No. SC101581

In the Supreme Court of Missouri

JAKE MAGGARD et al.,

Appellants,

v.

STATE OF MISSOURI et al.,

Respondents.

Appeal from the Circuit Court of Cole County
The Honorable Brian K. Stumpe, Case No. 25AC-CC09120

REPLY BRIEF OF APPELLANTS

Matthew P. Gordon, *Pro Hac Vice*
Jonathan P. Hawley, *Pro Hac Vice*
Kevin J. Hamilton, *Of Counsel*
PERKINS COIE LLP
1301 Second Avenue, Suite 4200
Seattle, Washington 98101
(206) 359-8000
MGordon@perkinscoie.com
JHawley@perkinscoie.com
KHamilton@perkinscoie.com

Tori Schafer, No. 74359
Jonathan D. Schmid, No. 74360
AMERICAN CIVIL LIBERTIES UNION OF MISSOURI FOUNDATION
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
(314) 652-3114
tschafer@aclu-mo.org
jschmid@aclu-mo.org

Counsel for Appellants

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INTRODUCTION

To borrow a line attributed (apocryphally) to a celebrated Missourian: History doesn't repeat itself, but it often rhymes.

More than a century ago, this Court rejected another attempt by the State to seize the People's share of the legislative power, observing that "an erroneous interpretation of powers conferred always ends in trouble." *State ex rel. Drain v. Becker*, 240 S.W. 229, 233 (Mo. banc 1922). The Court recognized the "prudence" of the People reserving "the right to correct any evils which may result from unwise legislation" and decided this "absolute power" is "immune from obstructive interference from any source until the purpose for which it is exercised has been consummated." *Id.* at 231–32.

Until then—until the People have their say and "the measure has been adopted or rejected at the polls," *id.* at 232—legislation like HB1 *cannot take effect*. The plain constitutional text forecloses this result: "Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*." Mo. Const. art. III, § 52(b) (emphasis added). This admonition reflects the "[p]urpose of referendum," which "is to suspend or annul a law which has not gone into effect and to provide the people a means of giving expression to a legislative proposition, and require their approval *before* it become operative as a law." *State ex rel. Moore v. Toberman*, 250 S.W.2d 701, 706 (Mo. banc 1952) (emphasis added) (citation modified). After all, "the exercise of legislative power by the people through the referendum is simply a reservation to themselves of a share of the legislature power." *State ex rel. Barrett v. Dallmeyer*, 245 S.W. 1066, 1068 (Mo. banc 1922). Legislation subject to a referendum petition *is not the law*—and it won't be until voters approve it.

Secretary Hoskins has other ideas. He has publicly vowed to "do everything [he] can to protect" HB1, D225 p. 2, and, to that end, erroneously interpreted his powers to

allow him to unilaterally determine when HB1 is suspended. The State tries—and fails—to provide a legal basis for this unprecedented "obstructive interference." *Drain*, 240 S.W. at 232. Seizing on Section 52(b) and stray language from *Moore*, the State contends that a measure is "referred to the people" (and thus suspended) only after the Secretary issues a certificate of sufficiency. But Section 52(a) is clear: "A referendum [is] ordered … by petitions," not by the Secretary. *Moore* unsurprisingly held likewise—no other construction of Section 52(b) can be reconciled with the fundamental purpose of the referendum right.

Nor can the certification procedures in Chapter 116, RSMo, allow Secretary Hoskins to decide for himself when legislation is suspended. The State's interpretation of Chapter 116 would allow measures to take effect *before* Missourians vote to approve them, but the referendum right "does not intend to invalidate a law already operative." *Moore*, 250 S.W.2d at 706 (citation modified). Since Chapter 116 cannot be applied to "interfere with and impede the right of referendum" or "make any referendum effort untenable," *No Bans on Choice v. Ashcroft*, 638 S.W.3d 484, 491 (Mo. banc 2022) (citation modified), either the State is wrong or Chapter 116 is unconstitutional.

Secretary Hoskins's promise to do "everything" to protect HB1 extends to the kitchen-sink response briefs filed by the State and Intervenor-Respondent Put Missouri First ("PMF"), which kick up dust about all manner of sideshows and red herrings. But conspicuously absent from their protracted filings is *any* attempt to square their belief that HB1 is currently in effect with the foundational principle that legislative effectiveness cannot precede the referendum power. Their silence on this central point is more than a little telling: They offer no persuasive explanation because none exists.

For more than a hundred years, this Court has zealously guarded the "absolute power" of the People's referendum right against incursion by the State and its officials—and, in one case, presciently identified the exact sort of manipulation the State is attempting here. Concerned that "the mere postponement of the [Secretary's] determination of the definite and exact number of signers on a referendum" might "defeat the will of those signers and prevent a vote upon a matter which might be of grave moment to the people," the Court announced a "general" rule to prevent such occurrence: Legislation is suspended when referendum petitions are filed. *State ex rel. Kemper v. Carter*, 165 S.W. 773, 779–80 (Mo. banc 1914). The Secretary's process for verifying sufficiency might have changed since then, but *Kemper*'s first principles and reasoning are just as valid today as in 1914. The State's contrary position is simply the latest leg of the "unseemly race between the Governor, the Legislature, and the people" that has long accompanied the referendum right. *Drain*, 240 S.W. at 233.

The State closes its brief by suggesting the Court should "rigorously enforce … limits" on the referendum right given the "politically sensitive" nature of this case. Br. of Respondents ("State Br.") 90. But more than a single congressional map is at stake here—this appeal will shape how the referendum right is exercised in the future and whether Missouri voters still have a meaningful opportunity to check legislative action. This Court has always ruled for the People against those who would subvert the referendum right through imposition of unwarranted "limits." Such action is needed once again.

