IN THE CIRCUIT COURT OF MISSOURI
19TH JUDICIAL CIRCUIT
Honorable Brian K. Stumpe

JAKE MAGGARD ET AL,	)	
	)	
Plaintiffs,	)	
	)	Case No. 25AC-CC09120
vs.	)	
	)	
STATE OF MISSOURI ET AL,	)	
	)	January 20, 2026
Defendants.	)	Jefferson City, Missouri

CIVIL MOTION HEARING

On January 20, 2026, the above cause came on for hearing before the Honorable Brian K. Stumpe.

JENNY JOHNSON
Certified Court Reporter No. 1041
19th Judicial Circuit of Missouri

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P R O C E E D I N G S

THE COURT: We have the motion for preliminary injunction and consolidation hearing on the merits and a motion to dismiss; is that correct?

MR. GORDON: Yes, Your Honor. Matthew Gordon for the Plaintiffs here. We -- the State has noticed up this motion to dismiss for today. We have noticed up our motion for preliminary injunction. The State objected on the grounds that it was untimely filed. We recognize that it was filed less than five days to the Court today, so we would recognize that part.

Our goal, as you know, is just to get an expedited trial on the merits as soon as possible. We filed our preliminary injunction motion in the case and, if we're not able to do that, our preference would be to schedule an expedited trial on the merits as soon as possible to deal with the preliminary injunction.

MR. CAPOZZI: Good morning, Your Honor. Luis Capozzi for the State Defendants. As my good friend said, we're here to argue the motion to dismiss. We're also willing to talk about scheduling and going forward. Our understanding is that, you know, argument on the merits of the preliminary injunction is not before the

Court today.

MS. BELL: Your Honor, I agree with Mr. Capozzi.

THE COURT: We're arguing dismissal today pending a date for the preliminary injunction; is that correct?

MR. GORDON: Your Honor, what we would prefer, again, is just move directly to an expedited trial on the merits but, if we're not able to do that, then we would seek a preliminary injunction as soon as possible. But I think when we spoke last time about an expedited on the merits, the State had said that they needed time to conduct discovery, and they mention in their opposition to our motion for a preliminary injunction that they were ready to move ahead once they receive discovery.

The discovery has been served and answered on the Plaintiffs, who provided responses to discovery. The State also issued third-party subpoenas to various other entities.

THE COURT: On the record in 25AC-CC09120. Jake Maggard, et al, versus State of Missouri, et al. The State appears by Mr. Capozzi, and Intervenor by Stephanie Bell, and Plaintiff by Matthew Gordon. We're here for a motion to dismiss today. The State's motion has been filed.

Mr. Capozzi, the floor is yours.

MR. CAPOZZI. Good morning, Your Honor. May it please the Courts?

Louis Capozzi, State Attorney General on behalf of the State.

The Court should dismiss this case and spare all parties the burden of discover and trial because Plaintiffs lack standing. This case is not difficult. It requires the Court to apply basic, standard rules. As the Court knows, only litigants with a concrete and particularized injury can sue. And that injury must be actual or imminent and not speculative based on guesses about future events. But Plaintiff cannot satisfy those basic rules here.

As the State explained in its motion to dismiss, there are two ways to understand Plaintiff's alleged injury in their complaint. First, we can understand Plaintiffs to be claiming the State is denying Plaintiffs their right to pursue a referendum on House Bill 1's congressional map. That injury supposedly comes from the fact that Plaintiffs signed the referendum petition and that they should be allowed to challenge the processing of the referendum, even though the referendum's organizers are conspicuously absent from this case.

To start, Plaintiffs do not have a causeable

injury to challenge the handling of a referendum petition in the certification process merely because they signed the petition. Notably, Plaintiffs barely contest this point in their brief. And then they mention their status as signatories only in a footnote, and for good reason. The Western District's decisions in Allred and Pressler state that the petition signatories have only a generalized interest, like any other Missourian.

That is because the organizers, i.e., People Not Politicians, not the signatories, control whether to submit the referendum petition at all. But even assuming that problem away, assuming that a referendum signatory has standing to challenge the processing of a referendum in the absence of the referendum's organizers, Plaintiffs claim is not ripe.

The Secretary is currently deciding whether the referendum has enough signature to qualify for the ballot or, to be more precise, 115 local election officials are reviewing the signatures. Once that process is over, the Secretary will make a decision whether to certify the referendum. Only at that point can Plaintiffs know whether or not they will get their referendum vote. Thus, Plaintiff's referendum base injuries are premature and not ripe under the Missouri

Supreme Court's decision in Schweich V. Nixon.

And really, what Plaintiffs are trying to do is circumvent the statutory process by which the Secretary and local election officials must process the referendum. Section 116.150 gives the Secretary a deadline to finish signature verification and legal review, and 16.200 says that Missourians can only sue the challenge of certification decision after the certification decision is made. And that simply hasn't happened here yet. The Court should not allow Plaintiffs to avoid the statutory process by judging, then.

In their brief, Plaintiffs all but abandon their theory that the State has denied them the right to vote on the referendum. On pages 7 and 8 and Footnote 3 of their opposition brief, Plaintiffs admit they are not challenging the Secretary's certification decision. Fair enough. Instead, Plaintiffs pivot to a second frame of their injury that the State discussed in its motion to dismiss, the idea that they are injured by being subject to an unlawful congressional map for any period of time.

I'd just state that this injury is also not ripe because the State simply does not know which congressional map would be in effect for the 2026

elections. If the Secretary concludes that the proposed referendum has adequate signatures and is legal, HB1 may not govern this year's elections. And contending otherwise, Plaintiffs must extensively speculate about what the Secretary will do in the future, making this case like Schweich, where the Missouri Supreme Court found no standing.

Ripeness put aside, Plaintiffs allege a textbook generalized grievance. The Court should pay close attention to pages 4 to 5 and pages 7 to 9 of Plaintiffs' opposition brief. Plaintiffs say that, quote, the people, end quote, and put Plaintiffs are being harmed right now merely because HB1 is in effect right now, end quote. That's page 5 of their brief.

But as the Missouri Supreme Court explained in Missouri Coalition for the Environment, a litigant must have a particularized and personal interest in a case. And highly well noted here, this is what the Court said about the alleged injury in Missouri Coalition for the Environment: Quote, while the Coalition alleges that every Missouri citizen has an interest in a legislative and that observes the State Constitution, the law provides otherwise. The generalized interest of all citizens in constitutional governments does not invoke standing, end quote.

Plaintiffs assert here that they have an interest in the State following the Missouri Constitution regarding the conversion alma that is in effect. But that is simply the generalized interest of all citizens in constitutional government that the Missouri Supreme Court explicably rejected in Coalition for the Environment.

Now, Plaintiffs try to get around this by saying that they are registered voters who will be subject to the challenge map. But the U.S. Supreme Court specifically rejected this theory of standing in Gill v. Whitford. There, the Court said that a litigant has standing to challenge the congressional map if the litigant alleges that the map disadvantages their particular district that they live in. For example, litigant can bring in a gerrymander and say their particular district is gerrymander, that litigant might have standing.

But litigants in Gill didn't do that. They just challenged the maps statewide without identifying people from the gerrymander districts. Gill rejected such a generalized application of injury. And so to here, Maggard and Lombardi don't make a substantive gerrymandering claim, nor do they allege any injury to their particular districts. They just say the map is

illegal statewide, making this case just like Gill.

Hopefully, the U.S. Supreme Court reviewed the rules for standing in election cases just a few days ago in Boss v. Illinois Board of Elections. There, the Court reaffirmed that voters lack standing to assert that particular election laws are illegal, because that's a generalized injury shared by all voters. The Court emphasized that litigants with special interest in a rule, like candidates, do have standing. But voters do not have a particularized interest in election laws. Even laws related to the voters' general interest in an accurate vote -- here Maggard and Lombardi are not candidates.

