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,	)	
	)	February 10, 2026
Defendants.	)	Jefferson City, Missouri

BENCH TRIAL

On February 10, 2026, the above cause came on for a Bench Trial before the Honorable Brian K. Stumpe.

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

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MATTHEW P. GORDON
JONATHAN P. HAWLEY
TORI MAE C. SCHAFER
JONATHAN D. SCHMID
Attorneys at Law
PERKINS COIE
1301 Second Avenue, Suite 4200
Seattle, Washington 98101
Telephone: 206-359-3552
E-mail: mgordon@perkinscoie.com

FOR THE DEFENDANTS:

LOUIS CAPOZZI
JOHN M. PATTON
PATRICK SULLIVAN
Attorneys at Law
SOLICITOR GENERAL OF MISSOURI
MISSOURI ATTORNEY GENERAL
207 West High Street
Jefferson City, Missouri 65101
Telephone: 573-751-3321
E-mail: louis.capozzi@mo.gov

FOR THE INTERVENOR:

MARC H. ELLINGER
STEPHANIE BELL
Attorneys at Law
ELLINGER & ASSOCIATES
308 East High Street, Suite 300
Jefferson City, Missouri 65101
Telephone: 573-750-4100
E-mail: usaattorneys.com

P R O C E E D I N G S.

THE COURT: On the record in 25AC-CC09120, Jake Maggard versus State of Missouri.

I have Matthew Gordon, Jon Hawley and Tori Schafer.

For the Defense, I have Louis Capozzi, John Patton, Patrick Sullivan.

And the Intervenor, I have Marc Ellinger.

MR. ELLINGER: And Stephanie Bell, Judge.

THE COURT: Oh, I'm sorry.

MR. ELLINGER: Not enough chairs.

MR. SCHIMD: Your Honor, Jon Schmid is here on behalf of Plaintiffs as well.

THE COURT: Okay. Anybody else?

John Schimd?

MR. SCHIMD: Yes.

THE COURT: We're here for a bench trial today?

MR. GORDON: We do, Your Honor. And the parties have submitted a couple of stipulations for the Court's benefit. So first was a joint stipulation of facts and exhibits that was filed the other day. And then yesterday the parties submitted an additional stipulation regarding pretrial proceedings.

And the parties have -- as part of that second

stipulation, the parties have agreed to that nobody is intending to call a witness unless except for rebuttal purposes. So I think we can proceed with trial on the basis of the joint stipulations of facts and exhibits.

And so I think the trial today will consist largely of argument about relying on those facts and exhibits, Your Honor.

THE COURT: I don't have yesterday's stipulations yet pulled through the system. Do you-all have a copy of that or it's just --

MR. GORDON: I can read it in to the Court, if that would be helpful. I don't believe we have a paperwork copy. My apologies.

THE COURT: Is it real long?

MR. GORDON: It's not real long.

THE COURT: Sure, go ahead. Just so I know what's going on.

MR. GORDON: Sure. You do have the earlier stipulation --

THE COURT: Yes.

MR. GORDON: -- of facts and exhibits.

THE COURT: That was from February 6?

MR. GORDON: I believe that's the one.

So I'll just read it verbatim.

Joint stipulation regarding trial proceedings.

Plaintiffs Jake Maggard and Greg Lombardi, parentheses, quote, Plaintiffs, unquote, unparentheses, Defendants State of Missouri and Denny Hoskins in his official capacity as Missouri Secretary of State, parentheses, quote, Defendants, unquote, unparentheses, and Intervenor put Missouri First, parentheses, quote, Intervenor, unquote, and collectively with Plaintiffs and Defendants the, quote, parties, unquote, jointly submit the following stipulations regarding trial proceedings.

Number 1, Defendants and Intervenor will not seek any continuance of the trial scheduled for February 10th, 2026 or otherwise delay such trial through other procedural mechanisms.

Number 2, the parties have not identified and do not intend to call trial witnesses or reserve the right to call rebuttal witnesses as appropriate.

Number 3, the parties waive objections, other than for relevance to the admission of the deposition transcripts of Jake Maggard, Greg Lombardi, Richard Von Glahn and Charles Hatfield and exhibits thereto.

Number 4, subject to any relevance objections, the parties waive any requirement that referenced excerpts of the deposition transcripts be read into the

record.

Number 5, Defendants and Intervenor waive any objections other than for relevance to the admission of the exhibits attached to Plaintiffs' motion for preliminary injunction. See Plaintiffs' motion for preliminary injunction and consolidation of hearing on merits, Exhibit 1 through 15.

THE COURT: All right.

MS. CAPOZZI: Your Honor, in addition to the Plaintiffs' trial, the State also has a few pending motions to compel with respect to evident. And so I'm not sure, you know, what order it makes sense to go in here. I think we had thought that it would make sense to cover the motion to compel first, before getting started with trial. But we can proceed however is convenient to the Court.

THE COURT: That's the motions filed February 4th and 5th?

MR. CAPOZZI: Yes, I believe that's right. I believe there are three.

THE COURT: The one on the third as well. With the February 3rd motion to compel, it's got some exhibits. Were those exhibits taken care of in the stipulation et al or are you still going to use all of those exhibits?

MR. CAPOZZI: So we are still seeking all of the information that we asked for in the motions to compel. We do have one clarification that we wish to make regarding the motion to compel against third-party People Not Politicians.

In that motion, we suggested that we are seeking to compel an answer from Mr. Von Glahn, who is funding the Maggard Plaintiff's lawsuit. We are withdrawing that particular request from that motion, but everything else is still pending. And, chiefly, what the State is trying to get is, who's funding the Maggard lawsuit, who's funding People Not Politicians litigation efforts? And also, People Not Politicians admitted that they created strategy documents related to this lawsuit before it was filed. We're seeking to compel those documents.

THE COURT: Regarding motion to compel on 2/3?

MR. CAPOZZI: So I believe we have -- is it two or three separate motions to compel?

THE COURT: Right. One on the 3rd, one on the 4th, one on the 6th.

MR. CAPOZZI: Yes, Your Honor.

THE COURT: Do you want to do them one at a time, back to back to back?

Do you want to do them all at one time?

MR. CAPOZZI: I think my colleague, Mr. Patton, is prepared to speak to all three at once.

MR. PATTON: Yes, Your Honor.

THE COURT: Go ahead.

MR. GORDON: Your Honor, we will address the motions to compel that are directed at our Plaintiffs, I believe counsel for PNP to address.

MR. BARRETT: That is correct. Alex Barrett and Alix Cossette on behalf of non-parties, People Not Politicians and Richard Von Glahn. We're here to respond to that motion directed towards our clients. I think, as a matter of just logistics, it makes sense to deal with the Plaintiffs here first. It's their show. They can argue that and then we can deal with what we need to take up on the third-party subpoenas.

THE COURT: All right.

MR. PATTON: I'm happy to proceed in whatever order Your Honor prefers. Do you prefer just focusing on the Plaintiffs first and then dealing separately with the third parties? Or I can address it all at once.

THE COURT: I think it's easier doing one, then two, then three. You can do them all together but, if you do part of Motion 1 and part of Motion 3 and then part of Motion 2, it's going to be somewhat rather confusing. So start with issues with Motion 1 from

February 2nd, then the February 3rd, and then the February 6th.

MR. PATTON: Yes, Your Honor.

THE COURT: Are you okay to reply to all of them at one time, if he goes through them?

MR. GORDON: So we're just going to reply to one and two, Your Honor.

THE COURT: Okay.

MR. GORDON: Because those are the ones directed at our clients. And I will say, and Counsel can correct me if I'm wrong, but my understanding is that one and two are basically seeking the same exact information. It's just one is directed at Mr. Lombardi and one is directed against Mr. Maggard. So unless you have different arguments with respect to those, I think we could at least handle those. And I -- my response to them would be the same with respect to both of them.

MR. PATTON: Yes, Your Honor. And to clarify, the February 3rd motion to compel is regarding Mr. Lombardi. February 5 is regarding Mr. Maggard. Both were filed following their depositions.

May it please the Court, I represent the State and the Secretary of State. There are two motions to compel at issue that I'll address here. Both of these seek evidence that go to the heart of the State's

judicial estoppel defense. As the State has argued throughout this case, courts judicially estop proxy plaintiffs when an estop third party seeks to use --

THE COURT REPORTER: Slow down.

MR. PATTON: -- that proxy plaintiffs to argue a position that the third party cannot argue itself. Here's what we know about the potential coordination based on the discovery collected so far.

First, we know that PNP's executive director and PNP's attorney publicly promised that a lawsuit would be brought arguing that HB 1 was frozen by the mere submission of an unverified referendum petition.

Second, PNP's executive director admitted that he knew that the ACLU was preparing this lawsuit five days before it was filed.

Third, the Missouri ACLU proactively recruited Plaintiffs Maggard and Lombardi to file this lawsuit.

Fourth, PNP's executive director admitted that PNP has not currently sued in its own name because the Plaintiffs here sued instead.

And further, PNP created strategy documents about this lawsuit before it was filed.

Finally, we know that an anonymous third party is funding Plaintiffs' lawsuit here and Plaintiffs could not remember during their depositions who this anonymous

third party is, nor could they identify the anonymous third party.

The State filed motions to compel because it's entitled to this information about the anonymous third-party funder, at least as to Plaintiffs Lombardi and Maggard. The State has repeatedly asked Plaintiffs to identify the anonymous third-party funder but, essentially, Plaintiffs have refused to turn over this evidence on the basis that they think that the State's judicial estoppel defense is wrong on the law. But whether a party thinks that their opponent's merits theory is correct is not a basis to refuse discovery.

I turn the Court's attention to Fergin versus Westrock Company. There the Court said, quote, a party cannot refuse to produce a requested document or information simply because it is relevant to a claim or defense on which the producing party believes that it would prevail.

Indeed, a producing party will always take the position that their opponent is wrong on the merits, and especially in an accelerated case like this. We think what should have happened is the Plaintiffs should have provided the State a straight answer on the third party funding this litigation and then allow the Court to make a determination about whether that evidence was

relevant. But now the State has been deprived of being able to access this information altogether, and so it's important.

Now, in light of my point earlier about the merits and the State's ultimate success on them not being relevant to discovery, I won't get into a lot of the merits arguments that Plaintiffs made regarding the judicial estoppel defense. Mr. Capozzi will address that in a moment. But there is one matter that I would like to clean up: Plaintiffs' claim that judicial estoppel does not apply to legal arguments.

I would direct the Court's attention to Footnote 7 of the Boca opinion. There, the Missouri Supreme Court said that judicial estoppel, quote, precludes a party from asserting facts that are inconsistent with a factual position taken by the party in prior proceedings or from a legal position from which the party benefited. So judicial estoppel applies both to inconsistent factual representations and inconsistent legal positions.

Finally, I'd like to address Plaintiffs' assertions of privilege over this information. They first invoke attorney-client privilege. That invocation flies in the face of controlling precedent from the Western District. This is State ex rel Koster v. Cain.

The Court said, quote, fee arrangements between the attorney and a client are not attorney-client privileged communications.

Next, Plaintiffs invoked First Amendment privilege. I'd like to turn the Court's attention to a -- they cite NAACP versus Patterson. There's several differences between this case and Patterson. Patterson involved a circumstance where the State of Alabama was suing the NAACP with the express purpose of trying to drive the organization out of the state. That's not at all what this case involves. Here the State is def-- is the Defendant. This lawsuit was not brought by the State. Also, the State is not attempting to drive any particular organization out of the state. The State is simply attempting to collect evidence to support its estoppel defense.

And finally, the Plaintiffs here are not an organization. They're individuals. Thus, the associational considerations that were at the heart of the Patterson case are not at issue here. For these reasons we would respectfully request that this Court grant the motion to compel.

Thank you.

THE COURT: You said Footnote 7?

MR. PATTON: Yes, Your Honor, of the Boca opinion

from the Missouri Supreme Court.

THE COURT: Okay.

MR. GORDON: Good morning, Your Honor.

THE COURT: Good morning.

MR. GORDON: This case poses a legal question. Is HB 1 suspended? Was it suspended when more than 300,000 signatures were submitted to the Secretary of State on December 9th? Or rather than focus on that question, Defendants have attempted over and over to divert the Court's attention with a conspiracy theory that has never had any factual or legal basis. And despite getting expedited discovery that resolved the question, Defendants now bring various motions to compel as a continued distraction to divert the Court's attention from the fact that the State has no good legal answer for the decades of the Missouri precedent that undermined their argument that HB 1 has not been suspended.

Defendant's theory, you may recall at our first hearing, they said because somebody at PNP said something about bringing a lawsuit like this, but then didn't, this lawsuit Defendants suspect must have been coordinated with PNP and these Plaintiffs are serving as parties. They've never had any evidence to support that. That was just supposition on their part. Just

supposition and hopes that, by diverting the Court's attention with that, they could somehow avoid addressing the merits of this case. But because there was and is no ** there and to expedite trial to try to resolve this case so that Missouri voters can have certainty about which congressional map controls or which one is in effect, Plaintiffs and third parties have accommodated disc-- Defendants' discovery request on the very accelerated timetable, even though they've always been seeking information that is entirely irrelevant to this case.

Both Plaintiffs and Defendants -- excuse me. Both Plaintiffs and third parties provided responses to interrogatories and RFPs long before they were due. Both Plaintiffs and third parties agreed to sit for depositions on just a couple of days' notice. The discovery responses and the deposition te-- testimony confirmed what we told you -- what I told you the first day in court. We are not coordinating with PNP or Richard Von Glahn or others on this case.

But that's not enough for Defendants. In their continuing desperation to distract from the merits -- distract from the merits, they've seized on a couple of isolated pieces of information. With respect to my clients, they've seized on the identity of the party

that is funding the li-- litigation, even though we told them it's not PNP, it's not Richard Von Glahn, it's not anybody associated with any of those entities. Nevertheless, that wasn't enough for them. The motions to compel, and these are Motions 1 and 2, fail at every level because the information sought is entirely irrelevant and unlikely to lead to admissible information.

Now, the State tells you this information is at the heart of their estoppel case. That may come as a surprise to you, because you heard at the beginning that they had this notion that there was this close coordination and that Plaintiffs were serving as proxies. The doors have been shut on that theory.

And now, their new theory that supposedly is at the heart of their estoppel case is that there's a common funder out there who may be funding both PNP or contributing to PNP and funding this litigation. So the heart -- their estoppel theory has more over time, the doors have been closed over this time. It's never had any factual or legal basis.

And even if there was something to it, even if there was a common funder, it wouldn't matter because there are no grounds to apply estoppel here, for three reasons. First, there was no inconsistent position

taken by PNP in the federal case.

Second, Missouri law holds that estoppel does not apply to positions regarding legal -- legal positions. It applies to factual positions.

And third, the Plaintiffs here are not proxies. There's no coordination, as we've told you and them repeatedly.

First, no basis for judicial estoppel here against anyone, because the supposed concessions, the supposed inconsistent positions that they talk about, that you've heard about from Counsel at every hearing over and over, they never happened. Defendants simply misrepresent what happened at the hearing in the federal court. They also re-- represent the federal court's ruling to suggest that federal court has decided the issue before this court. It did not.

The supposed concessions by PNP counsel at that hearing, those related to what happens after the Secretary of State makes a determination of unconstitutionality or insufficiency, after he makes that, the issue was, has the case been -- is the map then unsuspended and what has to happen to get the map back into effect, challenging the Secretary's decisions. That's not at issue in this case.

This case is about what happens before the

Secretary makes any decision about constitutionality, about certification. As to that issue, PNP counsel took the same position that Plaintiffs are taking in this case, that HB 1 is suspended upon submission of signatures. That what we're arguing here.

You don't have to believe me. You can go and look at the transcript, pages 45 to 46. Counsel for PNP said, it is turning in the signatures that ensures that the law will not otherwise go into effect on the 90th day. That's a quote. They reiterated on page 47 that the submission of signatures is what stops the law from going into effect. That's the exact same position that Plaintiffs are taking here.

Then the Court starts talking about what happens if the Secretary makes a determination that the referendum is unconstitutional or there aren't enough signatures. That starts at the bottom of page 45 of the transcript. And the Counsel's questions to -- excuse me. The Court's questions to Counsel are about challenges to that decision, the Secretary's decision.

And they were talking about that, Your Honor, because the Secretary was taking the position in that case that this referendum was unconstitutional. That's why they were talking about what happens if the Secretary makes that determination. And what is the

status of the map pending challenges to the Secretary's decision? In other words, what is the status of the map after the Secretary has acted? That's what the Court was asking Counsel about.

And then when you hear -- when you see the parts of Counsel responding to that, that's what she's talking about. The transcript is quite clear. PNP counsel never made the concessions that Defendants claim, so there's no inconsistent position. Which, of course, would be the first thing you would need for estoppel to apply.

Moreover, and this will be jumping a little bit to the merits, but the Court never made the ruling that the Defendants' claim that the Court made. The Court's ruling was that the case was not ripe because the Secretary has a unique self-help remedy. He can declare the referendum unconstitutional. Footnote 4, which you've heard a lot about from Plaintiffs -- excuse me -- from Defendants here, there the Court is discussing what happens if the Secretary makes a finding of unconstitutionality. He says the new map would go into effect barring a successful challenge to decertification. Again, what happens after the Secretary acts?

Footnote 2, actually, I would submit for the

Court, is actually the more telling of the footnotes, because there, the Court notes that the Secretary has taken the position that the petition is constitutionally deficient and the Court says, quote, there is no apparent reason why the Secretary would incur the significant cost of signature verification, given that belief, end quote, i.e., that belief that it's unconstitutional.

But as we know, the Secretary has not made that determination, at least not officially. The statement that Defendants cite as supposedly the holding of the case relevant to what happens before the Secretary asks, that's simply the Court's discussion in the background. That is not the holding of the case. Indeed, Your Honor, if there's any issue of inconsistent positions from that holding -- excuse me -- from that hearing, it is actually the State's representations to the Court, which are inconsistent with what they're going to tell you today.