ARGUMENT

The State's and PMF's attempts at overcomplication aside, this case comes down to a few basic premises: This matter is ripe and Appellants have standing because the State is currently violating their individual referendum rights, and this Court is tasked with safeguarding constitutional rights and can issue declaratory judgments to do so. The arguments

in response to these ostensible threshold issues repeatedly revert to discussion of the merits—specifically, whether HB1 is currently suspended regardless of the Secretary's sufficiency determination—and so Appellants begin there.

I. HB1 is currently suspended.

The constitutional text, this Court's precedent, and longstanding practice all confirm that legislation subject to referendum *cannot* take effect until the referendum process is completed. The State's premature enforcement of HB1 and the Circuit Court's ruling endorsing it must therefore be rejected. *See* Br. of Appellants ("App. Br.") 34–56.

A. Appellants' position is consistent with the constitutional text, this Court's precedent, and prior practice.

"[A]ll political power is vested in and derived from the people," who "have the inherent, sole and exclusive right to regulate the internal government." Mo. Const. art. I, §§ 1, 3. The referendum right is a natural extension of these foundational precepts, providing that "[t]he people … reserve power to approve or reject by referendum any act of the general assembly" with limited exceptions inapplicable here. *Id.* art. III, § 49. "[O]nce the right of referendum has been invoked," the State (the General Assembly and Secretary alike) "is divested of all power in regard to the matter referred until the action of the people has been exercised by a vote upon same." *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 35 (Mo. banc 2015) (quoting *Drain*, 240 S.W. at 232). A bill subject to referendum therefore *cannot* take effect, whether at the whim of the General Assembly, the Secretary, or any other official. "It is not reasonable to conclude"—as the State has apparently done—"that the power thus reserved was intended to be other than complete. Held to be otherwise, it would fail to effect the purpose of its creation, which … was to lessen the limits of legislative power as theretofore possessed by the General Assembly." *Drain*, 240 S.W. at 231.

How is this suspension operationalized? This Court has consistently provided the answer: "[T]he mere lodging" of referendum petitions suspends the "law affected," "regardless of any affirmative act on the part of the Secretary of State or the Attorney General." *Kemper*, 165 S.W. at 779; *accord Barrett*, 245 S.W. at 1068 (legislation "was suspended by the filing of referendum petitions"); *Drain*, 240 S.W. at 230 ("Within the time limited by the Constitution, [an] act was suspended by referendum petitions filed in the office of the Secretary of State."). This longstanding position should not "be viewed askance and construed timorously as an innovation"; instead, the automatic suspension of referred legislation is necessary "to prevent the possible exercise of unwarranted powers by the Legislature" and "reserve unto" the People "the power to … undo what [the Legislature] has improperly done." *Drain*, 240 S.W. at 231.[1]

To that end, a "presumption of validity" attaches upon submission, including because "[t]he signatures on the pages of an initiative petition may [] be proven by reliance on the circulator's affidavit" that accompanies each petition page. *Ketcham v. Blunt*, 847 S.W.2d 824, 832 (Mo. App. W.D. 1992) (citing *United Lab. Comm. of Mo. v. Kirkpatrick*, 572 S.W.2d 449, 452 (Mo. banc 1978)); *see also* § 116.080.2, RSMo ("Each petition circulator shall subscribe and swear to the proper affidavit on each petition page such circulator submits before a notary public commissioned in Missouri."). Here, every indication is that the 49,773 pages of 2026-R004 petitions submitted on December 9 contained the requisite affidavits and are otherwise facially valid: Secretary Hoskins never deemed the signed petitions facially insufficient, *see* D174 ¶ 19; he proceeded with the labor-intensive

[1] *Drain* predicted precisely the sort of gamesmanship that Appellants warned about in their opening brief, *see* App. Br. 25 n.3: the "game of battledore and shuttlecock" that would result if the Legislature could serially reenact referred measures without giving the People a meaningful chance to approve or reject them, leading "each power seeking by check and countercheck to undo what the other has done," 240 S.W. at 233.

verification process; and more than 150,000 signatures have already been deemed valid by local election officials, *see* App. Br. 16–17. The referendum petition is therefore presumptively valid, and HB1 was suspended as an operation of law. Again, there is nothing novel about this position; prior Secretaries of State (including those serving *after* the advent of Chapter 116) agreed. *See* App. Br. 14–15.[2]

To be clear: HB1 *is not the law*, and its congressional map cannot be used now. After "a bill has passed both houses of the general assembly," it "is then ready for *consideration* by the executive or the voters on referendum." *Brown v. Morris*, 290 S.W.2d 160, 167–68 (Mo. banc 1956) (emphasis added) (citation modified). Bills like HB1 *cannot* become law—and certainly cannot be enforced—until the Governor and the People have the chance to exercise their share of the legislative power and approve or reject them. The constitutional text confirms that HB1 is merely a measure to be considered by voters, *not* a duly enacted statute. *See* Mo. Const. art. III, § 49 ("The people … reserve power to approve or reject by referendum any *act* of the general assembly[.]" (emphasis added)); *id.* art. III, § 52(a) ("Referendum petitions shall be filed … after the final adjournment of the session of the general assembly which passed the *bill* on which the referendum is demanded." (emphasis added)); *see also Portland Pendleton Motor Transp. Co. v. Heltzel*, 255 P.2d 124, 125 (Or. 1953) ("When a referendum is invoked, the act of the legislature then becomes merely a measure to be voted on by the people[.]").[3]

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[2] The State objects to evidence of past Secretaries' conduct, *see* State Br. 67–68, but did not object to these exhibits at trial, *see Citizens for Ground Water Prot. v. Porter*, 275 S.W.3d 329, 344 (Mo. App. S.D. 2008) (evidentiary objections not timely made are waived). Nor has the State suggested these sources are inaccurate.