They have alleged only that they are ordinary voters, but that means they lack a specialized injury and lack standing. Because Plaintiffs lack standing, the Court should dismiss. Although standing is not guaranteed to bring every conceivable constitutional client, it's worth pointing out that other litigants might have standing to bring this case, even though Maggard and Lombardi do not. If Maggard or Lombardi want to challenge the Secretary's certification decision on the referendum, Section 116.200 allows them to sue, but it clearly requires them to wait until a certification decision is actually made following

signature review.

As for Plaintiffs' alleged interest in the law being followed before the Secretary's certification decision, Maggard and Lombardi simply have the same generalized interest as every other registered voter. Indeed, Plaintiffs explicitly agree with this on page 5 of their opposition brief, where they know that the People and Plaintiffs are equally harmed by HB 1 made in effect right now. Perhaps a candidate would have standing under the Boss case.

Other litigants are bringing substantive constitutional challenges to the HB 1 map, and the State is not contesting standing in those cases because the Plaintiffs alleged constitutional violations that their specific congressional districts are injured. That's what's happening in the compactness litigation over the map in Jackson County, for example. Again, the State is not contesting standing there.

Or perhaps the referendum's organizers, People Not Politicians in Richard Von Glahn, would have standing, but they would have to explain away their representation to a federal court that HB 1 is in effect unless and until the Secretary certifies the referendum. But those are hypotheticals.

Other litigants might have standing to bring

Plaintiffs' claims, but these particular Plaintiffs do not have standing. They are simply average voters. As the Supreme Court recognizes in Gill and, then again, six days ago in Boss, any interest they allege in the statewide suspension of the HB 1 map is necessarily generalized.

The Court should dismiss.

I welcome any questions from the Court. Otherwise, I'll sit down.

THE COURT: Is the time frame for certification, is that merely procedural or is it substantive in nature?

MR. CAPOZZI: So the Missouri statutes give the local elections officials until -- I don't have the exact date in front of me, but it's in July, to return signature reviews to the Secretary of State, who then has a statutory deadline to make the final certification decision.

THE COURT: I understand that. It's the 13th Tuesday before the election, is what it is. But is that substantive or is that procedural in nature?

MR. CAPOZZI: I'm not a hundred percent sure I understand that question, Your Honor, but that's a procedural rule the Secretary is required to follow. The Secretary must make a certification decision by that

deadline. An the Secretary can't force the local election officials to move any faster. And so, you know, there have been allegations that the Secretary is delaying in this case, but that's just unfounded. The signatures are with the local election officials right now, and the Secretary can't force them to move any faster. You know, it takes some time. And those local election officials have a statutory deadline that they will follow.

THE COURT: Thank you.

MR. CAPOZZI: Thank you, Your Honor.

THE COURT: Did you all file a motion?

MS. BELL: We did.

THE COURT: Ms. Bell, go ahead.

MS. BELL: Your Honor, our motion raises many of the same points that the State's motion did, so I will try to be brief on those issues. But on the same point, we assert three separate bases why the Plaintiffs don't have standing.

First, as Mr. Capozzi covered, the Plaintiffs here have alleged nothing more than a generalized interest. If you look at their petition, there is no allegation how this case affects them in any manner to state from the public at large.

Also, Mr. Capozzi addressed their -- the interest

they do assert, the injury is too remote and conjectural. Plaintiffs alleged harm in their petition. They say their harm is the denial of the right to approve or reject the referendum, and depends on contingencies that may never occur. And again, as has already been discussed, the Secretary is in the process of verifying and potentially issuing a certificate of sufficiency or insufficiency. That contingency means that their alleged harm is too remote here to incur standing. And again, I direct the Court to the Princeler case.

In addition, if we look at Princeler, there was a separate discussion about the -- about a disconnect between the case itself and between the outcome of the litigation. And so we put in our -- we've alleged that their interest is not directly and adversely affected by the outcome of this litigation. And so in Princeler, the Court talked about how that case was a ballot title challenge. Certainly, this Court has seen a lot of ballot title challenges.

The Plaintiffs in that case said they had an interest in seeing their signatures counted, an interest in seeing the measure qualify for the ballot. And the Court said, there's this disconnect. This is a ballot title challenge. The harm you're claiming is

disconnected from what this case is all about. And that same disconnect exists here. The harm, again, the Plaintiffs have pled in their petition is that denial of the right to approve or reject the referendum.

The relief they're seeking in this case is an injunction barring the use of the new map. Whether the use of the new map is enjoined doesn't determine whether the Plaintiffs get to ultimately vote on the referendum. The same disconnect that existed in Princeler exists here. The outcome of this case doesn't bear on their claimed harm, and they lack standing, again, because they've asserted a generalized interest because their interest is too remote and because there is that disconnect.

We've also asserted that this case is not ripe. And as Mr. Capozzi discussed, I think the Schweich case is directly on point. The case says allegations about an elected official's intent to act until that act has occurred present no judicial controversy. And if you look at Plaintiffs' petition, the only time they allege an official act, paragraphs 32 and 3, indeed they use the language "Secretary Hoskins intends to do X, Y and Z." That make Schweich directly on point.

And what the Court said there is, where claims are committed on factors that could not be known until

after the trial and the Court issues its judgment, the claims aren't ripe. Here, there is a statutory, described process where the Secretary to certify -- verify and certify these signatures, including the local election authorities. That's not going to be known at the time Plaintiffs are asking this trial court to issue its judgment. That makes this case unripe.

We've also raised two independent bases. We talk about the political question doctrine. And the political question doctrine makes certain cases non-judiciable; for example, where a court undertakes independent resolution without respecting ordinate branches of government and the initial determination of sufficiency is vested in the Secretary of State, not the Court. So the Secretary of State must complete the verification process with the help of the local election authorities and then issue a certificate, whether it's sufficient or insufficient. This is an administrative determination entrusted to the Executive Branch. And Plaintiffs here are asking this Court to preempt that statutory process and substitute its own judgment for the judgment that is assigned to the Secretary.

For that reason, we think this Court should dismiss.

And then, finally, with respect to the remedy,

Plaintiffs have asked for a declaratory judgment, and that's improper here. A prerequisite to seek declaratory judgment is lack of an adequate remedy. Plaintiffs, as citizens, have the right to sue under Section 116.200. That's after the Secretary issues his certificate. If and when the Secretary determines the petition is insufficient, they can sue as citizens. When the Legislature expressly provides for an avenue for review -- for review, it is exclusive and in accordance, therefore, deprives the jurisdiction outside that exclusive method. Here, we're seeking a declaratory judgment when there is an adequate remedy.

For all of these reasons, Intervenors reiterate what the State has said and join in on the motion and have filed our own motion and ask this Court to dismiss.

THE COURT: Okay. You're not Mr. Gordon.

MR. HAWLEY: I am not Mr. Gordon.

MR. GORDON: And I apologize, Your Honor. I neglected to introduce my colleagues, Tori Schafer, Jonathan Schmid and Jonathan Hawley, Your Honor.

MR. HAWLEY: And with the Court's permission, I have a demonstrative here that I was planning on using to help with the argument, if I may approach and hand these out.

THE COURT: You have a copy of it?

MR. CAPOZZI: We do.

MR. HAWLEY: Good morning, Your Honor.

I'm going to start this morning by hitting the reset button, because we've heard a lot today about what this case is and what Plaintiffs are asking for and what we want to get out of this. And I think we're kind of missing the thread here, so I want to reset and talk about exactly what this case is about, and what we're asking for in Plaintiffs' petition.

The narrow question before the Court in this case is, is HB 1 suspended right now? That's it. It's a straightforward question and it all hinges on the fact that HB 1 was suspended on December 9th, 2025 when the signed referendum petitions were submitted to the Secretary of State's Office. That happened as an operation of the law. And yet the State is treating HB 1 as though it is currently in effect. That is unlawful. That is unconstitutional. And that is what we're here to talk about today.