Mr. Capozzi said in that courtroom, and I quote, "there's some uncertainly as whether mere submission of the signatures freezes the map or whether it was post certification." This is at page 36, line 6 to 8 of the transcript. So there, before that Court, Mr. Capozzi said there's some uncertainly. It's unclear what

happens. Here, in contrast, they're telling you and they say this in the first paragraph of the trial brief. They say this case will decide whether the referendum campaign can freeze a duly enacted State law before certification.

The straightforward answer is no, and the Court should reject Plaintiffs' implausible contrary claim. So here they're saying it's straightforward and anybody who argues to the contrary, that's an implausible argument. In federal court, they told the Court there it's uncertain. So again, the only inconsistent positions are ones taken by the State. There is none taken by PNP counsel. And so the whole estoppel theory, the whole basis of it falls apart at the very beginning.

Second, even if --

THE COURT: Well, he said one thing, what you said here in the federal court and different here. Is it possible his ideas developed --

MR. GORDON: It is.

THE COURT: -- from Point A to Point B? And if so, how does that deal with the estoppel issue?

MR. GORDON: Good question, Your Honor. It is possible that his theory has developed. It's possible that his position has changed. It's possible that it hasn't and he made one representation to the court there

to try and get a particular result from that court, and is making a different representation to this Court.

THE COURT: So do you know the answer?

MR. GORDON: I'm sorry?

THE COURT: Do you know the answer to the question?

MR. GORDON: No. That's why I'm saying it's certainly possible. And, Your Honor, I'm not -- we're not making an estoppel argument here. I'm just pointing this out as an illustrative point to say, they have made all sorts of comments about a supposed inconsistent position taken by PNP counsel, when, in fact, the inconsistent position was taken by them. And I think it's another diversionary tactic.

MR. CAPOZZI: Your Honor, I'm sorry to interrupt. Counsel is taking the case badly out of context.

THE COURT: You're not the one that's -- he's arguing the motion here, so he gets to talk. Not to be rude, but it's John's (sic) side right now, so...

MR. GORDON: The second point, Your Honor, even if there had been an inconsistent position, even if PNP counsel had made the concession that they did not, there would be no basis for estoppel because, under Missouri law, judicial estoppel applies to factual, not legal representations. This -- you see this in the Steven W.

Holiday case and the Kansas City v. Martin case cited in our briefing. Both of those courts say the change of position regarding a legal issue does not work in estoppel. That makes sense, Your Honor.

The law is the law, regardless of what position a party takes on it. A party's position about the law cannot control what the Court decides the law to be. And this is especially true when it comes to issues of public law like co-- the constitutional rights that are at issue here. Even if a party in a different case had taken a different legal position, it would not make sense to apply estoppel because the law is the law and that's for this Court to decide.

Third, even if PNP counsel had made that representation, they did not, and judicial estoppel would apply to PNP under those circumstances, and it does not, there's still no basis to apply to these Plaintiffs. Discovery has conclusively established what we've said all along. There's no coordination between Plaintiffs and PNP in bringing this lawsuit for -- and proceeding with this lawsuit. We made that representation in court, repeatedly. Plaintiffs said that in their discovery responses and in depositions. So did the third parties.

They asked them -- both of the third parties have

you had any input? Have you had to -- have you reviewed the briefing? Have you coordinated with them? They all said no. At most, all they're left with is this wild theory that maybe, just maybe, there's some funder in common between two different organizations. Even if that were true -- and it's not, but even if it were, that would not provide a basis for judicial estoppel.

The authority cited by Defendants that they hang their hat on deals with very, very different situations that are miles apart factually. And I think you just need to look at the first paragraph of the case that they have most heavily relied on here, Grochocinski, with apologies.

THE COURT: How do you spell that? Seriously, for Jenny.

MR. GORDON: Yes, thank you. And I wrote it down here, G-r-o-c-h-o-c-i-n-s-k-i. And my apologies for the Plaintiff in that case for butchering the name.

THE COURT: Common spelling.

MR. GORDON: I should have said that.

The Court lays out, and we've put this in our briefing, that case involved a scheme to defraud the Court that was so egregious that the Court begins a decision by talking about Rumpelstiltskin and spinning straw into gold. And it goes through the various parts

of the scheme that the parties concocted to end up with a party that otherwise would not have gotten any recovery in getting recovery. That's the type of situation where judicial estoppel has been applied. And again, those are all positions related to facts but those are the type of situations where judicial estoppel applies to prevent a fraud on the Court, to prevent -- to prevent reversion of the justice system. Those cases are miles apart. And they do not even begin to suggest that estoppel should apply to a situation involving common funder.

Finally, Your Honor, even if the information they sought here -- well, let me say, for all those reasons, the information that they seek is and always has been completely irrelevant and unlikely to lead to any invisible information. But even if it had a whiff of relevance, the identify of the party funding the litigation on behalf of Plaintiffs is protected by the First Amendment privilege.

The cases are cited in the briefing. NAACP versus Alabama, Matthews case out of Florida, IN RE Bay Area Citizens against Lawsuit Abuse decided by the Supreme Court of Texas. What these courts all recognize is that requiring the disclosure of such information would have a chilling effect on the rights of the

organization and of association.

Now, Defendants argue that this case is nothing like NAACP. And there are different facts as there are in every case but, although the facts are different, the principles, the concern about the chilling effect on the First Amendment rights is the same. And the requiring disclosure here to the State of Missouri would have that same issues with the chilling effect.

And as we stated in the briefing, Your Honor, when a litigant seeks information protected by the First Amendment, the litigant must make a showing of need beyond its mere relevance. They haven't even come close to showing any relevance, let alone a need beyond that.

For all these, Your Honor, the motion to compel should be -- the motions to compel should be denied. This fishing expedition should end and we should proceed to trial on the stipulated facts and exhibits.

I'm happy to answer any other questions the Court has.

THE COURT: No questions. Mr. Ellinger?

MR. CAPOZZI: Your Honor, briefly if I may. Just a question of procedure.

THE COURT: Okay.

MR. CAPOZZI: So I had thought this was going to be a brief argument on the discovery.

My colleague just made a lot of merits arguments. He argued why our estoppel defense lacks merit. My plan was to address the merits arguments after we dealt with admissible. This is just a fight over whether evidence is discoverable. I mean normally you don't have a full merits arguments on whether the underlining defense is meritorious merely to decide whether discovery is available.

So if the Court wants to hear full merits argument on this issue now, I'd like to make my argument and I'd like to address, you know, including among other things, why counsel took my comments in the federal case very much out of context. If the court just wants this to be a simple discovery argument, you know, we can just stick to that.

THE COURT: Yeah, I don't care to have a merits argument right now.

MR. CAPOZZI: Okay. Thank you, Your Honor.

THE COURT: Mr. Ellinger, anything?

MR. ELLINGER: Nothing on this issue, Judge.

Mr. Patton?

MR. PATTON: Your Honor, with that I don't think there's much else to say. I heard a lot about the merits there. There was never any addressing by Plaintiffs' counsel regarding the case law that I cited

as to an ultimate success on a merits theory somehow undermining the ability to collect discovery. You know, I don't -- I -- again, I can address the merits. I think that the Court's opinion is quite clear in Von Glahn case. I think that Mr. Capozzi's comments there was very clear as well. I would urge the Court go read what Mr. Capozzi actually said on page 36. He went on to say the State's position is that the freezing will occur after certification even though there was some unclarity about that at that point in time before the Von Glahn decision. But we now believe that this issue is very clear.

Thank you, Your Honor.

THE COURT: Any reply.

MR. GORDON: Your Honor, I have nothing further. I -- I would encourage the Court to read that, the transcript of the hearing and -- which I think is very clear and also at the decision there, which I think is clear as well.

So unless the Court has questions for me, I have nothing further.

THE COURT: Okay. In all the suggestions and the motions, is the transcript attached anywhere?

MR. GORDON: The transcript of the hearing?

THE COURT: Yes.

MR. GORDON: Yes, it is. I believe it's Exhibit 6 to your motion; is that correct.

MR. PATTON: Your Honor, the transcript of the Von Glahn hearing?

THE COURT: The one you're telling me to read. I think Mr. Capozzi said on page 36.

MR. GORDON: 36, yes. And where PNP counsel talked about this on pages 45 and 46.

MR. PATTON: Yes, Your Honor. And I would also turn the Court's attention to the transcript which is attached to our trial exhibit index. If Your Honor were to look the index I believe the transcript is exhibit -- close to Exhibit 118 --

MR. GORDON: 119.

MR. PATTON: 119, Yes, Your Honor.

THE COURT: Thank you.

MR. GORDON: Just for the record, Your Honor, I think that the -- that exhibit, that transcript has been submitted to the Court in connection with the motions to compel. It's also been identified on the exhibit list. And this is something I should have mentioned before. The Defendants' exhibit list here includes a number of exhibits that were not part of the stipulation. We can turn to those when we get to the trial piece of this. But wanted to flag that for the Court.

THE COURT: Okay: Is that the 126 exhibits something like.

GORDON: I think they start at 98. So there's fewer than 126.

MR. PATTON: Yes, Your Honor. I believe we 128 -- not 28 exhibits, Your Honor.

THE COURT: The final motion to compel?

MR. PATTON: Yes, Your Honor.

So now, turning to People Not Politicians and Richard Von Glahn's opposition to the State's motion to compel, the State is seeking two categories of information. First, it's seeking strategy documents that People Not Politicians and Richard Von Glahn -- or rather, Richard Von Glahn admitted, during his deposition, exist. These are prefiling strategy documents that go to the fact that People Not Politicians knew about the Maggard, this lawsuit before it was filed.

The PNP and Von Glahn central response is to argue that these strategy documents are irrelevant. This -- my response to this is the same as the response to the Plaintiffs. Ultimate -- the -- their argument is it's irrelevant because the State want be able to succeed on the merits of its estoppel defense. But that's a completely separate question that the Court

should ultimately be tasked with resolving itself, if it believes that these documents are irrelevant. We don't believe that these documents should have been withheld.

Second, the State is seeking information about the identity of the third parties providing donations supporting the litigation funding of People Not Politicians. As Mr. Capozzi clarified earlier, this is abso-- absolutely relevant as a common funding source for Plaintiffs' lawsuit here. And PNP's litigation expenses would be extremely strong evidence suggesting coordination and requiring application of judicial estoppel.

Mr. Von Glahn and PNP claim in response to this information should not be turned over under a statute, Section 130.185. They say that bars the Attorney General from asking for information about the identity of PNP's donors supporting its litigation funding. But this statute has no applicability here. Chapter 130 deals with campaign finance disclosure laws of the Missouri Revised Statute. Section 130.185 discusses investigations into alleged violations of campaign finance disclosure laws.

We don't believe that this statute limits the discovery right of Defendants when the Attorney General is acting as their legal representation. Here, the

Defendants are the State of Missouri and the Missouri Secretary of State and they have discovery rights just like anyone else. Section 130.185 does not aggregate that.

Thank you.

THE COURT REPORTER: I'm sorry. I forgot your name.

THE COURT: That's Mr. Barrett.

Before you start, I've got a question for you, Mr. Patton. So 130.185 bars attack on its right of privacy regarding their donations restricting the AG from disclosing donor identities, unless they are involved in prohibited conduct under 130.170. So are you saying that it does not apply, because there's conduct under 130.170?

MR. PATTON: No, Your Honor. Our argument is, rather, that this statute is about a statutory scheme of campaign finance disclosure law. And the statute deals with circumstances where documents can be requested as a part of investigations and it -- and it enumerates a particular section related to campaign finance disclosure investigations.

But that's not dealing with what were -- that's not related to what we're dealing with here, which is two defendants who are not the Attorney General's Office

themselves. The State of Missouri and the Secretary of State who have the Attorney General as their legal counsel and have discovery rights, just like any other litigant, and we don't believe that the statute operates those discovery rights.

THE COURT: Not done with you yet.

MR. PATTON: Yes, Your Honor.

THE COURT: But doesn't it say that the disclosure of any identity of a donor cannot be discovered unless it's a violation of under 170 to 130.188? So are you alleging that it's a violation of Sections 170 through 188?

MR. PATTON: No, Your Honor. We're not. Rather, as our -- as I mentioned our position is that simply this statute is related to a category of laws about campaign finance disclosure, investigations. This is not what is at issue here, rather the Attorney General is simple legal representation for the State of Missouri and the Missouri Secretary of State who are Defendants in this case and have discovery rights. And we don't believe that the statute aggregate those discovery rights.

THE COURT: Okay.

MR. PATTON: Thank you, Your Honor.

MR. BARRETT: Thank you, Your Honor.

It seems -- I'll have to be confused. I'm a bit lost. It seems we need to have a review on how motion practice works. So we got a motion to compel last week. They asked for two things in that motion. Neither of which were the thing that you were just talking about with Mr. Patton. So we got a motion that said that we'd like to compel some documents, which he talked about. I'm here to address that. The other thing that they asked in that motion to compel was that Richard Von Glahn answered the question of who is funding this lawsuit, the Maggard lawsuit. And as we pointed out in our opposition that was an interesting request because that question was never asked at his deposition. They did ask, who is paying Perkins Coie and Mr. Von Glahn said I don't know. We've submitted an affidavit with our opposition to the motion to compel they filed that said, we weren't asked the question of who is funding this lawsuit. But if they had ask that question, the answer would be we don't know. Mr. Von Glahn does not know who is funding this lawsuit.

Now, what I'm hearing being argued is that they want you to, I guess, compel us to disclose who all of the donors to PNP generally are. That's not what they asked for in the motion to compel. So I -- I don't think there's any basis to grant it for that reason

alone. But, yes, those questions were asked at Mr. Von Glahn's deposition. They kept asking him, who are PNP donors that have earmarked funds to be used in PNP's litigation efforts? The specific question was, basically, who's giving you money to pay for the federal lawsuit that you are involved in with the Secretary of State?

And Mr. Chris Grant, who was representing PNP at that deposition, appropriately objected under Section 130.185, the Attorney General shall not collect or require the submission of information on the identity of any donor to a tax-exempt organization, other than those directly related to an alleged violation of the campaign finance laws. That's not what they're claiming.

And, in fact, the next sentence, any collection or required submission of information by the Attorney General regarding the identity of any donor to a tax-exempt organization beyond that permitted by Sections 130.170 to 130.188 shall be deemed a violation of Section 105.1500. They're asking you to enter an order compelling us to disclose our donor list.

And by the way, if that is the request that they had made in their motion, we would have had some additional objections under First Amendment grounds

similar to what the Plaintiffs have asserted. You can't require us to turn over our donor list as a matter of the federal Constitution or as a matter of this Missouri statute and that's not what their motion says.

And how is any of this relevant? To go back to where I was going to start, you know, we agree with the Plaintiffs that it is time for this sideshow to come to an end. Everybody has bent over backwards to answer discovery to tell the Secretary of State that PNP is not behind this lawsuit. We're not funding it. We don't know who's funding it. We haven't provided any drafting support. We haven't provided any litigation support. And, frankly, I find these arguments to be pretty offensive.

You've got good attorneys here who are ready to argue this case. They haven't asked for my office's help and they don't need my office's help. Like, we're not involved in this in any way. And the Secretary and the Defendants have convinced themselves that we're lying, and that's certainly their prerogative. But there is no evidence whatsoever to suggest any coordination.

And what's interesting when you heard counsel for the Plaintiffs speaking earlier is he mentioned that their -- the Defendants' theory of estoppel has now

morphed. And that's certainly true with respect to the motion that they filed against the Plaintiffs. They seem to have this common funder theory. But the theory that they have articulated in the motion they filed concerning my clients is still on this coordination theory. And I don't know how many times we can make clear that we have nothing to do with this lawsuit.

At the end of the day, the only fact that they have managed to come up with is that Mr. Von Glahn, the executive director of PNP, was made aware of this lawsuit on December 18th, five days before it was filed. He testified to that in his deposition. There was not a single follow-up question. Not one about the circumstances by which he learned about this lawsuit. They don't care. They would rather come in here and speculate to you about this nefarious plot that we have to jiu jitsu the Court into relieving my client of a judicial admission that they never made.

And I'm not going to spend time on the merits, because I think that was pretty well covered by Plaintiffs' counsel. The transcript is in the record. It does not say what they claim it says. And I find it a little ironic for Mr. Capozzi to get up and express frustration with being misquoted. It -- it's not fun, and that's been happening on to us for months now. And

I think the Court should read the transcript and you can see.

It's interestingly enough lawyers from both parties make comments somewhere in that transcript or throughout that transcript saying, you know, Missouri law is a bit unclear. I don't know how you can have a clear judicial admission when everyone is telling the Court, you know, we're in uncharted territory here. The documents, they have been misleadingly described to you as strategy documents. I want to be clear, I -- Judge, if you want to order us to turn those over, I've got a copy for all counsel. I brought a copy for you, if I may, for in-camera review.

THE COURT: Any objection if I review this in camera?

MR. PATTON: No, Your Honor.

THE COURT: Mr. Ellinger?

MR. ELLINGER: No objection.

MR. BARRETT: They continue to describe these as strategy documents. I think the way we talked about them was media strategy. What they are, Judge, is there's some e-mails talking about a draft press release that PNP would issue to reporters should they ask about this lawsuit once it was filed. And if you look in that, I've tabbed it for you, but there's basically

three sets of documents.

The first tab is, essentially, just an e-mail exchange between PNP's director of communications on the 23rd of December, the day this case was filed, with a reporter from the Jefferson City News Tribune who asked if they had a statement. She said, we do. Here it is. And then there was a question that was asked by the reporter about the Attorney General demanding that we, my client withdraw statements that had been made to the news media on threat of them seeking sanctions in federal court.

