

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

**MO STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF
COLORED PEOPLE, et. al.**

Plaintiffs,

v.

Case No. 25AC-CC06724

MIKE KEHOE et.al.

Defendants

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

I. INTRODUCTION

Defendants' Motion to Dismiss Plaintiffs' Petition should be Denied as moot. Pursuant to Rule 55.33, Plaintiff has filed an Amended Petition before Defendants filed a responsive pleading. See Rules 55.01, 55.25, 55.27 (a responsive pleading does not include a motion to dismiss). The Amended Petition includes, but is not limited to, challenges to any legislation passed by the General Assembly, presented to the Governor and/or signed. Accordingly, regardless of whether the Governor signs challenged legislation by the time this Court hears and rules on Plaintiff's TRO is immaterial. Missouri Courts have exclusive jurisdiction over this matter, and this Court should promptly grant Plaintiff's Motion for TRO.

**II. MISSOURI COURTS HAVE EXCLUSIVE JURISDICTION TO DECIDE
CHALLENGES THE CONSTITUTIONAL LIMITS PLACED ON THE
EXECUTIVE AND LEGISLATIVE BRANCHES**

The Missouri Supreme Court shall have exclusive appellate jurisdiction in all cases involving the validity of a statute or provision of the constitution of Missouri. Mo. Const. art. V, § 3. "[I]t is emphatically the province and duty of the judicial department to say what the law is,"

Mo. Coal. for Env't v. Joint Comm. on Admin. Rules, 948 S.W.2nd 125, 132 (Mo. 1997), quoting *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803); and *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, 344 S.W.3d 178, 186 (Mo. banc 2011), citing *Marbury*. “This power is a non-delegable power resting exclusively with the judiciary.” *Praxair*. Applying these constitutional principles, the judiciary has exclusive jurisdiction and authority to determine whether a Branch of Government has exceeded its constitutional authority. *See Mo. Coal., supra*, 133-134 (holding that legislature improperly exercised executive rulemaking power). Consistent with these principles, the Legislature has granted authority to circuit courts to make determinations regarding rights and remedies, and to restrain action pending such a determination on the merits. Sections 527.010, 526.050 RSMo. Constitutional challenges are reviewed de novo. *Legends Bank v. State*, 361 S.W.3d 382, 386 (Mo. 2012) (regarding constitutionality of a statute). “[I]f an act of the legislature clearly and undoubtedly violates a constitutional procedural limitation, this Court will hold it unconstitutional.” *Id.*

Here, Plaintiffs challenge the authority of the Governor and Legislature to act, as they have, under the limits of Article III and IV of the Missouri Constitution. Plaintiff challenge the constitutionality of Governor Kehoe's August 29, 2025 Proclamation convening an extraordinary session of the Missouri General Assembly, challenge the General Assembly's actions in response, convening a special session, under Article III, § 45, and challenge constitutionality of HB1 and HJR3, apparently since passed, and any subsequent presentment and/or signing by the Governor. This case presents important questions of constitutional interpretation regarding the Governor's authority under Article IV, Section 9 that are capable of repetition yet evading review, and likewise presents important questions regarding the interpretation of Article III, Section 45, and other relative provisions of the Missouri Constitution. The Court should deny Defendants' motion to

dismiss, promptly grant Plaintiffs' Motion for Temporary Restraining Order, and address the merits of Plaintiffs' claims to prevent future constitutional violations.

III. PLAINTIFFS HAVE STANDING TO CHALLENGE THE PROCLAMATION

Defendants' separation of powers argument fundamentally misunderstands the role of judicial review in our constitutional system. As shown above, Missouri courts have exclusive jurisdiction to rule regarding the interpretation of the Missouri Constitution and to apply its limits on other branches. The Missouri Supreme Court recognized in *State ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n*, courts have the authority to “make final determinations of questions of law.” The doctrine of separation of powers “does not erect an impenetrable wall of separation between the departments of government.” *Chastain v. Chastain*, 932 S.W.2d 396 (Mo. 1996).