[3] The State faults Appellants' use of Oregon precedent because "Oregon's referendum provision has been amended three times" and no longer includes language like Missouri's Section 52(b). State Br. 68. But those changes did not substantively alter or "diminish[]" the referendum right, and the Oregon Constitution still "provides that the people

Practicality compels the same result. If the State were correct and suspension followed the Secretary's sufficiency determination (whether intentionally delayed or not), then "much mischief may ensue." *Moore*, 250 S.W.2d at 706. Bills would take effect temporarily, then be suspended, then possibly be revived. Legislative whiplash, with Missourians subject to different laws at different times based on the whims of the Secretary, cannot be the rule—nor should it be, especially since, "when the right to referendum is employed, voters are more often than not inclined to exercise the power reserved for them; 24 of the 26 referenda put before the voters between 1914 and 2008 have resulted in the *rejection* of bills enacted by the General Assembly." *No Bans*, 638 S.W.3d at 489 n.8.

Consider the result here: the distinct possibility (if not probability, given public comments by Secretary Hoskins and Attorney General Hanaway) that voters will decide whether to approve or reject HB1 *at the same time* they elect members of Congress from its new districts. If voters *reject* HB1, it won't matter: The new delegation will have already been elected under the now-rejected map, frustrating the entire purpose of the referendum and effectively nullifying the People's constitutional prerogative.[4]

In sum, HB1 is now just a bill—only a bill—and it is elementary that a bill is not a law.[5] HB1 will remain a bill until either the referendum petition is finally found insufficient

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retain the referendum power to approve or reject legislation … before it goes into effect." App. Br. 48 (quoting *M.S. v. Brown*, 902 F.3d 1076, 1084–85 (9th Cir. 2018)).

[4] While the State's position is particularly intolerable here, chaos and confusion could result in *any* referendum if legislative effectiveness were switched on and off at the Secretary's preference. An amicus brief illustrates how this dynamic would have played out in the case of Missouri's 2017 right-to-work legislation had it not been deemed suspended by then-Secretary Ashcroft upon the submission of signed petitions. *See* Br. of Amicus People Not Politicians in Supp. of Pls.-Appellants 27–29.

[5] *See* Schoolhouse Rock, *I'm Just a Bill* (YouTube, Aug. 18, 2014), https://bit.ly/42KdDcn ("... I know I'll be a law someday, at least I hope and pray that I will, but today I am still just a bill.").

or the People vote to approve it. Until then, under a century of precedent and practice, HB1 is not effective—and cannot be enforced.

B. Neither Section 52(b) nor Chapter 116 suggests a different result.

In response to this straightforward application of the Constitution and precedent, the State raises two primary defenses—one based on the constitutional text and the other on statute. Neither is persuasive.

First, the State argues that, under Article III, Section 52(b), only the Secretary can "refer[]" a measure to the People—which, the State's reasoning goes, happens after certification under Chapter 116. But this Court's decision in *Moore*, the slender reed on which the State hangs its interpretation of Section 52(b), cannot hold that weight. True, the factual recounting in *Moore* at times linked the verb "refer" to "the Secretary of State," as the State observes. State Br. 46–47. But *Moore*'s substantive analysis confirmed that, under Section 52(a), measures are "subject to referendum *if petitions to refer them were duly filed* before their effective date." 250 S.W.2d at 706 (emphasis added). Thus, "the *filing* of referendum petitions within ninety days after final adjournment [] suspend[s the] effectiveness" of legislation, *not* subsequent actions by the Secretary. *Id.* (emphasis added). *Moore* itself explained why this *must* be the rule:

> [Section] 52(b) clarifies beyond question the intendment and scope of the referendum provided in § 52(a). It provides: "Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, *and not otherwise*." This is a clear declaration that the referendum provided for in 52(a) is not intended to apply to laws that have become effective.

Id. (citation modified). Again, the State does not and cannot reconcile this foundational predicate with its belief that bills like HB1 take effect pending the Secretary's certification process. That is not the law—certainly not under *Moore*.

Moore's conclusion that referendum petitions themselves accomplish the "referr[al]" of a measure is consistent with the constitutional text: "Referendum petitions shall be *filed* with the secretary of state," but a referendum itself is "*ordered* … by petitions signed by five percent of the legal voters in each of two-thirds of the congressional districts in the state." Mo. Const. art. III, § 52(a) (emphasis added). By this plain language, *petitions* initiate the referendum process and the attendant suspension of referred legislation. The Secretary's only constitutionally assigned role in the process is to receive the petitions, which makes sense given the Missouri Constitution grants a legislative check to *the People*, not the Secretary. The statutory verification process that follows confirms the sufficiency of the petitions nunc pro tunc, *see infra* pp. 13–14, but no action on the Secretary's part is required to refer or suspend legislation upon the filing of petitions.[6]

Second, the State claims that the statutory certification process under Chapter 116 delays the suspension of legislation. But as Appellants discussed in their opening brief, Chapter 116 cannot be the tail that wags the dog. If the State is correct and the statutory verification process allows legislation subject to referendum to take effect before the People have their say, then Chapter 116 would operate to undermine the referendum right. That cannot be allowed: As this Court has repeatedly explained, the General Assembly cannot thwart or otherwise dilute the referendum right. "Statutes that place impediments on the [referendum] power that are inconsistent with the reservation found in the language of the constitution will be declared unconstitutional." *Missourians to Protect Initiative Process*