Which they did, by the way. That sanctions motion has been sitting in front of Judge Bluestone for a couple of months, as has a motion to reopen the case making accusations -- the same accusations they're making to you that we misled the Court and bamboozled it. And Judge Bluestone has not reopened the case and he has not sanctioned us. Which I think tells you all you need to know about his view on whether he was misled or not.

The second category of the documents and, in fact, almost all of them what you see is their various visions of an e-mail that was exchanged on December 22, the day before the lawsuit was filed in which Mr. Von Glahn and his press person are just sending back

and forth a draft press release language -- this -- the same language that got sent to the News Tribune the following day.

And then third document is simply a copy of an e-mail in which the ACLU communication director, after the lawsuit was filed, sent a copy of a public press release to PNP and they said thanks.

I -- I don't know how any of that advances the ball on this j-- judicial estoppel argument. I'm not -- I just described them in court. I'm not that concerned if you want to order us to turn them over, but I also don't want to encourage rewarding bad behavior here. We have done our best to answer all the questions that have been asked. There is no collusion or coordination or whatever else you want to call it here, and they should not be allowed to use the Court's subpoena power to obtain internal media strategy documents from somebody they have a political disagreement with.

That's my view, Your Honor.

THE COURT: All right.

MR. PATTON: Your Honor, there's not much further to say about other than a couple of things. First, you know, I find it interesting that there's been a lot of discussion about what these strategy documents say here and in the motion or opposition to our motion to compel

filed yesterday. That's exactly the kind of information that we wanted to collect in discovery, but were denied the opportunity to be able to do because People Not Politicians and Von Glahn have been withholding this information. You know, if the Court wants to engage an in camera review we're happy for that. Frankly, however, if Mr. Barrett is not concerned about the Court turning over the documents, I'm not sure why we're engaging in camera review currently.

Furthermore, I'd like to say regarding the pending sanctions motion that still in front of Judge Bluestone, if the motion had as little merit as Mr. Barrett just claimed, the motion could have been denied easily within a couple of days. Instead it's been pending for a couple of month at this point, showing that Judge Bluestone is looking at this question very closely.

Thank you, Your Honor.

THE COURT: Any replied.

MR. BARRETT: Nope.

THE COURT: Mr. Ellinger?

MR. ELLIGNER: Nope.

THE COURT: All right. The Court is going to recess for about 15 minutes.

(A RECESS WAS TAKEN.)

THE COURT: Back on the record in 25AC-CC09120, Jake Maggard et at v. State of Missouri. The same parties are present as before. We just heard arguments on the motions to compel, three total, which the Court denies motion to compel at this time.

Are we ready for the trial?

MR. CAPOZZI: Yes, Your Honor.

MR. GORDON: We are ready, Your Honor. And we spoke with counsel about how we envision this going. And if you'd like to, we're prepared to discuss kind of what the order of operation -- we suggested order of operation if you will.

THE COURT: Yeah, that's fine.

MR. GORDON: So I think, initially, there were some evidentiary issues. As I mentioned, we stipulated to many facts and exhibits, but there are a few that are subject to evidentiary issues, and so I think it probably makes sense to start there. And then after that, Your Honor, given that neither party is intending to call witnesses except for potential rebuttal witnesses, we think that we can consolidate things, we condense opening argument and closing statement just into a combined argument by Plaintiffs and then response by Defendant with references to the evidence, if that works for the Court. And I believe that's what we

talked about with Mr. Capozzi.

THE COURT: And where does the Intervenors come in here?

MR. GORDON: That's a good question.

My apologies, Ms. Bell.

MR. PATTON: We're fine with just taking up these evidentiary issues first and just doing argument.

THE COURT: Okay. That will work. Who's going first?

MR. PATTON: Perhaps it makes sense for Plaintiffs to go first.

MR. GORDON: I believe that there were exhibits that you wanted -- I'm sorry. We do have the ones -- we do have our exhibits and then you have your -- the deposition transcript; is that right?

MR. GORDON: Yes, Your Honor. The deposition transcripts and the exhibit attached. So as long as all parties agree that those have been admitted into evidence at this point?

MR. PATTON: No, we don't agree. We don't agree on that, yeah. Okay. So I think -- I think the issues here are just for Your Honor's benefit, are -- there are the parties have reserved relevance objections to two sets of -- general sets of exhibits. One the -- our exhibits that were attached to the motion for PI. And

two, the deposition transcripts and associated exhibits. Do I have that right, counsel?

MR. GORDON: Yes, sir.

THE COURT: So what are your exhibit numbers that are in question?

MR. GORDON: 1 through 15. So we would move to admit those into the record at this time, Your Honor.

THE COURT: And what are yours that are contested?

MR. PATTON: So, Your Honor, we believe that Exhibits 98 to 117 are the exhibits that are attached to the deposition transcripts and then deposition transcripts themselves, we offer to admit all of those into evidence.

THE COURT: Are all of those the ones that are subject to objection?

MR. GORDON: They are, Your Honor. And I apologize, I misspoke. There is a third set of exhibits and that is potentially at issue here and those are I believe Exhibits 118 to -- through 126 which are additional exhibits that were not deposition exhibits so. The -- there basically all the exhibits on the Defendants' exhibit list depending on, I don't know if they're intending to move them all into evidence or not but we have potential obje-- objection to all of those

but it's the three different buckets of --

THE COURT: So if there's an objection to every single exhibit, what's the point of taking them up right now.

MR. GORDON: Well, I think at least with respect to the deposition transcripts I think that there is a blanket objection to those. I don't know -- I don't know counsel's position on our exhibits. So I don't know if we actually have to address that, but we would move to admit Exhibits 1 through 15. With respect to the deposition transcripts and associated exhibits, counsel and I talked about, we think that those potentially can be addressed all at once.

MR. CAPOZZI: Your Honor, I -- just to add to that, we have no objection to the admission of Plaintiffs' exhibits. My understanding of Plaintiffs' objections to the deposition transcripts is they have a blanket relevance objection. Their argument is that, so we want to cite the deposition transcripts to support our estoppel defense. I think you've already heard the gist of their objection this morning. They think that evidence is not relevant because they think that the estoppel defense is not valid. The State would suggest that the Court take that relevance objection with the case and it can address those arguments when it

addresses the merits of the estoppel defense. But the State has no objection to Plaintiffs, you know, reserving their objection there.

THE COURT: So there's no objection to Plaintiffs' 1 thought 15 coming in?

MR. CAPOZZI: Correct.

THE COURT: And you have a blanket objection of relevance to 98 through 128?

MR. GORDON: Through 117. The Defendant exhibit list has the deposition transcripts at the beginning. Those were unnumbered. And then 98 through 117, is my understanding of the deposition exhibits. And so our objection on those points, Your Honor, is that those transcripts and associated exhibits are irrelevant because the State has only indicated -- and Counsel can correct me if I'm wrong, but I -- I think the only purported relevance is to the judicial estoppel defense.

And for the reasons stated earlier, we believe and we've laid out why that judicial estoppel is offense -- defense has merits.

THE COURT: Okay.

MR. CAPOZZI: I -- I agree with that, Your Honor, with just one small addition. We also have a couple of citations to the deposition transcripts in our pretrial brief related to standing. Just a couple of things that

Maggard and Lombardi said about their injuries in the deposition. But, yes, otherwise the State citations are related to its estoppel defense.

THE COURT: Okay. And any objection to 118 to 126?

MR. GORDON: Yes, Your Honor. And it depends, I think for those it's not so much a blanket objection. We're not entirety sure what they intend to do with those, so I think for those we would likely reserve until we see if they move to admitted those during their presentation.

THE COURT: Okay.

MR. PATTON: Your Honor, if I may regarding Exhibit 119 that's the hearing transcript of the preliminary injunction hearing from Missouri General Assembly versus Von Glahn, we would move to offer that into evidence at this point. The parties were citing that transcript earlier. I think both parties want the Court to be able to view that transcript. So I'm interested to hear as to whether Plaintiffs have an objection.

MR. GORDON: No, as to 119. No objection as to 119, Your Honor. The rest of the documents 118 and then 120 through 126 are at minimum would -- are hearsay. And again, whether they're relevant or not I think

depends on -- whether we have further objections depends on what they want to admit them for.

MR. PATTON: Your honor, at this time we would move to offer Exhibits 120 to 125 into evidence. These are the Secretary of State's cer-- official certificates on the ballot -- on prior ballet petition sufficiency which contains signature verification rates for prior ballot petitions. These are self-authenticating documents under Missouri Revised Statutes Section 490.180, which says, and I quote, "copies of all papers on file in the Office of the Secretary of State, State Treasurer, State Auditor and Register of Lands or any matter recorded and either of said offices certified under this seal of the respective offices shall be evidence in all courts of this state." That precisely describes Exhibits 120 to 125, Your Honor.

MR. HAWLEY: And we object to the introduction of these on relevance grounds as well. Whether or not prior initiative and referendum were certified and the nature of those certifications are certainly not at issue here, and so we don't believe they're -- they are relevant. As with the relevance objections to the depositions and the exhibits, we're happy to have this objection on the record and it can be dealt with, you know, in post-trial briefing or wherever most helpful,

once we understand better how the State intends to use those exhibits.

But we will object to their introduction on relevance grounds because we're here to talk about the referendum on HB 1. And I struggle to see how any other referen-- or initiatives are relevant to that question.

THE COURT: What about 126?

MR. PATTON: Your Honor, we're not moving to any of that into evidence.

THE COURT: I'll take the objections with the case. So 1 to 15 on Plaintiffs is in.

(EXHIBIT NOS. 1 THROUGH 15 WERE RECEIVED INTO EVIDENCE.)

THE COURT: Mr. Ellinger, anything from you?

MR. ELLINGER: No, Judge. I think the -- I think the statutory requirement of Secretary of State records overwhelms any kind of objection.

THE COURT: Okay. Thank you.

Before we get started, this is a very emotionally charged case. Right. It's a very politically charged case. But we are not a court of politics. We're a court of law. So if we could just stay the legal discussion on things. I don't need the editorialized of political things. You can do it if you want to, but it really doesn't matter. It's not what we're here for

today. We're here today, what's the law says and how the facts apply to the law so.

Plaintiff your case.

MR. HAWLEY: Thank you, Your Honor. I have just a brief demonstrative that I gave to Defendants' counsel. I'll also, if I may, hand to Intervenor as well.

Sorry, Marc.

May I approach --

THE COURT: Yeah.

MR. HAWLEY: -- Your Honor? It will look familiar.

THE COURT: And you all can approach without asking.

MR. HAWLEY: Oh, thank you. So I believe it's still morning. Yes. Good morning, Your Honor. Jonathan Hawley for Plaintiffs.

To start Plaintiffs' case, I actually want to second something that the Court just said. This case is not about politics. This case is about the law. And it's about a very straightforward legal question. So once we remove the distractions, once we rid ourselves of the red herrings, this case comes down to a fairly simple legal question: Was HB 1 suspended when 50,000 pages of signed referendum petitions were

submitted to the Secretary of State's Office on December 9th, 2025?

That's the only issue that the Court needs to decide in this case. And that's a straightforward question, but it's also a very important one. For the past 100 years, the referendum power has allowed the people of Missouri to reserve a share of legislative power for themselves. If I can borrow some language from the Missouri Supreme Court, it is participatory democracy in its pure form. It gives the people the chance to say, we have a voice, we have the say in the laws that govern our state.

And for the past 100 years, Missouri courts at all levels have safeguarded that right against manipulation, whether that's legislative manipulation or executive manipulation. A critical facet of the referendum power is this: Referred legislation is suspended until the people have their opportunity to vote it up or vote it down.

And there's a straightforward reason for that. If legislation could take effect before the people have their say, the referendum power would be meaningless. It would be hollow and a loser. Maybe it wouldn't even matter and it wouldn't be worth protecting.

Now, the facts of this case do make this

consideration particularly acute, and here's why. The first chance the people of Missouri will have to approve or reject HB 1 is going to be the November 2026 general election. And if things go the way they have gone, HB 1's map will be implemented for that election. So this story could end with the people of Missouri voting down HB 1, while simultaneously electing representatives from its map and having unconstitutional districts for two years afterwards.

Now, again, this question exists for any referendum. But the fact that we're dealing with a congressional map here makes the problem all more acute, and it makes it all the more important for clear guidance from this Court that re-- that legislation like HB 1 is suspended when signed petition statements are submitted to the Secretary of State's office.

Ultimately, Your Honor, either the people of Missouri have a referendum right or they don't. And if they do, that right cannot be held captive to partisan wins or the Secretary's caprices or the Attorney General's erroneous view of the law or anything else. If they have that right, that right needs to be protected. It cannot be treated as a disposable right that exists solely when it's convenient for one party or another.

So that's the framework that I'm approaching this. If we agree that the referendum right is important, then we have to get into what exactly does it mean and how does it function in operation? And that question then asks, basically, how do Plaintiffs know that we're right? Why is our position in this case correct and the State's and Intervenor's is not correct? And there are three reasons why we know this is the case. There's a what, a why and a when. And once we address those three predicates, it compels the conclusion that Plaintiffs are right and HB 1 is suspended.

So we'll start with the what here. The what is fairly straightforward, because it comes right from the text of the Missouri Constitution. Article 3, Section 52B says that the legislation, when referred to the people, takes effect, quote, when approved by a majority of the votes cast thereon and not otherwise. It has to follow, therefore, that legislation cannot ever take effect before the people have the opportunity to vote it up or vote it down.

That is the requirement. Legislation cannot take effect until it's approved by voters, once the reference process has been initiated. And why is that? Is something that we also --

THE COURT: So if initiated and they find there's not significant signatures, is there a requirement to vote?

MR. HAWLEY: No. No. And I --

THE COURT: So if it's upon initiation, bridge that gap for me, if you would.

MR. HAWLEY: Absolutely. Okay. And so very briefly before I get to that question, because that's the when question. Right. I just want to -- if I may briefly emphasis the why question. Why is it that something has to be suspended before the people vote. Because we have to accept that as a critical precondition here. And the Missouri Supreme Court 50 plus years, State ex rel Moore v. Toberman, that's 250 SW 2d 701.

THE COURT: 250 SW 2d 701.

MR. HAWLEY: Yes, Your Honor.

THE COURT: Thank you.

MR. HAWLEY: And there the Missouri Supreme Court said that the purpose of the referendum, the very reason we have a referendum right is to suspend or annul a law which has not gone into effect and provide the people a means of giving expression and require their approval before it becomes operative as a law.

In other words, Your Honor, there would be no

referendum right if legislation was allowed to take effect, only to then be suspended and then voted on. It would be no different than if the State were to suggest that legislation could take effect before the Governor had the opportunity to exercise his veto. That's just not how the system works. It would be -- it would defeat the whole purpose because, again, the referendum right is a share of the legislative power that the people hold. So legislation can't go into effect if it's subject to the referendum process.

And that leads me to your question, Your Honor, is the when. How do we bridge the gap here and how does this process play out in practice. The when is that legislation must be suspended upon submission of petitions by the constitutional deadline. And the reason we know that is because of something that we talked about at the last hearing. These dually 90 day clocks that apply to legislation in Missouri. On one hand we have the effective date of legislation. That's Article 3, Section 29 of the Missouri Constitution. And generally speaking, legislation takes effect 90 days after adjournment of the session where it was enacted.

On the other side, we have the referendum deadline to submit petitions. 90 days after the adornment of the section where the referred legislation

was enacted. That's Article 3, Section 52-A. So we have these two deadlines. And the only way to make sense of those deadlines and then to make sense of the referendum right, is to conclude that a law takes effect after 90 days unless petitions had been filed to start the referendum process to refer it to the people. Because if legislation were not automatically suspended upon the submission of petitions, those laws would automatically take effect. And we know that can't be because the referendum power addresses legislation that has not go into effect. And we know that again because, the Missouri Supreme Court has said so time and time again.

And so that means that the automatic suspension happens as an operation of law. And then the secretary has his statutory obligation to undertake the review process. And once that review process happens, legislation can be unsuspended. Now, it's -- it's -- this kind of gets at the heart of something that the State has said in their brief. If they look at the language referred to the people in Section 52-B, because it says once legislation is referred to the people, it can only be voted on once -- it can only be enacted once the people vote on it.

But here's the probably with their position, they

take the position that legislation is not referred to the people until after the Secretary of State has finished his certification process. But we know that can't be the rule because that would allow legislation to take effect in the meantime and that would vitiate the referendum process. So the proper way of understanding the Secretary's review process is that the automatic suspension happens if petitions are filed by the 90 day mark. When the Secretary reviews it, if the Secretary makes the determination that those petitions were legally insufficient, they didn't have enough valid signatures or they didn't have enough valid signatures from six of the eight congressional districts or there's some others than constitutional deficiency, that means that those petitions did not satisfy the constitutional and statutory prerequisites for a referendum. And it means that this is essentially the referendum is null and void dating back to the moment of suspension. The Secretary's review is nunc pro tunc, which I confess is a phrase I have never said before in my life but it applies directly here. It's review that happens after the fact that dates back to the time of the submission of the petitions. Because if those petitions were legally insufficient, that means that the measure was never properly referred to the people and the suspension

is lifted. But until that certification is completed the suspension has to remain in effect. Again, and I -- I know I sound like a broken record, because if that were not the rule then the legislation would by operation of law, automatically take effect and that would defeat the whole purpose of having a referendum right.

And, Your Honor, you don't have to take my word for it the Missouri Supreme Court more than 100 years ago explored this very same dynamic. And that case is State ex re Kemper v. Carter, that 165 SW reporter 773.

If nothing else today, I want to encouraged the Court to read that opinion closely. That's not always fun. It is written in a very stilted and antiquated style of legal writing, but still it's an oldie but a goody, because the Missouri Supreme Court previewed many of the same arguments the State is making today and dismantled them one by one including this one.