This case is not about the Secretary certifying those petitions. We're not asking to force the Secretary's hand to speed him up. We're not asking the Court to certify the referential. We're not seeking to force a vote on HB 1. Those are issues for another day. This case is about suspension right now. We're not

trying to preempt the process, circumvent a process. That certification is happening one way or another. The issue here is, what is the status of HB1 right now?

And because the State is treating it like it's in effect, Mr. Maggard and Mr. Lombardi are suffering deprivation of their constitutional referen-- rights. And because that is our claim, there's no disconnect here between the claim and the relief. We are saying that HB 1 must be suspended now to safeguard the people's referendum rights. And our request for relief on page 9 of our petition, it's No. 1, a declaration that HB 1 is suspended and an injunction prohibiting the State from enforcing it. There's no disconnect there between our claimed interest, our injury and the relief sought. It's all very straightforward.

And so I wanted to discuss ripeness right now, because it's tied to this disconnect issue. Again, what exactly is our injury and what are we asking the Court to do about it? The reason this case is ripe for adjudication is because Mr. Maggard and Mr. Lombardi are being injured right now. There's nothing speculative about it. And I want to explain why we know that they are and why this case, therefore, is justifiable at this moment. And I want to walk though this demonstrative that I just handed out.

So let's start with three things that we know for sure. Number 1, any measure referred to the People shall take effect when approved by the majority of the votes task thereon and not otherwise. Now, that's the language from Section 52-B. That's constitutional language. It cannot be disputed. Referred legislation only takes effect when a majority of voters say that it can. That's point Number 1.

Point Number 2 is the purpose of the referendum is to suspend a law which has not gone into effect. The referendum power does not lie where a law is already operative. That's from the Moore case from 1952, from the Missouri Supreme Court. That's decades old precedence. Say the referendum exists, to suspend it to allow the voters to approve legislation before it goes into effect. Legislation cannot go into effect when it's been referred until the people have their say. That's on Number 2.

And Point Number 3 is that, because the referendum power serves as a check on the Legislature, the Legislature cannot impede or limit or interfere with that right that is so integral to Missouri's democratic system of government. That's from the No Bans case, just a couple of years ago. And if the Legislature can't interfere with that, right, it is certainly true

that the Secretary of State and the Attorney General cannot do so either. So those are the predicates that we're starting with. A law cannot go into effect before the people vote and the State can't do anything to interfere with that right.

So that might beg the question, moving on to page 2 here, when does a law become suspended after it's referred to the people? And we know the answer to that is -- well, and we can tell based on two other constitutional provisions. There's a bit of a dance here. It's a 90-day dance between two different legislative processes. The first one is when legislation becomes effective. And the bill, unless it's an emergency bill, which is not the case here, doesn't become effective fewer than 90 days after the sessions adjourns. That's the Legislature's effective date.

We also have in Section 52-A discussing the referendum right, referendum petitions must be filed not more than 90 days after adjournment. It's no coincidence that both of those provisions use 90 days. And the obvious takeaway is this: The Legislature passes legislation. It becomes effective in 90 days unless it's referred to the people. And that's why the submission of the petition by that 90-day deadline must

be the trigger that suspends the law because, otherwise, the law would take effect before the referendum is held. And we know that that cannot be, because referendum exists to let the people vote on legislation before it takes effect.

And you don't have to take my word for it, Your Honor, 1914, more than a century ago the Missouri Supreme Court reached this same common sense position. It's the submission of the referendum petition that holts the law regardless of any affirmative act on the part of the Secretary of State. That 90 day deadline elapsed in this case on

December 11, 2025. That was 90 days after the special session adjournment.

The HB 1 referendum petition was submitted on December 9th. Two days early. They beat the clock. When they submitted those petitions HB 1 was suspended. And just a parting note, there's a reason for this rule, reason, it just doesn't make sense that legislation could go into effect and then be suspended during a referendum and then may be go back into effect if the people approve it. That just doesn't make any sense.

And in the 1950s case when the Missouri Supreme Court said, if that were the rule, if Legislation could be switched on and off depending on where the process it

is, great confusion will result and much mischief may ensue.

Your Honor, I submit that today we're seeing a lot of mischief on the part of the Secretary of State's Office, because they are treating HB 1 as though it's in effect, and that is an ongoing injury. And why? It's because the referendum right is reserved to the people, Mr. Maggard and Mr. Lombardi. No less than any other Missouri voter, they have an individual right to approve or reject legislation before it goes into effect. But the State has taken the position that regardless of that right, HB 1 is in effect right now.

That cannot be the rule, and it infringes on our Plaintiffs' constitutional right at this moment. It's ongoing harm that started on December 11th when HB 1 purportedly took effect and it compounds every day, because every day our Plaintiffs' constitutional rights are being violated by enforcement of the law that should be suspended.

Now, we've heard a lot today and in the briefing about the map itself. I want to make clear, this case has nothing to do with the congressional map. That's the incidental subject. This case is about the referendum rights and this problem of enforcing suspended legislation would be an issue in any

referendum case. It just so happens that the harm here is especially acute, because unlike in -- you know, in ninet-- 1980s, there are cases about trucking legislation. If trucking legislation goes into effect and is then suspended, you might have some inconvenience there because the size of the truck at any given time that could be allowed on the State highways might change. That would be a problem, and certainly that would be a significant issue from a constitutional standpoint.

But the problem with a congressional map in particular, is that there's a point where it's looked in. You can't change a map on the drop of a dime. We know that, because the State says so in every election case, that there's a point where you need to have a map in place. Once that congressional map is in place, it's in place for two years at least.

And so the map problem makes the injury here more acquit and more immediate, but it actually has nothing to do with the ongoing constitutional violation that's the basis of our claim here regarding suspension of HB 1.

But I will say the mat injury is not conjecture either. I think Ms. Bell said that our allegations of delay were unfounded. Not so. We allege in the

petition and then our PI motion -- are incite articles on the petition as well.

The Secretary of State any the Attorney General have both stated that they are delaying certification to lock in the HB 1 map to a point where it's too late to change the map. Those motives aren't a mistery. They have said so pubically. So the assertion in the State's briefing here that HB 1 might be suspended in July or August from the certification process is done, that rings rather hollow when the Secretary of State is saying pubically that delay is in favor of the map because eventually that map is going to have to be locked in for the primarily and the general election. But again, you can set that aside.

The map problem makes our harm more immediate, and that's why we're seeking injunctive relief to prohibit the enforcement of HB 1. But the constitutional violation is happening today. There is nothing speculative or conjectural about that, and that is why we don't have a ripeness problem here. When a violation of a constitutional right is ongoing, there is no ripeness problem, because it's not conjectural. It's happening right now and we know it's happening right now.

Now, the second point they've raised is about the

generalized injury. And I want to take a step back and talk about what exactly that means. The way I look at it, a generalized injury, I call it an observational injury. It's when I as a citizen look at something the government's doing over there, and I think that's not right. They're not following the law. There's an issue there, I'm going to sue to take care of it.

And it's true, that Missouri Supreme Court is made clear, if you don't have a direct state in the game, you don't get to sue about something that the government is doing. That is not this case. Our Plaintiffs are trying to exercise their own constitutional referendum rights. It's not an abstract injury for them. They reserve for themselves a share of the legislative power. That is being denied. That is a direct constitutional violation.

Now, the fact that a lot of people might have that violation doesn't make it generalized. The generalization problem comes when you have an injury that doesn't directly impact planting. It gets quoted a lot, but Judge Scalia had a line he said in one of his books. He said, the purpose of standing is, what's it to you? Why are you in court? If you don't have a direct stake, you have a generalized injury, even if the government is doing something unlawful. But when the

person's own constitutional rights are being violated, that's not generalized.

Let me give you an example. I thought about this hypothetical. Let's say that in the next governor's race, the Secretary of State says, I'm not gonna count the votes for Governor. I'm gonna make that decision for myself. I think we'd all agree and I think the State would agree that would be unlawful action on the part of the Secretary of State. So my question is who could sue about that?