[6] The State suggests, based on isolated transcript quotations, that "everyone agrees that the Constitution contemplates the Secretary referring measures to the people." State Br. 47. To be clear, Appellants do *not* agree, and this is not what the Constitution says. At trial, counsel for Appellants suggested only that the Secretary plays a role in ensuring that only measures properly "referred" to the People proceed to a vote and that even the State's misreading of Section 52(b) does not require a different result. *See also, e.g.*, App. Br. 47 n.11.

v. Blunt, 799 S.W.2d 824, 827 (Mo. banc 1990) (per curiam) ("*MPIP*"). Following this admonition, the judiciary has "properly rejected [] attempt[s] at an end run around the referendum" because "preemptive legislation cannot negate a constitutional right of the people." *Earth Island*, 456 S.W.3d at 35.

Likewise, Chapter 116 cannot have the effect of "abrogat[ing]" caselaw defining the scope of the referendum right, as the State suggests. State Br. 62. Appellants rely on language from *Kemper* and its progeny that reflects necessary features of the People's constitutional referendum right, not (as the State and PMF wrongly frame it) the nuances of the pre-Chapter 116 verification process. In other words, although "*how* and *when* sufficiency is determined" might have "changed over time," *id.* at 61 n.8, the basic premise that legislative effectiveness cannot precede a referendum—which animated *Kemper*, *Moore*, and the other referendum cases—is a *constitutional* requirement that has not been altered or abrogated (nor could it by mere legislative enactment). The State's attempt to distinguish away this Court's precedent, *see id.* at 59–66, fails because it never grapples with this critical point.

Statutory provisions like Chapter 116 must instead be "liberally construed to make effective the people's reservation of [the legislative] power." *MPIP*, 799 S.W.2d at 827. Appellants' interpretation does precisely that, as explained in their opening brief. *See* App. Br. 46–47. Chapter 116 serves a precautionary function: The Secretary's post-suspension review process, including certification under Section 116.150, RSMo, confirms that only legislation that was properly referred to voters consistent with Article III, Section 52(a) proceeds to a vote. *See Kemper*, 165 S.W. at 781 ("[T]he acts of the Secretary of State … relate back to a date as of the day of filing the petition[.]"). If the Secretary certifies the referendum, then the suspension continues through the vote; if the referendum is finally

deemed insufficient, then the suspension is lifted and the legislation takes effect. The myriad other verification tools provided by Chapter 116 further allow the Secretary to police and deter fraud. *See* App. Br. 49–52. This construction of Chapter 116 harmonizes with the Court's caselaw; rather than undermining the referendum right, as the State would have it, the verification process safeguards it.[7]

In any event, suspension of legislation *cannot* be delayed until the Secretary issues a certificate of sufficiency; neither the constitutional text nor the principles underlying the referendum right permit such a result. The State's elevation of Chapter 116 over the constitutional referendum right would allow *the Secretary* to dictate whether and when legislation is suspended. But neither the Secretary nor any other state official possesses the power to suspend legislation and effectuate the referendum right; instead, *the People* reserved that power to themselves. More than a century ago, this Court asked,

> Of what avail would a reservation be which could be rendered futile by the act of the body from which the power has been withdrawn? To place the seal of judicial approval upon such legislative action would, in effect, render the constitutional provision concerning the initiative and referendum nugatory and, as a consequence, its adoption a vain and foolish thing. Reasons upon which the rules of construction are based offer no support to such a conclusion.

Drain, 240 S.W. at 231–32. The same question should be asked of a right that could be rendered futile by the Secretary—and any such suggestion should be rejected.[8]

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[7] Appellants thus reconcile Chapter 116's timelines with first principles and precedent; they do *not* contend, as the State claims, that "the Secretary and local election authorities must fulfill their Chapter 116 duties almost instantly upon the filing of a referendum petition." State Br. 80. Nor do Appellants "render the Secretary's review process a nullity," PMF Br. 54, as a final insufficiency determination serves to unsuspend the subject legislation.

[8] For this reason, Appellants have maintained that Chapter 116 (Sections 116.150 and 116.130 in particular) is unconstitutional if it permits the Secretary to refuse suspension until a sufficiency determination. The State and PMF now suggest Appellants waived this

C. Precedent supports Appellants.

The State suggests that precedent—in particular, the "only three courts [that] have addressed the questions at issue here"—is on its side. State Br. 51. The State's myopic focus on these three trial-court decisions is telling, since it disregards *this* Court's century-long history protecting the referendum right from government intrusion. At any rate, the only one of these three "precedents" clearly on the State's side is the Circuit Court's decision on appeal in this case. As for the other two, one is at best ambiguous and the other supports Appellants.