The Kemper decision they explained that the review that you take, the Secretary's review operates as an essentially an after-the-fact review to determine whether or not those petitions were properly submitted. But they go out of their way in that opinion to say, that the suspension has to occur before the certification process is completed. And we quote this

language in our pretrial brief in the introduction. They make the point that it would be, they say the flimsyish shadow or some such language, but they basically say it would make no sense. In fact, it would be counter to the very purpose of the referendum if the Secretary could delay the review process and allow the law to go into effect just because there was some manner of delay. It doesn't even have to be intentional delay. It's just any delay that would allow legislation to take effect would destroy the referendum power. And the court recognized this more than a hundred years ago and that's why they explained this general principle that the Secretary's review dates back to the time of submission and that's why the Secretary is empower to unsuspend legislation. Because if legislation the was not properly referred to the people when those submission -- when those petitions were submitted then Section 52-B doesn't apply and the Secretary can unsuspend it and there's no industrial problem with that. But that's the way the system has to work.

And again, I'm going to keep emphasizing this, in part because I have read the briefs filed by Defendants and Intervenor. They have not once addressed this critical point that their theory allows legislation to go into effect, only to later be suspended and then

voted on by the people.

THE COURT: So in Kemper v. Carter is says must be timely.

MR. HAWLEY: Uh-huh.

THE COURT: And how are you timely?

MR. HAWLEY: It's timely because in this case in particular, the deadline for submitting the HB 1 referendum petition was December 11, 2025, 90 days after --

THE COURT: What if we don't know that?

MR. HAWLEY: I'm sorry?

THE COURT: What if the timeliness is unknown?

MR. HAWLEY: I don't think that would ever be possible because the timeliness is set by the Constitution. It's 90 days after adjournment. And adjournment is a matter of public record, the Legislature has to adjourn. So we're always going to know.

THE COURT: So what does legal mean, timely and legal?

MR. HAWLEY: Legal means compliant with the statutory and constitutional requirements for a referendum. I'll give -- I'm sorry. Please.

THE COURT: What if we don't know if it's legal or not?

MR. HAWLEY: The automatic suspension happens, and that's why the Secretary has a statutory -- there's a very detailed statutory process to allow him, first, to assess the constitutionality of the referendum. That's Section 116.120. And then to determine the sufficiency. Because it does have that word "sufficient." But Carter -- if you read on in Kemper, it also discusses that there has to be a presumption, a prima facie case of sufficiency upon submission because, otherwise, we would have the problem that the State has created here, where a law could go into effect even though it's been properly referred to the people.

So the use of the word "timely," it -- it -- it's not saying it's -- the rule that's announced in that case is not that there must be definite proof of timeliness, sufficiency and legality at the -- at the time of the submission. It just means that to be properly referred to the people you have to satisfy all three of those conditions in determining whether or not those conditions were satisfied at the time of filing, happens afterwards when the Secretary undertakes his review process.

And this also makes sense because those 90-day deadlines are set by the Constitution. It would make no sense -- and we are not suggesting this, despite what

the State says in its brief. We're not suggesting that the Secretary has to satisfy those -- has to confirm those three prerequisites and undertake the review process in Chapter 116 by the 90 day deadline as well. That is not our position. The system is set up so that they don't need to rush. They have until August to certify the petition, which is well after the 90-day automatic effectiveness of legislation.

The reason there for that gap is because it's designed to give the Secretary sufficient time to do the review process, to make sure that the sub-- petitions that were submitted by the deadline are proper, and that will determine whether or not the suspension continues through the vote or if it was not properly referred and the suspension is lifted, and then the law would take effect. But that -- this -- that doesn't change the fact that that suspension has to happen at 90 days because otherwise the law would take effect and the referendum power would lose its meaning.

I'm sorry. I'm just reviewing here.

So the State has called our position here implausible. But I think their position is a nonstarter. Again, because it does not reconcile the fact that legislation can't take effect before the people vote it up or voted it down. Our position here

reconciles these various things in a way that makes sense. And again, this is what Kemper recognized more than a century ago.

And the Moore case as well, State ex rel Moore v. Toberman which I mentioned earlier, that gets in this as well. Because they mentioned that a referendum petition that was found to be legally insufficient was not suspended. That again, reflects the fact that this review process happens after the fact that it dates back to the time of submission so that the Secretary can determine essentially whether the suspension continues through a proper referendum vote or if no proper referendum has been started, then the suspension is lifted.

And the timing of that process is at the Secretary's direction and discretion. He gets to decide how long it takes. And he also gets to decide you -- the various tools, and we can briefly review those, because I do think it's important here. Because one of the big arguments that's made on the other side, both the State and the Intervenor briefs, is that this process might get room for abuse.

We've heard some hypotheticals, even in our last hearing, what happens if someone signs 50,000 pages with their own name, what happens if it's just scribbles,

what happened if you don't have enough signatures? Those are all valid well, those are -- I will say those are not quite valid concerns, but those are hypotheticals that have been put out here. But the system is designed to minimize the effects of that abuse.

Number 1, and perhaps most significantly something that's been lost so far in this case, and I'm taking this point directly from Kemper that 1914 case they made the point that the fact that it's a crime to forge or otherwise commit fraud in the referendum process will deter fraud understandably such that when the Secretary receives petitions by the deadline, they can accept them with confidence that they are going to be legal, sufficient and lawful.

And the particulars of that process have changed. The statute is new. But it's still a -- it's a Class A misdemeanor punishable by up to year in prison to forge or commit fraud as part of the signature process, and it says that on the petitions that people sign. So let's not forget that there are concerns about 50,000 forged signatures. If they're worried about someone who's willing to accept I -- I'm not a criminal lawyer but let's just say 50,000 years in prison for the sake of forging a referendum petition, that's an outlandish

hypothetical and that should not be the tail that wags the dog hair.

What's more, the statutory structure of Chapter 116 and, actually, I believe that the demonstrative that the State has -- will pass out, it lays out it pretty nicely. But there are different points of timing and different things that the Secretary can do.

A brief intermission is probably much needed, but the last page of that lays out Chapter 116 verification process. And what it confirms is that there are many things that the Secretary can do proactively and at different times and at different speeds to make sure that only properly referred legislation goes to the people and by extension that only suspension is minimized if indeed that suspension should not have occurred.

So the first threshold is in -- I -- actually that one is on I believe 116.110, if the submission doesn't follow the submission rules, the Secretary can kick the referendum right there. That can happen the day of submission, if they didn't follow the actual submission guidelines.

Next up, 116.120, the Secretary can make a determination of constitutionality. That's what

Judge Bluestone and Mr. Capozzi and others were talking about in that federal hearing. It's the self-help remedy that the Secretary believes that a referendum doesn't comply with the Missouri Constitution, and by extension the U.S. Constitution, he can make a judgment on that right away. There's no minimum time that has to pass. He can do that immediately and make sure that an unconstitutional referendum doesn't suspend legislation that aught not to be suspended.

130.140, the process for -- you can do random sampling of signatures. You can send either the full signatures or the random sampler to the county officials to verify that voters are the right ones. And, of course, 116.150 gives the Secretary that final certification power to either certify the referendum sufficiency or certify its insufficiency.

And I want to emphasize, there is an outside deadline for that process and, in this case, it's August 4th, which is primary day. There is no minimum time. So there's nothing stopping the Secretary, if he feels that a referendum is improper, if he has suspicions, if his staff has suspicions, they can expedite this process, they can determine its constitutionality at the very beginning of the process. They have the tools that are needed to make sure that

fraud in the referendum process does not occur.

But those concerns about fraud cannot vitiate the referendum by denying the people their right to have a vote on the legislation that has not yet taken effect. And that's why, again, we feel at that Plaintiffs' position here best reconcile these various requirements. We have the constitutional requirements and the statutory requirements.

And reading the statute as being a review that happens after suspension, is a way of making sure that the process happens so that the people don't lose their right to vote, to approve or deny legislation that has not yet gone into effect. And again, the State has not offered an explanation of how their position works when we know that legislation can't take effect without hollowing out the referendum power.

A few other points that the State raises in their brief and Intervenors in their brief as well, in response to Plaintiffs' argument and Plaintiffs' position. The first is that they claim that our position conflicts with precedent. Now, you've heard enough from me to know that we think our position is entirely consistent with precedent and we encourage the Court to look at Kemper, look at Moore, look at the other cases that have looked at some of these issues.

But the -- they point to two cases.

The first is the federal case, the one that we've been talking about in the context of estoppel. But as my colleague, Mr. Gordon, pointed out earlier, the federal court did not have a holding there about the automatic suspension of legislation because that issue was not what he was focusing on. He was focusing on, essentially, 116.120, the self-help remedy. Because that federal case, just for context, that was a state -- a case brought by the General Assembly against People Not Politicians claiming that the referendum itself violates the U.S. Constitution under the theory that referendum on congressional maps are inherently unconstitutional because the election clause empowers the Legislature to draw the maps of congressional lines.

I might be simplifying the issue there, but that's a -- that's about the constitutionality of the referendum itself. And, obviously, that's not an issue before this court. But that's what they were looking at. And Judge Bluestone concluded that the Secretary has a way of dealing with that where he doesn't need to call in a court. The Secretary, informed by the Attorney General, can make a determination of unconstitutionality under 116.120, and that is to use the federal court's term, "decertify the petition." Say

that it's insufficient and then the suspension would end once the process for judicial review happens.

Again, that's not what -- that's not an issue here but that case, if anything shows, that this is how the process is designed to work. The Secretary has the ability to address whatever flaws that he or the Attorney General might perceive in the referendum process under these statutes, but that doesn't affect the automatic suspension.

And other than taking some lines out of context from the background section, Judge Bluestone in the federal opinion never expressly said that automatic suspension does not happen on the 90-day mark. He just said that the Secretary can decertify a referendum later on and make it go into effect and, with recertification, it's just the process of issuing a certificate that the referendum is insufficient. So we don't believe that there's anything inconsistent with what we're saying and what Judge Bluestone said in the federal case.

The other case that they point to is actually one that Plaintiffs have been relying on, the Chugh Transport case, which is a case from Cole County Circuit Court in the early 1980s. That case was about trucking legislation and there was a referendum on it. And the plaintiffs in that case wanted a determination that the

law was not suspended because the Secretary certification of signatures had not yet happened. And the Court said no for the same reason that we said, because the people's referendum right is too important to allow laws to go into effect before they have their say.

And now the State points out that, in that case, the 116.120 certification had already happened. But that opinion does not say that that certification is required before suspension goes into effect. That's just the facts there. And again, that can't be the rule because there's no minimum deadlines here for 120 that would allow the Secretary to, essentially, drag his feet, decline to assert -- to issue a finding of constitutionality and let legislation go into effect. And that cannot be the rule. And so Chugh Transport doesn't say as much either.

And their response to that point, Your Honor, which is there's a risk that the Secretary could allow legislation to go into effect by, essentially, taking his time on the certification process. Their response to that, and I quote is, "elections have consequences." So they're -- as I understand their position, it's that if the Secretary of State violates the people's referendum rights by denying them their chance to vote

on legislation before it takes effect, the people can just vote him out of the office at the next election.

But I am not aware of any authority from any state or federal court that says that an elected official can violate the people's constitutional rights freely, just because there might be electoral consequences down the road. If that were the rule, then it would be impossible to prevail on a constitutional challenge to something an elected official does. Obviously, that's not the rule and that's not the rule here. But ultimately, Chugh Transport doesn't even reach that. It doesn't require that conclusion anyway. I just want to point that out.

The State has also said that we misunderstand what it means for something to be referred to the people, because they say only the Secretary can refer something to the people. We don't disagree with that. The Secretary refers legislation to the people. But again, that does not change the fact that the legislation that might be referred, ultimately, if it's certified, is suspended after 90 days. Again, that has to be in the rule, based on what we know from the Missouri Supreme Court and the text of Section 52-B.

So our position is con-- our position is consistent with the constitutional text. It's

consistent with this fundamental imperative that laws cannot go into effect until the people have their say. And that the inverse of that in a sense, that legislation once it's gone into effect can no longer be subject to the referendum power. And it's consistent with both the federal case and Chugh Transport.

The State and Intervene point to some other states that have different rules. I would submit that there's no need to look at Maryland, Wyoming or any other state that they cite to because the Missouri Constitution, Missouri statutes and Missouri case law give us the answers to these questions that we need. But I will say the fact that other states might do it differently, that's fine.

There is -- the -- this is just the way that Missouri courts -- that the Missouri Constitutions referendum power is effectuated with automatic suspension before effective date of legislation to ensure that the people can vote it up or vote it down. That's just the rule in Missouri. The fact that other states might have different applications there for their referendum power, it doesn't really have any relevance when we have Missouri authorities on the point here.

The State has said that our position is absurd and I think obviously we disagree with that. We think

that it's just the best way of reconciling all of these moving pieces. But we also note that prior Secretaries of State informed by the prior Attorneys General have adopted the view that Plaintiffs have here. This happened in 2018 related to legislation about Missouri's Right to Work law. It happened in the 1980s under Secretary Kirkpatrick under that trucking legislation. They took the position that both of those laws were suspended upon submission of the cert-- of signatures before the certifica-- signature certification process was completed.

So far from absurd, this is practice. And Defendants try to waive that away by saying, well, the Secretary of State isn't the ultimate legal authority in this state. But that's like me saying 'my dog is not intelligent because I beat her three games out of five when we play chess.' If she still wins the other two games, that is very significant of something. And the fact that prior Secretaries of State have adopted our view shows that this is not an absurd theory. This is Missouri practice. And again, it comes from a place of reason otherwise legislation can take effect before the people vote on it and that can't be the rule.

As I mentioned there fears about a major -- a minority of people freezing a law unjustifiable with a

legally insufficient petition, again, the structure of the statutory review process and the fact that it is a crime to defraud the State through the referendum process is the deterrent needed so that the Secretary can confidently suspend the legislation after 90 days and then complete his review. And again, the Kemper case from 1914 makes that point quite clear.

And again, we are not asking the Secretary to finish that review process in 90 days. In this case he would two days because the PNP petitions were submitted two days before the deadline. The whole point of our position and the automatic suspension by 90 days is that the Secretary does not need to have an impossible task. The timing and implementation of that review process is at his discretion and he can make those determinations.

And again, a contrary position would be inherently unconstitutional because it would allow the legislation to take effect before the people have their say.

And again, this is case underscores why this is a rule. Because were dealing with a map. And maps have to be applied by a date certain. Otherwise, you know, that's just the reality of election administration.

THE COURT: Why?

MR. HAWLEY: Because things have to done to

ensure that implementation of a map can't happen on a dime because it requires -- to make sure that the voters get the correct ballot. To make sure that the proper voter files are properly updated with new district boundaries. There just -- there are technocratic procedures that have to be done to implement a map.

THE COURT: You have to answer by February 24, why does that date matter?

MR. HAWLEY: February 24, and I'll -- absolutely, Your Honor. So February 24th as we've mentioned is the opening of the candidate filing deadline. Our position is not that that's the drop dead date to have Missouri map. We just think that it would be -- it would make most sense for candidates to know by the time they need to start filing their candidacy materials which districts they're going to be running in. That's not an election administration deadline. And again, Your Honor, I don't know what the deadline is. But here's the problem, the statutory review deadline is August 4th. That's the same day as the primary. So if the Secretary's position is correct, that he has until August 4th and not until that day, would HB 1 suspended, I would submit that it is a practical impossibility to have the certification process completed on August 4th, have HB 1 suspended on August 4th and do on that same

day hold the primary under the old map lines. That's just not possible. And there's some daylight there. I don't -- again, I don't know what the date is when --

THE COURT: This whole time we've been arguing or been discussing the need for February 24 to expedited discovery, do all of these things in a rush manner because there's importance of February 24th.

MR. HAWLEY: Yes.

THE COURT: And so is the importance that people know --

MR. HAWLEY: Yes.

THE COURT: -- by February 24th? But what if it ends up the signatures aren't there? Isn't it the exact same harm the other decision that people don't know?

I see what you're saying.

MR. HAWLEY: Yes. Yes.

THE COURT: I don't see how one harm outweighs the other harm. Aren't they equal harms in this situation?

MR. HAWLEY: They are not, Your Honor. Because thumb is on the scale of the referendum right. They are not two equal harms. Because the harm of vitiating a fundamental constitutional right, outweighs the harms that are inconvenience that comes to candidates, even voters and election officials of having to implement a

new map later on in the process then they might otherwise prefer. Because your -- the difference is inconvenience and confusion on one hand weighed against a fundamental constitutional right. And when you have a right on one side of the scale, that's the one that weighs more heavily. And again, that's why we have proposed our position here, which is it has to be automatically suspended to make sure that the people's referendum right isn't accidentally vitiated by allowing a law to go into effect.

And I'll repeat something that we said at the last hearing, Your Honor. The Secretary is empower to make immediate determinations, short of the full signature review process if he has a valid basis for determining that a petition is insufficient and that HB 1 should not be suspended. The fact that that has not happened yet is the Secretary's choice. We are not looking to control that choice. But in reality is the statute leaves it to his discretion. And if he wants to slow walk the process, then any inconvenience that's ultimately imposed on candidates or election officials is the Secretary's responsibility. It's not our Plaintiffs because they're only looking to ensure that their fundamental rights are vindicated through this legislation.

And that actually brings up a kind of important point about delay here, which has been raised in these briefs as well. We do think that delay is against -- is not on our side here. Delay should be minimized here, because it would just -- again, make the most sense for everybody, voters, candidates, election workers, the Secretary's office, everyone to have certainty to which map should be in place as soon as possible.

And originally, in their motion to dismiss briefing, the State suggested that there would no problem with delay here. And in their pretrial brief the State also says that that process is still happening. But I'm a little skeptical of that for two reasons.