Plaintiffs have standing as Missouri citizens and taxpayers who are directly affected by the Governor's allegedly unconstitutional convening of the legislature. The irreparable harms alleged include:

1. **Financial Harm:** The extraordinary session cost taxpayers in excess of \$25,000 per day based on per diem and mileage payments authorized by Sections 21.140 and 21.145.
2. **Procedural Harm:** The undue burden on interested parties to travel to Jefferson City for public hearings and participate in the legislative process outside the usual timeframe.
3. **Democratic Process Harm:** Uncertainty in district boundaries for constituents and potential candidates for office.

These concrete harms provide Plaintiffs with the requisite standing to challenge Defendants' actions.

IV. THE CASE IS NOT MOOT AND PRESENTS ISSUES CAPABLE OF REPETITION YET EVADING REVIEW

While HB1 and HJR3 have been enacted, this case is not moot for several reasons:

A. Continuing Constitutional Violations

The constitutional violations alleged by Plaintiffs continue beyond the legislative session itself. Any legislation enacted pursuant to an unconstitutional Proclamation remains tainted by that constitutional defect. As this Court recognized in *State ex rel. Department of Penal Institutions v. Becker*, 47 S.W.2d 781 (Mo. 1932), legislation passed during an unlawfully called extraordinary session is invalid.

B. Capable of Repetition Yet Evading Review

The Governor's practice of calling extraordinary sessions on increasingly routine matters presents a recurring constitutional issue that will evade review due to the compressed timeframes involved. The legislative process at issue here moved so quickly that by the time meaningful judicial review could occur, the session had concluded. This is precisely the type of case where the "capable of repetition yet evading review" exception to mootness applies.

As discussed, the judiciary has exclusive jurisdiction to interpret the Missouri Constitution and apply its limits. There is apparently no Missouri decision interpreting the meaning of an "extraordinary occasion," which is a limitation on the Governor's authority under Article IV, Section 9 of the Missouri Constitution. Missouri courts "must uphold the mandatory language of the constitution," including provisions of "shall." *Pearson v. Koster*, 359 S.W.3d 35, 39 (Mo. banc 2012).

There apparently no Missouri case law which interprets the meaning of an "extraordinary occasion" regarding the Governor's limited ability to call for a special session under Article IV, section 9. Applying the language of the Missouri constitution, including the mandatory provisions,

no “extraordinary occasion” has occurred to justify the Governor’s call for a special session of the Legislature, and none of the requirements have been met to require the Legislature enact redistricting laws.

Looking to the language of the Missouri constitution as previously applied, prior proclamations by the Missouri Governor indicated that an “extraordinary occasion” included circumstances such as responding to a world-wide pandemic such as COVID-19, giving rise to the need for an expedited legislative session because the General Assembly was unable to meet in time to address such an emergency pertaining to public health. See Governor’s Proclamation, July 15, 2020, “due to the COVID-19 outbreak, the General Assembly was unable to meet ...” therefore “on the extraordinary occasion that exists in the State of Missouri,” See MO Register Vo. 45 No. 16 (pp. 1211-1296), August 17, 2020.

The Governor previously indicated “additional immediate legislative measures must be taken to provide for the economic recovery from COVID-19 by providing liability protection ... on the extraordinary occasion that exists in the State of Missouri...” And see Executive Order, Governor’s Proclamation, Special Message, November 12, 2020, MO Register Vol. 45 No. 24 (pp. 1949-1998), Dec. 15, 2020; and Governor’s Proclamation, August 10, 2020, MO Register Vo. 45 No. 18 (p. 1333-1366) (regarding “unprecedented wave of violent crime existing in Missouri’s urban areas ... on the extraordinary occasion that exists...”). Other states such as Kentucky have concluded that an “extraordinary measure” includes an emergency threatening public health and welfare like the pandemic. *Beshear v. Acree*, 615 S.W.3d 780, 807 (Ky. 2020) (“the ‘extraordinary occasion’ ... of a global pandemic gives rise to an obvious emergency”).