First, the federal court's decision in *Missouri General Assembly v. von Glahn* noted that HB1 "would go into effect barring a successful challenge to decertification"—suggesting that only once an insufficiency determination is upheld would the new map take effect. No. 4:25-CV-1535-ZMB, 2025 WL 3514277, at *4 n.4 (E.D. Mo. Dec. 8, 2025). This is precisely how Appellants construe Chapter 116. The *von Glahn* order also included seemingly contradictory language. *See id.* at *1 ("If the Secretary finds that the petition satisfies both requirements, the challenged law is displaced[.]" (citation omitted)); *id.* ("[A]bsent a

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alternative constitutional challenge, but Appellants clearly raised the issue in their petition, specifying the constitutional provisions at issue and explaining why these provisions were violated, *see* D124 ¶¶ 15–18, 42, and preserved the issue throughout, *see, e.g.*, D139 p. 10 n.2; D212 pp. 10–11 n.3. Indeed, both the State and PMF *conceded* that Appellants raised a viable constitutional challenge to Chapter 116 in their jurisdictional filings. *See* State's Resp. to Appellants' Jurisdictional Statement 3–4 ("Appellants' challenge to §§ 116.130 and 116.150 creates another independent basis for this Court's exclusive jurisdiction."); PMF's Resp. to Appellants' Jurisdictional Statement 1–2 ("This allegation [about Sections 116.150 and 116.130] squarely places the validity of a statute (or in this case two statutes) in question in the underlying matter."). They cannot now be heard to contradict these representations; as the State notes, "[c]ourts judicially estop parties 'from deliberately changing positions according to the exigencies of the moment.'" State Br. 70 (quoting *Vacca v. Mo. Dep't of Lab. & Indus. Rels.*, 575 S.W.3d 223, 232 (Mo. banc 2019)).

successful court challenge, this [insufficiency] determination … would prevent the displacement of the new map[.]"). At worst, *von Glahn* is ambiguous—but it certainly does not unequivocally support the State. Even if it did, the order should be afforded little weight given the federal court did not engage with this Court's relevant precedent and the foundational predicates of the referendum right. And a federal district court is not, of course, the ultimate arbiter of what the Missouri Constitution means—*this* Court is. *See* Mo. Const. art. V, § 3.

Second, the State leans on *Kaw Transport Co. v. Whitmer*, No. CV181-778CC (Cole Cnty. Cir. Sept. 29, 1981). But as explained in Appellants' opening brief, the State misreads *Kaw Transport* just like the Circuit Court did. *See* App. Br. 46 n.10. The plaintiffs in that case advanced the very same theory of Chapter 116 that the State does—and the circuit court expressly *declined* to adopt it. *Compare* Petition at 6–7, *Kaw Transport*, No. CV181-778CC (Cole Cnty. Cir. Sept. 28, 1981) (praying for judgment that "the submission of [] petitions … did not have the effect of staying and deferring the effective date of [the] act" and that legislation "should not be deemed to have been referred to the people … until such time as the Secretary of State … has issued a certificate pursuant to Section 116.150"), *with Kaw Transport*, slip op. at 2 ("[T]his Court refuses to grant relief prayed for by the plaintiffs.").[9]

The State also cites decisions from other states, *see* State Br. 54–56, but these cases are no more helpful to it than *von Glahn* and *Kaw Transport*.

[9] The State further undermines its own reliance on *Kaw Transport*: "To be sure, the … opinion is wrong to the extent that it suggests the Secretary can refer a law to the people—and suspend the law—without a formal certification decision." State Br. 52. Even after dramatically narrowing the universe of relevant precedent to those it prefers, the State must still cherry-pick for support.

In *Barnes v. State ex rel. Pinkney*, the Maryland Court of Appeals considered a referendum that had *already been found insufficient* and rejected the contention "that the Secretary of State did not have the power or authority to decline to accept referendum petitions … on the ground of the invalidity of some of the signatures and should have referred the petitions to the electorate." 204 A.2d 787, 789, 793 (Md. 1964). This dispute over *who* determines insufficiency did not upset the court's prior holding about *when* suspension occurs, which is the same as Appellants' position here: "The period of suspension … begins at the time specified by [the Maryland Constitution] (*following the filing* of the requisite number of sworn-to signatures)" and "ends either when the voters approve the law or when a court holds that suspension has not been effected for want of proper compliance with" constitutional prerequisites. *First Cont'l Sav. & Loan Ass'n v. Director*, 183 A.2d 347, 350 (Md. 1962) (emphasis added).

Thomson v. Wyoming In-Stream Flow Committee addressed what the Wyoming Supreme Court acknowledged were "entirely different constitutional and statutory provisions" from Missouri's and concluded that automatic suspension was inappropriate because there was no "safeguard sufficient to create a presumption." 651 P.2d 778, 785 (Wyo. 1982). Here, in contrast, Missouri law provides the necessary safeguards. *See* App. Br. 49–52.

The Alaska Supreme Court's position in *State v. Allen* stemmed from its "belie[f] that the framers of the constitution and the people who adopted it intended that the effectiveness of an act passed by the legislature should not be suspended during the period between its effective date and its rejection by the referendum. If they had intended otherwise they would have expressly so provided in the constitution." 625 P.2d 844, 846 (Alaska

1981) (citation modified). Here, Section 52(b) provides precisely that constitutional mandate, as confirmed by this Court's precedent.

Lastly, *State ex rel. Morton v. Howard*, 248 P. 44 (Nev. 1926), supports Appellants for the reasons discussed in their opening brief. *See* App. Br. 40.

The State ultimately suggests it should prevail because, "for every out-of-state case cited by Appellants, Respondents have more out-of-state authorities." State Br. 68–69. But this is not a game of jurisprudential jacks where the winner is whoever gathers the most cases. What matters is the *persuasiveness* of authority, not its *quantity*—and this Court recognized that the out-of-state authority on which Appellants rely is "greatly persua[sive]." *Kemper*, 165 S.W. at 778; *see also* App. Br. 47–49. In any event, there is no need to look to other states because this Court's precedent alone resolves the matter, and the State's attempt to turn the focus outward to other jurisdictions is tacit acknowledgement that it cannot overcome that authority.