The first is, we have exhibits in the record from our preliminary injunction hearing which have now been admitted. The Secretary of State and the Attorney General has stated publicly that they are delaying this process to protects the HB 1 map. That is not my opinion. That is something that the Secretary of State stated to NPR and to other media outlets. So you don't have to take my word for it, that delay is happening here. The Secretary has made that position clear.

And even if we haven't -- he haven't though, they've taken the position that the 116.120 review

hasn't happened yet. It's a quick refresher, that's the self-help remedy that Judge Bluestone in the federal case focused on when he concluded that that case was not ripe because the Secretary could fix any problem himself immediately at any time. Judge Bluestone gave the Secretary the green light if he felt that the referendum was unconstitutional to make that determination right away. He -- the State has taken the position that he has not.

And I don't know why that is, if they believe this referendum is unconstitutional. The only solution -- or our only answer to that question I can find is that they are trying to delay this process to the point where it's too late to change the map. That's gamesmanship on the Secretary's side. That is no reflection on the referendum right. And again, that should not be the tail that wags the dog here. That people's fundamental rights need to be protected if they have any meaning.

And that requires that HB 1 be suspended because, otherwise, as the Kemper court observed more than a century ago, they would leave room for abuse in the process on the Secretary's side because delay and certification might serve to allow laws to go into effect even though they're subject to the referendum

power and cannot go into effect.

The specter of Purcell has been raised in this case. And -- oh, I'm sorry. Apologies. A brief word about Purcell. That's the doctrine that says the Courts can't get involved in litigation too close to an election because it risks creating confusion. Now, we submit there is no Purcell problem now because we've asked for a resolution by February 24th. Even if this case is not finally resolved, we do not accept that there would be a Purcell problem. But let us point out that Purcell isn't really applicable here because Purcell is about a Court coming in and changing rules on the eve of an election. We're asking this Court to determine simply which is the operative map right now. There's a dispute about that. Under Missouri precedent, it would be the old map. Under the Secretary's view it's HB 1. So we don't know -- there's uncertainly right now about which map is in effect. So the normal considerations of Purcell, which is interfering and changing rules at the last minute, isn't quite a good fit here because we're asking the Court to decide early which is the proper map, and that why we have sought expedition in this case, because the sooner that decision is made, the better it will be for everybody.

And but -- and yet -- and even though the State

has suggested in their motion to dismiss briefing that Purcell would not be an issue here, that the Secretary could wait until August 4th to certify and then suspend HB 1 there.

Again, that just -- that position lacks any credibility. It just doesn't make any sense. By August 4, primary day, you can't change the map. But that is the outside deadlines for the Secretary certification process. That just underscores this whole point that you can't tie the suspension of preferred legislation to complete the certification process, because it would allow laws to go into effect and when you're dealing with a congressional map, it makes that problem all the more apparent because eventually the map can't be changed. And it certainly can't be changed by the deadline for the Secretary's certification here.

And so again, this problem with delay is something that's been an issue in this case. It still is and that's why we urge a quick resolution of this case.

I've been going on for quite some time, Your Honor, but I just have a few last minute points, a few of the other ancillary issues that have raised in briefing heading into trial.

The first is standing. We talk about this a lot

at the last hearing. I don't want to belabor the points especially given that the Court has denied those motions to dismiss. But we do believe our Plaintiffs readily have standing here. They are bringing this case on behalf of their own constitutional rights. That is an individual right that each voter in Missouri holds as an individual. And any violation of that right is a personal injury to a voter. Again, the fact that all voters might have that injury, doesn't make it generalized because it's a direct injury to a personal right that our Plaintiffs hold. Therefore, they have a concrete injury. This is not an abstracted injury about the conduct of government. This is something that's individual personal to them and we allege is currently being violated by the Secretary's actions and the State implementation of HB 1. And we, again, believe this case is ripe because that is injury is on ongoing. If law -- if under the Missouri Constitution laws have to be suspended at 90 days and HB 1 was not suspended, then there's an ongoing violation of the rights that is happening now.

We are not challenging the certification process. We are not rushing the certification process. We're not seeking judicial review of the certification process. That's down the road. This case is about a preliminary

question of what happens to HB 1 in the meantime. That issue is ripe for adjudication now.

Intervenor suggested that we have an adequate remedy at law our plaintiff, such that a permanent injunction is not appropriate. But they cite to the judicial review of the certification process. So that argument fails for the same reason. We're not looking at the certification process right now. We're looking at what happens before then. There's an ongoing violation of our cons-- our Plaintiffs constitutional rights, that's a irreparable and non compensable harm and certainly there's no statute or other remedy that would allow plaintiffs to vindicate their rights short of litigation like this.

And the last thing I'm going to talk about is the estoppel question, which we've already hashed out in great detail. I adopt everything that Mr. Gordon said about the fact that no concession was made in the federal case. Even if it were, it would not be the sort of concession that estoppel would be applicable to, even if it were, even under their theory of common funding.

There's no case that would find an estoppel relationship there. Estoppel is about preventing parties usually from making money by committing a fraud on the Court. That is miles away from the case of two

plaintiffs, individuals seeking to vindicate their constitutional rights. And yet the State has now pivoted once again in their pretrial brief to make a pretty extraordinary suggestion that everyone who signed the HB 1 petition is estopped from making an argument that's inconsistent with what they view as PNP's argument in the federal case.

Again, there is no authority that would allow for such an expansive application of estoppel, by the same reasoning that would suggest that no one in the State of Missouri could ever take a legal position inconsistent with the Attorney General because the Attorney General ostensibly represents the people of Missouri. But that's just -- that would be I think clearly absurd. And this is no less absurd because there's, just -- again, the principle the estoppel is applied very carefully. The fact that our Plaintiff signed a petition doesn't mean that they don't get to vindicate their own referendum rights. And the St. Louis Typographical Union case, which they cite for that, doesn't saying to the contrary.

In that case, the Union was estopped because the Union itself had no interest in this litigation they brought. They were merely serving as a proxy for their members who had already failed in lit-- in litigation.

Then the Plaintiffs asked their -- the members asked the Union to bring a case and take a contrary position. That is not this case, because our Plaintiffs are seeking to vindicate their own rights, not PNP's, and so St. Louis Typographical has no application here, because this isn't a case where someone's acting as a proxy to vindicate someone else's rights. Our Plaintiffs are looking after their own referendum rights.

The State also suggested that there is sufficient circumstantial evidence for an estoppel ruling here. They picked at various things. They've listed them in their brief under a theory. Again, there is absolutely no proof, no evidence that yet been seen that our Plaintiffs and PNP or anyone affiliated with PNP have a connection worthy or that would merits a finding of estoppel. There's been no collusion, no coordination, no funding, no direction. No one is in cahoots with anyone else. They are just two separate entities. There's been no evidence other than their speculation that there might --

THE COURT: How do you know that?

MR. HAWLEY: I'm sorry?

THE COURT: How do you know that?

MR. HAWLEY: Because we've seen the record. Our Plaintiffs swore in their deposition -- I'm sorry in

their discovery responses and at depositions that they stand by those discovery responds that PNP is not funding this litigation. PNP in third party discovery confirmed that they are not funding this litigation or directing it or anything else. So if you look at the totality of the -- of the materials in the record, discovery responses, depositions, briefing and what we and my colleagues have said at the hearings, there is nothing in the record to suggest that there's any kind of collusion or coordination between PNP and us. It's all based on the theory of estoppel that wouldn't even have merit in the first place. And I want to draw the Court's attention to Taylor v. Sturgell, which is a U.S. supreme court case that --

THE COURT: Sturgell?

MR. HAWLEY: Yes, S-t-u-r-g-e-l-l. That's 553 US 880. The Supreme Court there said that courts should be cautious about finding estoppel based on the relationship of non-parties. And they said, quote, "a mere whiff of tactical maneuvering will not suffice to justify a ruling of estoppel." We don't even have evidence of tactical man-- we don't even have a whiff of tactical maneuvering here. All we have or -- is the State's speculation. And, as Mr. Gordon pointed out, we have gone out of our way, and PNP and the third party

deponents did as well, to confirmed that there is no tactical maneuvering and there is no connection here. There's no evidence of collusion whatsoever.

Estoppel is an equitable doctrine. It would be decidedly inequitable, I would suggest in this case, to deny our Plaintiffs the opportunity to vindicate their individual rights based on something that allegedly happened in a federal case based on the organizers of the petition. There is no case that they have cited, and certainly no case that we have seen that would urge a court to apply estoppel in that case.

So instead, the State is asking for an adverse inference to be drawn against us. That would be equally inequitable, because I don't know of any case where you would justifying an adverse inference based on the absence of information. Here there has been no lying, there has been no spoliation of evidence. There hasn't even been a refusal to testify as in JAR which is a case that the State cites in their brief.

Our Plaintiffs testified and the third parties' deponents testified that there is no connection here. We've all made the relevant point abundantly clear. We have declined to provide funding information based on our belief that that information is irrelevant and, more to the point, protected by the First Amendment. The

First Amendment privilege exists to ensure that individual and entities association rights are not chilled by undue interference.

I can only imagine the chilling effect that would happen if an adverse inference could be drawn by a court based on a party's good-faith indication of their First Amendment rights. That is exactly what the First Amendment privilege is designed to protect, so there is -- there is absolutely no grounds for any kind of adverse inference here because the record demonstrates that there has been no coordination and no collusion.

Ultimately with, Your Honor, I'll finish where I began. I've talked a lot, but I don't want to lose sight of the fact that this is a fairly straightforward question. We have very helpful Missouri Supreme Court cases. We have the text of the Constitution. We have what prior Secretaries of State and Attorney Generals have done and all of that is consistent with Plaintiffs' position. This has to be the rule. Legislation has to be suspended automatically before legislation goes into effect because otherwise the referendum right would be hollowed out beyond recognition.

And so we rest on our briefing and the evidence in the record. And with that I think with Court's time, we urge the Court to issue an order, a permanent

injunction and final judgment declaring that HB 1 is suspended until the constitutional referendum process is completed. And that can either be the final vote or ultimately a finding of insufficiency by the Secretary of State's office that's upheld on judicial review. Either way that's the consummation of the referendum process. Until that time HB 1 is suspended. And we ask the Court and join the Secretary of State and the State from enforcing HB 1's map until that process is completed.

Thank you.

THE COURT: So I like to play pinball. All right. It's a game I was really good at. And at the Safeway Store, when I was young I'd go down to Safeway and I'd play Elvira. Now, I'm there and all of a sudden there's one of those BLT machines now, right. Nothing to be close to controversy. There's discussion on this right now. Well, I decided I want to play that. All right. Now they past a law saying they're legal. But my wife doesn't like that and she started a petition. And there's -- and now they've submitted signatures to the State. Though the State says it's legal, there's reference saying it shouldn't be legal. If I'm playing that, under your theory I should be -- I could be arrested for that now. Right. I'm doing something

illegal. So where is the problem there?

MR. HAWLEY: I want to make sure I got this hypothetical correct. So these machines were legal --

THE COURT: They were illegal.

MR. HAWLEY: They were illegal.

THE COURT: They made them now legal. But there's been a referendum filed saying no, no.

MR. HAWLEY: This is exactly the point of why we have to be right, Your Honor. If the Legislature -- Legislature passes laws saying that it's illegal that law would not take effect until had 90 days.

THE COURT: They say it's legal.

MR. HAWLEY: Sorry. If they say it's legal, that legality would not take effect until 90 days after the adjournment of that session. So if your wife submits those petitions before that 90 days to ensure that the machines are still illegal, that would preserve the status quo, pending the referendum process, because the legality would never have taken effect, because it would -- the automatic suspension would have prevented that from happening. So this ensures security.

The bigger problem would be, if the Secretary were right, here's what would happen: You would be playing -- the law would go into effect. The pinball machines would become legal. You'd be playing pinball.

Then the certification would happen, and then the pinball machines would be illegal. All of a sudden, based on the Secretary's timing of the certification process. You can imagine how confusing that would be. Setting aside the referendum right means that legislation can take effect. This would be the back and forth. State ex rel Moore v. Toberman talks about this. It says it'd be very -- there'd be great mischief would result if that were the rule, because laws would be turned on and off like a light switch. It would be confusing.

In the case of a congressional map, it would be irreparable because the map once in place has to stay in place at some point. But to your point, there would be this back and forth of whether that illegal or not and, you could be at risk about not knowing what the status of what the law is, as could the proprietors of the Safeway who put the pinball machine in their store.

Ours -- the way we have conceded -- I caught Plaintiffs' position, but this is -- was the State's position up until this last year, prior Secretaries of State, prior Attorney Generals and the Missouri Supreme Court, our position -- and I want to run though it again, because I think it's quite telling. The machines are -- are illegal. The legislation decides they should

be lawful. That lawfulness would take effect after 90 days.

Your wife submits the petition. That freezes implementation of that law. It delays the effective date until after the referendum is completed so that way, there is consistency. There's no back and forth. The machines remain illegal. If that referendum vote succeeds, they'll stay illegal. If the referendum vote fails, the machines are lawful and you can play them as much as you want. And there's the middle ground.

If the Secretary -- I -- I'm reluctant to suggest this. If those petitions that your wife submitted are not sufficient, which I'm sure they would be, they absolutely would be, but if they were not and the Secretary determines -- makes that determination and a Court upholds that finding, then the legislation would go into effect and the machines would be legal. But the whole point of this is to avoid the back and forth and confusion that would result if the Secretary's position were correct.

But -- I'm sorry, please.

THE COURT: But you said if it's found to be sufficient. Right? But in the case you keep citing, the hundred-year-old case --

MR. HAWLEY: Yes.

THE COURT: -- Kemper v. Carter, it says timely, legal and sufficient.

MR. HAWLEY: Right.

THE COURT: And so what you just said is that, if it's deemed to be sufficient, which either sufficient has meaning or does not have meaning --

MR. HAWLEY: Yes.

THE COURT: -- so the archaic language of the case -- and you've told me that, if I'm reading through it. But you're trying to say --

MR. HAWLEY: Yes.

THE COURT: -- here sufficiency is required, but it appears it doesn't matter. That's just extra verbiage. It's this case and it's not --

MR. HAWLEY: It does not because in order for -- in order for a -- in order for that suspension to be lawful and for the suspension to be continued through the referendum process, petitions need to be timely, legal and sufficient. So that's not ** enter verbiage. That is the reality. But again, the case goes on to describe the presumption of sufficiency, timeliness and adequacy that detaches upon submission as a necessity of the process. And then the Secretary certification of that happened afterwards and, essentially, dates back to the time of -- of the -- of the filing.

So I think -- again, I think what we're saying is consistent here. We're not denying that suspension presupposes those things. It's just that there's essentially a presumption. It's a rebuttable presumption that the Secretary can rebut through the review process. But again, this has to be the mechanics here. Because otherwise we have the situation where a law goes into effect even though the people haven't voted on it yet.

And that does remind me, Your Honor, there's one other check on the system here. The Secretary can make sure that legislation, that it isn't unduly suspended by confirming whether or not a petition is sufficient or not.

The Legislature also has a check. If there's emergency legislation or certain other pieces of legislation to be constitutional criteria, the referendum process doesn't even apply. So there's no concern here. Let's say the Legislature made the decision that those pinball machines were very important to the State's economy and the enjoyment of its citizens and declared it an emergency that pinball machines have to be legal. I'm not sure if that would be necessarily a proper conclusion to make, but this -- the Legislature can pass legislation with certain emergency provisions

to make sure that it does not get suspended by the referendum process. So if something has to happen, if it's an emergency, the Legislature can make that determination and ensure that the legislation isn't subject to the referendum process. That's not the case here. There's nothing in HB 1 that triggers those safeguards. But the point is, there are safeguards in process. That's what Carter talked about, so that we can presume timeliness, sufficiency and adequacy. Law can be suspended and then the Secretary undertakes the review process and confirms that that suspension is proper and that legislation is referred to the people for their up or down vote.

THE COURT: Okay.

MR. HAWLEY: Thank you.

MR. CAPOZZI: Your Honor, do you want to launch right into this or -- I just fair warning, it might take a little while. There's a lot to respond to and just wanted to check if you wanted a break or if anybody else needs one.

THE COURT: What do you all want to do? I'm good for -- I'm not good until 3:00.

MR. CAPOZZI: I'm happy to proceed.

MR. GORDON: We're happy to proceed. Just a housekeeping matter, I think what we talked about before

with the objections to the documents, I'd just like to confirm that we can just have a standing objection to the extent that counsel refers to the exhibits, transcripts that we've lodged our objections to, instead me interrupting counsel every time we mention those.

THE COURT: It works for me.

MR. CAPOZZI: Yes, works for me.

THE COURT: You want to take a quick restroom break before you get started?

I don't know how you guys are doing.

You okay?

THE COURT REPORTER: Uh-huh.

MR. CAPOZZI: All right, Your Honor. I apologize in advance. This may go a little long but there's a lot it go through.

I want to start, though, with what we're not talking about. Because, frankly, I think a lot of my friend's arguments were a red herring. He says that this case is about the right to referendum and whether it means anything. He says, if the State wins, that the right to referendum doesn't mean anything. And that's clearly not true. I think we actually have some common ground on this point.

This case is not about whether the people will get to vote on HB 1. The Secretary's certification

decision has not happened yet. If the Secretary certifies the referendum, the people will get to vote. HB 1 does not only apply for 2026. It applies for 2028 and it applies for all elections until the General Assembly redirects again, which would be after 2030. And so the people will get their vote.

This case is not about whether the people will get their vote. This case is not even about whether HB 1 is frozen between, you know, for a certain amount of time before the people get their vote. If the Secretary certifies this referendum, say for example, in June. I'll agree that HB 1 is frozen and cannot be used for the 2026 elections. And so those two things are not at issue.