Now, the State would say that under Bost that recent Supreme Court case, candidates could sue. Absolutely. If I'm running for Governor and the Secretary of State says he's not going to count votes for Governor and he's going to make the decision himself, if I'm a candidate, I would have standing to sue. Absolutely. But I would not be the only person, because I think in that hypothetical the State would be hard pressed to argue that a voter deprived of their constitutional right to elect their Governor has not suffered a personal injury themselves. Every voter might have that injury. Absolutely. But the for each voter, it is a personal non abstracted injury. Again, just because it's widespread doesn't mean it's generalized, because each voter has a persona stake in

the electing their Governor and here Mr. Maggard and Mr. Lombardi have a personal and direct interest in being able to exercise their referendum rights. And the State charted an unconstitutional course here. They are saying HB 1 is in effect, and that subverts the right to referendum, because it denies voters their chance to approve a law before it goes into effect.

In the briefing the State accused us of ignoring Montana Cool ion for the Environment, which is one of the big cases about a generalized injury. We're not ignoring it, it just has no relevance here. Because, again, that case is about Plaintiffs who observed something that they felt was unlawful, but it didn't impact them directly. Again, that's not the case here. Every Missouri voter has a direct interest in being able to exercise their referendum rights, that is being denied to our Plaintiffs here and that is why they have stand. It is not a generalized injury.

I want to briefly touch on the political question doctrine, in which Intervener just raised as another basis to dismiss this case. I'll start by saying that it seems tough to swallow that given that there are many cases from the Missouri Supreme Court and the Court of Appeals safeguarding the right to referendum and serving as a check on the Legislature and the political branches

don't fear we are with that right so it's hick tore to make sure they don't interfere with that right.

So historically, clearly the referendum right is not something that's been intrusted to political branches to handle themselves. Just like with any other constitutional right that's held by an individual voter that's not -- that's a justiciable question. But more specifically, there are generally two buckets of cases where you find political questions emerge. The first is when some issue has been intrusted, delegated to the political branches exclusively.

Now, Intervenor suggests that's the case here because the Secretary of State oversees elections and oversees the certification process. But if that is correct, then no voting rights case could ever be brought because the Secretary of State is administering elections. Just because the Legislature is entrusted the Secretary with certain oversight powers, doesn't mean that the Secretary gets to decide the scope and contours of the referendum right. That's not the same thing.

And this is just not a case where the Secretary or the Legislature or anyone else gets to be the arbiter of how and when the people can exercise their referendum rights. So we don't -- we're not in bucket No. 1. And

the other bucket, when you see political questions come up, you think of the Rocha case Partisan Gerrymandering. It's when there's an absence of the judicially manageable standards.

The standard here is very straightforward. Preferred legislation is suspended when petitions are submitted. That's the rule here. And I think that's a standard that this Court and any Court can apply. So we're miles away from a political question problem here. Missouri courts can and have for more than a century heard cases addressing the referendum right and made sure that the people could exercise that right.

The declaratory judgment point is related to what we were talking about earlier. This case is not a certification case. It has nothing to do with what happens with the Secretary certification process. That's what the statute allows. That allows for a judicial review after a certificate of sufficiency or insufficiency is issued. The question in this case is, what happens in the meantime? It's a meantime case. What's happening right now?

And as I said, right now, our Plaintiffs' constitutional rights are being violated. That has to be addressed right now. There's no statute that we can call upon to address that constitutional violation. So

that the declaratory judgment argument that Intervenor raised is off base, because it's been a shadow boxing. They're addressing it to claim that Plaintiffs aren't bringing it.

Again, if you look at our request for relief, you'll see nothing in there about forcing certification, about speeding up the process or anything like that.

THE COURT: Then why do you need a trial date by February 24th if you're not speeding up the process?

MR. HAWLEY: That's a great -- it's because there is on -- there are two reasons, Your Honor. First is that we have ongoing violation of constitutional rights happening here. Every day that HB-1 is in force, every day that the State treats it as though it's currently in effect dilutes the referendum right of our Plaintiffs.

THE COURT: Then why not January 30th? If every day is an issue, why is it -- and I understand the 24th is the final date. But either that's the reason or it's arbitrary.

MR. HAWLEY: It's -- so, yeah. That's a very fair question. I'll just say if January 30th works for them, it works for us too. We'd obviously like to get this resolved as soon as possible, but I take your point, Your Honor.

THE COURT: That's not responsive.

MR. HAWLEY: Oh, okay. Yeah.

THE COURT: Why don't -- it's trying to enforce to happen quicker, why is there this date of the filing date that's necessary.

MR. HAWLEY: It's because there's a practical dynamic here when you're dealing with maps. Like this is referendum case. But it's a referendum about a constitutional map. And as I said, unlike other pieces of legislation that may be in theory you can easily switch on and switch off enforce not enforce, you don't have that luxury with a congressional map, because congressional maps have to be put in place at some point.

Now, I will be honest, Your Honor, I don't know when the drop dead date is for when Missouri's congressional map has to be in place. That's a question for the Secretary of State and election officials. But February 24th is a reasonable baseline, Your Honor. Because that's when candidates are gonna start filing for their districts. If you're running from Congress, you have to know at some point where you're running, who your constituency is going to be, because those are the folks we're gonna have to elect.

THE COURT: Isn't that the candidate's injury, not your client's injury? If your client's injury is

constitutional, I understand that the 24th -- it makes since now to me that the 24th, but to know where I'm going to run and what district is not their injury. It's an unnamed, nonexistent, fourth party at this point injury.

MR. HAWLEY: I think it's also a voter injury, because just like a candidate needs to know who their elector is, voters need to know who their candidates are going to be. Everybody needs to know who's running and who do I get to vote for. And that problem will be magnified as time goes on as we get closer to the ballot deadlines, closer to the primary, obviously closer the general election. But it's a problem for voters right now as well, they don't know what mat is in place, because you don't know who's going to be representing you and who is running to represent you. And so I think it's maybe a more immediate problem for a candidate, but I think it's also an injury for voters as well.

THE COURT: And how does the map depends on who runs and what district?

MR. HAWLEY: The map -- so --

THE COURT: Do I have to live in District 1 to run in District 1? Do I have to live in District 4 to run in District 4?

MR. HAWLEY: Under Missouri law, I believe you

don't actually have to, so that's a little bit different, but still a representative at the district is more than just the lines on a map. The district is a collection of eight hundred thousand or so people who you represent.

So, but I'll give you a kind of a medium -- this is going to be kind of focused on --

THE COURT: I get that. If you say the injury is not knowing who is going to run in my district, well, how are the lines of district dependent on who runs in the district?

MR. HAWLEY: I'll give you an example of our two Plaintiffs, actually. So under the old map, the map that was passed in 2022 and Plaintiffs believe and the law says is still in effect right now, because HB 1 is suspended, under that map they both live in Jackson County. They live in Congressional District 5. Under HB 1, they will no longer live in CD 5. They will live in Congressional District 4. So that means that right now, the map matters, because when their candidates start filing, when they start thinking about who they want to represent them, who they're going to vote for in the primary and in November, you know, a Representative Clever runs in District 5. Right now's he's their representative.

But under a different map, under HB 1, Representative Clever will still be running in District 5, however it's drawn. But they would then be represented by whoever is running in District 4. So it's not going to be the same candidates, even if, you know, Representative Clever or any representative runs in the same numbered district, no matter how it's drawn. For voters, you're not guaranteed to be in that same district. So the map has to be known because, otherwise, our Plaintiffs don't know, are they in CD 5 or are they in CD 4? And that makes a big difference, because you're going to have a different slate of candidates running in each district.

THE COURT: How do you know? How do you know that Clever won't run in 4 next time?

MR. HAWLEY: I'm sorry, Your Honor?

THE COURT: How do you know that Clever won't run in 4 instead of 5?

MR. HAWLEY: We don't know, because we need to know what the map is. I mean, that's up to any individual representative to decide where they're going to be running, but they need to know by February 24 when the filing period begins. You can only file and run in one congressional district at a time, I believe. So they need to know and then voters need to know where

they live as well.

