarifying language designating Cole County as the sole venue for constitutional challenges to congressional redistricting plans—because it is the *default* venue. *See Talley*, 210 S.W.3d at 215; Mo. Const. art. IV, § 20.

II. The abatement doctrine reinforces transfer of venue and/or dismissal.

Plaintiffs oppose abatement because they are not the same plaintiffs as the *Luther* plaintiffs litigating in Cole County. They suggest that because they have "independently sought a remedy" their case is distinct. Pls. Opp. to Mot. to Dismiss at 10. But Plaintiffs' alleged injury is not distinct. Instead, it is shared by voters residing in various areas of the State. *See Pearson v. Koster*, 359 S.W.3d 35, 38 (Mo. banc 2012) (standing based on being "Missouri citizens and qualified voters residing

in various areas of the state"). This includes the *Luther* Plaintiffs. And exactly like them, Plaintiffs ask this Court to declare that HB 1 violates the Constitution, enjoin its implementation, and consolidate the merits trial with the preliminary injunction hearing. *Compare* Pet. at 30–31 (prayer for relief A, C), *with* Pet. at 7, *Luther v. Hoskins*, 25AC-CC06964 (Cole Cnty. Cir. Ct. Sept. 12, 2025) (prayer for relief a–b). Admittedly, Plaintiffs do seek the additional relief for this Court to declare that HB 1 violates Section 45's compactness requirement, Pet. at 31 (prayer for relief B), but Plaintiffs acknowledge that this claim "would be rendered moot" by resolution of Count I, Mot. to Transfer at 2 n.1, *Wise v. State*, 2516-CV29597 (Jackson Cnty. Cir. Ct. Oct. 3, 2025); *see also* Pls. Sugg. in Support of PI at 4–12, 18–19 (moving only for preliminary injunction based on mid-decade redistricting claim and moving to consolidate trial on merits with preliminary hearing).

Plaintiffs have moved to consolidate their case with other Plaintiffs who filed previously in Jackson County. *See* Mot. to Transfer, *Wise v. State*, 2516-CV29597 (Jackson Cnty. Cir. Ct. Oct. 3, 2025). Plaintiffs state that "both cases allege first and foremost that HB 1 violates Article III, Section 45" and that "both cases have moved for a preliminary injunction on this claim and have also requested that the trial on the merits of Count I be . . . consolidated with the preliminary injunction hearing." *Id.* at 1. Except for being in front of different courts, the underlying legal question in these proceedings is materially identical to *Luther*—addressing the key threshold issue of the propriety of mid-decade redistricting. So it is incongruous for Plaintiffs

to oppose abatement because they are "entirely different plaintiffs" and have "distinct . . . legal issues." Pls. Opp. to Mot. to Dismiss at 10.

Moreover, Plaintiffs' argument that this case is distinct, if taken to its logical conclusion, would mean that plaintiffs could bring this challenge in *any* of the State's forty-six regional circuit courts spanning 114 counties and the City of St. Louis. And under Plaintiffs' theory, abatement would not apply. The State would have to litigate independently all of these cases, and worse, it would be an inefficient use of judicial resources as each court would resolve materially identical claims. There must be some limit on the duplication, triplication, or—forty-sextuplication—of suits, but Plaintiffs' theory supplies none. The State on the other hand agrees that Plaintiffs have the ability to challenge redistricting decisions, *see Armentrout v. Schooler*, 409 S.W.2d 138, 142 (Mo. banc 1966), but believes that judicial economy and preventing inconsistent judgments means they should be channeled into the proper venue, the Circuit Court of Cole County, *see Kelly v. Kelly*, 245 S.W.3d 308, 315 (Mo. App. W.D. 2008).

And for the reasons stated below, Board Defendants pose not obstacle to abatement.

III. The Board Defendants are pretensively joined.

Plaintiffs pretensively joined Board Defendants to force this case into Jackson County. That is improper and this case should be dismissed without prejudice, or, in the alternative, transferred to Cole County.

"Although plaintiffs may file suit in any statutorily permissible venue, courts will not permit plaintiffs to engage in the pretense of joining defendants for the sole

purpose of obtaining venue." *State ex rel. Green v. Neill*, 127 S.W.3d 677, 678 (Mo. banc 2004) (citing *State ex rel. Malone v. Mummert*, 889 S.W.2d 822, 824 (Mo. banc 1994)). Missouri courts will not tolerate such pretensive joinder, as the Missouri Supreme Court has reiterated:

> Venue is pretensive if (1) the petition on its face fails to state a claim against the resident defendant; or (2) the petition does state a cause of action against the resident defendant, but the record, pleadings and facts presented in support of a motion asserting pretensive joinder establish that there is, in fact, no cause of action against the resident defendant and that the information available at the time the petition was filed would not support a reasonable legal opinion that a case would be made against the resident defendant.