And frankly, that's mostly what the referendum right is about. Do the people get a vote? No. What this case is about is for a temporary period of time. Do we assume that merely submitting a petition, an unverified petition with unverified signatures, does that automatically block a law enacted by the people's elected representatives? I want to give a hypothetical, which I think is similar to your pinball hypothetical, but it's just this case. It's a hypothetical. It's this case.

People Not Politicians has submitted a referendum

petition against House Bill 1. They have to get a certain number of signatures in six congressional districts. You know, there have been allegations today of delay by the State and by the Secretary but, as the State has pointed out before, the Secretary very promptly referred this referendum to the 116 local election districts, the counties, and I think it's Jackson County has its own district. All around the State local election officials are going through the exhaustive process of looking at these signatures.

You have to make sure that they're registered voters. You have to make sure that there's not duplication. You have to check the signatures for signature matching to make sure there's no fraud. And this is an important process, Your Honor. You know, the exhibits that the State wants to submit or we're asking the Court effectively to -- you know, these are certified documents. These are the certified results from the Secretary of State. These show very high invalidity rates for past referendum petitions.

In the -- in the recent past, within the last ten years has high as 40 percent of the signatures submitted with referenda petitions have been invalid. If that's true here, anything close to that number is true here, People Not Politicians will probably not have enough

signatures for their referendum to qualify.

And so here's the hypothetical: Let's say that in July, when the exhaustive signature review process finishes, it turns out that there weren't enough signatures. It turns out that People Not Politicians did not have enough signatures in one or two of the congressional districts. Under my friend's theory, that means that HB 1, a law duly enacted by a majority of the people's elected representatives and signed by the Governor, can't be used for elections this year based on an invalid pile of signatures.

And so my friend says this case is about democracy. I agree. But I think democracy points in the other direction. Democracy is whether laws enacted by the people's elected representatives are going to be enforced. And in my hypothetical that would be an extremely antidemocratic and unfair result. Nothing in Missouri law requires that result.

And, in fact, I actually think the merits of this case are quite straightforward under the constitutional text. The constitutional texts prohibits that result. And we're going to go through all of that briefly, you know, just sketching out three arguments the State's going to make just to give Your Honor a direction of where we're going.

First, the State would like to repeat its prior argument that Plaintiffs' lack standing. Plaintiffs have the burden of proving standing at trial. You know, the State's not going to repeat all of the prior arguments that it made here. I would refer the Court to the first slide in the demonstrative that we handed you. You know, that's just a quote from the Missouri Collusion for Environment case. The State respectfully repeats its argument that Plaintiffs are simply asserting an interest in the law being followed here. That's a generalized grievance under Missouri Collusion for State.

It's very similar to the Gill v. Whitford case where the U.S. Supreme Court said that there was no standing. Just because you're election -- just because you're a registered voter does not mean you have standing to challenge a map that you would be voting under. That's the Gill versus Whitford case.

So unless the Court has questions, you know, we're not going repeat all of our prior arguments. We would just ask the Court when it issues a final ruling to address standing and to make a ruling on standing. Unless the Court does have questions on standing, I'll move to the second point.

THE COURT: No questions.

MR. CAPOZZI: Thank you, Your Honor.

So I want to talk a little bit about estoppel. My friends got to make a lot of their merit arguments earlier. We've been saving them for now. I'll try to be brief and concise. If People Not Politicians were a plaintiff in this case, they would be estopped from bringing this case. Now, I understand that my friends are frustrated, and I know that People Not Politicians is frustrated that the State has been trying to probe whether there's a relationship between these two entities. I understand.

But the State is also frustrated because the State is litigating against this referendum campaign. And from the State's perspective, the referendum campaign is saying one thing in federal court to secure a way, and then they come here through different plaintiffs, they say the opposite thing. And they're trying to win on both sides of a legal argument. That is exactly the sort of maneuver that estoppel is designed to prevent.

Now, my friends say that People Not Politicians never said this. They say that we are misreading the transcripts. The transcripts in the case, the Court can look at the exchange. It's a long discussion in federal court. Judge Bluestone asked -- the State asked me

directly when the signatures submitted, is the map frozen? And you'll see I said there is some legal uncertainty on this point. The State's position is that the map is not frozen until the end of the certification process. Now, I made that concession in federal court even though it damaged the State's case for standing. That was not good for us, having standing in federal court. Judge Bluestone then asked People Not Politicians, what's your position on the same question. And you'll see five or six times People Not Politicians lawyer tried to avoid making this concession. And Judge Bluestone said explicitly that they would lose the case if they did not concede that the map will remain in effect until the certification process is over.

Now, my friends say that I'm not characterizing that accurately. I would just point the Court to the third slide in the deck that I gave you. My friends partially quoted this exchange earlier, and I got frustrated. I apologize for that. But this actually is the full quote in context of what I said and what Judge Bluestone said. And this is at the end of the long exchange in federal court. And I'll just read it with your court's indulgence.

You know, Mr. Capozzi, it's also still quite unclear to me what the status of the map will be when

they submit their signatures. I think eventually my friend conceded that the map stays in effect unless and until they can win a state court challenge. That was a hypothetical state court challenge to the -- to the denial of certification by the Secretary. And the Court, that's what the Court says. That where I think everybody wound up.

And Mr. Hatfield is nodding his head yes. I do think that's very important. And I think as we talked about earlier that the arguments for dismissal will be very flat, if that weren't the case. But I do think, I mean, it is abundantly clear though from the record that's been developed at this hearing, that that's their position right or wrong.

So the reason that I was hedging in that quote, Your Honor, is because I knew that that would damage our standing. But I still said it because that's what both sides agreed at the hearing and the Court agreed that the other side, I mean, I'm talking right here about the status of the map when they submit their signatures. And I say that both sides agree, the map is not frozen. Judge Bluestone agreed that that point was abundantly clear. So with respect if People Not Politicians were the plaintiff in this case, they would be estopped. This whole claim would be estopped and they couldn't go

forward.

Now, People Not Politician is not the Plaintiff in this case. It is Maggard and Lombardi. Two voters who admitted during their depositions that they were recruited by the Missouri ACLU to bring this case. The State's first position, and we lay this out in our brief, is as a matter of law. Without even having to look at evidence, the Court can find that Plaintiffs and People Not Politicians are too closely related to be contradicting each other's legal positions in different courts.

You know, my friend, this argument was like the Attorney General trying to estop any citizen in the state from contradicting him. A petition's signers and a referendum petition's organizer are part of the same political campaign. They have the exact same goals. They have the exact same purpose. And I'll just point out that Plaintiffs' litigation interests are fully aligned with People Not Politicians. And, in fact, there's deposition transcripts confirming that, which I'll come to in a minute.

So it is unfair to the State and it is inequitable to the State that as the State mitigates against the referendum campaign in different courts, that they're allowed to contradict each other. By

having signers of the petition come in, advance the referendum organizers interests, while contradicting the referendum organizers petition. So that's the State's kind of first level argument there. Is that's inequitable. That's the type of case that judicial estoppel is meant to apply to.

Now, the State has tried to find evidence of coordination. The State did so under extreme time pressures. I think we did all of our deposition in a week. We did so where Plaintiffs refused to turn over relevant evidence as to People Not Politicians, and we did so because, in a case where we can't depose plaintiffs' lawyers, who are most likely to know whether coordination happened, we're not going to depose opposing counsel in a case.

But nevertheless, despite those limitations the State did find evidence. And I believe this is on pages 24 to 26 of our pretrial brief where we summarize what we found. We know that People Not Politicians leader, Mr. Von Glahn and its lead lawyer Mr. Hatfield, promised the State would be sued over its position that the mere submission of the referendum petition did not freeze HB 1. They were telling the press that this lawsuit would be brought. And yet we know they have not brought that lawsuit. We know that Mr. Von Glahn knew this

lawsuit would be filed five days in advance. That suggests at least some prefiling coordination.

Someone in the Maggard Plaintiff's camp made a communication that Mr. Von Glahn ended up knowing about the lawsuit. We know that People Not Politicians created strategy documents related to this lawsuit before it was filed. Those documents were not turned over to the State. We don't know what they say. We know Von Glahn testified to their existence. The Court has the option to review them in camera. But, you know, the State's kind of arguing blindly on that. We haven't seen them.

In their depositions Mr. Von Glahn and Mr. Hatfield both admitted that they considered bringing this lawsuit. But they testified that doing so was no longer necessary because this suit was filed. And so Mr. Von Glahn and Mr. Hatfield admitted, and I think this point is kind of obvious, that this lawsuit resolves all their legal needs with respect to the question in this case. That shows pretty clear alignment of the interest that Plaintiffs have and the interest that People Not Politicians have.

And so, again, we would ask the Court to find that Plaintiffs and People Not Politicians are too closely related to be contradicting each other's legal

positions in different courts in this state. It's unseemly to allow that. It's unfair to the State. It damages judicial integrity. And the Court should not allow it.

If the Court has no questions on estoppel, I will move to the merits.

THE COURT: Go ahead.

MR. CAPOZZI: So on the merits, Your Honor, you know, we already talked about, I tried to frame what this case is about. And I pose in my hypothetical, which I would encourage my friends to engage with.

What happens if in April, May, June, who knows when the local election officials will finish the very time consuming process of checking all these signatures. What happens if we find out that there were not enough signatures for the referendum to meet the State constitutions requirements for qualifying? What happens?

You know, as Your Honor has suggested in his questions, you know, the legal status of the map would be flipping back and forth in that hypothetical. Just as it would flip back and forth if the Secretary certifies the referendum this summer. And so there's a risk in either scenario that the law is going to be changing. There is uncertainty and it is unavoidable.

And so the question that the State has to deal with is well, in this sort of uncertainty, who do we favor? Do we favor a duly enacted law passed by a majority of the people's elected representatives and signed by the Governor or do we assume that a referendum petition submitted by a small minority of Missouri citizens meets constitutional requirements. You know, which way does the assumption go? Do we assume that the petition is valid or do we assume that it is not valid until the Secretary confirms that it is. My overall submission is the only responsible thing to do is to side with the presumptive validity of duly enacted laws. All throughout Missouri law, the tie goes to the Legislature. Statutes are presumed constitutional and there's no basis in Missouri law for assuming that a referendum petition has adequate signatures.

But the Court doesn't need to rely on sort of, you know, over -- grand overarching constitutional principles. I think the Court can resolve this case on the text. You know, if a 34-year-old tries to run for president, it's an easy constitutional case. You can't. The text says you have to be 35.

I think it's the third in the side of the State constitutional language. The two constitutional provisions at issue, I want to take a close look at this

language. So Article 3, Section 52-B says any measure referred to the people shall take effect when approved by a majority of the votes cast thereon and not otherwise. The key language in this case is "referred to the people." What does it mean for a measure to be referred to the people? Who does the referring? How does the referring happen? When does the referral happen? The State's position is that, a matter can only be referred to the people by the Secretary. And Plaintiffs, to their credit, agree with that.

My friend -- and he can correct me if I'm wrong -- expressly conceded that it is the Secretary who has to do the referring under this provision. Frankly, the State is surprised to get that concession, but we agree that that is what the law requires. After all, Article 3, Section 52-A says that referendum petitions must be filed with the Secretary.

And from the very beginning of the history of the referendum in this state, and you see this in Kemper or Carter if you prefer. You see it in Dallmyer. You see it in Toberman. You see it in the Chugh case. And in all of these cases, it was the Secretary making the referral.

And so I'm happy that Plaintiffs have abandon the more ambiguous version of their argument, which is that

merely dropping off the signatures at the office is what does the referral. I think everybody agrees that the Secretary has to do something. The Secretary has to make the referral for a matter to be referred to the people.

So what does the Secretary have to do? The State's position is that the Secretary has to issue a certificate of sufficiency following a review of the signatures and confirming that the referendum is legal. Now, how do we know that? We know that because Section 116 of the Missouri's revised statutes lays out a detailed process for what the Secretary has to do.

And I think this was the fourth slide in what we handed up and we lay out the relevant statutory provisions. It's an instruction manual to the secretary as to what he has to do. And it ends -- the instruction -- the list of instructions ends with Section 116.150.1, which says, after the Secretary of State makes a determination on the sufficiency of the petition. And if the Secretary of State finds it's sufficient the Secretary of State shall issue a certificate.

The State re-- respectfully submits that is the triggering event for when a matter is referred to the people. We think that is the legislature's clear

intent. Otherwise why would the Secretary be required to issue a certificate of sufficiency. It wouldn't even make sense. If, as my friend says, the matter is immediately referred to the people, why does the Secretary have to issue a certificate of sufficiency? I mean, the referral's already happened. The certificate of sufficiency would serve no purpose. And so that doesn't make sense. Now -- and so once again, we would urge the Court to look at Section 116. That answers the question of when a matter is deemed referred to the people.

Now, Plaintiffs say that a matter is referred to the people the day that the signatures are dropped off. They seem to imagine that the Secretary has to do some kind of snap judgment on the day that they're dropped off or maybe he doesn't have to do some kind of snap judgment. Maybe we just indulge the legal fiction that the secretary does the referral but, bottom line, Plaintiffs' view is, the day those signatures are dropped off, before we know if they're valid that's when a measure are referred to the people.

Okay. If that's true, the logical implication, if you look -- go back to the State constitutional text, any measure referred to the people shall take effect when approved by the majority of the votes cast thereon

and not otherwise. So when the measure is referred to the people, under Plaintiffs' view, there has to be a vote. Can't take effect unless there's a vote. But that's not Plaintiffs' position. They don't want to live with the logical implication of the technical argument.

They say, well, if it turns out that there's an insufficient number of signatures later the Secretary can unrefer it or decertify. They use different words. And, you know, the Secretary can sort of pro nunc tunc this petition and, you know, even though the petition was referred before, we're now going to say it was never referred in the first place.

THE COURT: So under your argument, if it's certified, it doesn't take into effect until there's a vote on it?

MR. CAPOZZI: Correct.

THE COURT: So the HB 1 map would be in effect for the election at the same time there is a vote on whether or not HB 1 stays in effect?

MR. CAPOZZI: No, Your Honor.

So if the Secretary certifies the referendum, if the Secretary issues a certificate of sufficiency, HB 1 cannot go into effect. So again, from the begins the State has said that this case not ripe, that Plaintiffs'

alleged injuries are premature. The Secretary is going through the certification process right now. The local election officials are looking at the signatures. If the signatures come back and the Secretary finds there's enough signatures, the Secretary finds it's legal and certifies the referendum, HB1 can't take effect.

Now, my friend say that there's practical difficulties with this, you know, because the statute gives everybody until pretty late in the year, until late July to do all of this work. And I agree, that is a practical problem. You know, the statutory scheme, Section 116 for dealing with referendum petitions was enacted in 1980. We've never had a referendum on a congressional map in that time. This really hasn't happened in modern Missouri history. This is new to everybody in the State. And so we're trying to figure out what do we do where, yes, like, the question of whether map is in effect has important practical consequences in -- throughout 2026. We understand that. But the State's position is, again, we can't just assume that they have the signatures. You have to check. And I'll come back to this more in a bit. But historically there have been high invalidity rates.

You know, Plaintiffs say People Not Politicians submitted 300,000 signatures. Well, it's a lot more

complicated than that. First of all, 100,000 of those signatures are at issue in a case before Judge Limbaugh, because those signatures were gathered before the Governor signed the bill. And there's a question whether those can be considered at all. And right now they're not being considered. So it's 200,000 signatures. And then the question is, well, where are those signatures. You have to have a certain number in six congressional districts. The total number you have, doesn't matter. If you have a hundred and fifty thousand signatures in Jackson County, that's not going to be good enough 'cause you're not going to have enough in the other parts of the State. The State doesn't know where those signatures are. But then even assuming on their face that there are enough potential signatures in the six congressional districts, we have to see if there's enough valid signatures. That's why the local election officials are checking. You check to see if these are registered voters. You check to make sure they didn't sign twice. You check to make sure that the signatures match. There's a very labor intensive signature matching process. And once again, the evidence submitted by the State shows that error -- or not error rates, invalidity rates of the signatures submitted in these referendum are routinely between 30

and 40 percent. If we have anything close to that in this case, referendum probably won't have enough signatures. And so I understand that Plaintiffs want a quick answer. They want to know what map is going to be governed. I understand that. The State wants that too to be clear, but we need to do the work to figure out if this referendum petition qualifies. And fundamentally, what Plaintiffs are trying to do is just skip over that process and render it meaningless.

Going back to Plaintiffs' textual position, it's strange, you know, because, again, they acknowledge -- I mean, they hear the hypotheticals. What happens if, you know, a foreign government submits a referendum petition with, you know, 200,000 signatures, but it's all the same signature? You know, under their view, that freezes the law that it challenges.

Now, what they say, well, the Secretary should get around quickly to decertifying that. The Secretary should figure out that that's not legitimate but, you know, say the Secretary is busy. He doesn't start looking at it for two weeks. I think we'd all agree in that hypothetical for those two weeks, under Plaintiffs' view, the law is frozen.

Now, let's say after the two weeks, the Secretary gets around. He says, wait a minute, these are all the

same signatures. They don't have enough signatures. This doesn't qualify. Plaintiffs say that the Secretary would decertify the referendum at that point. But if -- I don't see how that can be constitutional. Because under Plaintiffs's view, the measure was referred to the people the day it was submitted. I think they have to agree with that.

But Article 3, Section 52-B says any measure referred to the people shall take effect when approved by a majority of the votes cast thereon and not otherwise. So once the matter is referred, you have to have the vote. But under Plaintiffs' view in my hypothetical even though the matter was referred, you don't have the vote. And so instead the -- they're inviting the court to develop this legal fiction where, we will just pretend retroactively that the law was not referred to the people even though it was and even though it had an immediate legal effect. It's a weird sort of disappearing act. You know, in these hypotheticals, you know, today the measure was referred and it froze, a dually enacted law, but tomorrow we have to pretend it was never referred. I don't even know what the status of the law is in that interim. I mean, it's a criminal law. Could people be charged under it? Was law in effect those two weeks. You know, the weird

legal consequences of Plaintiffs' position is really endless here.