But I want to underscore something, Your Honor. This question is important, just in terms of scheduling and practicalities. It is not relevant to the injury that our Plaintiffs are suffering right now that form the basis of this case. This is case is about the referendum rights, not about congressional maps. It's just that the fact that a congressional map has a certain patent tendency to it that eventually it gets locked in. That's why we need to address this as soon as possible. But the injury itself is a constitutional injury related to the referendum rights.

And the -- but to your point there are -- these are the practical questions that we need to ask. And all of it suggestion, let's just get this decided as soon as possible because then everybody will know. Candidates will know, voters will know, local election official who have to decide who gets what ballot. You know, each precinct is going to have a different -- they'll know as well who gets what, who's living in what district. The sooner we have clarity on that question, the sooner it benefits everybody. And the sooner we get this case resolved, the sooner the State's unconstitutional enforcement of HB 1 will end, which again is immediate injury here.

THE COURT: Suppose HB 1 is suspended, but then the Secretary and attorney general duty is not you sufficient. Is there -- is that the exact same problem there then if HB 1 is not suspended and is found to be sufficient.

MR. HAWLEY: It's a great question, Your Honor, and I'm want to take a step back and explain what's at play here. We mentioned in our PI brief. But I'll briefly review it. After petitions are submitted on the -- by that 90 day deadline, it is to the Secretary's discretion how he goes about certifying and reviewing those petitions for sufficiency.

If you look at Chapter 116 of their statutes, it lays out the process. Each statute successfully gives them another option. No. 1, and this is 116.100, as soon as petitions are submitted, the Secretary can do a first pass and make a call right then are they insufficient, do they meet the submission requirements. That's No. 1. He can then do a five percent sample to quickly get an estimate, do we have enough signatures from each progression district, 'cause we have to have a certain number from six of the eight districts. He can do sampling there. And if the sampling shows they don't have enough ballot signatures, he can do an insufficiency there. That's an expedited process. The

Secretary can do what he has done, which is send it to local -- actually he can then take those random samples and send those to election officials, and then they can look at them and decide whether are there sufficiency signatures from qualified voters. And then there's the law. So there are various processes.

And this is the critical thing. All of this is left to the Secretary's discretion. He is in control of the timing. The Secretary of State has chosen delay here. And again, we don't need to speculate why. He said the quiet part out loud publically to the Associated Press. They're delaying because they want to lock in HB 1 until it's too late to change it. Now, that's a strategic decision on the Secretary's part. But that is not something that needs to burn the people's right to vote on a referendum. If the Secretary were so concerned with the sufficiency of these petitions, it was and is within his power to expedite and accelerate the review process, to avoid the problem that you're talking about, which is a -- I mean this is the question, right. What happens for -- not just -- we can forget about HB 1, this would be a problem for any preferred legislation. What happens if the petitions are insufficient? What happens if they don't need the prerequisites? That's always the problem

and the answer is the Secretary can find out as quickly as he can, and he can use these various statutory mechanisms to do so.

THE COURT: Could the Court tell you that instead of filing -- and I'm not trying to beat you up here. Please don't think that.

MR. HAWLEY: Oh, please.

THE COURT: I appreciate your answers. Could the Court tell the Petitioners in this case, we really don't have 90 days to file this after the close of session. You have 43 days. Right. Because we could file any time within 90 days. Could the Court force you to shorten that date, as the Court is kind of being asked that the Secretary could do this, and he could do that, he couldn't do this. Well, couldn't you file this in 43 days and then a different place today.

MR. HAWLEY: I'd say, no, Your Honor, because the Missouri Constitution sets that 90 day deadline for submitting the petition. So that time can't be shortened by any other Court. And if you're sensing a disparity here, or -- I wouldn't call it unfairness necessarily, but why -- why are we -- know you, -- why are the -- why are the referendum sponsors given more of a pass than the Secretary is? It's because the thumb on the scale of the referendum power.

THE COURT: I guess, I understand what you're saying there. But you're saying well, the Secretary could do this and he could do that, and he could do the other, but is it the Court's job it tell the Secretary how fast they must do this.

MR. HAWLEY: No. Oh, I'm sorry, Your Honor. Absolutely not, which is whey we're not asking for that.

THE COURT: Okay.

MR. HAWLEY: Again, we're not asking for the Court to speed up. I was just responding to your concern here. What happens if it turns out that HB 1 should not be -- should never have been you suspended or it's unsuspended because the referendum isn't happening. And the answer to that, is that's within the Secretary's discretion to make sure that doesn't happen by undertaking an accelerated review process. That -- it's his responsibility to statutory obligation to review it. And 116.150 provides the outside deadline for issuing a certificate of sufficiency. It does not give a -- it does not give an earlier start it. He can do it at any time, whether it's rule it's sufficient or insufficient. And so that's the -- that's the way that the process is designed to avoid this problem, which is you don't -- if something shouldn't be suspended, you don't want it to go suspended when it should be in effect. And the

Secretary, that's why he has these various tools at various times to make sure that doesn't happen. He just hasn't called upon those tools this time and that's his decision that we're not asking this court to review or this court to order otherwise.

THE COURT: So in Kinder v. Carter, on page 2 of responsive evidence, it's says it was timely, legal insufficient.

MR. HAWLEY: Right.

THE COURT: So here we have timely, within 90 days. There's a legal ripe for the referendum. But is it sufficient? And so does Kempker only come into play once all three things are met or is too sufficient for that?

MR. HAWLEY: I think it has to be understood, again, based on this interplay of the 90 day provisions. It has to be understood that it's presumed sufficient until it's ruled otherwise.

THE COURT: And where do you brief that?

MR. HAWLEY: I'd say it's two things. No. 1, it's the line in Kempker regardless of any affirmative act on the part of the Secretary of State.

THE COURT: Okay.

MR. HAWLEY: So that's not -- that's assuming that the Secretary doesn't have to do anything to

effectuate the suspension.

And now Intervenor suggests in their brief that this is old law that's been superseded by the certification statutes. I have to disagree, because we have to read any statutes as being consistent with what the Constitution requires. And so the fact that there's now certificate -- an outside certification deadline, the 13 weeks ahead of the election, that doesn't change what Kempker says. It's just to reconcile is all -- that's where we -- that's how we're able to determine that the suspension happens on 90 days. It's assumed sufficient and it's up to the Secretary to tell us otherwise and for, eventually, a final determination to that effect to be made.

But the statutes don't change the fact that the suspension happens on the 90 days. And I think it's just the way you have to read both the cases, and then this 90 interplay because, otherwise, we'd be in a situation where things get suspended and unsuspended at various times throughout the process. And that's what the Moore -- State ex rel Moore v. Toberman, you can't do that, because on all sides of the process you can have people fiddling around with getting things suspended and unsuspended and gaming the system.

Again, the thumb is on the scale of the

referendum, right? It's to give the people the opportunity. And, you know, I'll just say, the State's briefing they ask -- they say that we have not explained why these Plaintiffs are bringing this lawsuit. And I thought if the Court has that same question, I might make a try for an answer, because I think it's relevant here.

The referendum right is the people's way of giving themselves a little piece of that legislative power. It's actually in Article 3, which is the section of the Constitution about the Legislature. It's the -- it's just is the Governor veto is the way of the Governor exercising a little piece of that. The referendum right is the people's right to do it. It's an individual personal right for every individual.

And again, you don't have to take my word for it, I was just reading Missouri's to Protect the Initiative Process, which the initiative and the referendum are kind of flip sides of the same coin. There is nothing in our Constitution that so closely models participatory democracy in its pure form. Constitutional and statutory provisions relative to initiative are liberally construed to make effective the people's reservation of that power. What's true of the initiative is true of the referendum.