* * *

At times, Appellants, the State, and PMF seem to be talking past each other, citing the same passages from the same cases but reaching divergent conclusions after exchanging dueling italicizations. The explanation for this phenomenon is ultimately critical: The State and PMF are dwelling on the wrong issue. They repeatedly emphasize the word "*sufficient*," suggesting that changes to the Secretary's statutory verification process also changed the meaning of that term such that *Kemper* and its progeny are no longer good law. But constitutional sufficiency has not changed—the requirements of Article III, Section 52(a) are the same now as they were a century ago. Although the Secretary's process for *verifying* sufficiency changed with the advent of Chapter 116, neither the State nor PMF points to a single case tying suspension of referred legislation to the completion of the

Secretary's review. Nor could they: This Court has uniformly held that the *filing of petitions* triggers the referendum process and, consequently and necessarily, the suspension of legislation. Appellants' position is consistent with precedent, the text of Sections 52(a) and 52(b), and the practices of prior Secretaries. The State's newfound and contrary view, one that elevates Chapter 116 at the expense of the referendum right, cannot withstand scrutiny. HB1 is currently suspended as an operation of law, and this Court's intervention is needed to once again safeguard Missourians' constitutional rights.[10]

II. The State's and PMF's other obstacles to adjudication are unavailing.

Because they cannot prevail on the merits, the State and PMF propose a variety of procedural obstacles—all erroneously adopted by the Circuit Court—that lack merit and should be rejected.

A. Appellants have standing because their individual referendum rights are being violated.

Both the State and PMF argue that Appellants assert a generalized grievance that cannot confer standing. State Br. 31–38; Intervenor-Respondent's Br. ("PMF Br.") 15–29.

[10] The State mentions in passing its belief that "a referendum on a congressional map would violate the U.S. Constitution's Elections Clause, and that the Missouri Constitution does not authorize referenda on congressional maps." State Br. 16. Both suggestions are baseless. Congressional maps are not among the Missouri Constitution's enumerated exceptions to the People's referendum power, and this Court has never suggested that such referenda are improper—not even when directly considering them. *See, e.g.*, *Moore*, 250 S.W.2d at 702. As for the federal constitution, the U.S. Supreme Court long ago rejected as "plainly without substance" the notion that referenda on congressional maps are "repugnant to" the Elections Clause. *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916); *accord Moore v. Harper*, 600 U.S. 1, 23–26 (2023). Rather than prohibit Missourians from approving or rejecting congressional maps, the U.S. Constitution *safeguards* the referendum right. *See, e.g.*, *Stone v. City of Prescott*, 173 F.3d 1172, 1175 (9th Cir. 1999) (explaining that, "where the people reserve the … referendum power, the exercise of that power is protected by the First Amendment" and "a State may not impermissibly burden the exercise of the right to petition the government by … referendum").

Not so. Appellants claim injury to their referendum rights; specifically, that their constitutional right to exercise a check on legislative action is currently being diluted and subverted by the State's premature enforcement of HB1 and its intent to use the new map in the upcoming midterms. The referendum right, like the right to vote more broadly, is "individual and personal in nature." *Reynolds v. Sims*, 377 U.S. 533, 561 (1964); *see also, e.g.*, *Gonidakis v. LaRose*, 599 F. Supp. 3d 642, 655 (S.D. Ohio 2022) ("[F]rom this core right extends a broader range of legally protected interests that can ground standing." (citation omitted)). Because "[t]he right to vote is inherently individual and personal in nature, [] the judiciary is empowered to vindicate individualized infringements on that right." *Hall v. D.C. Bd. of Elections*, 141 F.4th 200, 205 (D.C. Cir. 2025) (citation modified). It does not matter that *all* Missouri voters might share the same injury: "The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance" where, as here, "each individual suffers a particularized harm." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016).

Appellants' asserted injury otherwise satisfies the requirements for standing. The injury is "concrete" and "personal," implicating their ability to meaningfully exercise their constitutional rights. *Richard v. Governor*, 336 A.3d 864, 870 (N.H. 2024).[11] And because the injury is not merely imminent but *ongoing*—every day HB1 is prematurely effective further undermines the referendum right—"a substantial controversy exists between parties with genuinely adverse interests." *Schweich v. Nixon*, 408 S.W.3d 769, 773 (Mo. banc

[11] PMF argues that "Appellants base their standing on the fact that they signed a petition purportedly referring HB1 to the vote" and lodges an evidentiary objection, PMF Br. 17–18, but this is misdirection—that Appellants are qualified voters with a share of the legislative power gives them standing, not just that they signed petitions.

2013) (per curiam) (citation modified). This injury exists independently of the Secretary's ultimate sufficiency determination. *Contra* PMF Br. 24–27.

In response, the State and PMF both rely on *Missouri State Conference of NAACP v. State*, but the plaintiffs there lacked standing because they "did not establish [the] voter identification requirements actually infringed on their ability to vote, and their fears the law may do so in the future are merely speculative." 730 S.W.3d 550, 561 (Mo. banc 2026). Here, in contrast, Appellants have established that the State's actions infringe on their constitutional rights because the premature effectiveness of HB1 dilutes the referendum power. That injury is not speculative; it is occurring *right now*. As the State concedes, *Missouri State Conference of NAACP* merely held that voters do not "automatically have standing to challenge laws and legislative maps that govern elections they will vote in." State Br. 34. But voters like Appellants *do* have standing when they demonstrate a concrete, individualized, and ongoing injury.[12]