State ex rel. Cross v. Anderson, 878 S.W.2d 37, 38 (Mo. banc 1994) (quoting *State ex rel. Toastmaster v. Mummert*, 857 S.W.2d 869, 870–71 (Mo. App. E.D. 1993)) (internal citations omitted). "Joinder is pretensive if either test is satisfied." *State ex rel. Doe Run Resources Corp. v. Neill*, 128 S.W.3d 502, 504–05 (citing *Hefner v. Dausmann*, 996 S.W.2d 660, 663 (Mo. App. S.D. 1999)). Here, Plaintiffs' petition fails in both regards.

Clearly, on the face of their petition, Plaintiffs joined the Board Defendants to change venue from Cole County to this Court. Second, Plaintiffs' claims—mid-decade redistricting and the compactness of the 2025 map's districts—are constitutional claims with necessarily statewide implications and do not implicate the Board Defendants in any way distinct from the State Defendants.

A. The Board Defendants are improper defendants because their duties are purely ministerial.

Board Defendants are improper defendants because they exercise neither control nor discretion over the congressional map authorized under HB 1 distinct

from State Defendant. The *Legislature* fixed the boundaries of the map, passed the law, and obtained the Governor's signature.

Despite Plaintiffs' passing gestures at some unique role, *see* Pls. Opp. to Mot. to Dismiss at 17–18, the local election authorities, including the Board Defendants, are not distinct from the ministerial, *statewide* role of the Secretary of State. They should be viewed as part of a cohesive elections system where the "main duties are performed" in Cole County. *Talley*, 210 S.W.3d at 215. Put simply, in this ministerial role, the local election authorities are state-mandated agencies, not substantively distinct from the Secretary of State's operations in Cole County. *See* RSMo. § 115.027. Demonstrating their degree of ministerial subordination to the State, the Governor appoints members of the Boards, *id.*, with the advice and consent of the State Senate, Jackson County Election Board, *Who We Are* https://jcebmo.org/who-we-are/ (last visited Nov. 3, 2025). Some of Board Defendants' tasks are more locally independent, such as generating "rules and regulations," but the tasks at issue in this case—implementing the duly-enacted congressional map—are not. RSMo. § 115.043.

The Board Defendants act only after the Secretary takes the first ministerial implementaotn for the new congressional map under Chapters 115 and 116, RSMo. As Plaintiffs' own petition admits, the Secretary "is charged with administering and overseeing laws related to elections across the state, including implementing the state's congressional districts and candidate filings for the next election." Pet. ¶ 28 (citing Mo. Const. art. IV, § 14; RSMo. §§ 115.136(1), 115.353). Therefore, the "main

duties are performed" in Cole County, *Talley*, 210 S.W.3d at 215, while the local election authorities' administration is downstream.

Contrast the Boards' actions here to suits seeking injunctions against local prosecutors for bringing indictments under allegedly unconstitutional state laws. There, joinder of local defendants is proper because the action to prosecute or not prosecute under the law in question is discretionary, not ministerial. *See State v. Potts*, 181 S.W.3d 228, 232 (Mo. App. S.D. 2005) ("When the State has probable cause to believe a crime has been committed, the 'decision whether or not to prosecute and what charges to file generally rests entirely within the prosecutor's discretion.'" (quoting *State v. Patino*, 12 S.W.3d 733, 739 (Mo. App. S.D. 1999))).

The Boards' actions here are exactly the type of tasks which subject such officials to mandamus actions if they fail to act: a writ. A writ will "issue only when there is an unequivocal showing that the *public official* failed to perform a *ministerial duty* imposed by law.'" *Curtis v. Mo. Democratic Party*, 548 S.W.3d 909, 915 (Mo. banc 2018) (quoting *Jones v. Carnahan*, 965, S.W.2d 209, 213 (Mo. App. W.D. 1998)). "A ministerial duty is a duty 'of a clerical nature which a *public officer* is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own judgment or opinion concerning the propriety of the act to be performed.'" *Id.* (quoting *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525, 531 (Mo. banc 2010)). Imagine that one of the Board Defendants, in a few months, decided simply to ignore the 2025 map and apply the prior map. The appropriate relief sought would be mandamus since the

election duties are ministerial based on the General Assembly's approval of the congressional map, enactment by the governor, and ministerial administrative action by the Secretary of State. Fundamentally, Plaintiffs' claims turn on allegations concerning the passage and compactness of the 2025 congressional map, not about any procedure by the Board Defendants.