So to get that cushion, how do we know this has to be the rule? How do we know that I'm ripe and that sufficiency is presumed? We have to construe the Constitution, the statues and the case law liberally to effectuate the people's referendum power. And if legislation is allowed to go into effect before the people have their say, or before the process is completed one way or another, I don't -- we clarify it in our briefing, we're not trying to say that the Secretary doesn't get to certify HB-1. If the HB-1 referendum is deemed insufficient, you have such that another way for the constitutional referendum process to end.

But setting that aside, you have to let the process play out. And in the meantime HB-1 must be suspended because if it's not, it dilutes the referendum power. And it's the one power that's reserved for people legislatively. It's reserved to Mr. Maggard. It's reserved to Mr. Lombardi. That's why they're bringing this lawsuit. This is their right the Secretary of the State is trying to take away from them by enforcing the law even though that the people get to have their say.

And looking at everything, looking at the -- reading these things in concert, putting it all

together, that's where we end up with this conclusion that the law has to be suspended now. And that it's the Secretary obligation to ser -- to run the certification process in the most responsible way to make sure that the process works and that and in -- as the case may be, legislation that should be suspended gets unsuspected as quickly as possible. That's his power. That he doesn't get to trample on the peoples referendum rights to reach that end or just because he wants this law to be in effect, that's not good enough. The assumptions with the people, the laws are construed in favor of the people's referendum rights. And again, as I said, this controversy is ready for adjudication right now. We've submitted discovery responsive to the estoppel question, which the Secretary or the State said was the only holdup here was this belief that we were stopped from making these arguments. And I believe our discovery says that in no uncertain terms that even assuming, if their estoppel theory made legal sense, it factually, it's baseless. So we're really hoping we can put that issue to rest, focused on the merits. Because I have to say it's kind of sticking we're not talking about the merits more in this case.

Intervenor and the State are desperate to avoid talking about the merits. They're focusing on standing

and they're focusing on estoppel. They're doing everything they can. I think it's because they don't have a leg to stand on. When you read the constitutional provisions, when you read the case law, it is clear that laws are suspended if they're submitted by that 90 days mark or referendum.

And that's the critical issue here. That's the narrow legal issue before the Court, and we believe the Court can and should address that issue as soon as possible to vindicate Mr. Maggard's and Mr. Lombardi's referendum rights and to make sure the referendum process isn't subverted or diluted by the actions of the Secretary of State and Attorney General.

Does the Court have any other questions? Or else I'll take my seat.

THE COURT: I do not. Thank you very much.

MR. HAWLEY: Thank you, Your Honor.

MR. CAPOZZI: May it please the Court?

I appreciate my friend's argument. Although, very little of it was actually addressed to what we're here to argument about today. There was a lot of discussion on the merits which have not been briefed yet and some discussion on -- about discovery. So I'd like to start just briefly responding to what my friend said about those irrelevant points before we get into

standing where he didn't have that much to say.

So on the merits, you know, we haven't briefed this yet. We're -- if that becomes appropriate we're happy to do so.

But, you know, if we return to my friend's demonstrative, I actually think it is helpful here. If you look the constitutional language it says any measure referred to the people, shall take effect when approved by a majority of the votes cast thereon and not otherwise. On the merits, this case is all about what does it mean for something to be referred to the people? Is it when someone drops off a box of unfair verified signatures or, is it when the petition has been found to be legally and when it comes to signatures sufficient, like the Kempker case suggests? All of the cases that my be friend quotes on the merits, have that language suggesting that in order for a referendum petition to be deemed referred to the people, there has to be sufficiency. So how do we know, how do we know if the sufficient number of signatures, how do we know if it's legal and sufficient. We have a statutory process whereby the Secretary makes that determination. And although my friend repeatedly insists that they're not trying to hurry the Secretary along, you know, that is the effectively what they're doing here. The Secretary

has a statutory deadline to determine whether the petition is legally and factual sufficient. When the Secretary makes that determination within the language of Article 3, Section 52-B, the petition is then referred to the people.

And just to consider for a moment the implications of my friend's argument under the constitutional language. Let's image as he does that merely dropping off a box of unverified signatures refers a matter to the people. Well, what happens then if the Secretary looks at the signatures and says, you don't have enough in the six congressional districts? Well, the Constitution says that once the matter is referred to the people, it can't take effect until the votes says and not otherwise. It says it infanticidally. But in that situation where dropping off the box, as it turns out, insufficient signatures refers the matter to the people, well under my friend's interpretation the Constitution requires a referendum to -- on a factually insu-- insufficient referendum. And so that can't be right under the language of the Constitution.

So once again the State is happy to brief the merits when the time comes. It's not now but, my friend's position is wrong. And because he spoke so

much about the merits, I want to briefly respond. And as the Court pointed out, the Kemper case really does come close to the petition. It says that the matter is not referred to the people until it's found to be legally and factual sufficient.

My friend once again makes accusation about the Secretary of State and Attorney General and that he alleges that they have an incentive to delay. We think that he's taking their statements out of contexts. It's also just irrelevant. The signatures were being reviewed by the local election official, a 115 counties plus the City of St. Louis. They are reviewing the signatures. And so what my friend is effectively saying is that all 115 local election officials are delaying. There's hundreds of thousands of signatures to review here. It takes a little bit of time. And, you know, my friend says, well, they should hurry it up. And he says that, you know, we can't have a situation where the law is balancing back and forth based on the review process. But that is a risk in this context regardless of what the Secretary does.

Let's image that my friend is correct. That merely dropping off the box of unverified signatures automatically freezes the law. You know, if the Secretary reviews the signatures and finds that there

aren't enough signatures in one of the congressional districts, well, then the map has to go back or, at least theoretically that's what's supposed to happen.

And so, you know, on -- as the Court suggested really no matter what the Secretary did here, there was a risk that the map would have to balance back and forth during an election here, which is not good. That's not great. The State acknowledges that. This is a highly unusual situation trying to do a referendum on a congressional map really is unprecedented. There's never been a judicial determination of the State saying that that's permissible. We really are in uncharted waters here. And so the Secretary and the local election officials are doing their best to process this referendum petition.

And the idea that the Attorney General is delaying here, we have been litigating a whole host of cases related to the HB-1 map, to the referendum petition since as soon as the Governor signed the bill. I think we've been litigating since September. I think there's seven or eight different cases.

You know, the opponents of HB-1 have been heard many, many times by judge. That had their chances to make their arguments. The idea that the State is trying to slow these cases down, when many, you know, one is

already up in the Missouri Supreme Court. So the State has been willing and able to litigate these matters quickly.

Now, my friend suggests that the State is stalling over discovery. I would remind my friend that the State served its discovery requests before it was required to do under the rules. We would have been perfectly in our rights to wait until the Court decided the motion to dismiss. But because we also want a timely and efficient resolution of this case, we put our discovery requests out right away. Now, in response we have been stonewall. We have not been given the discover. We asked for the third parties, have invoked various privileges. They've said they're not turning over documents. That's not that unusual with interrogatories and RFPs. The State will need to depose the third party witnesses. Because again, you know, my friend calls it a conspiracy theory.

But we still don't really have a plausible explanation as to why it's Maggard and Lombardi bringing this case. People Not Politicians have personally litigated all of the cases related to the referendum until this one. The head of People Not Politicians, Von Glahn told the press that this exact case would be brought and it wasn't. And I think it's pretty clear as

to why. People Not Politicians told a federal court that HB-1 would not be frozen until the certification decision. The federal court made that finding.

If you read page 2 of Judge Bluestone's decision in the Von Glahn case, it says that the law can only be frozen after the Secretary makes findings as to the legal and factual sufficiency of the petition.

And so on the merits my friends are asking you to split what the federal court here in Missouri.

THE COURT: If I may?

MR. CAPOZZI: Yes, Your Honor.

THE COURT: You stated in Kempker this speaks of legal and factual sufficiency, but I don't see that in the text. I see it's timely and sufficient. So is the terminology legal and sufficient in Kempker? Is it in the Blue's case -- I'm sorry, Von Glahn case? Is it legal and factual or is it merely sufficient.