B. This matter is ripe because the State is imposing an ongoing injury.

The State's and PMF's ripeness arguments misunderstand Appellants' claim and the law, as illustrated by this statement: "HB1's suspension *depends* on the sufficiency of [the] referendum petition, but no court can know the answer to that question until the Secretary completes his review process." State Br. 38; *see also* PMF Br. 33 (similar). This is incorrect: As discussed at length above and in Appellants' opening brief, HB1—like all referred legislation—was suspended as an operation of law when signed petitions were filed with the Secretary. Premature enforcement of suspended legislation dilutes (if not

[12] The State suggests only the HB1 referendum's organizers have standing, *see* State Br. 35–36, but Appellants' claim impacts their *own* individual rights, not the mechanics of the referendum process, *see* App. Br. 25–26. For this same reason, there is no "disconnect" between Appellants' claim and requested relief. *Contra* PMF Br. 20–21.

vitiates) the referendum right on a present and ongoing basis, denying voters their prerogative to approve legislation "before it become operative as a law." *Moore*, 250 S.W.2d at 706 (citation modified). A final insufficiency determination serves to *un*suspend legislation, but a sufficiency determination does not trigger suspension—*filing* does. *See* Mo. Const. art. III, § 52(a). Because the State maintains that HB1 is currently effective notwithstanding its suspension (and, absent relief, will likely used the new map in the midterm elections), Appellants' referendum rights are currently being violated. No conjecture is required, *contra* State Br. 39–40, and no advisory opinion would result, *contra* PMF Br. 33–36.

C. Courts can adjudicate the contours of the referendum right.

As Appellants explained, the Circuit Court's political-question determination was premised on a critical misunderstanding of Appellants' claim. *See* App. Br. 30–32. PMF now doubles down,[13] suggesting Appellants "ask[] this Court, in the first instance, to make an initial policy determination." PMF Br. 40. But "whether [a legislative act] be a law or not a law is a judicial question, to be settled and determined by the courts and judges." *State v. Moore*, 145 S.W. 199, 201 (Ark. 1912) (quoting *Town of South Ottawa v. Perkins*, 94 U.S. 260, 267 (1876)) (concluding that "[i]t was not intended that an act passed by the Legislature should take effect conditionally and subject to the referendum"). This is *not* a policy determination reserved for the political branches. The automatic suspension of legislation upon the submission of signed referendum petitions occurs as an operation of law independently of the Secretary's certification process. The two concepts might be related—the Secretary's determination of insufficiency, if finally adjudicated, would allow HB1 to

[13] It is telling that the State, which has thrown every possible impediment in the path of a merits determination, did not pursue this theory before the Circuit Court and offers only a lukewarm endorsement now. *See* State Br. 14 n.3.

take effect—but they are not "inseparable." PMF Br. 42. Because the automatic suspension of referred legislation is a fundamental predicate of the constitutional referendum right that operates apart from Chapter 116, this Court can most assuredly declare HB1 suspended without interfering with the political branches.

D. Declaratory relief is the proper remedy here.

For this same reason, declaratory relief is proper. *Contra* PMF Br. 45–48. Section 116.200, RSMo, provides a means of challenging the Secretary's statutory sufficiency determination. It does *not* allow the judiciary to determine whether Article III, Sections 52(a) and 52(b) require legislation to be suspended as an operation of law when signed petitions are filed. *Contra* PMF Br. 47. That is instead a constitutional question for which no administrative remedy is provided, making declaratory judgment the proper vehicle for Appellants' claim. *See City of St. Louis v. State*, 643 S.W.3d 295, 300 (Mo. banc 2022); App. Br. 32–33.

E. The State's estoppel theory remains fundamentally baseless.

At the Circuit Court, the State doggedly argued that Appellants were estopped from making their case merely because they signed HB1 referendum petitions. This estoppel theory was bunkum, unsupported by law or fact, and the State has finally abandoned its effort to silence Appellants. Instead, the State now suggests People Not Politicians ("PNP"), the referendum's organizer, is estopped from providing even amicus support. State Br. 69–71. Because the State's estoppel theory underscores the lengths to which it will go to avoid the merits, Appellants briefly explain why the argument remains baseless.

First, PNP did not make the "concessions" in the *von Glahn* litigation that the State suggests. At the hearing on the State's motion to dismiss, PNP clearly stated that "turning in the [petition] signatures ensures that the [referred] law will not otherwise go into effect on the 90th day," D203 p. 45. "[O]nly upon the Secretary's decision" that a referendum

petition is insufficient "surviving state court review," PNP explained, "would the map go into effect." *Id.* at pp. 45–46. PNP did not deviate from this position, even when the court asked point-blank "what authority is holding the law from going into effect." *Id.* at p. 47. PNP responded, "It is the submission—it is that the referendum process has been initiated." *Id.* PNP's counsel further confirmed the court's characterization of its position as follows: "[T]he law would go into effect" *if the Secretary found the petition insufficient*, at which point PNP "would seek to challenge the law based on the Secretary's actions and … file [] emergency relief … , and that very well could preclude the map from going forward." *Id.* at p. 48. This exchange is consistent with what Appellants (and PNP) argue here.

Second, even if the State had correctly characterized the federal litigation, its estoppel theory would still be a nonstarter because "[j]udicial estoppel applies to prevent inconsistent *factual* assertions." *Stephen W. Holaday, P.C. v. Tieman, Spencer & Hicks, LLC*, 609 S.W.3d 771, 781 (Mo. App. W.D. 2020) (alteration in original). This case illustrates why the rule makes sense: Nothing PNP's counsel might have said at the federal hearing changes, as a *legal* matter, what happens to referred legislation under the Missouri Constitution's referendum provisions. Because the purported concessions here concern a purely legal issue, estoppel would not apply even if they had been made.