Whereas Governor's call is in excess of his constitutional authority, then the Legislature is likewise limited in authority convene because there was, in effect, no valid call under the Missouri

Constitution. This Court should exercise its constitutional authority, and promptly enter a Temporary Restraining Order, to prevent further actions by the Governor and General Assembly, which have exceeded their constitutional limitation.

V. PLAINTIFFS HAVE STATED VALID CLAIMS FOR RELIEF

A. Count I: The Proclamation Fails to State an Extraordinary Occasion

Article IV, Section 9 requires that the Governor may only convene the legislature “on extraordinary occasions.” The term “extraordinary occasion” has a specific meaning requiring “a set of circumstances that require action or bring about an event.”

The facts alleged in the Petition demonstrate no such extraordinary circumstances:

1. No new census has been conducted requiring redistricting under Article III, Section 45.
2. No federal action has triggered the constitutional redistricting process.
3. Most initiative petition reforms sought were already enacted in Senate Bill 152.
4. No court has ordered new congressional maps.

The Governor's own statements reveal the political rather than extraordinary nature of the Proclamation. Press reports indicate that “President Trump has been pressuring Gov. Mike Kehoe to call a special session for mid-decade redistricting” to “dilute Democratic voting power.” Political ambitions of national figures do not constitute an “extraordinary occasion” under the Missouri Constitution.

VI. INJUNCTIVE RELIEF IS THE APPROPRIATE REMEDY

Defendants’ argument that mandamus is the exclusive remedy lacks merit. Missouri courts have consistently recognized that “there is very little difference in its practical results between proceedings in mandamus and by mandatory injunction” where the same court has both legal and

equitable jurisdiction. *State ex rel. Shartel v. Humphreys*, 338 Mo. 1091, 93 S.W.2d 924, 926 (Mo. 1936).

The *American Civil Liberties Union of Missouri v. Ashcroft* case provides instructive guidance on when injunctive relief is appropriate to address constitutional violations by state officials. 577 S.W.3d 881 (Mo. App. 2019). There, the court recognized that permanent injunctive relief can properly "compel the undoing of something wrongfully done" by state officials acting beyond their statutory authority.

Here, Plaintiffs seek declaratory judgment regarding the scope of the Governor's constitutional authority and prospective injunctive relief to prevent similar constitutional violations in the future. This is precisely the type of constitutional oversight that courts are empowered to provide.

VII. THE PUBLIC INTEREST SUPPORTS JUDICIAL REVIEW

The Missouri Constitution guarantees that "all political power is vested in and derived from the people." Mo. Const. art. I, § 2. When government officials act outside their constitutional authority, "courts must act to 'restrain unlawful acts of municipal officials which affect the rights of the public.'" *State ex rel. Ellis v. Brown*, 326 S.W.2d 752, 754 (Mo. App. 1959).

The public interest strongly favors judicial clarification of the constitutional limits on the Governor's power to convene extraordinary sessions. Without such clarification, governors may continue to circumvent the constitutional requirements and waste taxpayer resources on unnecessary legislative sessions.

VIII. CONCLUSION

Defendants' motion to dismiss should be denied as moot. Plaintiffs have standing to challenge the Governor's constitutional authority, the judiciary has exclusive jurisdiction to rule

on the constitutional limitations on the Governor and the General Assembly, and Plaintiffs have stated valid claims for relief, and seek appropriate remedies. The constitutional questions presented are of significant public importance and require prompt judicial resolution to prevent future violations.

The Court should proceed to the merits of Plaintiffs' claims and provide the declaratory and injunctive relief requested to ensure that future extraordinary sessions are called only when truly extraordinary occasions warrant such action.

WHEREFORE, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss and proceed to consider the merits of Plaintiffs' constitutional claims, and promptly grant Plaintiffs' Motion for Temporary Restraining Order without any delay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15th day of September, 2025, the foregoing was filed via the Missouri eFiling System and that a copy of the same was thus served via the electronic filing system in accordance with Supreme Court Rules.

/s/ Sharon Geuea Jones
Attorney for Plaintiffs