Finally, if the local election boards were as instrumental and distinct from the Secretary of State as Plaintiffs contend, then it is puzzling why Plaintiffs declined to join the Boone County Clerk (Plaintiff Coble), the City of St. Louis Board of Election Commissioners (Plaintiffs Beagle, Heard and Nastasia), the Greene or Christian County boards (Plaintiff Nichols-Elliott), the St. Louis County Board of Elections (Plaintiffs Freivogel, Self, and Sorrells), the Clay County Board of Election Commissioners (Plaintiff Wright), the St. Charles County Election Authority (Plaintiff Todd), the Pettis County Elections Office (Plaintiff Rollings), and the Phelps County Clerk (Plaintiff McCallian). After all, under their theory, these defendants are *necessary* to redress Plaintiffs' injuries. *See* Pls. Opp. to Mot. to Dismiss at 17–18. The fact that Plaintiffs failed to join these parties as defendants reinforces the reality that they are engaging in blatant forum shopping and pretensively joining defendants to avoid litigating in Cole County.

B. Plaintiffs suffer no harm from exclusion of pretensively joined Board Defendants from suit.

Despite their protestations, Plaintiffs in no way are prejudiced by the exclusion of the pretensively joined Board Defendants. Conversely, Board Defendants *and* State Defendants are disadvantaged by pretensive joinder. It imposes unnecessary

judicial costs and threatens to render incoherent judicial rulings on key constitutional questions with an approaching election.

In their opposition, Plaintiffs assert that they laid out "extensive allegations regarding the harms they will suffer due to HB 1's changes to congressional districts in Kansas City and Jackson County, and the ways in which an injunction against Board Defendants will remedy those injuries." Pls. Opp. to Mot. to Dismiss at at 11 (citing Pet. ¶¶ 29–34, 78–91). However, a cursory assessment of Plaintiffs' Petition reveals this is unsubstantiated. First, as noted *supra*, only three of the Plaintiffs live in Jackson County. Second, Plaintiffs' allegations concerning the drawing of new districts in the Kansas City area are not at all tethered to any actions by the Board Defendants. Other than enumerating the Board Defendants' mandatory statutory duties at the most atmospheric level, Plaintiffs do not and cannot identify how the Board Defendants are connected to their claims.

And as with their general allegations—mid-decade redistricting and compactness claims—these complaints concern HB 1's constitutionality and its applicability statewide, not any action by Board Defendants. Other than stating that the Jackson County, Pet. ¶ 29, and Kansas City, Pet. ¶ 32, boards are "charged" with overseeing elections in those jurisdictions, Plaintiffs make *no* mention of how the Board Defendants influence the implementation of these plans. For comparison, hypothetically, if Plaintiffs had joined a subordinate official of the Secretary of State's office, who happened to be located in Audrain County as a defendant, the longstanding doctrine that Cole County controls would hold true.

In Missouri, venue's "purpose . . . is to provide a convenient, logical, and orderly forum for litigation." *State ex rel. Drake Publishers, Inc. v. Baker*, 859 S.W.2d 201, 204 (Mo. App. E.D. 1993) (citing *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991)). Cole County is "convenient, logical, and orderly." Plaintiffs are spread across the State—yet the proper State defendant—is in Cole County. Several of the Plaintiffs, including Plaintiffs Beagle, Heard, Self, Sorrells, and Freivogel, Nastasia, Todd, Coble, Rollings, Nichols-Elliott, and McCallian do not live in Jackson County, the sole jurisdiction of the Board Defendants. Only Plaintiffs Anatol, Bussey, and Sapp attest that they reside within the jurisdiction of the Board Defendants. Therefore, an injunction issuing against Board Defendants would not render any relief to the non-Jackson County Plaintiffs. However, *all* Plaintiffs would enjoy their sought relief in an injunction issued against the State Defendants.

CONCLUSION

For the foregoing reasons, this Court should grant State Defendants' motions to dismiss, or, in the alternative, motion to transfer venue.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was filed and served electronically on all counsel of record via the Court's e-filing system on November 4, 2025.

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