F. The *Purcell* doctrine does not foreclose relief.

As a last-ditch effort to deny Appellants the relief to which the Missouri Constitution and this Court's precedent entitle them, both the State and PMF sound the drumbeat of the quasi-equitable *Purcell* doctrine. The effort should be rejected as a matter of law and fact, as Appellants explained. *See* App. Br. 54–56.

Apparently recognizing that *Purcell* "does not limit state judicial authority where, as here, a *state* court must intervene to remedy violations of the State Constitution," *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022), the State and PMF turn to *Hadley*

v. Junior College District, 460 S.W.2d 1 (Mo. banc 1970) (per curiam). But that decision only underscores that the State has failed to mount an equitable defense here.

To begin, *Hadley* emphasized the demonstrated practical considerations that militated against relief in that case. *See id.* at 2–3. Here, however, the State chose *not* to introduce any evidence of when it would be too late for courts to order relief in this case. The State is now left to rely on evidence-free generalizations and speculation; for example, baldly claiming without citation that "candidates have built their campaigns around [the HB1] map." State Br. 83. Gallingly, Appellants pressed the State throughout the Circuit Court proceedings, in filings and at hearings, to explain when it believed the congressional map must be locked in—and the State repeatedly refused to offer any input. It made a strategic decision to avoid raising *Purcell* or explaining to the Circuit Court when and how the doctrine might be implicated. That decision now has consequences.[14]

Next, the State's newfound position contradicts its earlier statements to the Circuit Court, where it gave every indication that *Purcell* would not be a practical impediment and represented that Secretary Hoskins could order suspension of the HB1 map as late as primary day. *See* D131 pp. 13–14, 16; App. Br. 55. Even now, the State claims "the Secretary could suspend HB1." State Br. 41. The State's self-serving suggestion that the practicalities of relief are somehow different when the State orders suspension as opposed to the courts, *see id.* at 86–87, cannot withstand scrutiny.

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[14] The State contends *Appellants* urged consideration of the *Purcell* doctrine. *See* State Br. 84–85. But Appellants mentioned *Purcell* precisely because they anticipated the State would later invoke the doctrine in an eleventh-hour gambit to deny relief (concerns that have come to pass). To be clear: Appellants *do not believe* equitable considerations militate against relief here. To the contrary, the equities compel vindication of their constitutional rights as quickly as possible—the reason Appellants repeatedly urged expedition at the Circuit Court. *See, e.g.*, D124 ¶ 45.

Finally, the evidence before the Court suggests that, if anything, *Purcell* favors *Appellants*, not the State. Though the State claims a ruling for Appellants would result in "[a] judicial order to *change* Missouri's congressional map," State Br. 82 (emphasis added), the old 2022 congressional map—*not* HB1's new map—is currently in use. This is evidenced by the fact that, as the State concedes, "local election authorities are still engaged in an ongoing review of the signatures on PNP's referendum petitions." *Id.* at 43. Those officials are using the *old* congressional map. *See, e.g.*, Br. of *Amici Curiae* St. Charles Cnty. Director of Elections Kurt Bahr 7 ("[U]nder the 2022 map, St. Charles County is split between multiple districts[.]"); *Preliminary Petition Signature County Reports*, Mo. Sec'y of State 100 (Apr. 10, 2026), https://bit.ly/4twbQmw (noting that St. Charles County is split between two districts for purposes of signature verification). Given that the 2022 map is still in use for signature verification—including to review 367,000 initiative signatures submitted this month in support of a proposed constitutional amendment, *see* Faith Jacoby, *Respect MO Voters Turn in Historic Number of Petition Signatures*, Columbia Missourian (May 3, 2026), https://bit.ly/3R24CZz—it is not Appellants who are threatening to alter the status quo *but the State itself*.

In the end, Appellants do not ask this Court to "change" any election laws. As they explain above, HB1 is still a mere legislative proposal, not a duly enacted law. Its premature enforcement would be unconstitutional, and "[a]n unconstitutional statute is no law and confers no rights. This is true from the date of its enactment, and not merely from the date of the decision so branding it." *City of Normandy v. Kehoe*, 709 S.W.3d 327, 334 (Mo. banc 2025) (citation modified). Because HB1 is not currently the law, it *cannot* be changed as a legal matter. Nor need it be changed as a practical matter, since the old map is currently being used by election officials. Whether considered as an issue of law or fact, ruling in

Appellants' favor would not implicate the equitable concerns underlying *Purcell* and *Hadley*.

CONCLUSION

The Court should reverse and order declaratory and injunctive relief suspending HB1 until completion of the constitutional referendum process.

Respectfully submitted this 4th day of May, 2026.

AMERICAN CIVIL LIBERTIES UNION OF MISSOURI FOUNDATION

/s/ Tori Schafer
Tori Schafer, No. 74359
Jonathan D. Schmid, No. 74360
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
(314) 652-3114
tschafer@aclu-mo.org
jschmid@aclu-mo.org

PERKINS COIE LLP

Matthew P. Gordon, *Pro Hac Vice*
Jonathan P. Hawley, *Pro Hac Vice*
Kevin J. Hamilton, *Of Counsel*
1301 Second Avenue, Suite 4200
Seattle, Washington 98101
(206) 359-8000
MGordon@perkinscoie.com
JHawley@perkinscoie.com
KHamilton@perkinscoie.com

Counsel for Appellants

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed and served electronically on all counsel of record via the Court's electronic filing system on May 4, 2026.

I also certify that this brief complies with the limitations in Rule 84.06(b) and contains 7,729 words.

/s/ Tori Schafer