So let's turn to precedent now. Plaintiff say that the Missouri Supreme Court settled this long ago but that's not true. There's actually only one decision which is directly addressed the question before this court. Which is under the modern statutory system, Section 116 for processing referenda, when is a matter deemed referred to the people under the State Constitution. Only one case has actually addressed that question. And that is from a couple months ago in the U.S. District Court for the Eastern District of Missouri, Missouri General Assembly v. Von Glahn.

Now, my friends say that the Court did not address that issue in this case. The Court did. We talked about it at great length in the hearing, but you don't have to take my word for it. I think it's the third slide in what we handed, Your Honor. It's from page one of this federal court decision. And it addresses the exact issue in this case. And I'm just going to read it with your indulgence.

Quote, after the timely submission of a final petition, the Secretary of State must examine the petition to determine whether it complies with the Constitution of Missouri and with Chapter 116 and verify

whether there are enough valid signatures to trigger a statewide vote. If the Secretary finds the petition satisfies both requirements, the challenge law is displaced and will only take effect when approved by a majority of the votes cast thereon.

Judge Bluestone opinion is unambiguous here. The law can't be frozen unless if the Secretary finds that the petition satisfies both requirements. That's the requirements that there are enough signatures and that it's legal. So at minimum, my friends are asking the Court to create a split between judges within this state on this same question. The State would encourage the court not to do that.

The State also cites out-of-state precedence. Which, you know, my friend kind of waived off and say, oh, the Court shouldn't look at other states. But the Maryland Constitution is actually very similar to Missouri's. The Maryland's Constitution allows the people to do referenda and it provides that laws are frozen pending the vote.

And in Barns, the Maryland's High Court, back then it was called the Maryland's Court of Appeals, that was their Supreme Court back then, said, no, the law is not frozen until the Secretary finishes the statutory certification process. And so the exact question we

have here, virtually identical state constitutions, Maryland says, no. Law is not frozen until the secretary finishes the statutory certification process. We also cite the Wyoming Supreme Court's decision. We cite decisions from several other states. I think it's pretty telling that my friends don't even try to cite out-of-state authority. And so, you know, I would encourage the Court not to make Missouri an outlier on this question.

Now, I think my friend's primary arguments focus on this Kemper v. Carter case, Dullmeyer and Toberman. This trio of old Missouri Supreme Court opinions. But there's a fundamental problem with relying on these opinion. These cases predated the 1980 adoption of Section 116. Section 116 is the statutory system which governs the Secretary's review today. It requires the Secretary to confirm the signatures.

Before 1980, the Secretary was not required to confirm the signatures. In the statutory system that existed in the early 1900s, which is what the Missouri Supreme Court addressed in Carter, the Kemper v. Carter case, the statute was fundamentally different. And this is the days that there was a lot of trusts for direct democracy. Yeah, this was the progressive era of U.S. politics.

Back then, a referendum circulator, organizer could self-certify the sufficiency of the signatures. Missouri law allowed a referendum organizer to self-certify that the signatures were sufficient, and so, as a matter of statutory interpretation, in Kemper v. Carter the Missouri Supreme Court said correctly, that the -- that the Secretary of State's duties purely administerial. It's because they were back then.

And even still, as Your Honor pointed out, in Kemper V Carter, in Toberman the Missouri Supreme Court was still explicit that the Secretary still has to refer the matter to the people and there's still stuff the Secretary has to do before he can do that. Even back then the Secretary had to make a finding of legal sufficiency and timeliness. But that's the big difference between the world back then which was discussed in those cases and the world today.

It's -- in 1980 the General Assembly on the recommendation of former Secretary of State Kirkpatrick adopted this intense process for reviewing the signatures. And we're not just going to take the circulator's word for it anymore. We're going to make sure that they actually checked the signatures and that we're sure that there's enough signatures. And because

Section 116 didn't even exist those old cases are really not on point.

Now, I'm not the only one to reach that conclusion interestingly enough. In the late 1980s the Wyoming Supreme Court was addressing this question under the Wyoming Constitution. And the proponents of an immediate freeze cited Missouri and cited Kemper v. Carter, and said, well, there, you know, that's, immediate free. Secretary's duties are purely ministerial. The Wyoming Supreme Court said Kemper is no longer good law in Missouri, because the statute changed so much. Section 116 was adopted in 1980. That abrogated Carter. And so different statute, different rules.

I think, and I'm carious what my friends will say on rebuttal to this. Because they say in their brief in a footnote, well, to the extent that Section 116 is a problem for us, it's constitutional as applied to this case. I'm curious if they're going to actually make an argument there, because to me that seems to be implication of what they're saying. Section 116 is unconstitutional in requiring this big review process before the certification decision, before the matter is referred to the people, under Article 3 of the Missouri Constitution they say that that's unconstitutional.

They make the argument in footnote. I think it's one or two sentences. They don't even engage with the relevant standard of review. I think most courts would deem their constitutional to Section 116 waived.

I'm curious if they have more to say about that argument when they get back up.

So under Section 116 the governing law, my friends have only two pieces of evidence. They have the nonbinding trial court opinion in Chugh from early 1980s, which actually supports the State. And we address this in our brief.

In Chugh, there was a plaintiff who challenged -- so there the Secretary certified. The Secretary referred the matter to the people and the plaintiff in Chugh said, you shouldn't have done that. But that makes this case fundamentally different than Chugh. Here the Secretary has not referred the matter to the people. All agree on that. I think. The Secretary has not made a finding as to legal validity, unlike the Secretary in Chugh.

Now, to extent that Chugh is suggesting that the Secretary has the discretion to refer the matter to the people before the statutory process concludes, we think that's wrong. And we would ask the Court to not to follow that. But at most Chugh suggests that the

Secretary has discretion whether to follow the full process before referring to the people. The Secretary there apparently thought that he could do that. Here the Secretary has not done that and does not thick he can do that. And so Chugh does not support Plaintiffs. It actually supports the State.

Second, Plaintiffs quote articles about former Secretary Jay Ashcroft. And they say that, you know, the right to work referendum he immediately froze the challenged law. We don't have any evidence on this point. We have some articles making claims about what Secretary Ashcroft did. Secretary Ashcroft is a witness. We don't know what Secretary Ashcroft's thought process was. But even assuming that he thought that, okay, the Secretary has discretion to immediately freeze a law, when a referendum petition comes in. Even assuming that that stands for everything Plaintiffs say, he's not the State's chief legal officer and he's not the Secretary of State today. There's no judicial opinions that arose from that case. And today the Attorney General and the Secretary of State are in agreement. The Missouri Constitution and Section 116 do not allow what Plaintiffs are asking for.

So we've talked about text. We've talked about precedence. I only have one more thing to talk about, I

promise.

THE COURT: You promise?

MR. CAPOZZI: I promise.

I'd like to close with a good ode to common sense and to basic democratic principles. Because I do think that that's what is at stake in this case. And I think those principles cut the opposite way of what my friends suggest. It simply makes no sense for an unverified pile of signatures to freeze a law enacted by a majority of the people's elected representatives. The logical implication of Plaintiffs' position is that even a completely fraudulent petition would initially suspend state law through its mere filing.

I mean, we can come up with all kinds of bizarre hypotheticals about foreign governments submitting 300,000 of the same signature. You know, I could do that all day. But under Plaintiffs' view, those bizarre, obviously inadequate petitions do freeze duly enacted state laws, at least until the Secretary gets around to finishing the review process and issuing a certificate of insufficiency.

And even beyond extreme hypotheticals, again, I return to the hypothetical I opened with, is it fair to the people of Missouri and their elected representatives to freeze a law enacted by a majority of the people's

elected representatives, a law which may well have majority support? You know, it's one thing, and we all agree the Missouri Constitution says this. It's -- the Missouri Constitution gives minorities, political minorities an extremely potent power in this state, a small minority of the Missourians can freeze a dually enacted state law by submitting a ligament petition. But the Missouri Constitution does not give unlimited right to political minorities to do that. That would not be democracy. No. There are strict rules. You have to have a lot of signatures. It's not easy to get them. Section 116 sets out this review process. Section 116 is the check on that tool of minority power. And it's one thing to say, you know, a minority can freeze a law.

But what Plaintiffs are saying is we should just assume that when a minority drops the file of signatures, they follow all the rules that they have enough signatures and we should allow that minority to freeze a law without double checking, without being sure that they met the statutory requirements, that I would submit is fundamentally antidemocratic. That is not consistent with how democracy works. And frankly, I think their position is unfair to the majority.

And the Arizona Supreme Court pointed out this

dynamic in another out of state case we cite, the Feldmeier v. Watson case.

THE COURT: Spell Feldmeier for me real quick.

MR. CAPOZZI: Feldmeier v. Watson.

THE COURT: Will you spell Feldmeier?

MR. CAPOZZI: Yes, Your Honor. F-e-l-d-m-e-i-e-r.

THE COURT: Thank you.

MR. CAPOZZI: And we do -- we do discuss all of this in the pretrial brief. I understand.

So the Arizona Supreme Court said is, quote, it makes since to hold referendum proponents to, quote, an exacting standard because referenda permit a minority to hold up the effective day of legislation which may well represent the wishes of the majority, end quote. And for that same reason, Missouri law puts exacting requirements on minority groups that want to try to freeze duly enacted State laws.

And to balance against that, to protect the majority, Section 116 requires the Secretary to make sure that those requirements are met. The Court should enforce those pro-democracy limits on the referendum and enter judgment in favor of Defendants. I welcome the Court's questions.

THE COURT: None at this time.

MR. CAPOZZI: Thank you, Your Honor.

THE COURT: Off, Jenny.

(A RECESS WAS TAKEN.)

THE COURT: Parties ready?

MR. ELLINGER: Yes, Your Honor.

THE COURT: Back on the record. 25AC-CC09120. Jake Maggard verus State of Missouri.

Mr. Ellinger, the floor is yours.

MR. ELLINGER: Thank you, Judge.

And thank you for taking a break. I think that actually makes things a little shorter and get out here little earlier for lunch. We spent 90 minutes already at least, maybe more than that maybe two hours on oral argument. The one thing I take away from that is I think the Plaintiffs are putting the cart before the horse here. And I think the reason is because they're not focused, or at least I was always taught where you start by focussing. What does the constitutional itself says and then we can worry about the other things.

And -- sorry. I'm old school here. I actually have a paper book here. But we're talking about Section 52-A, Section 52-B of Article 3. And I think we started with 52-A. Framers saw to start with 52-A, sever to start with 52-B. And 52-A says, and I think this is really important language that the referendum

petitions are filed with the Secretary of State. So we've already agree with that. In fact, the other side has conceded that the Secretary refers a matter to the voters.

If you go up above that it says, petition signed by five percent of the legal voters in each of two thirds of the congressional districts of the State. So let's look at what that threshold means. That means for a referendum you have to five percent of the legal voters in two thirds of the congressional districts. That's six I don't think anybody disputes that.

The Plaintiffs have talked a lot about why, what, I think that how they started theirs off with. I'd like to focus on what is a legal voter is. Let's say what is. What is a legal voter. We actually know what that is. We know what a legal voter is. It's a person who lives in the State of Missouri who has registered the vote who has not been disenfranchised. That means -- that has to mean something. When the framers of the Constitution limited the power. It's not an unlimited power. It's a limited power. The framers decided that there would be a power of referendum but they didn't want the tyranny of the majority. They wanted to be very specific and make sure that there was a set of qualifications on that and restrictions on that. And

that's what the Constitution put in. It put in a restriction. Five percent of legal voters.

Now, I'm not going to rehash the history of all of the cases. And I think Mr. Capozzi did an excellent job of addressing how the law has changed.

It has to mean where you have to be timely, you have to be legal and you have to be sufficient. We know what a legal voter is. We actually know what sufficient is. The statutes say what sufficiency is. The Constitution says what sufficiency is. We don't know where the signatures come from. By congressional district, we know what county's pages were submitted on. And I think we could probably figure out what signatures came out of those counties. But you don't know in many of these counties, particularly the urban one, what the split is. You don't know who's a registered voter. You don't know who's not a registered voter. There's a lot of work that has to be done before we subsume this massive power. And that massive power is restricted because the framers didn't want people to jump off the edge and suddenly start suspending laws that were put into effect.

And I cringe at the word suspended. I cringe at using that word. Because if you read the Constitution it never says that. You can read the entire set of

provisions on referendum, it's not that many words. And the word suspend never used a single time. It's a created term. I think it's one that lots of people like to talk about. But it's a created term. The framers didn't say suspend. The framers didn't say frozen. They didn't say any of that. They said that if a referendum had enough legal voters, then it went to the people. That's what the Constitution said. And I think that's important because other constitutions, they're created around the same time, actually used the word suspend. And they were very clear. They knew what that meant. They knew how to say something got suspended or didn't get suspended.

And I think other courts have looked at that. And I think you can look at some of those courts that have looked at the language of constitutions. And said the framers of the Constitution know what they put in, that's the plain language.

We also have to be cognitive of what they didn't put in. We can't read new things into it. And I think that's what Plaintiffs are trying to do here, trying to read new things into the Constitution. If there are five percent of the legal voters in six of eight congressional districts, two thirds, if that occurs, then the matter get referred. Then 52-B kicks in.

That's when 52-B kicks in. That's when it becomes effective upon the vote of the people. Not until that point.

I think the Supreme Court, in a different case, one that I think actually hasn't been talked about much here, which is -- and I will get this name wrong, because it's Kaesser, K-a-e-s-s-e-r, versus Becker, 243 SW 346 MoBac 1922. It's interesting that I butchered the name, because A-E in the old English put them together. So I'm not sure how you actually pronounce that.

THE COURT: You say 243 SW?

MR. ELLINGER: SW 346.

THE COURT: Thank you.

MR. ELLINGER: And the Court in that case talked about the importance of this process and how really, you know, referendum is something that was put into the process but it comes with those restrictions.

So if you'll indulge me, the Court says when a solum legislative act is sought to be set aside, it's our duty to see that the constitutional and statutory, notice that constitutional and statutory, requirements have been substantially met by those seeking to refer the act. The referendum is a safeguard against legislation which is deemed unwise, and the law must not

be so construed as to destroy its effectiveness. And here's the key point. On the other hand full observance of substantial requirements must be exacted, less the referendum be made an instrument of injustice or oppression by a militant and well organized opposition. Much less in numbers than the required five percent of the legal voters in two thirds of the congressional districts.

The Court knew you had to go through this process. The Court was not willing to take this idea that Plaintiffs have floated. We dump a bunch of boxes with a bunch of papers in it and the law is suspended. That's not what the Constitution says. And if they can point to the word suspended in the Constitution, I will more than happily stand corrected. If they can put something in the co-- if they can point to something in the Constitution that says when a box of papers is delivered to the Secretary of State, the law is suspended. I'm more than happy to be corrected. They can't because it doesn't say that. The Constitution is very clear.

And as I know that the Supreme Court in that -- in that quote I just read also mentions statutory requirements. We have a statutory frame work. I don't know why we're here debating this today. Let the

statutes play out. That was what the Constitution, that's what the framers intended, that's what the Supreme Court said. Let the statutory framework work play out. A number of precedential cases that have been talked about here, I'm not sure many of them are actually precedent at this point, but we can consistently talk about legal sufficient and timely petitions. In fact, I think Plaintiffs talk a bunch about Moore versus Toberman, which is a case that doesn't even talk about sufficiency. Sufficiency was conceded. Kinda of hard to use that as an application now to say, we have to assume it's sufficient. And that's the logical leap here. We just have to assume it's sufficient. The statutes provide a process so that we know. We should take dictated of what the Court said that this is a serious action when you suspend a duly enacted law.

And I think if you look at the sufficiency question, that still has yet to be established. That goes back to obviously we argued standing and ripeness a long time in front of you Judge, it gunshot to ripeness thing. Because if it's not sufficient and they think it is, they have a statutory right -- a clearly defined statutory right to immediately go to court on an expedited basis to get an answer. And, you know,

conversely, if some -- if someone is harmed by a determination that it is sufficient, those people have the opportunity to go to court. Now, I'm not sure on an average citizens gets that right. Hopefully we won't be finding that out because it's not sufficient. But I question how an average person, perhaps a petition signer has the right to jump in before a determination is sufficiency has been made to try to invalidate a state law. I noticed Plaintiffs mentioned a few times that we just terrible if people had to vote on the unconstitutional map. I think that was term, they used, might have been unconstitutional statute.

There's no allegation that House Bill 1 is unconstitutional in this case. That's the not before the court. Plaintiffs have not argued that. They haven't asked for any relief, asking for anything to be declared unconstitutional. What they're asking for is a determination that a box of papers by default means enough signatures to suspend something. We have to let the process play through. And I think evidence of that also goes to the fact that something is referred by the Secretary of State. And the Secretary can't refer something until that process goes through. We have to read all this in conjunction. And when you read that in conjunction you realize that when the process is done,

then the measure is referred. I don't like the word suspended. I don't want to use that word because I don't think it falls in the Constitution, but that's the point at which 52-B kicks in, and that that referred measure, IE that measure referred to the people which can only occur after the Secretary of State conducts that sufficiency process, shall not have -- take effect until approved by a majority of the voters cast thereon.

We're way premature here or the wrong venue. The venue is in 116 local election authorities right now that are diligently going through signature pages. I don't think anybody thinks that the local election authorities are dragging their feet are delayed or we'd have a lawsuit against a 116 election authorities to move more quickly. Let the process play out.

Plaintiffs may have gotten their signatures. They may be there. Them applicants will get suspended. They may not be there. And the law will stay as it is. Don't jump to the conclusion that the box of papers is all it takes to stop a law in the State of Missouri.