MR. CAPOZZI: We understand Kempker to require a termination referendum is legal and factually sufficient. And the statute cited by Judge Bluestone on page two of the Von Glahn decision referred to that as well. And so we would refer the Court to the Von Glahn decision from Judge Bluestone who lays out with careful citations exactly how this process is supposed to work.

And again, all parties in that case agree on this

point. The Secretary has to make a factual and a legal sufficiency finding before the matter can be deemed for the people and to the Missouri Constitution.

And so again, that's the merits. We submit that we're not here to argue the merits. It's premature.

But my friend left out a lot of context, and so I wanted to just briefly respond.

One last point on discovery, Your Honor. We do want to do deposition. We want to probe People Not Politicians and Mr. Von Glahn as to whether they coordinated, whether they communicated, whether they assisted in the filing of this lawsuit.

The State is planning to those schedule depositions as quickly as possible. We just got their discovery responds yesterday. You know, we will move expeditiously. We are not waiting for the Court to rule on motion to dismiss. Again, there's no evidence that the State is delaying in this case. We will move as quickly as possible and we will continue to do so.

Now, turning to standing. So what we're here to argue about. My friend had relatively little to say about standing, which they need to prove. For 99 percent of his argument, the injury that they articulated was the law being in effect. At the very end, and I think his last couple of paragraphs he talks

about the right to vote on legislation and the right to cast referendum votes. Once again that injury, the rights to cast a vote on the referendum it's not ripe. The Secretary hasn't made a certification decision. This lawsuit is trying to get around the statutory timeline for the certification decision and for judicial review.

As to the law being in effect being an injury, that's a generalized grievance. Now, my friend says the generalized grievance doctrine refers only to an observational injury. And it suggests that it can't be a generalized grievance when you're subject to the law, and the law affects you. Well, in Missouri Coalition for the Environment, the Plaintiffs said the same thing there. They said -- you know, they challenged the statute in that case about the appointment for the water commissioners, and they said we're subject to the water commissioners. We're subject to the rules they make. Our constitutional rights to be subject only to properly appointed officials are being violated.

And the Missouri Supreme Court said, that's a generalize grievance. We really think about what they're saying. You're just arguing that you have the right to the law being followed, and that's generalized grievance. My friend completely ignored Gill v.

Whitford, the U.S. Supreme Court case, which we think is a very factual analysis of this case. It's heavily cited in our briefs. You know, in Gill is really like this case. So my friend says this case is not like Gill. Our interest is not in law being followed. It's our referendum right. Our constitutional rights are being violated. But that's exactly what the Plaintiffs say in Gill. They said you're gerrymandering the map. It violates our First Amendment rights. It violates our right to vote. And so in all of these cases where the courts find a generalized grievance, the plaintiff is usually going to say, you're following the law. That violates our rights. Again, that's not enough. If the Court reads Gill, I think it's very instructive. They have to point to a particularized injury. It can't be something that affects all citizens equally.

Now, my friend says, well, what about when you have a defendant action that hurts a lot of people? And that's the Spokeo v. Robins case, which both parties cite in their briefs. They acknowledge that sometimes a government action can injure a lot of people. And in Spokeo the Court was talking about a mass tort. A mass tort can injure a lot of people. That doesn't make it a generalized grievance. In Spokeo the plaintiff were able to explain -- actually, it wasn't in Spokeo, but in

the Court's reasoning, the Court explained that in a mass tort situation everybody can explain how they have suffered an individualized injury. It's not just an abstract interest in the law being followed.

My friend offered a hypothetical about the Governor refusing to count all the votes and who would have standing in that situation. Well, candidates, candidates would certainly have standing. Just as candidates would likely have standing here. Election officials would have standing. And the State submits all voters who voted were not counted. When your vote is actually rejected and not counted, you have standing.

And there's plenty of cases that stand for that proposition. You have suffered a particularized injury. That hypothetical is like the mass tort situation the Supreme Court was discussing in Spokeo. It's not like this case where everybody, where the Plaintiffs are just alleging an interest in the law being followed and asserting a conclusory assertion about how the law is not being followed violates their constitutional rights. That's exactly what the U.S. Supreme Court rejected in Gill. It's exactly what the Missouri Supreme Court rejected in Missouri Coalition for the Environment.

And so unless the Court has any questions, we would urge the Court to dismiss this case for lack of

standing.

THE COURT: Okay. Ms. Bell?

MS. BELL: Try to be brief.

Opposing counsel suggests that we are miles away from the political question doctrine, and I will suggest that we -- that we're miles away from the motion to dismiss. I think if we go back -- I've got a copy of the petition in front me -- there are just two paragraphs. They're identical, addressing the two separate Plaintiffs regarding the injury. And again, it says Mr. Maggard or Lombardi would be injured if the HB-1 new map is used in the 2026 congressional election, because it would deny him his constitutional right to approve or reject legislation referendum.

We had a long conversation about maybe people need to know what candidate they are going to vote for or maybe this or maybe that. I would direct the Court back to the base of the petition and the allegations therein, which are very bare and do not support the standing here. I would also direct the Court to the statements made by opposing counsel where I think they conceded generalized interest. At one point, there was a suggestion about harm, that the harm to these Plaintiffs is no less than any other voter. That's our point. It's the same harm as every other voter. And

that is the generalized interest that is insufficient for standing.

I think in the discussion of candidates in the same way, it was, well, everybody needs to know, that everybody needs to know who -- what candidate they're voting for. Again, Mr. Lombardi, Mr. Maggard might want to know but, again, they conceded everybody wants to know. That's a generalized interest. It's a textbook generalized interest. It doesn't incur standing here. If we look out at the speculative -- let's go to -- okay.

I also want to address, the Court talked a little bit about if there's some questioning about -- and again, you know, I believe the discussion about the merits is immaterial here, but I do need to respond briefly to some of the things that were said. I -- I think it was said that, you know, just the rule any other way just doesn't make sense. But we have to think about what that rule is taken to the extreme.

And I know the Court looked at the Kempker case. And again, there, it says the mere logging of a timely, legal and sufficient referendum petition -- and I would note that that sufficient language also shows up in the Strickler case, sufficient signatures. And in this context, sufficient is a magic word. And we talked

about the certificate of sufficiency, the certificate of insufficiency. It's not a dictionary definition. It is the determination that the Secretary makes.

And so, like Mr. Capozzi said, what is invoking the referendum when we're looking at those constitutional provisions? And the Constitution itself says the threshold you have to meet to invoke the referendum. So I think if we look at those cases that the Plaintiffs are skipping over that language. Again, when we go back to, I think this is the Kempker case, there, sufficiency was presumed. It was kind of a prima facie showing, and I believe it addresses it on page 7 of our suggestions.

But the Court said that it is further shown that proper affidavits as to the genuineness of the signatures were appended to several and to the petitions. And so far as number are concerned, so far as the number of congressional districts in which the petitions and affidavit come there and all things sufficient, there, it was basically conceded that they had sufficient signatures. That's not conceded here. Mr. Capozzi addressed there are tons of lawsuits going on right now that are being challenged. And again, no similar evidence is before the Court or pled today.

So I think, again, we would reiterate the Court

should dismiss here, that the petition is really bare bones. And if the Court goes back and looks at the petition, I think the allegations are simply insufficient to confer standing. The case isn't ripe, and they also sought their own.

MR. HAWLEY: And, Your Honor, can I have a --

THE COURT: Yeah.

MR. HAWLEY: First of all, the State ex rel Moore v. Toberman case was actually about a referendum on a congressional map. I just want to point that out, because the State suggested we're in unprecedented waters, and that's at least one instance suggesting we're not.

I want to talk briefly about Kempker, because Kempker does -- the State suggested that Kempker says you need to have a legal and factual finding of sufficiency. Kempker does not say that. It says the contrary. It says that there can be a presumption of sufficiency. And granted, the language they use is a little bit archaic and sometimes difficult to parse, but if you look at pages -- there's a paragraph at pages 779 to 780 of Kempker where they talk about this.