I also find it's interesting that Plaintiffs have said that their referendum right trumps the rights of voters. They said, you know, state officials may have issues, candidates may have officials, voters may have problems. We don't care about that. This referendum

right trumps it. Well, the voters get a say if the Plaintiffs do their job and they get enough signatures. Until then, the voters' rights are voting under a duly enacted law by the General Assembly.

There are statutory deadlines to ensure there's not delay. We don't need to jump ahead at this point. Finally, to I -- I think everybody would agree we have moved this case in a pretty expeditious pace. Some people may have doubted that was going to occur, I seem to recall at one point. But we moved this at an expeditious pace and I would like to compliment all the counsel in that. But the fact that we have moved this quickly doesn't change the underlying matter here, which is the Constitution has to govern here. Section 52-A controls. And that's kind of the end of the game.

And that the reason that Plaintiffs' relief should be denied, they haven't shown irreparable harm. They simply have made allegations. They seek an injunction. They nowhere come near the standard for an injunction. Spent all the time talking about the merits. I presume they have effectively waived the injunction argument, because they haven't addressed the issues that are required to be established to get an injunction . There's irreparable harm to the people that have signed the petition. There's no irreparable

harm to the average Missourian if a validly elected map goes forward.

If the map -- or excuse me -- if the petition is found to be sufficient, yeah, maybe you can argue some irreparable at that point if the Secretary didn't do something. That's not what where at. We put the cart before the horse. Let's get things lined back up again and let this process get down the road and then if we have to fight about it, we can come back and do it then.

Thank you, Judge.

THE COURT: Mr. Hawley?

MR. HAWLEY: Thank you, Your Honor.

I just have maybe five minutes. Just a few brief things before we rest.

Everything the State and Intervenor has said, there was no answer to the fundamental problem that I posed at the beginning of this trial, which is, their motion would allow legislation to take effect before the referendum process is completed, even though the Missouri Supreme Court has clearly said that the referendum power exists to address legislation that has not gone into effect. That was preset that we were starting with and they still have not given any sort of answer as to how they can reconcile all of these different pieces without addressing that critical one.

And that's why ultimately we have included with our case this argument about Chapter 116, specifically specific sections as to their fundamental unconstitutionality. We have not waived that argument. I will address it right now very briefly. If the Secretary is correct and the State is allowed to permit the effectiveness of legislation before the people have the chance to vote on it and referendum, if that's what the statute allows, then those statutes will be unconstitutional because it is a fundamental precondition of the referendum right that legislation has not yet gone into effect in order for the people to vote on it. So if Chapter 116 allows that to happen, yes, that is fundamentally unconstitutional.

We don't need to reach that point, though, because statutes are to be construed in such a way as to avoid a constitutional problem, and that is exactly what we have done. We have proposed a position to ensure that the statute has meaning, the Constitution has meaning and the case law has meaning and the result of that, the necessary result is the auto -- is the presumption of adequacy when the submit -- petitions are submitted, the automatic suspension before the effective date of legislation, followed by the review process to confirm that stat -- that petitions are properly

referred to the people.

And that question about being referred to the people, the State and I think the Intervenor, as well, suggested that we made some big concession here today. We did not. The case law says what it says, and it uses the verb "refers" with the subject, the Secretary. But that doesn't tell us anything. The devil is in the details. What does it mean for something to be referred? And we have explained that the way of making sense of all of this is that the referral process has several steps.

It begins with the automatic suspension upon submission. It follows with the Secretary's process and it ends with the Secretary's certifying or not certifying, which will determine whether or not it proceeds to a vote. And for that reason, the State suggested that we've, essentially, read Chapter 116 out of the referendum process. We have not. The Secretary's job is still critical. It's to make sure that that automatic suspension is proper and that a matter has been properly referred to the people. That is the Secretary's power.

But we need to have that automatic suspension or else the system falls apart, because it loses a fundamental precept of the referendum right. And the

Kaesser decision, which intervening counsel quoted, says this specifically. We cannot allow any sort of law that would destroy the effectiveness of the referendum process under the Constitution -- the constitutional rank. The State's position destroyed it effectively by allowing the legislation to go into effect.

The substantial compliance with statutes, that is important. And we re -- we recognize that. And that's part of our position. What the Secretary does to certify, to confirm that the suspension is proper that is vital. Because we want to make sure that only properly referred measures go -- could proceed to a vote and that laws are not suspended without reason. But that suspension still must occur as a preliminary matter.

A few other minor points, Your Honor. First, the Carter case that's been suggested that it's no longer good law, because Chapter 116 was enacted in the interim. And notwithstanding what the Wyoming Supreme Court has said on the matter, we believe that Carter is still good law. The particulars of what the secretary has to do, that has changed over the past century. Undoubtedly. But the reasoning and principles on which the Carter court based its decision, those have not changed. And I'll return to that when I close in just a

moment.

But again, the specifics might have changed but the principles, those are still good. And it's as reflected by the fact that prior Secretaries of State, including Secretary Kirkpatric as the State mentioned the architect of the Chapter 116 took the position in 1980's that legislation was automatically suspended before his certification process was completed after Chapter 116 was codified as law.

The State has suggested that there is no evidence of that. There is. It's Plaintiff's Exhibit 12 and 13 we moved into admission and the State did not object. That is evidence that that's what's happened previously. And our position here is consistent with what those prior Secretaries of State did.

THE COURT: Did they have to?

MR. HAWLEY: We would argue yes, that that's the only way of reconciling the Constitution, the case law and the statutes. So -- so, yes. And then the, Chugh Transport case reflects a judicial stamp on the reasoning there. But I would say yes they had to. Because if they allowed a law to go into effect before they were done -- or they allowed the law to go into effect pending the result of the certification that the State is doing now, it would violate the referendum

right under the Constitution. So I would say that was a compelled result and the correct one.

THE COURT: The whole time this case has been going on, I've asked a lot of questions about sufficiency, what the word sufficient means. Were you aware that what was required for sufficiency is different now than it was at the time that Carter was written?

MR. HAWLEY: I'm sorry, can you ask that again?

THE COURT: Were you aware that the requirement for sufficiency at the time Carter was written are different --

MR. HAWLEY: Yes.

THE COURT: -- than the time of today?

MR. HAWLEY: Yes. That's a question of detail not a question of principle. So what is sufficient? What legal? What is -- I don't think the timeliness has changed. I believe that part was still the same. What the Secretary has to do and what the contents of the petition must be, that has changed. But the --

THE COURT: Why didn't you tell me that? The whole time you've said this is sufficient, this sufficient here. And this is how we're supposed to do this. But in Carter was it self-certified before the case came to be, which was very different than the

requirement in the Secretary to certified. I mean it's a shock to me to hear today that the standard is different as when arguing this whole time that I should trust Carter and I should trust the sufficiency.

MR. HAWLEY: I would submit, Your Honor, that those distensions don't under mind the wholly of Carter and the reason we had been citing it, which is for the broader principle not exactly what the Secretary has to do or what the details were at the time of what a petition had to be, but for the fact that it make -- No 1. it make sense to presume the sufficiency of a petition based on safeguards in the system, which we have today. In fact, they've been even perhaps magnified since then because the details have been flushed out a little bit more. But more importantly, the idea that it does -- that if you allow it to go into effect before the referendum process, it will vitiate that right.

THE COURT: But in Carter, it's out of Audrain County, it's a dram shop case, and did the referenders, did they self-certify the thing before the opinion came out?

MR. HAWLEY: Yes.

THE COURT: Was it sufficient because it was self-certified -- had they not self-certified, would it

still be sufficient.

MR. HAWLEY: Under the law at the time, no, it would not have been. So, yes, that's true. The -- that process has changed. But Carter doesn't rest its holding on the existence of that certification process. It still makes a point of the prima facie presumption makes sense given the way interplay --

THE COURT: But isn't it based upon on the conjunctive of the legality, timeliness and sufficiency? It didn't just say legality and timely. It's all based upon, there's a coordinating conjunctions, right, and, nor, form, or, so, but, yet.

MR. HAWLEY: Yeah.

THE COURT: And so they use the term "and" to say all three things are required.

MR. HAWLEY: Yes.

THE COURT: They didn't just say, well, if it's just two of three or one of the three things is okay. So why -- I understand the holding and you're saying that it says X, Y and Z. But isn't X, Y and Z predicated on all three this being required first?

MR. HAWLEY: I would say that if we take that position and apply it as it is today without the self-certification, we would run into an immediate problem, which is that laws would not be allowed to be

suspended before the certification process. I mean, that's essentially the way the --

THE COURT: I think we're talking past each other.

MR. HAWLEY: I'm sorry.

THE COURT: So supposed it was -- I mean, it's a stool, you're milking the cow and it's got three legs. Right. You have legality. You have timely and you have sufficient. So what if it wasn't legal? All right. So what if -- what if a guy from Arkansas filed this case, all right, would that be okay? Or what if it was outside of 90 days, would that be okay? And so if it requires all three things, why if it's sufficiency which is required now of a certain number of voters deemed to be certified, why is that okay to take off the stool where the other two would not be? Does that make sense to you?

MR. HAWLEY: It does make sense. And my response to that, is we have to interpret it that way. We have to presume the existence of the third leg of the stool, because otherwise the rest of the referendum process would fall apart.

THE COURT: But they didn't in Carter. It was self-certified in Carter. I mean, wasn't that the requirement, then, that it has to be certified? They

self-certified, so the three legs were met. And they used the -- I mean, even the words are there or not.

I'm not trying to argue with you --

MR. HAWLEY: No. No. No. No. If we're talking about participatory democracy in its peer form of back and forth seems quite in keeping with that. So this is wonderful. And I see the Court's point exactly. The fact that self-certification happened then means that sufficiency was established prior to suspension. That is a detail in Carter. That was the reality of the statutory scheme at the time.

But what we're trying to do is take the reasoning of Carter and look at it now without that self-certification. So we have two options what we could do. The first would be to say that because sufficiency is not self certified at the time of filing that precondition is not established, therefore, a law is not suspended upon the submission of petitions today. That's the State's position.

But again, I don't believe that's a constitutional position because it would allow legislation to take effect only to later be suspended and voted on and we know from other cases that the referendum only exists if a law hasn't already gone into effect. So it would -- it in theory, would deny the

people their ability to vote on something if the law wasn't suspended.

So that's why when we look at Carter, we see the word sufficiency. Looking at it under the statutory scheme as it exists today, it suggests that the sufficiency is confirmed by the Secretary's review. But we have to presuppose it at the beginning. And if it's not at that supposition was incorrect at the time of filing, then the law is unsuspended as expeditiously as possible.

But if we lose that presumption, if we lose that stool, that leg of the stool, then we have bigger problems about the fundamentals of the referendum right.

THE COURT: So Mr. Ellinger was talking about a person to vote has to live in Missouri, be registered to vote, I think it was, and not disenfranchised --

MR. HAWLEY: Yes.

THE COURT: -- because of the three-legged stool. So if you don't live in Missouri but register to vote here and you've not been disenfranchised, is that okay? Again, we're taking away one of the three things because it's conjunctive not disconjunctive. So I'm trying to figure out how to get it to -- get me to presuppose X, Y and Z. But the law changed which required a timeline.

MR. HAWLEY: Yes.

THE COURT: The timeline became imbedded substantive not procedural. Right. So I can't change the timeline based upon that. But how do we -- I still don't see how -- we're trying to say it's sufficient when the law has changed to require sufficiency today but it's not determined sufficient yet. Are you asking me to determine that it's sufficient already?

MR. HAWLEY: No, I'm asking you to do exactly what Secretary Kirkpatric did in the 1980s, what Secretary Ashcroft did ten years ago, which is how do we look at -- how do we read Carter in a modern eye post-Chapter 116? I think their position was the correct one. The suspension happens because, if it didn't happen, the law would take effect and we know that it can't be. And then the sufficiency process is confirmed.

And I realize that it -- if it's not a matter of any one judge or any one court presupposing sufficiency, it's the way the system has to be designed -- or it doesn't have to be designed. It's the way the system has to be implemented to give meaning to the other provisions of the Constitution and the case law interpreting it. Because if we didn't -- if sufficiency wasn't established until months or in theory even years later, because it's tied to the election date not the

date of the filing, we would have a significant constitutional problem or a legislation that will eventually be referred to the people and rejected for months or years. And as we pointed out, with a constitutional map, that's even a stronger problem.

So all of those three things have meaning. Timeliness, sufficiency and I forget, whatever the third leg of the stool, they all have meaning. But we have to approach them slightly differently. But that does not mean that Carter is bad law and it doesn't mean what we're saying is inconsistent with Carter. It just how it can realistically make the system work.

So what I was saying, what referred to the people means, that's not a term defined in the Constitution. It's not even clearly determine -- defined in the case law. But it's something that we can figure out based on the clues that exist and in the constitutional and statutory text and the case law, and that's what we're doing today.

Again, this is not a novel position. This is the position that prior Secretaries have taken as a necessity, because we have 116. And 116 is constitutional, which means it doesn't undermine or violate the right to referendum. That means that there has to be something that happens before 90 days are up.

And that means we have to assume that those three stools -- the three legs of the stools are satisfied, and then the Secretary confirms or disconfirms that later on. It's the only way of putting everything together in a -- in a coherent whole without losing one piece.

THE COURT: You think the right to statutory interpretation is based upon assumptions of things that are not in this statute of Constitution?

MR. HAWLEY: No, I think that the way we're looking at it is we have to construe statutes in a way to make them constitutional. And 116 is construed to postpone the sufficiency determination in a way that allows legislation to go into effect, even though it's eventually subject to referendum, that would be unconstitutional. And so when presented with this problem, our solution, which we feel is both the supported one, the correct one and the logical one, is that you have to have automatic suspension based on a preparation of those three precondition, because otherwise the law would take effect.

So that's our way of looking at 116 and making it constitutional. Because if it was interpreted in a way that allows suspension -- the delayed suspension, we have a big constitutional problem. And just -- sorry,

just real quick. On the points about injunction, that's addressed in our brief. We satisfied that requirements for mandatory injunction. I just wanted to mention that.

And I want to end up by tying up to Intervenor's counsel's suggestion that we let this play out. And this gets to the point about kind of Carter and what Carter stands for and why we are interpreting it in the way that we believe is correct. We quote in our brief pages 775 and 780 of Carter, describe a hypothetical that they call grave -- grave of mementos, which is what would happen if the delay -- in this process, what would happen in that time if we allowed the Secretary's delay of his, at that time, ministerial duties to vitiate the referendum right.

And they said we cannot do that because it would be -- that it would just be -- the right would be nothing if the Secretary's delay of his responsibilities would vitiate that right. But then they say, but luckily, that's not the case before us today. That is exactly the case before us today, is because what happens when there's a delay in certification? Again, the process has changed. The details have changed. That part of it we can see. But this is the fundamental problem that we have today, and Carter gives us the

answer. It's to assume -- it's to have an automatic suspension under different details but the same reality.

And the way we need that, the way the reason we can't let the process play out, I point the Court to Plaintiffs' Exhibit 10, and this is quote from the Secretary of State. "I'm going to do everything I can to protect Governor Kehoe's Missouri First Map, the map the General Assembly passed." Carter was afraid that a secretary might just not get around to undertaking his obligations in a timely manner. We have here evidence that the Secretary has staked a position to do that. And so that is -- that's the concern that we have.

And our -- the way to safeguard against that, whether it's intentional or unintentional delay in the certification process, is to apply the automatic pres-- the automatic suspension based on presumption of adequacy that the Secretary can then, again, confirm or disconfirm, and that's also our way of making sure that Chapter 116 is construed constitutional.

THE COURT: I've got one more question. I apologize.

MR. HAWLEY: Please.

THE COURT: I don't know the answer to it and, if you don't, I'm going to ask down the road.

But in Carter's time, was there a statutory time

limit for the Secretary to act?

MR. HAWLEY: I don't believe so. There was the timing requirements of the referendum, but I'm not aware of an outside deadline for the ministerial actions that the Secretary was -- I confuse, I just -- that's a long-winded way of saying I don't know.

THE COURT: I don't know either.

MR. HAWLEY: Okay. Well, I'd better sit down. Thank you, Your Honor.

MR. CAPOZZI: We don't think there was a deadline, Your Honor.

THE COURT: Anybody know? I don't have a clue.

MR. ELLINGER: I don't know, but I don't believe there is.

THE COURT: Thank you. Mr. Capozzi?

MR. CAPOZZI: Thank you. Your Honor, I really don't have that much to add, you know, this sort of extra evidentiary allegation that the Secretary is delaying anything. Again, the Secretary immediately referred this to the local election officials. There's no allegation the Secretary has departed from the timeline. So with respect, we don't appreciate the suggestion that those local election officials are intentionally delaying this process. They're working hard to go through the statutory process.

Only other thing we'll say, unless the Court has questions, I'm happy that Plaintiffs have put the issue front and center. They want the Court to strike down as unconstitutional Section 116 as applied to this case. It's a very serious request. They really haven't even briefed that request. You know, they make the argument in a footnote. They don't even engage with heavy standard of review for striking down a law as unconstitutional that we've had for, you know, over three decades, and the State to guide the referendum process. And so the State maintains Section 116 is unconstitutional.

And unless the Court has questions, we will rest.

THE COURT: No questions at this time.

MR. CAPOZZI: Thank you, Your Honor.

THE COURT: Mr. Ellinger?

MR. ELLINGER: Judge, I don't want to try to milk the cow on the three-legged stool over here, assuming that there are legs. I'll sit down.

THE COURT: All right. Would you three come up here real quick?

We're off, Jenny.

(END OF PROCEEDINGS.)

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 February 10, 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 156 pages contain a true and accurate transcription of the proceedings.

JENNY JOHNSON

S/S_____