And they talk about the flimsyish shadow that comes from mere postponement of the determination of the definite and exact number of signers on the referendum

petition to a less pressing and more convenient season. And so what they're getting at is, they're stating a general rule in that case, and the general rule is that you can presume sufficiency. It does not require a factual and legal determination of sufficiency that the State is suggesting. Kempker says the opposite. And the statute don't change that. To the extent that the statutes allow for legislation to go into effect pending a certification process, as we allege in our petition, those statutes are unconstitutional.

Neither Ms. Bell or Mr. Capozzi just now give explanation about what happens to legislation if it becomes effective before the referendum process is completed. We know the Missouri Supreme Court has said over and over that that officiates the referendum right. And that's exactly why, again, this is not a generalized injury.

In Gill v. Whitford and Missouri of Environment for the Coalition -- sorry -- the Missouri Coalition for the Environment case, the State suggested that the plaintiffs there said they were all also directly injured. But the Court said, quote, the Coalition does not allege, nor can it show that the speculative potential changes to the commission membership threatened or actually injured it. There is no way to

foresee if the new membership will be less favorable to their cause or interest in clean water. So it's the generalized injury precisely because they did not allege any kind of direct or immediate injury. That is not the case here.

If we are correct, and we are correct because the Missouri Supreme Court has said so, if legislation cannot take effect until the people have their say under the referendum provision, therefore, the referendum provisions are violated if legislation takes effect before that happens. That is a -- that's the equivalent of denying the right to vote that the State just conceded would give a voter standing. It would deprive the people of their right to vote under referendum. And that's just -- that's what the Missouri Supreme Court has told us time and time again.

It would be no different than if legislation took effect before the Governor had a chance to veto it. No one would suggest that's not a tangible and cognizable injury, because it deprives the Governor of his right in that case to approve or disapprove legislation. It's the same here. So the fact that HB-1 is currently in effect, which is something that they didn't address, that is the key merits question. That's our relief. That's our claim is the law is wrongfully in effect

right now. It must be suspend. Therefore, there is a direct injury to Mr. Maggard's and Mr. Lombardi's referendum rights.

And I want to finish by briefly touching on the discovery issues, since that is a little bit in development. But the State suggested we were stonewalling on this issue. And I just -- I want to read, so it's very clear what it says in both Mr. Maggard's and Mr. Lombardi's responses to the discovery we've received, Plaintiffs have not been contacted about and offered assistance regarding or discussed the filing of this lawsuit with People Not Politicians or any entities or individuals affiliated with People Not Politicians. We're not stonewalling. We're saying it as plainly as we can.

If there's any doubt about the responses and the sufficiency of responses that Mr. Capozzi just mentioned, it's because the State has sought information that is undeniably protected by attorney/client privilege by other privileges and by the First Amendment. They -- the responses are widely overbroad and widely inappropriate in the -- in what they're asking for from our Plaintiffs and in the third-party discovery. And we acknowledge that, in our responses as well, but even setting that aside, we stated in no

uncertain terms and so did the third responses, there is no connection between People Not Politicians and our Plaintiffs in this case. There just is none.

So the need for depositions, for further discovery rings hollow. We've addressed the single issue that's motivating this discovery. There is no fire there. There's barely any smoke, but there is certainly no fire. We do not see the need to delay any further in pursuit of this misguided theory.

So unless the Court has any question, I'll stop.

THE COURT: I do not. Thank you.

MR. HAWLEY: Thank you, Your Honor:

MR. CAPOZZI: Your Honor, may I have 30 seconds?

THE COURT: I'm here all day.

MR. CAPOZZI: Your Honor, I'll be brief because, you know, we could go back and forth all day.

On the merits, we're happy to brief that when the time is right. We're happy to argue that when the time is right. For now, I'll just note that everything my friend was saying is contradicted by what the U.S. District Court of the Eastern District of Missouri said in the Von Glahn case. I would refer the Court to page 2 of that, again. And so at minimum, my friend is saying that the federal court got this issue all wrong. We're happy to brief the merits when the time comes.

On discovery, to be frank, the State theory is not that People and Politicians -- People Not Politicians and Mr. Von Glahn or Lombardi and Maggard as individuals, our suspicion, which we think is well justified based on public statements, is that they coordinated with counsel for the Plaintiffs here. Now, we're seeking attorney/client communications between Plaintiffs' counsel and the Plaintiffs. We are seeking communications from People Not Politicians and Mr. Von Glahn to Plaintiffs' counsel, which would not be protected unless my friends want to assert a common interest privilege, which they can do, but that would help prove the State's point that there's coordination here.

Again, you know, my friends call it a conspiracy theory. The State is skeptical. Mr. Von Glahn promised this lawsuit would be brought. People Not Politicians have personally litigated all cases related to the referendum. And then, right after Von Glahn promises this lawsuit to be brought, two random voters appear with Plaintiffs' counsel and this lawsuit is brought.

And so, we would like to continue exploring that and we will do that through deposition. We just got discovery responses yesterday. We will move within the next couple of day to schedule depositions.

And finally, on standing, my friend continues to ignore Gill v. Whitford, which we think is the most analogous case here. Thereto, the plaintiffs said if -- thereto, the plaintiffs made an allegation that the statewide congressional map was illegal. They said that violated their First Amendment rights and their right to vote. But the Supreme Court said, not really. You haven't explained how it actually violates your individual rights. This is just a generalized grievance. You have not pleaded this correctly. Plaintiffs here have made the same mistake.

Unless the Court has questions.

THE COURT: No questions.

Anything else, Ms. Bell?

MS. BELL: Just say on the discovery issue, I want to say that HB-1 was effective on the December 11th. The petition wasn't filed until December 23rd. The motion for PI normally would have been filed with -- the petition got filed on January 14th. That's a five-week wait. So now they're showing up to court saying we're in a hurry. It didn't appear that they were in a hurry before.

And so on a timing thing, we've got another week-long trial set on the next month. There's going to be scheduling issues. Again, happy to have that

discussion. But just wanted to reiterate the timing issue that I think we're being accused of some delay. I don't think any delay in this case has been on our part.

The other thing I would just say is taken to the extreme that Mr. Capozzi said something about this, like just dropping off a box of just signatures. Again, their argument is that the Secretary doesn't get to look. You drop it off and it suspends the law. So we can take hypotheticals. You know, I get 50 friends. I print out the petition online and I get 50 friends to sign my papers. I show up and I turn it in. Suspended? I turn in the 300,000 signatures. I sign John Smith on every line. Suspended? I turn in the exact number that's required. And everyone has to assume that I made no mistaken, there are no duplicates, no missed congressional districts. But I filled out the exact number that's required. Suspended?

Under their theory, in all the instances you submit, you invoke the referendum. I think the Constitution says this different, because it says the threshold you must invoke the referendum, again, the statutory scheme allows for the Secretary to check sufficiency. The case law refers to submitting a sufficient petition, and I think the rule doesn't make sense. I can show up with a box of paper and the law is

suspend. I don't think that's what it meant. And we do urge the Court to dismiss.

THE COURT: Anything else?

MR. HAWLEY: I think I'm done. I think you've heard enough from me. Thank you, Your Honor.

THE COURT: When do you want to have some briefs to me?

MR. CAPOZZI: We can submit those today.

THE COURT: Off, Jenny.

REPORTER'S CERTIFICATE

I, Jenny Johnson, Certified Court Reporter No. 1041, certify that I am the Official Court Reporter for the 19th Circuit of Missouri in Jefferson City; that on January 20, 2026, I was present and reported all of the proceedings in JAKE MAGGARD ET AL, Plaintiffs, vs. STATE OF MISSOURI ET AL, Defendants, Case No. 25AC-CC09120. I further certify that the foregoing 69 pages contain a true and accurate transcription of the proceedings.

JENNY JOHNSON

S/S_____